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NOTICE OF APPEAL.

Filed July 6, 1926.

In Chancery of New Jersey

Between	
CHARLES R. HEDDEN COMPANY, a corporation, *Complainant,*	*On Bill.*
and	*Notice of Appeal.*
WALTER J. DOZIER, *Defendant.*	

The defendant hereby appeals from the final decree made in this Court in the above-stated cause on July 1, 1926, and from the whole, and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

McCARTER & ENGLISH,
Solicitors for and of Counsel with Defendant.

Dated: July 2, 1926.

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

CONOVER ENGLISH,
Of Counsel with Defendant.

AMENDED NOTICE OF APPEAL.

Filed July 9, 1926.

IN CHANCERY OF NEW JERSEY.

Between	
CHARLES R. HEDDEN COMPANY, a corporation, *Complainant,*	*On Bill.*
and	*Amended Notice of Appeal.*
WALTER J. DOZIER, *Defendant.*	

The defendant hereby appeals from the final decree made in this Court by the Chancellor on the advice of Vice-Chancellor Backes in the above-stated cause on July 1, 1926, and from the whole, and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

McCARTER & ENGLISH,
Solicitors for and of Counsel with Defendant.

Dated: July 8, 1926.

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

CONOVER ENGLISH,
Of Counsel with Defendant.

PETITION OF APPEAL.

Filed July 15, 1926.

New Jersey Court of Errors and Appeals

Between	
CHARLES R. HEDDEN COMPANY, *Complainant-Respondent,*	*On Bill.*
and	*On Appeal.*
WALTER J. DOZIER, *Defendant-Appellant.*	*Petition of Appeal.*

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

The petition of Walter J. Dozier, the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery, by his Honor, Edwin Robert Walker, Chancellor of New Jersey, on the advice of Honorable John H. Backes, one of the Vice-Chancellors of New Jersey, bearing date the 1st day of July, 1926, wherein the said Charles R. Hedden Company was complainant, and the said Walter J. Dozier was defendant, in this respect, to wit: That the said decree, after reciting that the check to the order of the defendant, your petitioner, for the sum of $65,219, mentioned in the bill of complaint, was fraudulently obtained by the said defendant, and that the monies secured by him from the complainant thereby were fraudulently and unlawfully extracted from the complainant corporation, and that the complainant is entitled to the relief sought and prayed for in its

bill of complaint, adjudges that the said complainant, Charles R. Hedden Company, do recover from the defendant, your petitioner, the sum of $65,219, together with interest thereon from January 15, 1924, and further adjudges that the defendant, your petitioner, shall, within thirty days after the service upon him or his solicitors of a copy of said decree, pay to the said complainant the said sum of $65,219, together with interest thereon as aforesaid, and that, in default thereof, an execution do issue according to the course and practice of the Court of Chancery; and does further adjudge that the said defendant, your petitioner, do pay to the said complainant the costs of said suit to be taxed, which shall include therein a counsel fee of $2,500, and that execution issue therefor according to the course and practice of the Court of Chancery.

And your petitioner humbly appeals from the whole and every part of the said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous for that the decree of the Chancellor should have adjudged that the complainant was not entitled to the relief sought and prayed for in its bill of complaint, and that the said bill of complaint should be dismissed.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be 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.

McCARTER & ENGLISH,
Solicitors of Appellant.

CONOVER ENGLISH,
Of Counsel with Appellant.

ANSWER TO PETITION OF APPEAL.

Filed July 21, 1926.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between	
CHARLES R. HEDDEN COMPANY, *Complainant-Respondent,*	*On Bill, etc.*
and	*On Appeal.*
WALTER J. DOZIER, *Defendant-Appellant.*	*Answer to Petition of Appeal.*

The answer of Charles R. Hedden Company, the above-named respondent, to the petition of appeal of Walter J. Dozier, the above-named appellant.

This respondent not acknowledging all or any of the matters which in said petition of appeal are contained to be true, for answer thereto nevertheless says and admits, that a decree was on the first day of July, 1926, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as 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 the said decree is agreeable to equity and it prays that the same may be affirmed with costs to be adjudged to this respondent.

LUM, TAMBLYN & COLYER,
Solicitors for and of Counsel with Respondent.

BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainant, Charles R. Hedden Company, a corporation of the State of New Jersey, having its principal office in the City of Newark, in the County of Essex, in said State, respectfully shows:

1. That complainant is a corporation duly organized in pursuance of an Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)" and the several Acts supplemental thereto and amendatory thereof; that the Certificate of Incorporation of said company was duly filed and recorded in the office of the Secretary of State of the State of New Jersey on February 28, 1918; that complainant was organized for the purpose of conducting and carrying on the business of general building construction and contracting engineers; that the total authorized capital stock of complainant is $100,000.00 divided into 1,000 shares of the par value of $100 each.

2. That the incorporators of complainant company were Charles R. Hedden, Charles L. Doe, John W. Wathey, and Walter J. Dozier, who is the defendant herein; that said incorporators organized complainant company for the purpose of taking over and continuing in corporate form the building construction, contracting and engineering business which said Charles R. Hedden individually had previously conducted

under his own name and under the trade name of Hedden Construction Company; that said four incorporators continued to be the only stockholders of complainant company until February 17, 1920, when one James H. Toothe acquired 20 shares of the capital stock of complainant, which said 20 shares have been at all times since then and still are held by him; that in or about the month of January, 1922, all the shares of complainant's capital stock which were held by said Doe and Wathey were acquired and transferred to said Hedden and Dozier; that in or about February, 1922, one Harold F. Fisher acquired certain shares of complainant's capital stock, and at all times since then has been and still is a stockholder in complainant company; that since the incorporation of complainant company there have been no stockholders of complainant other than said persons above mentioned, and said Charles R. Hedden has held at all times since the purchase of said Doe and Wathey stock and still holds a majority of the issued and outstanding shares of its capital stock.

3. That for more than ten years prior to the incorporation of complainant company defendant, Walter J. Dozier, had been in the employ of said Charles R. Hedden, trading under his own name and as Hedden Construction Company, and had gained the implicit trust and confidence of said Charles R. Hedden, and at all times from the time of the incorporation of complainant company until the time of the resignation of the defendant on January 15, 1924, as hereinafter set forth, the said defendant enjoyed the implicit trust and confidence of all the offi-

cers, directors and stockholders of complainant company.

4. That from the time of the incorporation of complainant company said Charles R. Hedden had been and still is its president.

5. That from the time of the incorporation of complainant company until the time of his resignation as hereinafter set forth, the defendant, Walter J. Dozier, was a director and treasurer of complainant company and during said period had entire charge of the finances of the complainant and control of its bank accounts and moneys; and from the time of the incorporation of complainant until February 14, 1922, said defendant was also secretary of complainant, on which last-mentioned date said James H. Toothe was elected as secretary in the place and stead of defendant and at all times since that date has been and still is secretary of complainant; that on February 14, 1922, said defendant was also elected a vice-president of complainant, which office he continued to hold until the time of his resignation, as hereinafter set forth.

6. That from the time of the incorporation of complainant until December 27, 1921, complainant's board of directors consisted of said Charles R. Hedden, Charles L. Doe and the defendant, Walter J. Dozier; that after the sale of the stock of said Doe as aforesaid the said Harold F. Fisher was on February 14, 1922, elected a director of complainant in the place and stead of the said Doe, and complainant's board of directors thereafter consisted of said Hedden, Dozier and Fisher until on or about April 20, 1923, when complainant's board of directors was increased from three to four mem-

bers, and at the annual meeting of stockholders held on said last-mentioned date the following persons were elected directors and continued to constitute complainant's board of directors until January 15, 1924, to wit, Charles R. Hedden, Walter J. Dozier, Harold F. Fisher and James H. Toothe.

7. That not until after January 15, 1924, as hereinafter set forth, did complainant or any of its officers, directors or stockholders have any knowledge of any dishonesty, fraud or breach of trust on the part of the defendant or have any knowledge of any act of said defendant which might tend to destroy or impair their trust and confidence in him or put them upon their guard in respect to his dealings with complainant and the discharge of his trusts, duties and obligations as an officer and director of complainant.

8. That at or about the time of the resignation of said Doe and Wathey as aforesaid, defendant began to contrive to acquire a majority and controlling interest in complainant's issued and outstanding capital stock, and to that end made diverse and repeated propositions to the said Charles R. Hedden in respect to the acquisition by the said Dozier of the shares of complainant's stock held by the said Hedden; that upon finding that no such propositions were acceptable to said Hedden the said defendant sought to induce the said Hedden to purchase the shares of stock held by him, the said defendant; that upon finding that the said Hedden was not willing to purchase the stock of said defendant and that he, said defendant, could find no other purchaser for the said stock, defendant conceived a malicious and fraudulent scheme

whereby he hoped and intended to surrender up his said shares of stock to complainant company and to make over and pay to himself a sum greatly in excess of the true value of his said shares out of the moneys and assets of complainant which were intrusted to him and under his control as treasurer of complainant as aforesaid, and schemed and contrived to do so in such manner as he hoped would render it impossible for complainant to recover from him the moneys so extracted by him from complainant's treasury in pretended payment for his said shares of stock.

9. That at the time of the appointment of said James H. Toothe as secretary of complainant, defendant suggested to the other officers and directors of complainant that, inasmuch as he, the said defendant, had for so long acted as secretary of complainant and was conversant with the proper preparation of minutes of complainant's stockholders' and directors' meetings, he would continue to write up and prepare such minutes as an aid and accommodation to the said newly appointed secretary, James H. Toothe; that all the officers and directors of complainant, having implicit trust and confidence in said defendant as aforesaid, acquiesced in his said suggestion, and thereafter until the time of his resignation as hereinafter set forth said defendant wrote and prepared the minutes of all complainant's stockholders' and directors' meetings; that it became defendant's practice to write and prepare minutes of such meetings a long time after the meetings had been held, and to submit at one time to the said Toothe the minutes of a number of meetings to be signed by him as secretary, and after

having had same so signed by said Toothe did cause a certificate thereto to be signed by said Charles R. Hedden as chairman; that although said Toothe was nominally secretary he in fact looked upon and considered himself as being merely an employee of the said Hedden and Dozier, who were the active heads and managers of complainant's business, and he therefore did in a perfunctory manner what the said Dozier instructed him to do, and signed such minutes of meetings as the said Dozier submitted to him for his signature; that said Charles R. Hedden, trusting implicitly in the said Dozier as aforesaid and through years of experience with him as aforesaid having found no reason to suspect defendant or to be on his guard against the perpetration of any fraud by defendant, was also accustomed to sign such minutes of meetings as said Dozier submitted to him for his signature and certification without carefully reading the same; that said defendant, moreover, both during the time that he himself was secretary as well as during the time that he acted for the said Toothe, as aforesaid, was accustomed to prepare formal minutes of directors' meetings which had never in fact been actually held, setting forth therein such resolutions and matters as all the directors of complainant had knowledge of and acquiesced in, which such formal minutes were accustomed to be signed and certified by the secretary of complainant as well as by said Hedden as president, all of which was done and permitted because of the small number of complainant's stockholders and directors, all of whom were actively engaged in the conduct of complainant's business and as between whom there existed the highest degree of accord and harmony and mutual confidence.

10. That at or about the end of the calendar year 1922 said Dozier submitted to said Hedden for his signature, as aforesaid, minutes which he had prepared purporting to be minutes of a number of regular and special meetings of the board of directors of complainant held from between the early part of March, 1922, and the end of said year, which minutes had previously been signed by the said Toothe as secretary and between the pages of which defendant had inserted paper markers to indicate the pages on which the said Hedden was to sign, and the said Hedden accordingly signed the certificate appended at the end of the minutes of each such supposed meeting without carefully reading the whole thereof, and believing that the said Dozier had inserted therein only minutes of what had actually transpired at such meetings of complainant's directors or had been agreed to by all of complainant's directors.

11. That thereafter defendant kept complainant's said minute book locked in his own private compartment in complainant's safe, to which compartment only defendant had access, and shortly after the beginning of the calendar year 1923 defendant opened and thereafter used for the recording of complainant's minutes a new minute book.

12. That not until subsequently to January 15, 1924, did complainant or any of complainant's officers, directors or stockholders other than the said defendant have any knowledge or intimation that pursuant to his said fraudulent and malicious scheme and intent defendant had inserted in what purported to be the minutes of a meeting of complainant's board of directors

held on August 15, 1922, a minute to the effect that the following resolution was adopted:

> "Further resolved that should the Treasurer at any future time and at his pleasure withdraw from active management of the Company's affairs, his stockholdings in the Company shall be purchased by the Charles R. Hedden Company at the book value per share at the closing of business for the fiscal year ending December 31st preceding his intention to withdraw and date of resignation."

13. That on August 15, 1922, complainant's board of directors consisted as aforesaid of three members, to wit, Charles R. Hedden, Walter J. Dozier and Harold F. Fisher, and the said James H. Toothe was secretary of complainant; that at no meeting of complainant's board of directors either on August 15, 1922, or on any other date was any resolution ever submitted to or moved or adopted by complainant's board of directors such as that last-above quoted or to any like effect or in any way providing for the purchase by complainant of its said stock, nor was any such purchase by complainant of its said stock ever agreed to by the said Charles R. Hedden or by any of complainant's officers, directors or stockholders other than the defendant.

14. That complainant is informed and verily believes and charges the truth to be that its board of directors was not authorized or empowered to enter into such contract to purchase from the defendant his shares of stock as set forth in said alleged resolution of August 15, 1922; that said alleged resolution and alleged contract contained therein were *ultra vires,* ille-

gal, fraudulent, void, and utterly without consideration, and that if it was adopted by said directors constitutes a breach of their fiduciary obligations to complainant.

15. That pursuant to his said fraudulent scheme and purpose defendant further inserted in said supposed minutes what purport to be minutes of a regular meeting of complainant's board of directors held on September 19, 1922, including a minute that the following resolution was adopted, viz: "Resolved, that the reading of the minutes of a previous meeting of the board of directors held on the 15th day of August, 1922, be postponed to the next regular meeting of the board," and in what purport to be minutes of the next regular meeting of complainant's board of directors held on October 17, 1922, defendant inserted a minute that the following resolution was duly made, seconded and carried, to wit: "Resolved, that the reading of the minutes of the regular meeting of the board of directors held on the 15th day of August, 1922, be ratified, approved and confirmed."

16. That complainant charges the fact to be that no meeting of complainant's board of directors was held in September, 1922, and that at no meeting of said board of directors was any resolution ever suggested, offered, voted upon or adopted to the effect that the reading of the minutes of the meeting of the board of directors held August 15, 1922, be postponed to the next regular meeting of the said board or to any other meeting, and that neither at the meeting of said board held on October 17, 1922, nor at any other meeting of said board was

any resolution suggested, offered, voted upon or adopted to the effect that the reading of the minutes of the regular meeting of the board of directors held on August 15, 1922, be ratified, approved and confirmed, and complainant charges the fact to be that at no meeting of said board of directors were said alleged minutes of the meeting of the board of directors held on August 15, 1922, or any other minutes of said meeting offered, read or in any way ratified, approved or confirmed; but complainant charges the fact to be that not until subsequently to January 15, 1924, did any officer, director or stockholder of complainant other than the defendant have any knowledge that there appeared in complainant's said minute book any such minutes as those last above quoted.

17. That on December 31, 1923, and also on January 15, 1924, there were outstanding 900 shares of the capital stock of complainant company, of which said Charles R. Hedden held 480 shares, said defendant, Walter J. Dozier, held 275 shares, said Harold F. Fisher held 125 shares and said James H. Toothe held 20 shares.

18. That on January 15, 1924, complainant's board of directors consisted of four members as aforesaid, to wit, the said Charles R. Hedden, Walter J. Dozier, Harold F. Fisher and James H. Toothe, and the officers of complainant company were Charles R. Hedden, President; Harold F. Fisher, Vice-President; Walter J. Dozier, Vice-President and Treasurer, and James H. Toothe, Secretary.

19. That on January 14, 1924, defendant, in furtherance of his said fraudulent scheme and purpose, and anticipating the meeting of com-

plainant's board of directors called to be held on the following day, and intending on the next day to resign from and sever his relations with complainant company for the purpose of setting up and conducting an organization which would compete with complainant company in the same line of business as that in which complainant was and is engaged and which defendant had or was about to incorporate and conduct under the name of Fisher-Williams Corporation, and in furtherance of which purpose defendant was in need of cash and capital, defendant did, in violation of his obligations as a director and as treasurer of complainant company, and in violation of the trust and confidence which the complainant and the other directors and officers of complainant company reposed in him, secretly and without the knowledge of complainant or of any of complainant's other officers or directors, fill out or caused to be filled out a bank check payable to his own order dated January 14, 1924, in the sum of $65,219, drawn on Montclair Essex Trust Company against funds which complainant had on deposit with said Trust Company, and as treasurer of complainant, defendant signed the same, which check so filled out and signed by defendant was one which the president of complainant company had previously signed in blank and had intrusted to said defendant as treasurer of complainant to be used by defendant to discharge some current obligation of complainant arising out of and in the usual course of the conduct of complainant's business, and either on that same day or on the following day prior to said directors' meeting called to be held on January 15, 1924, defendant presented said check to said Montclair Essex

Trust Company and caused the same to be certified by said Trust Company and to be paid to him by said Trust Company in the sum of $65,219 out of the funds which complainant had on deposit with said Trust Company as aforesaid.

20. That at the meeting of complainant's board of directors held at 3:00 P. M. on January 15, 1924, at which all of the then directors of complainant were present, defendant, as treasurer of complainant, presented to said meeting what purported to be a statement of complainant's assets and liabilities as of December 31, 1923, and upon motion it was resolved by said board that the said treasurer's report be spread upon the minutes and approved subject to audit; that thereafter and after the consideration and transaction of some other business defendant made a motion which was seconded, to the effect that complainant company purchase the shares of stock in complainant company then standing on the books of complainant company in the name of defendant at the book value thereof as shown on said treasurer's report, which motion, upon being put to a vote, was not carried, two of said four directors voting in favor thereof and two of said directors voting against the same; that at no time during said last-mentioned directors' meeting was any reference or allusion whatsoever made by defendant or by anyone else to said above-quoted resolution alleged to have been adopted by complainant's board of directors on August 15, 1922, nor did defendant in any way refer to or reveal the fact that he had drawn, signed and had certified and cashed the aforesaid check to his own order in the sum of $65,219; complainant charges the fact to be that at the time of said meet-

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ing of January 15, 1924, none of complainant's directors other than defendant had any knowledge of said alleged resolution of August 15, 1922; that said Fisher voted with defendant in favor of defendant's said motion and that said Fisher had at that time also intended to resign from and sever his relations with complainant to engage with defendant in organizing and carrying on the aforesaid competing business which was then or has since been incorporated under the laws of the State of New York under the name of Fisher-Williams Corporation, and of which said Fisher is an officer and an active manager, having resigned from and severed his relations with complainant after said meeting of January 15, 1924; and that defendant at said meeting of January 15, 1924, resigned as director, treasurer and vice-president of complainant and is now president of said Fisher-Williams Corporation, and said James H. Toothe was elected treasurer of complainant in his place and stead.

21. That on January 16, 1924, defendant requested the said Toothe to accompany him to the safe deposit box belonging to and under the control of complainant at Fidelity Union Trust Company in the City of Newark and defendant placed in said box certain deeds, agreements and other papers belonging to complainant which had been in his possession as treasurer of complainant and therewith placed in said box also the certificates which he held for said 275 shares of complainant's stock standing in his name, which certificates had been endorsed by him for transfer in blank and his signature on which had been witnessed by the said Fisher; that defendant requested of said Toothe a re-

ceipt for said papers, which said Toothe refused to give him and to which request said Toothe replied that he would have to speak to the said Charles R. Hedden concerning the same; that although said certificates of stock have since remained in said deposit box, complainant has never accepted the same and has at all times and still does permit the same to remain in said deposit box as the property of said defendant and subject to his control and disposition.

22. That on or about January 16, 1924, defendant instructed complainant's book-keeper to make in complainant's books an entry of said payment to defendant of said sum of $65,219 and instructed said book-keeper to note on the entry thereof in complainant's books a reference to the aforesaid resolution of August 15, 1922; that when said shortage of $65,219 in complainant's account at said Montclair Essex Trust Company was discovered complainant's officers inspected complainant's books to detect the cause thereof, and seeing the aforesaid reference to the resolution of August 15, 1922, referred to complainant's minute book, and then for the first time learned of the existence of such alleged resolution in said minute book; that after advising with counsel complainant demanded of defendant that he take back in his possession the aforesaid certificates for his 275 shares of stock and that he refund and repay said sum of $65,219 with interest to complainant, but defendant has refused and still does refuse so to do.

23. That defendant relies upon said alleged resolution of August 15, 1922, to justify his taking and retaining said sum of $65,219 as afore-

said and claims that the said sum represents the book value as of December 31, 1923, of said 275 shares of stock so as aforesaid held by him in complainant company, but complainant insists and charges the truth to be that the said sum is greatly in excess of the book value of such shares as of December 31, 1923, and that the financial statement of complainant company as of that date was prepared by defendant and that the value of the capital and surplus of complainant as of that date was greatly exaggerated and inflated by defendant in said statement for the purpose of increasing the book value of the shares so held by him and in contemplation of his said fraudulent scheme and design to have his said shares purchased by and paid for out of the assets of complainant as aforesaid, and that as of December 31, 1923, the true and actual book value of said shares was less than their par value of $100 each.

24. That the actions and doings on the part of defendant with respect to the withdrawal of said sum of $65,219 from the treasury of complainant corporation were inequitable, illegal and fraudulent and were in fact a fraudulent, unwarranted and illegal withdrawal of the capital of complainant corporation, and that even if said resolution of August 15, 1922, was adopted by complainant's board of directors the appropriation of said moneys by the said defendant to his own use in manner aforesaid was utterly in violation of the provisions of the Corporation Act of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896"), and the acts supplemental thereto and amendatory thereof.

Complainant is without adequate remedy in the courts of law and therefore prays:

(1) That the said Walter J. Dozier, who is the defendant to this suit, may answer this bill of complaint without oath and each statement therein made.

(2) That the said resolution alleged to have been adopted by the board of directors of complainant on August 15, 1922, as above set forth, may be decreed to be fraudulent, of no effect, illegal, *ultra vires,* and void.

(3) That said defendant may be decreed to make and pay over to the complainant said sum of $65,219 so as aforesaid received by him, together with interest thereon from the date of the receipt of the same by him.

(4) That, pending the final hearing in this cause, a receiver may be appointed to take into his possession the said sum of $65,219, and that said defendant may be directed to deliver the said sum, with interest from January 15, 1924, to such receiver as may be appointed herein.

(5) That if said resolution alleged to have been adopted by the board of directors of complainant on August 15, 1922, as above set forth, shall be held to be valid and binding upon complainant, the value of defendant's said shares of stock as of December 31, 1923, may be determined and fixed, and defendant decreed to make and pay over to the complainant so much of said sum of $65,219 so as aforesaid received by him as is in excess of the value thereof so fixed and determined, together with interest on such excess from the date of the receipt of the same by him.

(6) That complainant may have such other and further relief as the nature of the cause may require and as may be agreeable to equity and good conscience.

(7) That a writ of subpoena may issue, commanding said defendant to answer this bill of complaint and abide by such decree as this Court may make in the premises.

LUM, TAMBLYN & COLYER,
Solicitors for and of Counsel with
Complainant.

Answer.

ANSWER.

IN CHANCERY OF NEW JERSEY.

Between

CHARLES R. HEDDEN COMPANY, a corporation, *Complainant,*

and

WALTER J. DOZIER, *Defendant.*

On Bill, &c.

Answer.

The answer of the defendant, Walter J. Dozier, to the bill of complaint says that:

1. He admits the first paragraph of the bill but requires the production of the certificate of incorporation for greater accuracy as to the purpose for which the complainant was organized.

2. He denies that the incorporators of the complainant organized it for the purpose of taking over and continuing in corporate form the building construction, contracting and engineering business which Charles R. Hedden individually or Hedden Construction Company had previously conducted and he denies that the said James H. Toothe was a bona fide holder of twenty shares of the capital stock of the complainant company, or of any shares of stock of the complainant company; and except as herein denied, he admits the said second paragraph of the bill.

3. He admits that for some ten years prior to January 15, 1924, he was associated in business with Charles R. Hedden. He has no knowl-

edge sufficient to form a belief as to whether he had gained the implicit trust and confidence of the said Charles R. Hedden, or of the officers, directors, and stockholders of the complainant company, although his conduct was such as to richly merit such confidence.

4. He admits the fourth paragraph of the bill.

5. He denies that from the time of the incorporation of the complainant company until his resignation as a director and treasurer thereof, he had entire charge of the finances of the complainant company and control of its bank accounts and monies, and except as herein denied, he admits the said fifth paragraph of the bill, except that he requires, for greater accuracy, that the corporate minutes of the complainant company be produced and proved.

6. He has no knowledge sufficient to form a belief as to whether the board of directors of the complainant company was increased from three to four members, and whether James H. Toothe was elected a director of the complainant, and except as to the said matters concerning which he has no knowledge, he admits the sixth paragraph of the bill, except that for greater accuracy he requires that the books and records of the complainant be produced and proved.

7. He denies that he was guilty of any dishonesty, fraud, or breach of trust, or of any act which might tend to destroy or impair the trust and confidence of the officers, directors and stockholders of the complainant in him, and he says that he was faithful in the discharge of his trust, duties and obligations as an officer

and director of the complainant, and that all of his acts and doings were known to the other officers, directors and stockholders.

8. He denies the eighth paragraph of the bill.

9. He admits that he was entitled to the implicit trust and confidence of all the officers and directors of the complainant and that there was no reason for them to suspect him of the perpetration of any fraud, and except as herein admitted, he denies each and every allegation in the ninth paragraph of the bill.

10. He admits the opening of a new minute book in 1923, and except as admitted, he denies the tenth paragraph of the bill.

11. He denies the eleventh paragraph of the bill.

12. He says that the resolution set forth in the twelfth paragraph of the bill was adopted by the directors of the complainant at a meeting held on August 15, 1922, as appears of record in the minute book of the complainant and except as herein admitted he denies the twelfth paragraph of the bill.

13. He admits that on August 15, 1922, complainant's board of directors consisted of three members, to wit: Charles R. Hedden, Harold F. Fisher and Walter J. Dozier, and that James H. Toothe was secretary of the complainant, and for greater accuracy, he requires the production and proof of the books and records of the complainant, and except as herein admitted, he denies the thirteenth paragraph of the bill.

14. He denies the fourteenth paragraph of the bill.

Answer.

15. He has no knowledge sufficient to form a belief as to the exact language of the resolutions quoted in the fifteenth paragraph of the bill, and says that they are matters of record in the books and records of the complainant, and he requires proof thereof, and except as he lacks knowledge as herein set forth, he denies the fifteenth paragraph of the bill.

16. He denies the sixteenth paragraph of the bill and each and every allegation therein contained.

17. He admits that on December 31, 1923, he was the owner of 275 shares of the capital stock of complainant company, but he is without knowledge sufficient to form a belief as to the other allegations contained in the seventeenth paragraph of the bill and requires proof thereof.

18. He admits that on January 15, 1924, he was a director of the complainant company and treasurer thereof, but he is without knowledge sufficient to form a belief as to the other allegations contained in the eighteenth paragraph of the bill and says that they are matters of record in the books and records of the complainant, and he requires proof thereof, except he admits the officers were as named.

19. He denies the nineteenth paragraph of the bill and each and every allegation therein contained.

20. He has no knowledge sufficient to form a belief as to those matters alleged in the twentieth paragraph of the bill which are matters of record in the books and records of the complainant, and as to those allegations he requires proof. Except as he has no knowledge as herein

set forth, he denies the allegations in the twentieth paragraph of the bill, except he admits Toothe was elected treasurer.

21. On January 16, 1924, defendant turned over to James H. Toothe, who had been elected as treasurer of complainant, in his place and stead, all of the books, papers and records of the complainant corporation, and in addition thereto, and by direction of Charles R. Hedden, president of the complainant company, defendant also turned over to said Toothe as treasurer, the certificates which he held for 275 shares of complainant's stock standing in his name, properly endorsed in blank for transfer. All of which books, records and papers were accepted by the said James H. Toothe as treasurer of the complainant, and except as herein admitted, defendant denies the twenty-first paragraph of the bill and each and every allegation therein contained.

22. On January 15, 1924, defendant delivered to the book-keeper of complainant company a properly signed voucher for $65,219, which said voucher read as follows:

> "January 14, 1924, for the purchase of two hundred and seventy-five (275) shares of common stock of the Charles R. Hedden Company standing in the name of Walter J. Dozier at the book value period ending December 31, 1923, in accordance with the resolution of the board of directors passed August 15, 1922, and recorded in Minute Book, page 158."

and except as herein admitted, defendant denies the twenty-second paragraph of the bill and each and every allegation therein contained.

Answer.

23. The resolution of August 15, 1922, is one of the elements relied on by the defendant to justify his retaining the said sum of $65,219 and except as herein admitted, he denies said paragraph twenty-three and each and every allegation therein contained.

24. He denies the twenty-fourth paragraph of the bill and each and every allegation therein contained.

Further answering the bill of complaint, defendant says:

25. On August 15, 1922, the board of directors of the complainant company adopted a resolution reading as follows:

> "The treasurer reluctantly stated to the board, that owing to his continued ill health and nervous mental condition, due from strain and overwork incident to the construction of camps at Lakehurst, N. J., during the war time, that he felt it would be unwise for him to continue active in the management of the company's affairs and asked to be relieved from further duties involving active participation in the company's management, or that he would hand in his resignation as an officer of the company. After a cursory and general discussion of the matter,
>
> Upon Motion, duly made, seconded and carried, it was
>
> Unanimously Resolved, to grant a two months' leave of absence to the treasurer, Mr. Dozier not voting.
>
> Upon Motion, duly made, seconded and carried, it was
>
> Further Resolved, that should the treasurer at any future time, and at his pleasure, withdraw from active management of the

company's affairs, his stockholdings in the company shall be purchased by the Charles R. Hedden Company at the book value per share at the closing of business for the fiscal year ending December 31st, preceding his intention to withdraw and date of resignation."

The said resolution was unanimously ratified, approved and confirmed at a meeting of the board of directors of the complainant company held on October 17, 1922. All of the stockholders, as well as all of the directors of the complainant company had knowledge of and acquiesced in the said action of the said board of directors and said resolution of August 15, 1922, has never been modified or changed, all of which will more fully and at large appear by recourse to the minute book of the complainant company to which reference is made.

26. During the latter part of the year 1923, defendant determined not to longer continue active in the management of the complainant's affairs, and asked to be relieved and as the result of a conference between Charles R. Hedden, president of the complainant company, and defendant, held on January 5, 1924, it was agreed that the complainant company should buy the stock of the defendant at its book value per share at the closing of business for the fiscal year ending December 31, 1923, pursuant to the said resolution of August 15, 1922, and that the said stock should be paid for by the check of the complainant company. Pursuant to said agreement the book value per share of the stock of the complainant company was figured as of the closing of business for the fiscal year ending December 31, 1923, by the complainant's offi-

cers, aided by its accountants and book-keepers, and a financial statement was prepared from which it appeared that the book value per share of the 275 shares of common stock of the complainant company owned by the defendant, as of the closing of business for the fiscal year ending December 31, 1923, was $65,219. Pursuant to the said resolution of August 15, 1922, supplemented by the said agreement between the said Charles R. Hedden, president of the complainant company, and the defendant, Walter J. Dozier, the complainant company drew its check to the order of the defendant for $65,219, which check was duly signed by the president and treasurer of the complainant company, and which said check was in form a voucher check having written thereon the following:

> "For the purchase of 275 shares of common stock of the Charles R. Hedden Company in name of Walter J. Dozier * * * * * * * * * * * $65,219."

and which said check was presented and paid.

27. The sole stockholders of record of the complainant company at the time of the matters complained of in the bill were Charles R. Hedden, Harold F. Fisher, James H. Toothe and defendant. No rights of creditors have intervened or are involved. All the stockholders had knowledge of and acquiesced in the matters complained of in the bill and the complainant is estopped to claim the relief prayed for in the bill.

28. The complainant is in laches in the assertion of its rights.

29. The complainant has an adequate remedy at law.

McCARTER & ENGLISH,
Solicitors for and of Counsel with Defendant.

OPINION.

IN CHANCERY OF NEW JERSEY.

Between

CHARLES R. HEDDEN COMPANY, a corporation,
Complainant,

and

WALTER J. DOZIER,
Defendant.

Opinion.

Treasurer of a company ordered to return money fraudulently abstracted.

For complainant, Lum, Tamblyn & Colyer (Mr. Ralph Lum).

For defendant, McCarter & English (Mr. English).

BACKES, *V.-C.*

The Charles R. Hedden Company sues to recover from Walter J. Dozier, its former treasurer, $65,219, which it charges he procured through fraud. The defendant answers that the sum was paid to him as the purchase price of his 275 shares of the capital stock of the company.

There appears in the minutes of the company a resolution purporting to have been passed by the board of directors at a meeting on August 15, 1922, that "should the treasurer at any future time and at his pleasure withdraw from the active management of the company's affairs his stockholdings in the company shall be purchased by the Charles R. Hedden Company at

the book value per share at the closing of business for the fiscal year ending December 31 preceding his intention to withdraw and date of resignation." It is charged that this resolution was never before the board for its consideration and is a false record, surreptitiously incorporated in the minutes by Dozier; and it is further charged that a check of the company dated January 14, 1924, to the order of Dozier for $65,219, which he claims was given for his stock, was fraudulently obtained.

The business of the Hedden Company is that of constructing engineers and builders of large structures, and its operations are extensive. It is a close corporation, with Charles R. Hedden, now seventy-three years of age, the master mind. He has been engaged in that line in Newark for upwards of fifty years and erected many of the imposing buildings of that city and vicinity. Dozier, a much younger man, was for many years his book-keeper and confidential secretary, until the company was formed in 1918 by Hedden and Dozier, and two others, who later sold their holdings to Hedden and Dozier. In February, 1922, James H. Toothe and Harold F. Fisher became stockholders. Toothe held 20 shares, by gift from Hedden, his grandfather, Fisher 150 shares, Dozier 275 shares and Hedden the balance, slightly more than a majority of the outstanding 900 shares, of the par value of $100. Hedden has always been the president and the practical man in charge of operations and Dozier was treasurer and the indoor man in charge of the finances and clerical force and affairs of the company, until he resigned January 15, 1924. He was also secretary until he was succeeded by Toothe in February, 1922. Hedden, Dozier and

Fisher constituted the board of directors from the time Fisher became a stockholder until Dozier quit the company in 1924. These three, according to the minutes, are supposed to have voted for the disputed resolution of August 15, 1922.

Whatever question there may be as to the integrity of the August 15, 1922, resolution, there can be no doubt that the check of January 14, 1924, was not the result of negotiation and settlement based on that resolution. The resolution was never adverted to either by Hedden or Dozier, as the latter admits, from the date it bears until, as he says, at the conference of January 5, 1924, he mentioned it to Hedden and that "he didn't say very much about it." In view of what he says happened at that meeting and the ensuing event it is not believable that Dozier referred to it at that time. The relations between Hedden and Dozier became strained in the fall of 1923, and Dozier was constantly pressing Hedden to buy his stock, Hedden always refusing. Finally, at a pre-arranged conference, on January 5, 1924, so Dozier says, he offered to sell his or buy Hedden's shares at $200 per share; that Hedden refused the offer but agreed that the company would take his (Dozier) shares at their book value as of December 31, 1923, and directed him to prepare a statement of the financial standing of the company, which, he says, he forthwith proceeded to do; that on January 11th he showed Hedden his work sheets and told him that the book value of the stock would be approximately between $225 and $240 per share, and that he again expressed himself as willing to sell for $200 per share, as he had offered to do on January 5th, but that Hedden told

him to go ahead and settle on the basis of the book value, which later, Dozier says, he determined to be $237.16 per share, by including in the assets, items amounting to $134,279, anticipated profits on incompleted contracts, which, on completion, according to a later accounting, were $57,061.02, and an item for good will of the business of $52,354.16, which in the treasurer's annual statement was set down at $1.00. Upon completing the statement on January 14th, Dozier, according to his own admission, without again consulting Hedden or advising him of the result, drew the company's check for $65,219 and the next morning put it in an envelope with seventy-five other checks to be signed by Hedden, and placed the envelope on his desk. Hedden arrived later, signed them and handed them back to Dozier, who quickly drove to the Montclair bank, had his check certified and deposited it to his credit. He was late getting back to the annual meeting of the company, held that afternoon. At the meeting he submitted the financial statement of the company, showing assets, $490,166.51, liabilities, $329,066.99 (not including the outstanding capital stock, $90,000), and net worth $161,099.52, which was approved, subject to audit. Thereupon Dozier submitted this resolution, "Resolved that Charles R. Hedden Company purchase shares of stock of Charles R. Hedden Company now standing in the name of Walter J. Dozier on the books of the said company at the book value thereof as shown on the treasurer's report submitted to this meeting and accepted and approved." The resolution was rejected by a two to two vote, Dozier and Fisher voting for and Hedden and Toothe against. Dozier thereupon resigned as vice-president and

treasurer, and the next day turned his books over to Toothe, his successor, and also tendered him his certificate of stock, which he refused to accept. On the following day the book-keeper discovered the entry of the check of $65,219 on the stub of the check-book and reported it to Hedden. The reaction was confusion and consternation. The resolution of August 15, 1922, was also found, and immediately a bill was prepared, filed on January 31, in the name of Toothe on behalf of the company (Toothe *v.* Dozier, 96 N. J. Eq. 46, reversed *Id.* 601). Upon the dismissal of that suit as improperly brought by a stockholder this bill was filed by the company.

There is not much mystery as to how Dozier got the check. He was in charge of the financial affairs of the company, was implicitly trusted, and he was all prepared. A few days before he deposited a check for $82,000 in the Montclair bank, which, on account of its size, ordinarily would have gone to the Fidelity-Union in Newark, and he gave directions that it be not drawn against. Of the seventy-six checks made out by his secretary, Miss Jackson, on the morning of January 14, 1924, all but the one to Dozier had the amount filled in, transversely, in heavy red type, seemingly by a check protecting device. Dozier filled in his own in the same red type the next morning, slid it into the envelope with the rest, laid the envelope on Hedden's desk and took a gambler's chance that it would be signed as routine, and he was not disappointed. To Hedden they were simply a batch of business checks—and they were, all but one—and unsuspectingly he signed them on the dotted line, without inspection, as he had done thousands of times before, exactly as Dozier ex-

pected he would. It was not a clever trick, just a vulgar cheat, a constructive forgery, perfidious and despicable. Dozier's fanciful story that he had offered his stock at $200 per share and that Hedden insisted upon paying him the book value approximated to him at between $225 and $240 per share, and that he assumed that Hedden signed the check without comment in consequence of that arrangement, and without curiosity or inquiry as to how the obviously excessive sum total was reached, is only further testimony of his cunning. There was nothing in the activity over the books or even if Dozier showed Hedden the work sheets or told him the approximate value of the shares to attract Hedden's attention or to arouse his suspicion, for it was the time for the annual statement which Dozier had been getting out for years. If the deal had been as amicably arranged as Dozier professes it was, why did he plant the check among others of ordinary affairs, and to which it bore no relation? Why was there no allusion to this check, given in settlement of this extraordinary transaction and that brought to a close a lifetime affiliation, either before or after it was signed, and why did Dozier rush to the bank to have it certified? And why the resolution that the company buy the stock at the book value as shown by the treasurer's report, when he had already pocketed the price at his own figures? And again, why, when his resolution was turned down, did he not retort that the stock had already been bought and paid for? The fraud is so palpable and glaring, on his own word, that it hardly need be stated that Hedden denies making any arrangement with Dozier on January 5th or at any other time to buy his

stock, and it is not believable that he, having consistently refused to be a purchaser, suddenly shifted the sale to the company, of which he was the majority stockholder, and at a price of from $225 to $240 per share when the shares had been offered at $200.

The indictment against the resolution of August 15, 1922, is of secondary interest.

The minute book is of the loose-leaf type, and the minutes of meetings from the election of Toothe as secretary, February 14, 1922, to the last entry, January 16, 1925, twelve in all, appear to have been regularly entered and to each is appended a formal certificate signed by Hedden as president and Toothe as secretary that they were present at the meeting and that they "have read the foregoing minutes of said meeting and the same are in all respects a full, true and accurate record of the acts and things done thereat." Moreover each page bears the impress of the corporation seal and each impression bears Toothe's initials. Dozier and Fisher affirmed that it was duly passed, after discussion, while Hedden and Toothe deny and say that there were no meetings held after Toothe was elected secretary until the annual meeting the following January (1923). Fisher denied having any recollection of it at first when Hedden discovered it, but on the witness-stand professed to have dissembled because he was in sympathy with Dozier. The minutes, as a whole, appear regular on the face of the record, and Hedden and Toothe, because of their certifications, would ordinarily be estopped from challenging them, and particularly so in view of the allegations in the bill of Toothe *v.* Dozier, *supra,* that the board of directors had adopted the resolution, and a

similar allegation in the complaint in a civil action in the Supreme Court brought by the company against Dozier, Fisher and others for conspiracy to ruin the company's business, and a sworn statement to the same effect in an affidavit made by Toothe as a basis for criminal prosecution against Dozier. Yet, in the face of this impressive evidence, it is impossible to escape the feeling that the fraud had its inception in the disputed resolution. It is admitted by Dozier that up until the very day of the resolution Hedden refused to agree to an option to buy Dozier's stock or to sell his to Dozier upon the death of either, and Hedden says that the day following the date of the resolution, and he has an entry of it in his diary, Dozier again pressed him to sign a form of agreement which he had previously submitted. It is singular that Hedden should refuse to buy at Dozier's death and still, according to the resolution, agree to take at Dozier's pleasure. The minutes were prepared under Dozier's direction after Toothe was elected secretary of the company until the fall of 1923. His secretary would place them on Hedden's desk for signature, Hedden in his blind confidence signed them without much attention, and Toothe, inexperienced, followed suit to his grandfather's signature. It is not strange that the disputed resolution which is one of many of the alleged meeting, covering three typewritten pages, should have escaped notice. It is in evidence that many of the minutes of meetings were prepared in group and handed to Hedden in batches and it is evident that some of them were manufactured, as for instance, the noting of Toothe's presence at the meeting of February 14, 1922, when he was away on his honey-

moon; Dozier's record of the meeting of September 19, 1922, when he (Dozier) was away, and the recital in the minutes of the meeting of October "that the reading of the minutes of the regular meeting of the Board of Directors held on the 1*f*th of August, 1922, be ratified, approved and confirmed," which appears as the first entry, when, according to Dozier, the reading was had in connection with another subject before the meeting (Kelly Tire Co.). These discrepancies adverted to go to prove Dozier's complete domination over the internal management. The things that are inexplicable and utterly discredit the minute of the disputed resolution, are the fact that Dozier at no time for nearly a year and a half after the entry alluded to it, and that after its date, and especially in the fall of 1923, Dozier constantly importuned Hedden to buy his stock, and at the January 5th conference and again at the January 11th interview, when, according to his story, the book value approximated between $225 and $240 per share, he offered to sell for $200. Why, if he had the promise of the company by resolution, honestly enacted, to take his shares at any time he felt like quitting, and if he were not conscious that it would not stand daylight, did he pursue and urge Hedden to take them off his hands? It is not difficult to believe that one wicked enough to stoop to the mean deception of which Dozier stands convicted upon his own attenuated recital of the manner in which he raided the treasury of the company, would lay his plans far enough in advance to have, as Fisher, his friend, naively wrote to Toothe's father, "a card up his sleeve" for an emergency.

Whatever may be the secret behind the resolution or the solution of the manner in which it crept into the minutes, there is no question in my mind that Hedden was not aware of its existence until after his disillusionment of faith in Dozier in January of 1924. The allegation in the suits and the averment in the affidavit to which reference has been made ought not to be held against him. They were matters of pleading dictated by counsel who assumes responsibility of failure to accurately state the facts by prefixing "It appears by the minutes of the company, etc."

The fraud has been so clearly established that little need be said of the inefficacy of the resolution as a binding obligation, assuming that it was adopted. There was no consideration. It was not the unanimous act of the stockholders. Toothe did not assent to it, and its consummation would have impaired the capital of the company. The statute forbids the paying of any part of its capital stock to a stockholder (C. S. 1617); Siegman *v.* Electric Vehicle Co., 72 N. J. Eq. 403. Of course Hedden's alleged promise of January 5th could not bind Toothe or the company.

Dozier will be decreed to pay back the money he unlawfully abstracted, with interest and costs.

Final Decree.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

57-143.

Between CHARLES R. HEDDEN COMPANY, a corporation, *Complainant,* and WALTER J. DOZIER, *Defendant.*	*On Bill, etc.* *Final Decree.*

This cause coming on to be heard before the Court in the presence of Ralph E. Lum, Esquire, of counsel with the complainant, and Conover English, Esquire, of counsel with the defendant; and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and the Court having duly considered said pleadings, proofs and arguments; and it now appearing to the Court that the check to the order of the defendant for the sum of sixty-five thousand two hundred and nineteen dollars ($65,219.00), mentioned in the bill of complaint herein and drawn upon the account of the complainant in the Montclair Trust Company, was fraudulently obtained by the defendant, and that the moneys secured by him from the complainant thereby were fraudulently and unlawfully abstracted from the complainant corporation, and that the complainant is entitled to the relief sought and prayed for in its said bill of complaint:

Final Decree.

It Is, on this first day of July, one thousand nine hundred and twenty-six, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, Ordered, Adjudged and Decreed, and the said Chancellor doth, by virtue of the power and authority of this Court, Order, Adjudge and Decree that the complainant do recover from the defendant the said sum of sixty-five thousand two hundred and nineteen dollars ($65,219.00) so received by him as aforesaid, together with interest thereon from January 15, 1924,

And It Is Further Ordered, Adjudged and Decreed that the said defendant, Walter J. Dozier, shall, within thirty days after the service upon him or his solicitors of a copy of this decree, pay to the complainant the said sum of sixty-five thousand two hundred and nineteen dollars ($65,219.00), together with interest thereon as aforesaid, and that in default thereof an execution do issue according to the course and practice of this court.

And It Is Further Ordered, Adjudged and Decreed that the defendant do pay to the complainant the costs of this suit to be taxed, which shall include therein a counsel fee of twenty-five hundred dollars ($2,500.00), and that execution issue therefor according to the practice of this Court.

E. R. WALKER,
C.

Respectfully advised,

John H. Backes,
V.-C.

IN CHANCERY OF NEW JERSEY.

March 16, 1925.

Between

CHARLES R. HEDDEN COMPANY, a corporation,
Complainant,

and

WALTER J. DOZIER,
Defendant.

Transcript of shorthand notes of testimony taken in the above-entitled cause before his Honor, John H. Backes, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, in the presence of Lum, Tamblyn & Colyer (by Mr. Ralph Lum); Messrs. McCarter & English (by Mr. Conover English) for the defendant.

CHARLES R. HEDDEN, sworn for the complainant.

Direct examination by Mr. Lum.

Q Where do you live, Mr. Hedden? A Beg pardon?

Q Where do you live, Mr. Hedden? A Glen Ridge, New Jersey.

Q Are you an officer of the Charles R. Hedden Company? A I am.

Q What officer? A President.

Q When was that company incorporated? A 1919—1918.

Q And for what business? A General building construction.

Q And where was its principal office? A Prudential Building, Newark.

Q What was its authorized capital stock? A One hundred thousand dollars.

Q How was it divided? A Originally—it was divided into—originally I put in twenty thousand—I would rather have that—(interrupted).

Mr. Lum: Strike out that question.

Q What was the par value? A The par value was one hundred dollars per share.

Q Who were the original incorporators?

Mr. English: I should think the certificate would give us all that, your Honor.

Q Do you recognize this?

The Court: Put it in.

Mr. Lum: I offer in evidence a certified copy of the certificate of incorporation.

(Paper marked Exhibit C. 1.)

Q The Walter J. Dozier, who is referred to here as the statutory agent, how long had you known him? A More than ten years.

Q How well had you known him? A From the time he entered in my company I had been very closely associated with him.

Q What was the personal relationship between you in addition to the business relationship? A Why, Mr. Dozier took charge of my personal affairs and when he was with the Hedden Construction Company, which was the first company that he joined, that I was associated with as president of the Hedden Construction

Company, he acted as my private secretary, had charge of my private matters, and then when I started my business, personal business at '16 up to '18, the time incorporated, why, then he had charge of the accounting and charge of my secretarial work and my personal business.

Q The Doe & Wathey mentioned in the certificate, are they still in the company? A They are not.

Q When did they leave? A They left in approximately '18.

Q And who then, if anyone, took their place? A Mr. Harold F. Fisher.

Q How many shares of stock did he hold? A He held one hundred and twenty-five shares.

Q When did James A. Toothe become associated with the company? A He became associated with the company, I can't give you the precise date.

Q What year? A 1922.

Q And how many shares of stock did he hold? A Twenty shares.

Q Who were the directors in 1922? A Dozier, Fisher and myself.

Q When did Mr. Toothe first become a director? A I was referring to—that was in, I can't give you that precise date.

Q What year? A '22.

Q The early part or the latter part? A It was the latter part of '22.

Q Were there any other stockholders excepting Mr. Hedden, Mr. Dozier, Mr. Fisher and Mr. Toothe? A There were not.

Q Who, in 1923, had charge of the finances of the company, and control of its bank account and moneys? A Walter J. Dozier.

Q And what officer was he? A He was treasurer, secretary and vice-president, before Mr. Toothe's election.

Q When Mr. Toothe came, what office did he take? A Secretary.

Q And did Mr. Dozier continue to hold the other offices? A He did.

Q Now, did you and Mr. Dozier ever have any conversation with reference to the sale or purchase of the capital stock? A We had several.

Q What was the first one? A The first one started in '22, several times in the early part of '22, after our annual meeting, 1922, of February 14th and from a month to six weeks after that he started in approaching me to sell or buy his stock.

Q Did it go so far as having a draft of contract made? A No. He had a drafted con-contract—he had a drafted contract in the case of death or disability, several of them.

Q And were any of them ever signed? A Never signed.

Q Did you agree to sign any of them? A I never agreed to sign any of them.

Q Did you ever at any time agree to buy his stock or sell yours to him? A I did not.

Q And, coming now to the annual meeting in January, 1922, do you remember the date of it? A There was no annual meeting in January, 1922.

Q I beg your pardon. I mean in 1923. A In 1924, the 15th of January.

Q Who was present at that meeting? A There was Mr. Fisher, Mr. Dozier, Mr. Toothe and myself.

Q And who kept the minutes of that meeting? A Mr. Toothe.

Charles R. Hedden, direct.

Q Was a resolution covering the sale or purchase of the stock introduced at that meeting? A There was.

Q By whom? A By Mr. Dozier.

Q What was the resolution?

Mr. English: I object. I think the resolution speaks for itself, your Honor.

Q Was it offered in writing? A It was not. It was offered orally.

Q By whom? A By Mr. Dozier.

Q What was the effect; what was it? A A tie vote and it was tabled.

Q What was the resolution?

Mr. English: That, I think, the minutes speak for. If they have a minute of it, of course if they have not—they have a book there.

Q Do you recognize this as the minute book? A Yes.

Q And these as the minutes of that meeting? A Yes.

Q I call your attention to a resolution to the effect that— (interrupted).

Mr. English: No. Object. Pardon me.

Q —reads as follows—(interrupted).

Mr. English: I think he can mark the book in evidence, your Honor, and call your Honor's attention to any part in the minutes he thinks proper.

The Court: He must first establish the integrity of the book.

These are minutes, Mr. Lum?

Mr. Lum: Yes, sir.

Witness: Yes, they are the minutes.

Mr. Lum: I offer the minutes in evidence.

Q Is this the entire minute book?

Q (By the Court.) That is the minute book? A Yes.

Q Covering from what period, from that date, April 10, 1923? A April 10, 1923.

Q To date? A To January 15, 1924. I don't know. I haven't read it.

Q To date? A Twentieth of January, 1925.

Q Right.

(Minute book marked Exhibit C. 2.)

Q Referring now to the resolution of January 15, 1924, Mr. Dozier made a motion that Charles R. Hedden Company purchase shares of stock of the Charles R. Hedden Company now standing in the name of Walter J. Dozier on the books of the said company at the book value as shown on the treasurer's report. This motion was seconded, there was a tie vote among the directors and the motion was laid on the table. Do you recall that resolution? A I do.

Q Was there any other discussion of that subject at that meeting? A None whatever.

Q When did you next hear of that subject of the purchase of the Dozier stock by you, by the company? A Seventeenth of January, 1924.

Q When did you hear of it then? A After the meeting of the 15th; the 16th I was away; I was not at the office at all. The morn-

ing of the 17th the facts were put before me.

Q By whom? A By Mr. Aubin.

Q Who is he? A Our book-keeper.

Q What did he inform you?

Mr. English: I object.

The Court: It may or may not be relevant. I don't know. (To witness: What did he say to you?)

Mr. English: What the book-keeper said to— (interrupted).

The Court: It may or may not be. If he is speaking of present things, yes; telling of past things, no.

Mr. English: Mr. Aubin is here. I presume he can state whatever the facts are.

The Court: That would be the same thing. I don't know whether it is or not. You may move to strike out, if it is not.

Mr. English: All right.

Q (By the Court.) What did he say to you? A He informed me that Walter J. Dozier had withdrawn from the Company, on the Montclair Essex Trust Company, $65,219.

Q Had you known of that before? A I did not. First I had ever heard of it.

Q And then did you see Mr.—was Mr. Dozier there then? A Mr. Dozier was not there then.

Q What did you do then, immediately after getting that information? A I immediately phoned to the bank, trust company, Montclair Essex Trust Company, to stop payment on the check. They said the check had already been passed to Mr. Dozier's credit.

Q Then what did you do? A I communicated with you—Mr. Lum, Ralph Lum.

Q And did you come to my office that day? A I came to your office and was there some time.

Q Who was with you? A There was Mr.—
10 well, on the 18th, on the 17th?

Q Yes. A Mr. Toothe.

Q Anyone else? Just you and Mr. Toothe? A Only Mr. Toothe.

Q Were you there the next day? A I was.

Q With whom? A I was there the next day with Mr. Fisher and Mr. Toothe.

Mr. English: What date is that, please?

Mr. Lum: The 18th of January.

20 Witness: The 18th of January, 1924.

Q And was the subject discussed at that time? A It was.

Q Now, was there any other resolution besides this one of January, 1924, touching the subject referred to? A No, not to my knowledge.

Q When was it first referred to, to your knowledge? A On the 17th of January, 1924.

30 Q And how did you then hear of it? A I heard of it through our bookkeeper; Mr. Toothe brought it to our office when I came to the office on the 17th.

Q (By the Court.) Your bookkeeper, Mr. Toothe?

Q Our bookkeeper and Mr. Toothe. A Our bookkeeper and Mr. Toothe.

Q Did they bring the resolution to you and
40 show it to you in a book? A Yes.

Q I show you a resolution—the minutes of August, 1922, August 15, 1922. Do you recognize those as your minute book? A I do.

Q Covering from the first meeting of the corporation in March, 1918, to and including the meeting of the 16th of January, 1923? A Yes.

Q The date of the 16th of January, 1923? A Yes.

Q You recognize it? A I do.

Q The minutes of this meeting of August 15, 1922, as the resolution?

The Court: Offer the minute book.

Mr. Lum: I offer this minute book in evidence.

(Minute book marked Exhibit C. 3.)

Q This meeting of August 15, 1922, was signed by you and Mr. Toothe, I believe. A It is.

Q Is that your signature (indicating)? A It is.

Q And that is the seal and initials of the secretary? A It is.

Q This meeting refers to a resolution for the company to purchase the stock of Mr. Dozier of the book value per share at closing, the value.

The Court: Read the resolution.

Q "Resolved further that should the treasurer at any future time and at his pleasure, withdraw from active management of the company's affairs, his stock holdings in the company shall be purchased by the Charles R. Hedden Company at the book value per share at the closing of business for the fiscal year, ending December 31, preceding his intention to withdraw, and date

of resignation." When did you first hear of that resolution? A January 17, '24.

Q The date of the 15th of August of that year ? A Yes.

The Court: 1922, you mean?

Mr. Lum: 1922.

Q Do you know where you were? A I think I was at the office, but I can tell you.

Q Do you keep a memoranda book? A I do.

Q For how long have you kept one? A For many years. I have it for '22, '23 and '24.

Q Have you them with you? A I have.

Q Will you refer to your memoranda book for August, 1922? A Refer from the abstract or from the minute book?

Q You had better show me the book. A (Witness shows book to counsel.)

Q In whose handwriting are these entries (indicating)? A Mine.

Q When were they made, with reference to the dates? A Made the day of the date.

Q And, generally, what was your habit to cover in these various dates, during these various years? A If there was anything especially important I noted it in business and these are my private books and other minutes.

Mr. English: Is this in the nature of a diary?

Witness: It is a diary.

Mr. Lum: This is merely for convenience.

Mr. English: All right, sir.

The Court: Do not take the time now. Cross examine later.

Q Refering to August 15, 1922, what do you find? A August 15—there is no meeting.

Q What does appear in your minute book of that date? A In the minute book?

Q No, in your memo book, in the diary. A "To Newark by trolley. Had Mr. Rippel on the phone at the Maplewood Club, Vermont. George Bennet left—"

Q (By the Court.) You were at the office that day? A At the office? I was at the office.

The Court: That is what counsel wants.

Witness: There all day.

Q There all day? A Yes.

Q Was there any meeting of the directors held on that day? A No, sir.

Q If there had been would you have made a note of it in your diary?

Mr. English: I object to that.

A I made— (interrupted).

Mr. English: Wait. I object to that.

Q Does your diary cover each day's affairs of business? A There is—each day of business affairs and only important matters noted.

Q Is a meeting of directors an important matter? A Directors' annual meetings are noted; yes.

Q Were there any other meetings held by the company besides annual meetings? A None whatever.

Q Are you quite sure of that? A To the best of my knowledge and belief, there were no meetings held.

Q Did you consider the meetings of the directors sufficiently important to make a note in your diary? A I do.

Q And did you make any memo in your diary of any meeting of August 15, 1922? A I did not.

Q Now, there were several other meetings, according to the minutes of the book before you, held in 1922, were there not, according to the book? A According to the book; yes.

Mr. English: What book are you speaking of now?

Witness: The minute book.

Mr. Lum: The book before you, C. 3.

Mr. English: That is the minute book?

Mr. Lum: Minute book.

Q What date was the annual meeting held in 1922? A The 14th of February, at my home, Glen Ridge.

Q Why was it at your home? A Because on the 29th of January, in walking up to the Glen Ridge Country Club, I slipped and ripped the ligaments of my right ankle and was confined to my room for some weeks, under the doctor's care.

Q And on March 21st it is—(interrupted).

Mr. English: What year, please?

Q (Continuing.) 1922, was there a meeting held at which you were present? A No.

Q Now, do you know where Mr. Fisher and Mr. Dozier were on March 21, 1922—March 9th, meeting of March 9, 1922, instead of March 21st. A "March 9th. Walter has my income tax ready." No meeting.

Q Now, who did you refer to as "Walter"? A Dozier. Mr. Dozier.

Q That was a memo from your diary that you just read? A Yes. I can read you the date, if you want it, I mean, the entire entry.

Q Do you think if there had been a meeting you would have made a memo?

Mr. English: I object to that.

The Court: No.

Mr. Lum: It is a matter of argument, I think, perhaps.

Q What was the custom with reference to the minute book? Where was it kept; what was done with it? A The minutes—the minute book —(interrupted).

The Court: Do not let me mislead counsel. I think you have the right to show his custom and to show that on days that the corporate meetings were held and he made note of it in his private diary, you may show that. You may ask him whether his private diary shows the notation of all of the meetings of the company.

Q Does your private diary show a record of all the meetings of the company? A It does not; only the annual meetings.

Q Were there other meetings held beside the annual meetings? A No; not to my knowledge.

Q Then, does your diary show all the record of—or, the holding of all of the meetings that you personally attended? A It does.

Q Let me go back. The minutes were kept by whom? A Eh?

Q The minutes were kept by whom? A Mr. Dozier, Walter Dozier.

Q Where was that book, C. 3, kept? A Kept by Mr. Dozier in his private box in the safe in his room.

Q Did you have a key to that? A I did not.

Q Are you sure that it was kept there? A To the best of my knowledge and belief, I believe it was.

Q Your signature appears there many times— A Yes.

Q —with reference to meetings. Tell us the method of signing and how these came to be signed. A Mr. Dozier would bring the minute book in my room, stand alongside of me; he had markers, foolscap; he would turn to that and he would say, "Now, there it is. It has been initialed and it is all right." They were signed while Mr. Dozier was there in the room, sometimes for many, many months.

Q You mean, more than one meeting at a time would be signed by you? A Yes.

Q Did you read them over before signing them? A I did not.

The Court: Is the minute a loose-leaf minute?

Mr. Lum: It is a loose-leaf minute.

Witness: No; it is in the book. They were inserted in the book. This is a loose-leaf book, yes.

Q But the book is a loose-leaf book? A Is a loose-leaf book; yes.

Q But the minutes were fastened to the book just as they are now? A Just as they are now.

Q When they were brought to you? A When they were brought to me by Mr. Dozier.

Q What did you say about the slips between them? A He turned and he said, "I have indicated where to sign." He would turn that over himself and I would sign it and in many cases—I won't say all, Mr. Toothe would sign first and initial it.

Q (By the Court.) What do you mean "initial?" Whose initial? A Mr. Toothe's, the secretary, and the seal.

The Court: Oh.

Q Did you have any question whatever at that time as to the entire responsibility and reliability of Mr. Dozier? A None whatever. I put every confidence in Mr. Dozier.

Q You read there in the memo, under date of March 9th, that your income tax report was submitted by Walter; that was Mr. Dozier? A It was read; yes. He prepared it before I submitted it to Palmer & Searle, our New York counsel.

Q (By the Court.) That was a memorandum in your diary? A That is a memorandum from my diary; yes.

Q And Mr. Dozier did prepare your income tax at that time for you? A He did.

Q Now, do you remember that meeting at my office on the 18th of January? A Very well.

Q And did Mr. Fisher speak of the resolution of August, 1922? A Yes, sir.

Q What did he say about it? A He said he knew nothing about it.

Q And Mr. Toothe was also present with you and me at that meeting? A He was.

Q Now, this check for sixty-five thousand-odd dollars, when did you first see that? A I first saw that check on the 17th of January.

Charles R. Hedden, direct.

Q Mr. Hedden, returning again to the check. What was your custom as to signing checks of this company? A I would sign several checks in blank in the different books; sometimes more or less sometimes; as Mr. Dozier would indicate; sometimes one page, sometimes two or three pages.

Q Did you know how much was in the Montclair bank on the 15th of February? A I did not. I not only did not know how much was in the Montclair bank, nor did I know we had received the check from the Harrison Radiator Company, because they had been borrowing money from me, amounting to several thousand dollars to meet their current obligations while borrowing from me.

Mr. English: I object to that. I do not think that is responsive to anything or bears on anything.

Mr. Lum: Yes; it is.

The Court: I think it is.

Q Mr. Hedden—

The Court: I suppose he intends to show preparation on the part of Mr.— (interrupted).

Q You have referred to a check of the Harrison Radiator Company. We know nothing about that. What was that check, for what amount? A I can give you—(interrupted).

Q Roughly. A Well, it was between eighty and ninety thousand dollars, if I remember correctly.

Q And when did you first know that that check had been paid to the Charles R. Hedden

Company? A That was the 17th of January, 1924.

Q (By the Court.) Was that for a trade account? A I beg your pardon?

Q On the completion of a large contract for them? A Yes; a large contract that we were doing at Lockport for the Harrison Radiator Company, amounting to between four and five hundred thousand dollars.

Q Now, on the 5th of January, 1924, did you and Mr. Dozier have some conversation with reference to the purchase of the stock? A Yes. On December 31, '23, Mr. Dozier wrote me a letter—I was not at the office in the morning, but I came out at noon and he had gone; the letter was on my desk and I opened it—asking for a meeting, an early meeting, so the meeting was held on the 5th of January, 1924. The duration of the meeting was about fifteen minutes.

Q What took place; what was said about the stock? A Mr. Dozier—I beg your pardon?

Q What was said about the stock? A Mr. Dozier came in again and he said, "I want to talk to you about buying or selling my stock—about buying my stock or selling your stock." "Well," I said, in a casual way, I said, "Suppose we come to an agreement and I should buy your stock and I wanted to give part notes for it?" He said, "Well, I don't know whether you are good for a note." "Well," I said, "All I can do is assure you I am for several hundred thousand dollars." "Oh," he said, "I wish I had that." Now, that was all that was said then at that time. Then I said, "I don't want to purchase your stock, nor is my stock for sale," As I have told you several times before, that was the conversation I had with Mr. Dozier.

Q And that ended the January 5th meeting? A That was the January 5th meeting.

Q And was the subject of stock purchase between you and Mr. Dozier referred to again between the 5th of January and this meeting on the 15th of January? A Not to my recollection.

Q I show you letter of December 31, 1923. Do you recognize that signature? A I do.

Q That is a letter received from Mr. Dozier? A That is a letter received from Mr. Dozier.

Mr. Lum: I ask that that be marked in evidence.

(Letter marked Exhibit C. 4.)

The Court: What date?

Mr. Lum: December 31, 1923.

(Exhibit C. 4 read.)

Q At the time that letter was written, how far from your office was Mr. Dozier's office? A Only a door separating us.

Q (By the Court.) Were you on friendly terms? A In the next room adjoining.

Q Were you on friendly terms? A On friendly terms? Yes, absolutely.

Q Did Mr. Dozier have any agreement with him, when he met you at this meeting in January 5, 1924? A Agreement for what?

Q Purchase of stock, any typewritten agreement in blank? A With myself?

Q Yes. A No.

Q Nor with anyone else? A No.

Q A proposed—(interrupted). A Absolutely not.

Q Well, did he have a paper with him, a proposed agreement? A I don't know. He didn't show me any agreement.

Mr. English: What date are you speaking of?

The Court: January 5, 1924.

Q I show you a blank paper, the blank date of January, 1924, covering the matter of purchase of stock. Did you ever see that paper before? A This paper or similar papers— No; I never saw that before; only an agreement in case of my death or incapacity.

Q Now, the matter of the book value of the stock of the Hedden Company, was that discussed between you and Mr. Dozier? A Never.

Q Did he submit to you figures showing you what the book value was? A Not until the meeting—not to me; he submitted to the board on January 15th.

Q And had you up to that time seen those figures that he submitted to the board? A I had not. He only referred to that statement, annual statement, I think it was in December that he was preparing an annual statement and would soon have it ready, and I said before there was any annual statement sent out to the bank, I wanted our books certified by a certified accountant. The books were not certified.

The Court: Excuse me, Mr. Lum. I did not get the full force of those earlier minutes that you introduced. What was the first? January, 1923, I understood.

Mr. Lum: The first, August, 1922.

The Court: No. That came in later. That was the third. The first meeting of January.

Mr. Lum: January 15, 1924.

The Court: 1924; but prior to that there was one of January, 1923.

Mr. English: Not January, 1923; August 15, 1922.

The Court: That is where I got confused. I thought he may have been referring to but a single resolution of January, 1924, but there was also something said about a meeting in January, 1923.

Mr. Lum: No. Meeting of January 5, 1924, but it was not a meeting of the corporation.

The Court: There was nothing in January, 1923?

Mr. Lum: No.

The Court: I think it will appear 1923 on the record.

Mr. Lum: If it is so—(interrupted).

The Court: It was intended to be 1924?

Mr. Lum: It was, indeed.

The Court: That is why I have been confusing whether there was a meeting in January, 1923, that had no connection with this litigation.

Mr. Lum: None at all.

Q At this meeting of January 15, 1923-1924 (to Court:) There it goes again.

The Court: Confusion.

Q (Continuing.) It says that: "Resolved that the treasurer be authorized and instructed to open a deposit account for and in the name of this company with the Montclair Essex Trust Company of Montclair, New Jersey."

Mr. English: What date is that?

Mr. Lum: January 15th.

Mr. English: What year?

Mr. Lum: 1924. January 15, 1924.

Q When that subject came up for discussion, did Mr. Dozier say anything about his having drawn a check on the Montclair Trust Company for $65,000? A He did not.

The Court: What is that resolution, opening—

Mr. Lum: Opening another account at the Montclair Essex Trust Company.

The Court: Oh, another.

Mr. Lum: Yes.

Q In this statement that was submitted on the 15th of January, 1924, among the other assets, I notice an item of "Good will, $1.00." Do you notice that? A I had not read over the statement of '23 submitted at that meeting, but I have since learned that there was an item of $1.00 for good will.

Q Now, in this check of $65,000 which Mr. Dozier took, how much did he figure for good will, do you know? A No. I know it was fifty-odd thousand dollars. I don't know the exact amount.

Q Did he ever discuss that with you, before he got that check? A He did not discuss it with me, nor the manner in which it was arrived at. He did not discuss it with me at all.

Q I show you a check dated January 14, 1924, to the order of Mr. Walter J. Dozier. A Walter J. Dozier.

Q Sixty-five thousand two hundred and nineteen dollars. That is your signature? A That is.

Q When did you first see that check? A On January 17th, not until after this meeting.

Q Did you at any time consent to the drawing of those funds by Mr. Dozier? A Never.

Mr. Lum: I ask this check be marked.

(Check marked Exhibit C. 5.)

The Court: Anything particular about the check you want me to see?

Mr. Lum: Later I think there will be.

Mr. English: Yes.

Mr. Lum: We think it is a rather interesting check for many reasons.

The Court: It would be, for such an amount.

Mr. Lum: Other things interesting about it.

(Discussion.)

Q After Mr. Toothe was secretary, who kept the minutes? A Mr. Dozier kept the minutes.

Q How did that come about? A Mr. Dozier came in to me and said that he had—was familiar in keeping the minutes, had the experience, and suggested that he keep the minutes for Jimmy—Mr. Toothe—(interrupted).

Q What relation— A —which he did.

Q That continued for how long? A That continued—I don't recall just the date, but for only a short time before the last meeting.

Q Did he ever have any conversation with you about keeping the minutes longer? A Mr. Dozier?

Q Yes. A None whatever.

Q What relation is Mr. Toothe to you? A He is my grandson.

Charles R. Hedden, direct.

Mr. Lum: I would like, very briefly for the record, to put on record some of the experience of Mr. Hedden in this section in building.

Q Will you tell us, briefly, some of the more important structures in this section with which you have been connected, or with which you have been the contractor and builder?

Mr. English: Unless your Honor cares to hear this—unless your Honor thinks that is material, I want to object.

The Court: What for?

Mr. Lum: For the purpose of showing an unusually wide range of experience and ability, very unusual.

The Court: I will permit it.

Q Just briefly tell us some of the more important structures. A In Newark?

The Court: It might have been introduced at the very beginning, Mr. English.

Mr. Lum: Yes.

The Court: I suppose, to let the Court know who he is.

Mr. English: Of course, this is not a fight over any building contract or anything like that.

The Court: I understand that.

Mr. English: I do not think it does any harm and I do not think it does any particular good. Mr. Hedden is a well known builder. If your Honor thinks it is all right, I am not going to object.

The Court: From my viewpoint, I do not see how it is going to do you any harm.

Mr. English: I don't either, but—

The Court: I will let it in. Continue.

Witness: You want me to confine myself just to the construction or other work?

Q No. Just the larger buildings. A In Newark, the Prudential group, Mutual Benefit, American Life Insurance, Essex County Court House.

Examined by the Court.

Q And structures of that character? A Many of that kind, many millions of that kind.

Q Over what period? A Over a period of fifty-odd years.

Q Individually? A Individually. At first all my associations were with the B. J. Hedden Sons Company, of which I was president, and then I had the B. J. Hedden & Sons, and then Hedden Construction and then later I operated on my own account until I organized the Charles R. Hedden Company to take my associates in.

Q And the business of that company is what? A The amount of business?

Q No. The business is what? A Building construction and engineering.

Q The same general character of work that you always carried on? A Yes; excepting I have done expert appraisal work in connection with my business, an outside issue for many years, which familiarized me with the cost of construction.

The Court: Anything more in that line?

Mr. Lum: No, sir.

Charles R. Hedden, direct.

Examined by Mr. Lum.

Q What was the work of Mr. Dozier in connection with your company? A Accounting; our bookkeeper and later treasurer and vice-president.

Q Of some former company? A No; in the former company he was only a bookkeeper, the Hedden Construction Company.

Q (By the Court.) What company preceded the present company? A I was operating personally, after I completed the Public Service Terminal, then I started closing out the Hedden Construction Company, started on my own account and did a very large amount of business.

Q (By the Court.) That was what, ten years ago? A No; that started in '16. I was retained by the government on a large amount of work at Little Silver, and so forth, and did the Prudential extension personally. Mr. Dozier then acted as my bookkeeper and accountant, secretary and confidential man. Then, after building the government work at Little Silver, which was Camp Albert Vail, unsolicited, and that operation came to me from the government through Mr. Sterrit, I learned later, at Lakehurst, and Lakehurst, the old Russian Proving Grounds, I had that in my personal account. Then I organized Charles R. Hedden Company, because I thought so much of Mr. Dozier, to take him in with me.

Q (By the Court.) And after that? A After the next one was Camp Kendrick, which he participated in.

Q Is Mr. Fisher now connected with your company? A No.

Q When did he resign? A He resigned in 1924. Just the date I haven't my fingers on.

Q A month or two after the January meeting? A Yes, sir.

Q (By the Court.) Did he sell his stock? A Yes; he still holds his stock.

Q No. Mr. Fisher still holds his stock? A Still holds his stock; yes.

The Court: The other two men sold?

Mr. Lum: Yes, Doe and Wathy, 1922.

The Court: Who did they sell to?

Q Who did Doe and Wathy sell their stock to? A Mr. Dozier and myself.

Q And Mr. Dozier's stock, did you give any instruction regarding that? A None whatever.

Q Did you know that he had handed it to Jimmy? A Yes, sir.

Q When did you first learn that? A On the 17th of January.

Q Did you have any knowledge of it before? A None whatever.

Mr. Lum: Take the witness, Mr. English.

Cross examination by Mr. English.

Q Mr. Hedden, when did Mr. Dozier first become associated with you in any company? A In what capacity?

Q Any capacity at all. When did you and he first begin business relations together? A About ten years ago, if I remember correctly, about 1912.

Q Then under what name or in what company were you doing business at that time? A Hedden Construction Company.

Q Was that a corporation? A It was.

Charles R. Hedden, cross.

Q How long did the Hedden Construction Company continue? A Until 1916 or 1917. I can get you, if you want it, the year that we finally closed out.

Q That is near enough. And how long a time lapsed between the windup of that company and the formation of the Charles R. Hedden Company? A About—well, from the time we completed the Public Service Terminal was two years—

The Court: Won't you answer that question?

A (Continuing.) Two years, 1916, the Public Service Terminal was completed.

Q Was Mr. Dozier with you during that time? A He was.

Q Yes. And were you operating as an individual then? A I was.

Q Doing business under the name of Hedden Construction Company, was that it? A No, I was doing business under the names of Charles R. Hedden individually.

Q As Charles R. Hedden? A Yes.

Q Now, you endeavored to liquidate the Hedden Construction Company, didn't you? A Endeavored to liquidate?

Q Yes. A I did not endeavor to liquidate; I did liquidate it.

Q Before you liquidated, you endeavored to sell to Stone & Webster Company, didn't you? A I had what?

Q Before you liquidated, you endeavored to sell to Stone & Webster Company? A I did not.

Q No negotiations of that kind at all? A No. Negotiations with Stone & Webster were

made some years before that. Mr. Dozier then had nothing whatever to do with the company. They wanted us to merge with them. It was through a friend of mine.

Mr. Lum: Mr. Hedden, just drop your hand. We can hear you better.

Witness: Oh, yes.

Q Well, when Mr. Dozier was with you there was a good deal of activity on your part in an effort to sell out to Stone & Webster Company, was there not? A Nothing whatever. Mr. Dozier had nothing to do with Stone & Webster. It was the late John P. Hagemann who was associated with me as vice-president, Mr. Barlow, my son-in-law and myself.

Q That was the Hedden Construction Company you are speaking of? A It was.

Q But Mr. Dozier was an employee of the Hedden Construction Company, wasn't he? A He was.

Q And while he was employed by that company you had these negotiations with Stone & Webster, did you not? A The company did; yes.

Q Yes. In which you participated, of course? A In which who participated?

Q You. A Certainly.

Q And Mr. Dozier was with you at the time? A He was a bookkeeper there then.

Q He was your confidential man? A No.

Q You and he were at the Hotel McAlpin a good deal at that time, were you not? A What?

Mr. English: Read it.

(Question read as follows: "You and he were at the Hotel McAlpin a good deal at that time, were you not?")

A We called there occasionally; yes.

Q And Mr. Hagemann would not go along; isn't that right? A I can't understand what the Hedden Construction Company— Pardon me.

Q Mr. Hagemann would not go on with you, would he? A Yes; he was only too anxious to go in, if I had continued.

Q How is it he got out and formed the Hagemann-Harris Company? A For the simple reason that we had liquidated or were liquidating—I was liquidating the Hedden Construction Company.

Q Yes. All right. Now, following the liquidation of the Hedden Construction, you incorporated the Charles R. Hedden Company, did you not? A I did not.

Q Who did? A It was not incorporated, you mean Charles R. Hedden Company? No, I was operating as Charles R. Hedden individually.

The Court: For two years.

Q Yes. And following that the Charles R. Hedden Company was incorporated? A The Charles R. Hedden Company was incorporated in 1918 on account of my high regard of Mr. Dozier.

Q Very good. A Yes.

Q Now, you and Dozier and Doe and Wathy were the stockholders of that company, were you not? A We were.

Q And that went along until how long, until Mr. Doe and Wathy sold out? A About two years.

Q About two years. Now, do you remember at what price they sold out? A They sold out for one hundred and fifty.

Q One hundred and fifty dollars a share? A Yes.

Q At that time, when those four were in, you had less than a majority control, did you not?

Mr. Lum: I object. It seems to me it is foreign to the issue. I do not think there is anything in it. I do not want to object to anything that is important.

(Discussion.)

The Court: Keep it in the issues.

Q At the beginning of the Charles R. Hedden Company you had forty-five per cent. control and your associates had fifty-five per cent., did they not? A I had $20,000 in the company at the beginning of the Charles R. Hedden Company.

Q Just answer my question. A What is it?

Mr. English: Read it to him.

(Question read as follows: "At the beginning of the Charles R. Hedden Company, you had forty-five per cent. control and your associates had fifty-five per cent., did they not?")

Q You know that, Mr. Hedden, that you had less than a majority?

The Court: Let him answer the question, if you want it.

Mr. English: Yes; I do want it.

Q (By the Court.) Can you answer the question? A No; not without referring to—(interrupted).

Q What book do you want? A Mr. Lum can give it to me, or you can.

Mr. Lum: Which book do you want?

Witness: Who has got the amount of capital when we were incorporated? Charles R. Hedden— Shall I read from this?

Mr. Lum: No. Just refresh your recollection enough to answer the question.

Q Yes; whether it is not true that you had forty-five per cent. and your three associates had fifty-five per cent. of the stock of the Charles R. Hedden Company. A About that; yes.

Q That is about right? A About right.

Q Yes. All right. Now, you wanted to have a majority control, didn't you? A No; if I had wanted majority control, I wouldn't have— I did this for Mr. Dozier's sake. I didn't have the—(interrupted).

Q How much stock did Mr. Dozier have in that company at the beginning? A Ninety-six hundred dollars.

Q And that was given for how many shares, ninety-six shares? A Yes.

Q Out of a total of $100,000? A There was only $20,000 in it.

Q How much did Mr. Doe have? A Mr. Doe had $12,000.

Q Yes. And Mr. Wathy? A Mr. Wathy had forty-eight hundred.

The Court: Is that Doe?

Witness: Doe; yes.

(Discussion.)

Q You were president of the company, were you not? A I was.

Q And it had been incorporated, you say, to take over your business? A It was.

Q Yes. And you exercised your prerogative as president to manage the company, did you not? A I just didn't get that.

Q (Question read as follows: "Yes. And you exercised your prerogative as president to manage the company, did you not?") A I did.

Mr. English: Did he say yes?

Witness: I did.

Q And Mr. Dozier's title was vice-president and general manager, was it not? A Yes.

Q And he became rather restive, because you insisted on running the company instead of himself. A He did not.

Q Do you remember about the time you sold out, or a little before, you had a conference with Mr. Dozier at your house over this matter of the purchase of Mr. Doe's stock? A I did not have any, not to my recollection— Did we have any meeting there?

Q Just you and Dozier at your house in 1921 before you purchased Doe's stock, you and he had a conference; do you remember that? A Possibly so.

Q And do you remember that Mr. Dozier showed you a letter which Mr. Doe had written him, written on yellow paper in pencil? A I remember a letter; I don't recall its contents.

Q Yes. Well, you read it at the time, did you not? A Possibly so.

Q Yes. I show you what purports to be a letter from Charles L. Doe to Walter J. Dozier, dated December 6, 1921, beginning "Dear Walter." Is that the paper which he showed you at that time? A Letter from Doe?

Q Yes. A Yes; I paid so little attention to it I don't remember the details.

Q Now, it comes back to your mind, does it? A Yes, that comes back to me.

Q And you remember the general content of this letter was a complaint of the way things were going in the office, with particular reference to Doe himself and his relations with you. Do you remember that? A No; I don't remember that, because my relations with Doe were always of the best until Mr. Dozier and Doe got in a fight.

Q All Dozier, I suppose. A Yes; Dozier.

Q Now, do you remember in this letter which you saw and read at that time, Mr. Doe says this, "He has been"—referring to you—"he has from the very first tried to get more than his legitimate share of the profits and has, during the last year or so especially, seemed to be absorbed with a desire to be supreme both in stock control and administration." Do you remember reading that? A Yes. Not true.

Q Not true. But you remember reading it? A I remember reading it or Dozier reading it to me. I don't think I read it.

Mr. English: Mark it for identification.
(Letter marked D. 1 for identification.)

Q Now, it is true that you wanted to be and did act as manager of the company, isn't it? A Why shouldn't I?

Q No reason why you shouldn't. I am just trying to get the facts. That is true enough, isn't it, it was your company, your business? You had—(interrupted). A Yes.

Q You had taken these fellows in, hadn't you? A Yes.

Q And you felt that that was your business into which you had taken these associates. That is right? A It was my business and I took them in.

Q Certainly. And, because of that feeling on your part, you naturally exercised your prerogative to run the company, didn't you? A I don't know what you mean by "running the company." I was always the working head, as I said before.

Q You assumed the general management of the company as its head. A Naturally so.

Q And you have continued that right on up to the present time? A Why, certainly.

Q And as president of the company and as the working head, you exercised your prerogative as the leading and dominant figure of the company, didn't you? A Not as far as the treasurer—(interrupted).

Q Oh, well. A As far as Mr. Dozier was concerned, he had entire charge of the—(interrupted).

Q You mean to say you didn't undertake to keep the books, you had people in the office to keep the books. A No. I didn't undertake to

keep the books for Mr. Dozier was manager of that company.

Q Certainly. I understand that. But you were the responsible head of the company, weren't you? A Naturally so.

Q And you expected people to report to you. A On matters that I wanted them to report; yes.

Q And they did, didn't they? A On some matters, yes.

Q Yes. A Not on everything.

Q Not on every little detail, but on important things? A Not necessarily on important matters. They didn't report to me when many large loans were obtained, nor report to me when a large amount of money was taken out of the bank, by Mr. Dozier.

Q (By the Court.) Who dictated the policy, you? A No; Mr. Dozier.

Q Policy of what? A I meant—you said "deposit."

Q Policy. A Well—(interrupted).

Q The Vice-Chancellor asked you who dictated the policy of the company. A Only as far as construction, as far as I dictated it.

Q That was the business of the company, wasn't it, construction? A That was the business of the company, but it required financing.

Q And everything was subordinate to that? A Not necessarily; no.

Q And what else was the main business of the company besides construction? A The banking account.

Q That was auxiliary to the construction, wasn't it? A That may be. But it was a very important part of the construction.

Q Now, do you remember that Mr. Fisher came into the company after Mr. Doe and Mr. Wathy went out? A I do.

Q Do you remember how much stock of Doe and Wathy you purchased and how much Dozier purchesed? A I don't know how Mr. Dozier worked it around, but I paid $10,500.

Q Do you know how much stock that gave you? A I don't recall just the amount.

Q Well, do you remember how much they had for sale? A Yes; had one hundred and fifty shares, Doe had, and Wathy, I think, had $6,500. I can refer to the books for that. I don't carry all that in my mind.

Q That would be sixty-five shares and one hundred and fifty shares.

The Court: Forty-eight shares he had, Wathy, didn't he?

Mr. English: Well, he has told us two different things.

The Court: No. He is trying to do the best he can.

Q Two hundred and ten shares they had for sale altogether, didn't they, Mr. Hedden? A Yes.

Q That is right? A Yes.

Q Of which you bought $10,500? A No; I paid in $10,500. Mr. Dozier worked that whole thing.

Q Yes. You mean he attended to the accounting details of the thing. Is that what you mean? A I don't mean that at all. I mean he made the preparations and fixed it all up to suit himself.

Q So, of the one hundred thousand par value to be purchased you put up $10,000; is that it? A That is my recollection.

Q And who put up the balance? A No; he did not put up the balance.

Q I say who did? A The company, the Charles R. Hedden Company put up the balance.

Q And you and Mr. Dozier divided that stock between you, didn't you? A He knows how it was divided.

Q I am asking you, Mr. Hedden, if you know how that stock was divided between you. There were two hundred and ten shares. You each took one hundred and five, isn't that true? A Eh?

Q I beg your pardon? A Without referring back, I will say yes, but, understand me right now, Walter Dozier was the only—as I have since learned—only—(interrupted).

Mr. English: I object.

A (Continuing.) He juggled the rest of it.

Mr. English: I object.

The Court: What was that last?

(Answer read as follows: "He juggled the rest of it.")

Mr. English: I move to strike that out.

The Court: That goes out.

Q Do you remember that Mr. Fisher came into the company following the retirement of Doe and Wathy? A I do.

Q Do you remember having a conference with Mr. Fisher at the Union League Club in New

York before he came in? A Having a conference with him?

Q Yes. A I had several conferences with him. He came in with my son-in-law, Mr. Joe Sterrit.

Q I am asking you if you remember particularly a conference at the Union League Club, before he came in. A I had conferences with him, yes.

Q And that was before he came in; was it not? A Yes; I had several conferences with him, not in New York, but at my son-in-law's house.

Q And at that conference at the Union League Club in New York, Mr. Fisher discussed with you some arrangement by which, in case of the death of any of you, the stock of the others should be bought by the survivor. A He did nothing of the kind.

Q Do you remember that you said to him at that time that you wanted Dozier to come on that arrangement, too? A I said nothing of the kind.

Q Do you remember, just after Fisher came in, a contract was drawn up to that effect? A Various contracts were drawn up and presented to me.

Q Do you remember that particular one in February, 1922? A No. February what?

Q February, 1922? A What date?

Q I don't know what date. I am asking you about that time. A No.

Q You don't remember that? A No. There were so many presented to me I don't remember the date.

Q (By the Court.) What is your age, Mr. Hedden? A What is that?

Q (By the Court.) What is your age? A I am in my seventy-third year.

Q When did Mr. Toothe come into the company as a stockholder? A I think he came in in the early part of '22.

Q In the early part of 1922. Now, I show you a draft of a proposed agreement dated February the 23rd, 1922, between Charles R. Hedden, Walter J. Dozier— A What date was that? Pardon me.

Q February 23, 1922, between Charles R. Hedden, Walter J. Dozier, Harold F. Fisher and James H. Toothe. There is a carbon copy. A There has been a dozen handed to me.

Q Just look at that and see if you remember that.

The Court: Just answer the questions.

A Yes; I have seen that.

Q Yes. And that, in general, provided for the purchase or sale of stock of any of the survivors by any of the survivors in case of death of anyone of you, didn't it? A Yes.

Mr. English: I offer that.

(Paper marked D. 2 for identification.)

Q Now, from the very time that Mr. Fisher came in until the time that Mr. Dozier went out, there were more or less discussions back and forth about the purchase and sale of stock, weren't there? A May I answer that question in my own way?

Q I just want you to answer the question. Were there? A Yes; there were.

Q Pardon me, then you have answered the question. Now, do you remember that in August of 1922 you and Mr. Dozier had a further conference which resulted in another draft of an agreement? A I do not.

Q I show you a proposed form of agreement dated August blank, 1922, between Charles R. Hedden and Walter J. Dozier. See if that does not come back to your mind now. A Oh, we had them in every few weeks.

Q Yes. Well that is one of—(interrupted). A That is one I turned down. You say 1922. Just see if I have—(interrupted).

Q Blank day of August, 1922. What is this memorandum you are referring to? A On August 16, 1922, Walter submitted an agreement and I turned it down. Then he went to California.

Q What was this paper you are referring to, Mr. Hedden? A It is some notes that I took from my diary.

Q Out of your diary. All right. And this paper, which I now show you, is the agreement he submitted on August 16, 1922. A Possibly so.

Q And you thought that was important enough to note in your diary? A Yes; because—All right.

Mr. English: Mark it for identification.

(Paper marked D. 3 for identification.)

Q Now, you said that Mr. Dozier was getting ready to go to California? A Mr. Dozier went to California on the 21st or 22nd.

Q His health was not particularly good about that time, was it? A His health?

Q Yes. A I hadn't seen anything very extraordinary about his health. He would be away one day and back the next.

Q You remember he was anxious to get away for a vacation? A He told me later that he went out there to see—(interrupted).

Q Just answer my question. Do you remember that in August, 1922, he was anxious to get away for a vacation? A He might have been anxious, yes; he was anxious to get away.

Q And isn't it true that the ordinary vacation which he took was a month? A Oh, he has taken vacations right along.

Q Just answer my question. A No; no.

Q What was the—what was his ordinary vacation? A I don't recall that. I don't recall them all, but he went to—(interrupted).

Q I don't care where he went. I am dealing with the length of time. The period of the vacation would be about a month? A He never had to ask me about a vacation. He was always privileged to go.

Q And do you remember that in August of 1915 you discussed in—

The Court: 1915?

Q In August, 1922, you discussed in the board the advisibility of letting Mr. Dozier have two months' vacation? A We did not. We held no meeting on that date.

Q Now, in the latter part of August, 1922, he went to California, didn't he? A Yes, on the 21st or 22nd.

Q Well, now, you don't know just the date, do you? A Yes; I got it noted down here the 21st.

Q What does your note say? A I just said. I think he went—I have got in my diary here August 22—no. Let me see. My eyes are bad. 24.

Q Well, never mind, Mr. Hedden. A I got 22. I recall Mr. and Mrs. Dozier, we lunched together and he went to California that night.

Q I see. Now, see if you can get back into your mind that about a week before he left you had a meeting of the Board of Directors in which you voted him this two months' vacation; do you remember that? A We had no meeting before that.

Q No meeting? A No meeting from February 14, 1922, until April 20, '23.

Q No meetings? A No annual meeting. And the next annual meeting was January 15, 1924.

Q Are you speaking of meetings of the directors or stockholders or both? A I know there were no meetings held.

Q Of directors or stockholders or both? A No; there is none.

Q No meetings of the stockholders held from February, 1922, to April, 1923; is that correct? A That is correct.

Q And no meeting of the directors held during that time? A Correct.

Q And that is the reason you have not noted it in your diary the holding of any meeting, except the two meetings on those dates which you mentioned; is that correct? A Yes.

Q Now, James H. Toothe, I think you said, is your grandson? A Yes.

Q When did he become secretary of the company, do you remember? A 'Twenty-two. I don't recall the exact date.

Q In 1922? A Yes, sir.

Q Well, was it back at that meeting in February that you speak of? A What do you mean, of the meeting of the—(interrupted).

Q When he first became secretary; you said you held a meeting in February, 1922. Then you jumped to April, 1923. Now, was that February meeting, 1922, the time that Mr. Toothe became secretary of the company? A What date in February?

Q February 14th. A No. Mr. Toothe was not there.

Q No. That does not answer my question. Was he made secretary of the company on that date? A No.

Q He was not? A Not to my knowledge.

Q Let me show you out of your company's minute book this: Just look at this, please. A On the 14th?

Q Fourteenth of February, 1922. A No; for the simple reason that Mr. Toothe was married on the 4th of February and did not come back from his wedding until the 21st.

The Court: He wants to know whether he was not elected at that meeting in February.

A No, no.

Q Look at your minute book. A It may be in the book.

Q And look here, in February. A It may be.

Q Will you please answer my questions or not, Mr. Hedden?

The Court: A little more patience.

Mr. English: I know, but—(interrupted).

The Court: A little more patience.

Q You note the date, 14th of February, 1922, don't you? A Yes.

Q You note there is sealed and initialed, J. H. T. A Yes.

Q That is James H. Toothe? A Yes.

Q Every page? A Yes.

Q Yes. Every page? A Yes.

Q And it finally winds up, signed James H. Toothe, secretary? A Yes.

Q Signed Charles R. Hedden? A Yes.

Q That is your signature? (Indicating.) A Yes.

Q And that is Mr. Toothe's signature? A Yes.

Q Now, do you notice in those minutes, sealed by and signed by and sealed and signed by the secretary, that says Mr. Toothe was elected secretary of the company? A That may be.

Q That is all true?

The Court: Meeting of February 14th?

Mr. English: February 14, 1922.

Witness: Those minutes were drawn by Mr. Dozier.

Q Now, you say that no other meetings of any other kind were held from that day until February, 1923? A Yes.

Q Let me call your attention to the minutes dated March 9, 1922. Do you see them? A There are a lot of minutes that are not on the book. I say they were not held.

The Court: He wants you to look at it, sir.

Q See the date March 9, 1922, each page has the seal of the company? A Yes.

Q And the initials "J. H. T., secretary," stamped on there? A Yes. Months after that was put on.

Q And it is leafed over on there and signed James H. Toothe, secretary, Charles R. Hedden, chairman; is that correct? A Yes.

Q That is Mr. Toothe's signature? A Yes.

Q That is the seal of the company? A Yes.

Q Now, I call your attention to the minutes of April 18, 1922. Do you see the date? A Yes.

Q Do you see that? A Yes.

Q "Being no quorum the meeting adjourned." Do you see that? A Yes.

Q Signed by you as chairman? A Yes.

Q Signed by Toothe as secretary? A Yes.

Q And the seal of the company? A Yes.

Q I call your attention to minutes of May 16, 1922. Do you see the date? A Yes.

Q The same seal and initial, that is true? A Yes.

Q Signed by you as chairman? A Yes.

Q Signed by Toothe as secretary? A Yes.

Q They are genuine signatures? A Yes.

Q That is the seal of the company? A Yes.

Q I call your attention to minutes of June 20, 1923. You see the date? A Yes.

Mr. Lum: The minute book is in evidence.

The Court: He has a right to cross examine.

Q You see the same thing, do you? A Yes.

Q Signed by you as chairman and Toothe as secretary? A Yes.

Q And the seal of the company? A Yes.

Q The same thing is true of the minutes of July 5, 1922? A Yes.

Q That is true? A Yes.

Q Signed by both of you? A Yes, that is my—(interrupted).

Q That is your signature? A That is my signature.

Q And Mr. Toothe's signature? A Yes.

Q And the seal of the company? A Yes.

Q The same thing is true of the minutes of August 15, 1922, each page has the seal of the company, initialed by Mr. Toothe? A Yes, yes.

Q That is true? A Yes.

Q And it is signed Charles R. Hedden? A Yes.

Q Chairman, James H. Toothe, secretary? A Yes.

Q And it says, this is the language, "This is to certify that I, Charles R. Hedden, chairman of the foregoing meeting, and I, James H. Toothe, secretary thereof, respectively thereat have read the foregoing minutes of the said meeting and that the same are in all respects a full, true and accurate record of the acts and things done thereat." A Yes, sir.

Q That is the sheet that you signed, that is the reason that you signed as chairman? A Yes.

Q And Toothe as secretary? A Yes.

Q And the seal of the company? A Yes.

Q That is true of all these minutes; is it not? A Yes.

Q And the seal is on every one? A Yes, they are in it now.

Q Now, going on it says, "September 19, 1922, present Hedden and Fisher only." A Yes.

Q "Motion carried over until the next meeting, being no business before the board." That is right? A That is what it says here; yes.

Q Dozier was in California then, wasn't he? A Yes.

Q The minutes are signed by you and by Toothe. A Yes.

Q The next meeting was on October 17, 1922. A It says there the next meeting was—(interrupted).

Q According to this book, I mean, yes. A Yes; that is what—(interrupted).

Q The book, each page is sealed by the secretary. A Yes.

Q And initialed. A Yes.

Q The minutes contain the certificate I read. A Yes.

Q Signed by you and Mr. Toothe. A Yes.

Q That is your proper signature, that is your signature. A I said so; yes.

Q And the minutes recite at the very beginning of this October 17, 1922, meeting, "On motion made and carried it was resolved at a reading that the minutes of the regular meeting of the board of directors held on the 15th day of August, 1922, be ratified, approved and confirmed." It says that, doesn't it? A It says that there; yes.

Q And you certified to that over your signature, did you not? A I signed my signature; yes; at Mr. Dozier's request; yes.

Q You signed a minute for November 21, 1921, no quorum?

The Court: Minute of the meeting.

Q Minute of the meeting November 21, 1922, no quorum; that is true? A Yes.

Q You also signed the minutes of a meeting of December 19, 1922, where apparently con-

siderable business was transacted; that is true? A Yes.

Q The next one following is January 16, 1923, four pages of minutes, at the end signed by you and Mr. Toothe. A Yes.

Q That is all true? A Yes.

The Court: The next one. Follow right up.

Q Now, I call your attention to the next minute book, C. 2. It begins at April 10, 1923, and recites a postponed annual meeting, signed by Toothe, secretary. A Yes.

Q Notice to stockholders, starts off with "Notice to stockholders." Signed Toothe, secretary, for a meeting of April, 1923. That is right? A Yes.

Q That has the seal of the company and his initials? A Yes.

Q Then on April 20, 1923, you held the annual meeting of stockholders—that seems to be held. A Yes.

Q Of stockholders, namely yourself, Fisher, Dozier and Toothe. A Yes.

Q (By the Court.) It was signed?

Q The minutes of the meeting are signed by the four of you. A Yes.

Q That is your signature. A Yes.

Q Now, you remember that one, do you? A Yes.

Q (By the Court.) Why was that signed by the four?

Q Why did all four of you sign that, do you know? A The same as I have said before. All these were written up afterwards and brought by Mr. Dozier to me.

Mr. English: I mislead your Honor and myself. A waiver of notice is signed by all four. I want to correct that.

Q Included in the minutes is a waiver of notice signed by all four of the stockholders, Mr. Hedden; see that, and that is seconded by all four. A Yes.

The Court: The minutes are not signed by all four?

Mr. English: No, sir. (To witness): Then the minutes are offered, six pages, and the final page is signed by you as chairman and Toothe as secretary; is that true?

Witness: Yes, sir.

Q (By the Court.) With the same certificate?
Q With the same certificate? A Yes.
Q Yes.

The Court: That is the meeting he said was held.

Mr. English: He said that meeting was held?

The Court: Yes; ask him.

Q Was that meeting held or wasn't it held; the annual meeting of stockholders? A The annual meeting was held.

The Court: The 29th?

Mr. English: The 20th of April.

Q Was there any directors' meeting held following that? A Not that I recall; no.
Q Let me show you the minutes. Here are the minutes of directors' meeting held imme-

diately after the adjournment of the stockholders' meeting. You see it says that? A Yes.

Q It recites that Hedden, Fisher, Dozier and Toothe were present. A Yes.

Q You were elected president of the company at that meeting, weren't you, at the meeting of the directors? A Meeting of the 20th?

Q Yes. Of the directors, after the stockholders' meeting. A Yes.

Q It says so. Were you elected president or not? A Yes, I said—I was elected president.

Q Do you remember that meeting? A The 20th?

Q Yes. A Yes.

Q And Fisher was made vice-president? A Yes.

Q Dozier vice-president, treasurer? A Yes.

Q Toothe secretary? A Yes.

Q Do you remember that now? A Yes.

Q That minute—the minutes of that meeting cover three pages and are signed by you and Toothe and have the same certificate; that is right? A Yes.

Q Now, we go over— Pardon me? A That was the 20th. Go ahead.

Q Then there was a meeting of May 15, 1923, covering a page and a half, signed by you and Mr. Toothe; that is correct? With the same certificate. A Yes.

Q And with the seal of the company on it initialed. That is true? A That is what it says there, but it does not say the date it was signed.

Q That is what I am asking you. A All right.

Q Then there is a meeting of June 19, 1923, with you and Toothe only present, no quorum,

meeting adjourned. Do you see that? A I see it.

Q The same certificate, and signed by you and Toothe? A Yes.

Q The same sort of an entry of a meeting of July 17, 1923, you alone present, according to that statement. A Yes.

Q Then a meeting on August 21, 1923, covering three and a half pages of minutes, signed on the end by you and Toothe. A Yes.

Q And the same certificate. A Yes, sir.

Q Was that held? A No; that meeting was not held.

Q The meeting was not held? A No.

Q Then there is a minute of a meeting of September 18, 1923, with you and Toothe recited present, no quorum, the meeting adjourned. A Yes.

Q Is that signed by you and him? A Yes.

Q With the same certificate. A Yes.

Q Was that meeting held? A No.

Q Then there is a minute of a meeting on October 16, 1923, with you alone present. A Yes.

Q Was that meeting held? A No.

Q Then I call your attention to the minute of—(interrupted).

Examined by the Court.

Q How do you recall those three meetings were not held? A For the simple reason—(interrupted).

Q Three meetings in 1923 just referred to. A I could refer to my— (interrupter).

Q It is because you have not got any memorandum of it in your diary? A Yes; I can—(interrupted).

Q Please. Is it because—(interrupted). A That is what I am testifying from.

Q Is it because you have no minute in your diary that you now say the meetings were not held? A Yes.

Q Is that the only reason? A Yes. Not the only reason, because when I refer back to my diary I find in some cases that—where they state certain ones were present and they were not there.

Q Do you depend for that upon the minutes in your diary? A Yes.

Q You have no independent recollection? A No.

Examined by Mr. English.

Q Now, I show you the minutes of November 20, 1923, covering a page and signed by you and Mr. Toothe. That is correct? A I don't recall that meeting.

Q No. But it is correct that they are signed by you and Mr. Toothe. A They are signed, as far as that is concerned.

Q And the same is true of the minutes of the meeting of December 18, 1923. A Yes.

Q Referring to the business of the Mountainside Hospital; do you remember that? A I remember the signature there.

Q Yes. Was the meeting held or not? A I don't think it was.

Q Don't think it was? A No.

Q Then minutes of a meeting of January 15, 1924, do you remember that? A I do.

Q Yes. That covers seven pages signed by you and Toothe and certified in the usual manner? A Yes.

Q That is right? A Yes.

Q Now, you say, except for the meeting in February, 1922, the one in April, 1923, and the one of January 15, 1924, none of those other meetings were held? A That is what I said; yes.

Q Your grandson, Mr. Toothe, certified and sealed a certificate contrary to the fact; is that right? Is that what you say? A I told you, to the best of my knowledge and belief, they were not held.

Q All right. Then I understand you to say that. Now, I ask you, in view of what I showed you, in view of all these meetings held every month, everyone signed by you and Mr. Toothe, everyone signed by you and bearing the seal of the company, that you now say that Mr. Toothe as secretary signed the minutes and affixed the seal to a set of meetings that never were held? A Yes.

Q You say that, do you? A Yes.

The Court: What do you say?

Q Do you understand my question, Mr. Hedden? A Yes; I understand your question, but —I see my signature is on those meetings, but I say, to the best of my knowledge and belief, that many of those meetings were not held, not all of them. That book was presented to me months after for signature—with Mr. Dozier coming there—without reading them, which I should have done, but I had so much confidence in him that I did not do it.

Q You are not getting my question. My question is, after going through all these minutes which bear your signature and that of Mr. Toothe and the seal of the company, you now say that Mr. Toothe, your grandson, certified

to a series of minutes of meetings which never were held; do you say that? A No; I wouldn't say that at the present time.

Q Isn't it a fact that if Mr. Toothe certified to them they were held? A It depends all together under what conditions he certified them. Mr. Dozier—he might have been duped the same as I was. Mr. Dozier came to him and got him to do it.

Q How old a man is Mr. Toothe? A Under thirty.

Q Under thirty; he is a man? A Yes.

Q Would you expect him to sign minutes from month to month reciting meetings with a lot of transactions, if they never took place?

Mr. Lum: I object. Mr. Toothe is here.

The Court: Objection overruled.

A It would depend on the conditions.

Q Would you expect him to do that? A No; if he undertook to—(interrupted).

Q Well, he was capable of understanding—(interrupted).

The Court: Let the witness answer.

Mr. English: I thought he had.

The Court: Did you finish?

Witness: Yes, sir.

Q He was capable of understanding, wasn't he? A I suppose so, yes.

The Court: Now, he mentioned four meetings. That is, four were not held. What are those four? You rattled them off so fast I couldn't get them.

Mr. English: I will rattle them off slowly.

The Court: Have you them in mind?

Mr. English: They were held every month.

The Court: I mean, he said, all but four were not held. You mentioned the four. Have you the four in your mind?

Mr. English: Yes.

The Court: Let me have them.

Mr. English: February of 1922, April of 1923, one a stockholders' meeting and one a directors' meeting; two on April, 1923, one a stockholders', and January 15, 1924.

The Court: I see. Three.

Mr. English: There were four meetings, three of directors and one of stockholders.

Q You made it a practice of signing the minutes of the company from the beginning of the company, didn't you, Mr. Hedden? A I did.

Q Were you in the habit of signing your name and certifying to things that did not exist? A I followed—Mr. Dozier dictated—(interrupted).

Q Just answer my question. A It is self-evident, I say, that—(interrupted).

Q You were not in the habit of signing your name to papers regarding matters that did not exist, were you? A Without doubt, I did sign without their existing.

Q Were you in the habit of doing that? A In the habit of signing minutes just the same as I have signed them.

Q You think that you signed other papers in your company's affairs in the same way, or

did you look at the other papers that you signed? A It would depend altogether on what the papers were.

Q Well, contracts for these big buildings you were talking about, did you read those over? A Why, certainly.

Q Estimates, did you look those over? A I certainly did.

Q Yes. Minutes of the meetings, did you look those over? A No.

Q No. Never looked them over? A No.

Mr. English: Now, Mr. Lum, I will ask you to produce, or else let me use the book in the case of James H. Toothe against Walter J. Dozier.

Mr. Lum: Go ahead.

Q Do you remember, shortly after you discovered, as you say, this check for $65,000 had been drawn, you retained Mr. Lum as your counsel? A I did.

Q And you retained him on behalf of the Charles R. Hedden Company, did you not? A I did.

Q To endeavor through legal means to restore the money which you thought was improperly drawn? A I did.

Q Do you remember were you in Mr. Lum's office when he dictated a letter and sent a letter to Mr. Dozier dated January 17, 1924? A I don't recall that.

Q Read that and see if you remember that letter. A Yes; I remember that letter.

Q That was written by Mr. Lum, wasn't it, after conferring with you? A Yes.

Q And with your authority? A Yes.

Mr. English: Mark that for identification, letter from Lum, Tamblyn & Colyer to Walter J. Dozier, January 17, 1924.

The Court: Any objection to it going in evidence?

Mr. Lum: No.

The Court: Offer it in evidence and read it to me.

(Letter marked Exhibit D. 4.)

(Exhibit D. 4 read.)

The Court: I thought it was something else.

Q Do you remember discussing with Mr. Lum the form of procedure to go to the court in your effort to get this money back? A Do I what?

Q Do you remember discussing with Mr. Lum—(interrupted). A I do.

Q —the form of procedure by which you would go to court in the effort to get this money back? A I left it with Mr. Lum.

Q But what you wanted to do was to get that money back for the Charles R. Hedden Company, didn't you? A That is right.

Q And you followed that up with Mr. Lum in whatever he advised; did you not? A Yes.

Q You know, Mr. Hedden, do you not, that Mr. Lum on behalf of your company's interest filed a suit in this court in the name of James H. Toothe? A I do.

Q You saw that bill at the time, didn't you? A I did.

Q You were consulted, weren't you, when it was drawn? A I was.

Q You sat there with Mr. Toothe when Mr. Lum dictated it? A At his—I did.

Q And you knew what went in it, didn't you? A Yes.

Q Now, I call your attention to paragraph 4 of the bill, which says—the Toothe bill—which says, "that at a meeting of the board of directors held on the last mentioned day"—that is August 15, 1922—"the following resolution was adopted: 'Further resolved that should the treasurer at any future time and at his pleasure withdraw from the active management of the company's affairs, his stockholdings in the company shall be purchased by the Charles R. Hedden Company at the book value per share at the closing of business for the fiscal year ending December 31st, preceding his intention to withdraw and date of resignation.'" You knew that was in that complaint, didn't you, Mr. Hedden? A After I got the bill of complaint I did, yes.

Q Yes. You never told Mr. Lum to change the bill to correct that, did you? A I don't think I did.

Q No.

Mr. English: I will mark that bill of complaint for identification.

(Bill marked D. 5 for identification.)

The Court: If there is no objection, offer it in evidence.

Mr. English: I offer, if your Honor wants me to, the record in the case of James H. Toothe against Walter J. Dozier in the Court of Chancery of New Jersey, filed blank, page blank. I can supply that.

Q Now, do you remember, Mr. Hedden, that in the summer of last year, that is, in the sum-

mer of 1924, after conferring with Mr. Lum, he brought a suit in the Supreme Court of New Jersey in connection with this same matter? A Yes.

Q In the name of Charles R. Hedden Company? A Yes.

Q Do you remember that? A I do.

Q You conferred with Mr. Lum about that? A I did.

Q That was before this present suit that we are now in court over was brought, isn't it? A Yes.

Q Did you see the complaint that was drawn up in that case? A I don't recall whether I did or not.

Q Well, you know it was against Mr. Dozier and Mr. Fisher and the Fisher-Williams Company? A Yes.

Q And Harold Williams? A Yes.

Q You knew all about it, didn't you? A Yes.

Q And you saw the complaint after it was drawn? A Yes.

Q Do you remember in the sixth paragraph of that complaint it recites that in August, 1922, when the board of directors, consisting of Charles R. Hedden, the defendant, Walter J. Dozier, and the defendant, Harold F. Fisher, said board of directors adopted a resolution of which the following is a true copy and then follows the same resolution that I read before? A Yes.

Q That is true, isn't it? A Yes.

Q You never instructed Mr. Lum to change that either, did you? A No.

Q And that was filed in the Supreme Court of New Jersey, wasn't it? A Yes; it was.

(Discussion.)

Mr. English: I have here copy of the complaint which was served by Mr. Dozier on the sheriff. I will mark that for identification.

(Paper marked D. 6. for identification.)

Q Do you remember, Mr. Hedden, that early in January or the first—that in January or the first part of February last year, through Mr. Lum you endeavored to bring to the attention of the Prosecutor of Essex County what you considered the improper conduct of Mr. Dozier? A I do.

Q Do you remember that Mr. Toothe made an affidavit in that matter? A I don't—I presume he did.

Q Did you see the affidavit? A Mr. Toothe's affidavit?

Q Yes. A I don't think so.

Q You don't think you saw Mr. Toothe's affidavit. All right.

(Discussion.)

Q Now, do you remember in this suit that Mr. Toothe brought in this court, the defendant Dozier filed an answer through us? A I beg your pardon; I didn't hear that.

Q Do you know whether or not we filed an answer for Mr. Dozier and did you see that answer? A I don't think I did.

Q Didn't see that. All right. Now, does it come back to your mind, Mr. Hedden, that Mr. Dozier went to California in the summer of 1922? A Yes.

Q That comes back to your mind? A Yes.

Q He was gone for two months; do you remember that? A Yes.

Q Your by-laws require monthly meetings of the board of directors, do they not? Do you remember that? A Yes.

Q Was that by-law lived up to? A No; the by-law was not lived up to.

Q Never ran any monthly meetings of the directors; that is right? A I don't recall any meetings of the directors for the reasons I stated, from February, '22 to December, '24.

Q Do you recall in September of 1922, when Mr. Dozier was in California, that you and Mr. Fisher conferred together about the monthly meeting of the board to be held that day and agreed that it should be postponed, any business should be postponed until the next meeting in October? A No; there was no meeting between Mr. Fisher and myself regarding that; no meeting held.

Q Not a formal meeting, but just standing there in the office? A No; no informal meeting. He had no discussion with me about that at all.

Q You don't remember that?

The Court: No; it did not occur.

Q You say it did not occur then? A I do; yes.

Q Do you remember, after Mr. Dozier came back that you had a meeting? A I do not.

Q No meeting held. Do you remember whether it was customary, when you had those informal meetings, when there was not a quorum, just to agree that it should be counted a meeting and no quorum and things carried over until the next month? A Not only carried over until the next month, but several months.

Q You misunderstand my question. Do you remember that on those occasions when there were only one or two of you there, it was understood that you would make the minutes, the former minutes of an informal meeting and have all the business carried over until the next meeting, until the next month? A I don't recall anything of the kind.

Q And that when you held your formal meetings you would read the minutes both of the informal preceding meeting and the last preceding formal meeting; do you remember that? A No; I remember it was not done.

Q It was not done? A No.

Q And that it was customary to make a minute of what had been done that way by consent of all hands? It was not so, was it? A No.

Q Now, you said in your earlier examination that after Mr. Toothe was elected secretary Mr. Dozier said he continued to write up the minutes; do you remember that? A I do.

Q What minutes did he continue to write up after that, do you know? A No; I do not.

Q Well, did he write up any other minutes than those of the four meetings, which you say were held? A Not to my knowledge.

Q You agreed that Mr. Dozier should write up the minutes for Mr. Toothe, didn't you? A I agreed that—yes, I did.

Q Now, where do you say the minute book was kept, Mr. Hedden? A The minute book was kept in Mr. Dozier's private box.

Q How do you know that? A I only know that when I sent for the minute book on several occasions it was locked up, the box was locked and no one had a key.

Charles R. Hedden, cross.

Q Do you remember you had a steel safe cabinet in one of the offices, one of the rooms in one of your suite of offices? A In his office? I don't know whose office it was.

Q This steel case I refer to was in his office.

Q You mean the office occupied by him? A By Mr. Dozier.

Q Who else was in that office? A The bookkeeper, Mr. Aubin.

Q And there was a steel safe cabinet there and Mr. Aubin used to open it every morning? A I presume so.

Q You remember the minute book was kept on the shelf in that steel cabinet? A I only testified, when I wanted it it was locked up in the cabinet. I never saw the—(interrupted).

Q Do you know whether the steel safe was locked or unlocked, as a matter of fact? A The steel safe was locked.

Q And that is where it was kept, in the steel safe cabinet? A I presume so.

Q When that cabinet was opened, anybody could go through that wanted to, couldn't they? A Well, if it was open.

Q (By the Court.) Who had the key to it? A Mr. Dozier.

Q And so did Aubin, didn't he? A Not to the box. It was Mr. Dozier's box.

Q You mean, Dozier had a box in the steel safe cabinet? A It was a combination lock, the safe, and a key lock to the box.

Q And Dozier had a private box of his own in that safe cabinet; is that what you say? A Yes.

The Court: He had a key lock box in this cabinet?

Mr. English: It was a box with a drawer inside this big safe, that is what it was.

Mr. Lum: So much has been said, I have pictures of it.

The Court: Let Mr. English go on.

Mr. Lum: I offer that.

Q (By the Court.) Was it in a loose box? A No. It was a box the same as a safe deposit box; there were two keys, the combination and a small key inside.

Q Did you have a private box in that same safe for your affairs? A I did not. I had my private safe in my room.

Q I see. A And Mr. Dozier had a key for it.

Q And the safe cabinet, the big safe itself was opened by Mr. Aubin every morning, was it not? A I can't say it was opened by him every morning.

Q Well, that was part of his duties. A Mr. Dozier might open that.

Q You won't say the minute book was not kept on the shelf in that safe cabinet, will you? A I say, if it was on the shelf, when I sent for it they could have brought it in.

Q You didn't pay any attention to where it was kept, did you? A I sent for the minute book.

Q That doesn't answer my question. You didn't pay any attention to where they kept the minute book. All you wanted was to see it when you wanted it; is that right? A Yes.

Q When were those occasions when you sent for that minute book and could not get it? A There were three occasions, one was when Mr. Dozier was in California.

Q When was that? A One was in 1922-1923.

Q When was the other one? A I don't recall the other.

Q Now, you are quite positive, are you, in your mind, that, while Mr. Dozier was away, the minute book could not be located or found? A Not when I asked for it. I wanted to look over the by-laws.

Q I see. Who was in the office at the time you asked for it? A Mr. Aubin.

Q Mr. Aubin and he could not find it; that is right? A He could not find it.

Q And that is in the summer of 1922? A I think it was.

Q When Mr. Dozier was in California? A I can look it up.

Q I wish you would be quite particular about that date. Just tell us that. A I can't give you the date.

The Court: Not the day, the year.

Q The general time. A I rather Mr. Aubin would testify to that.

The Court: No. He wants to know when you wrote for it.

Witness: When I asked?

Q (By the Court.) When you asked for the minute book for the purpose of examining the by-laws, whether that was in the year 1922, during Mr. Dozier's absence, or in 1923. A That I can't say.

Q Then you don't undertake to say when it was that you could not get the book? A No; I wouldn't.

Q Now, isn't it true, Mr. Hedden, that for a number of months before the 5th of January, 1924, when you and Mr. Dozier had a conference that he had been bringing into the conversations between you and him, from time to time, the matter of the purchase or sale of the stock of the company? A Of my purchasing his stock?

Q Or of he buying yours. A Yes; he brought it up several times.

Q That came in very often in your conversation, didn't it? That he was anxious to get out? A Well, I presume so.

Q Yes. And he was rather disturbed by the things in the office and in the management of the company that got on his nerves, wasn't he? A Well, it got on his nerves because he was trying to run the whole affair.

Q Well, whatever the reason was, he was not happy and he wanted to get out, didn't he? That is true enough? A I presume so.

Q Well, now, there is no doubt about that, is there? A I wouldn't say. He knows it.

Q Well, you know, too, don't you? A I know what he told me. He wanted to go in business in California. He said that in 1922.

Q And from that time on, he was all the time bringing up the question of gettting out of the company. A What is that? No; he tried to sell me his stock.

Q That is one way of getting out of a company, to sell your stock, isn't it? A That may be his mind.

Q Isn't that what you meant, the way of getting out of the company, to sell stock? A There are more ways than one.

Q He made you no offer of that, did he? A I don't know whether he did or not.

Q He gave you every chance to buy his stock if he wanted to get out. A Every time he came I said I didn't want his stock.

Q I understand that, but he gave you every opportunity to buy it, isn't that so? A Yes.

Q Yes. Now, do you remember that he brought the question up, after some discussion you had over the proceedings at the Mountain Station School? A No.

Q Don't remember that? A Mountain Station School? No.

Q Don't remember that? A He brought it up so frequently.

Q Or over some other discussion you had over Major Sterrit. A Who?

Q Major Sterrit. A No. Never had any discussion over Major Sterrit. The only discussion I ever had was with you over Major Sterrit.

Q All right. Was it some discussion you had over the bill you presented to Mr. Julius Ripple on the Ripple job here on Clinton street. Remember that? A There was no discussion I remember of on November 20, 1923.

Q Do you understand my question, Mr. Hedden? A I do, precisely so.

Q Whether in connection with that matter he brought up the question of the sale of this stock; that is the question. Do you know that? A Ripple?

Q Yes. A No.

Q You do remember that you have put in evidence the letter that he wrote in December 31, 1924, seeking an appointment on January 5th? A No; did not mention January 5th; the appointment was on January 5th.

Q I show you Exhibit C. 4, which is the letter which you say Mr. Dozier wrote you in which he said, "May I ask for the courtesy of such

appointment on or before January 5, 1924?" A No.

Q That says that, doesn't it? Now, you remember it was January 4, 1925, don't you? A Yes.

Q Now, on that day you and he had a conference, didn't you? A Yes.

Q That was a Saturday morning, wasn't it? A Yes.

Q I think the calendar shows that. And it took place in your private office, didn't it? A Yes.

Q Mr. Fisher's office was right next door to yours, wasn't it? A Yes.

The Court: Where was that?

Q In your separate offices in the Prudential Building? A In this building, Prudential Building.

Q The building we are in. You are on the third floor? A The third floor.

Q And Mr. Fisher was in his office during that morning, in and out, wasn't he? A I don't think so.

Q Don't remember that. Would you say positively or would you say you don't know? A No; I haven't got any note whether he was there or not. He was not in the office.

Q Eh? A I say, sometimes he would come in the office in the morning, and sometimes in the afternoon.

Q (By the Court.) You don't know whether he was there that day? A I don't know now. I may, if I refer back.

Q Would you undertake to say that that conference only lasted fifteen minutes? A Yes, it only lasted fifteen minutes.

Q Isn't it true it lasted three hours? A No.

Q The whole morning? A No.

Q In the course of which you and Mr. Dozier discussed the purchase and sale of your stock, or his stock? A Yes.

Q That came up, didn't it? A Yes.

Q Do you remember that he showed to you in that conference a comparative statement of the respective businesses of the Hedden Construction Company and the Charles R. Hedden Company, a copy of which I show you? A I saw that.

Q Have you got it?

Mr. English: I asked the other side to produce it.

A No; I haven't got it.

(Paper marked Exhibit D. 7.)

Q And this statement was exhibited and discussed and a copy kept by you during that conference, wasn't it? A It was not. It was not discussed. There was nothing to discuss about it.

Q You took a copy of it with you, didn't you? A I may have put one on my desk, or torn it up; it was no interest to me.

Q And do you remember, as a result of that conference, it was agreed that the company should buy Mr. Dozier's stock of the book value as of December the 31st previous? A There was nothing said about Mr. Dozier—about buying Mr. Dozier's stock, nothing discussed about it; and the meeting was only about ten or fifteen minutes.

Q It didn't take all the morning there? A It didn't take all morning.

Q And that you discussed with Mr. Dozier whether he would accept your note or not? A Now you are branching off from one to the other. Mr. Dozier did discuss with me about my buying his stock.

Q Yes. A Then I said, "Walter, if we agree on a price, would you take notes for it?"

Q And he was not willing? A And he said, "I don't know whether you are worth enough for that." "Well," I said, "I guess I am worth up to several hundred thousand." He said, "I wish I was worth that." That was all that was said.

Q Didn't he say he wanted cash for his stock? A He said nothing of the kind. I told him I didn't want his stock, as I said before.

Q And didn't he say, if you were worth so much and your notes were so good, that you could discount them at the bank and get them that way? A Nothing of the kind.

Q And then do you remember that it was suggested that the matter be financed through the company pursuant to the resolution of August 15, 1922? A He said nothing of the kind. The next memorandum of that, as I said before, was January 17, 1924.

Q And that he said he could draw the company check and you said, "Put it through that way." A Absolutely untrue.

Q Do you remember when you came out, you both came out in rather a good humor? A I didn't come out with him. I was in the room after he left.

Q And did you pull out of your pocket more or less cigars and hand them around? A I

passed no cigars. In the first place, I don't carry cigars in my pocket.

Q Did you get them out of your box? A No; I didn't have any.

Q Nobody got a cigar of you that morning? A No, sir; they did not.

Q Now, do you remember that immediately following that, the men in the office, Mr. Aubin, your bookkeeper, Mr. Dozier and Mr. Fisher, all began to get busy on figuring out the forms of statement and the book value of the stock? A I know nothing about it.

Q You don't know anything about that? A No.

Q Do you know a Mr. Whitehurst? A I do.

Q Who was brought in sometimes by your company, through Mr. Dozier, to help with the books and income tax? A Mr. Whitehurst was in my employ before we organized the Charles R. Hedden Company. Mr. Dozier's nephew was employed by me down at Camp Vail under Mr. Perkins.

Q Well, do you remember that they sometimes used him in the office as sort of an emergency bookkeeper or accountant? A Mr. Dozier had a row.

Q Row or no row. Do you remember that they used to get him to help get up the annual statement and income tax and things like that? A No; I don't know that they did.

Q Do you remember following the meeting between you and Mr. Dozier on January 5th for the next ten days Mr. Whitehurst was there part of the time working on those books with the others? A He was there.

Q (By the Court.) Did you know it at the time? A No; I did not.

Q Didn't know it at the time? A Never brought to me, never had my permission to bring anyone, and he had plenty of assistance right in the office. If not, we could send out for accountants.

Q Do you know, as a matter of fact that they were all working on the books in an effort to ascertain the book value of the stock? A At the time, no.

Q Did you know that at the time? A No.

Q Do you remember conferring with Mr. Dozier in your office on Friday, January 11th, when he came in to report to you the progress they were making on these books? A Absolutely untrue.

Q Do you remember that he had in his hand the yellow work sheet which I now hold in my hand, and that he called your attention to one of the pages in particular, which seems to be headed, "Review before closing" and which I now show you? A I have never seen that paper and never had any discussion with him about the book value of the stock.

The Court: Let him look at it.

Witness: Oh, yes, I will look at it. Never saw that before.

Q And that he said to you that it looked as though the book value of the stock was between two hundred and twenty-five and two hundred and forty dollars a share? A He never said any such thing.

Mr. English: Mark it for identification, consisting of eighteen sheets, and I showed the witness the ninth sheet.

(Paper marked D. 8 for identification.)

RECESS.

AFTER RECESS.

Q I want to again call your attention to this yellow work sheet, Exhibit D. 8 for identification. Do you remember that when Mr. Dozier showed you that, you were sitting at a little table in your room? A I have never seen this before.

Q You have a little table in your room? A Not a little table. I have a long table; possibly it was as long as that (indicating), possibly.

Q Over by the window? A My desk is toward the window. This is my desk toward the main hall (indicating).

Q And don't you remember you were sitting at the table when he showed you that? A No; he never showed it to me.

Q Do you remember that about that time there was a dinner in New York of the Builders' Association? A I didn't know anything about it, but I learned later, Mrs. Dozier was there with Mr. Dozier.

Q Do you remember that when he was discussing with you this statement, you suggested that you were a little angry that you had not been invited to that dinner? A I never said anything of the kind and I never saw this statement.

Q And he said he would let you have his seat at the table. A No; no, I never discussed that.

Q And that you said to him, "Why, fix the statement any way you want." A Never said anything of the kind.

Q And he said, "Very well, I will put it through without modification." A Nothing of the kind.

Q Now, it was not your practice to let a lot of checks signed in blank lie around the office, was

it? A I signed, as I said before, the checks in the check-book, the number that Mr. Dozier requested.

Q Well, how many was that on any given occasion? A Sometimes there would be two or three sheets, the same as Mr. Dozier did when he went to California, he didn't leave someone else sign his name.

Q (By the Court.) Two or three checks going to the sheet? A Sometimes three to a sheet.

Q Do you know whether those checks were left in the check-book? A Whether they were left in the check-book?

Q Yes. A Why, I don't know whether he left them in the check-book or took them out and put them away.

Q You were president of this company and you knew the danger of checks signed in blank. Didn't you have any knowledge or give any instructions as to what should be done with those checks? A As I told you before, I had such implicit confidence in Mr. Dozier that I left Mr. Dozier my check—(interrupted).

Q That does not answer my question, Mr. Hedden. A (Continuing.) No; it never—(interrupted).

Q Did you interest yourself at all in what became of the checks signed in blank? A No; not at the time.

Q Did you know that Mr. Aubin took them? A Mr. Aubin, of course, Mr. Aubin might have taken them if Mr. Dozier handed them to him to pay the current bills.

The Court: Loose sheets?

Mr. English: I don't know.

The Court: Ask him.

Q Do you mean to say you took the check-book and signed right down the page, three checks on a page, and handed the check-book back? A I mean to say that Mr. Dozier brought in the check-book to me and indicated the number of checks he wanted on the different banks, and I think then we had four banks.

Q Now, of what time are you speaking? A What do you mean?

Q You say he brought in the book and indicated what he wanted signed. What time was that ? A Whenever he wanted checks or if I was going away. When I was in Nassau, I signed more than I did others.

Q That is after Mr. Dozier left? A What say?

Q That was after? A No, no; Mr. Dozier was there when I went to Nassau in February in 1922.

Q You went down to the Bahamas, or somewhere, in January, 1924, didn't you? A No.

Q Where did you go? A I went down in February, 1924.

Q All right. February. That was the Bahamas. You signed checks then, didn't you? A Yes.

Q Now, there was a reason for that, wasn't there? A No more reason than I signed the checks if I was going to New York and pressing bills came in that required to be paid.

Q You and Mr. Dozier and Mr. Fisher could all sign checks, couldn't you? A Yes.

Q Any two signatures of that combination was good, wasn't it? A Yes.

Q Now, Mr. Fisher was there every day, wasn't he, in and out? A I don't know whether he was or not.

Q And Mr. Dozier was there every day? A I don't know whether he was or not.

Q And you were there every day? A I was there, not every day, no.

Q Most every day? A Well—

Q What necessity was there, when all three of you were around, to sign up a lot of blank checks and leave them around? A Because Mr. Dozier was my trusted man and I signed checks for him to dispose of, through Mr. Aubin, or others, and he signed checks for me to do likewise.

Q Now, do you swear that— A Very few checks ever signed by Mr. Fisher.

Q After Mr. Dozier left in 1924 and you went down to the Bahamas, then you signed checks so that they could be countersigned by Mr. Fisher, didn't you? A Countersigned by Mr. Fisher or Mr. Toothe, yes.

Q Now, do you swear that this check for $65,000 to the order of Mr. Dozier was one of those blank checks? You cannot swear to that, can you? A I can swear that I never heard of the $65,000, or the check until January 17, '24.

Q Well, that is your present recollection; is that right? A I don't know what else—I have stated the fact.

Q Yes. It was customary when bills were paid to make out bills or vouchers, checks to match them and have them signed, wasn't it? A Yes.

Q And it was customary for somebody to put those on your desk to be signed, wasn't it? A Yes.

Q And when you would get them signed, you would put them in a blue envelope and someone took them back? A No. Checks of that kind

after they were taken out of the check-book—(interrupted).

Q You and I are not talking about the same kind of checks. I am talking about the ordinary course of business. A I am trying to answer about the ordinary course of business. You are speaking of that envelope.

Q Yes. A The checks were put in by Mr. Dozier and Mr. Aubin and given to me to sign. Those checks had been countersigned.

Q By whom? A By—it might have been by Mr. Aubin or by Mr. Toothe.

Q Now, you say, "might have been." A Well, I cannot go back to every check on the book.

Q Didn't you always sign the checks first? A No.

Q They countersigned your signature? A No.

Q What checks can you remember that you ever signed second? A The majority of checks brought in were seconds.

Q Signed by who? A Signed by myself.

Q Yes. You signed first, and then after you signed, the counter signature was put on? A Not necessarily. On the check is countersigned by Charles R. Hedden.

Q Yes, all right, but your signature went on as the first of the two signatures necessary? A I can't say that it went on first on every occasion nor the number of occasions.

Q But you know that was the usual practice, don't you? A Usual practice for what?

Q For the check to be put on your desk to be signed first by you? A When the checks were brought in the envelope you are referring to, they had been filled out. They were filled

out and signed by Mr. Dozier or someone else, and then I signed the check.

Q I am talking about the ordinary course of business, when the business had to pay bills. A I am answering about the ordinary course of business.

Q The check would be made out in the office? A Naturally.

Q By Miss Jackson, wouldn't it? A (No answer.)

Q She was stenographer, wasn't she? A I don't know. Mr. Dozier had someone fill them out.

Q You do know there was a stenographer there named Miss Jackson? A Precisely so.

Q And she did the typewriting work? A Yes.

Q Once in a while assisted by Mrs. Ferry? A Yes.

Q And then checks made out in typewriting pinned onto the bill were put on your desk to be signed? A Well, they were not put on the bill.

Q Well, if not pinned, the voucher was there? A No, the voucher was not there.

Q They were put on your desk to be signed, weren't they? A Put on my desk to be signed, yes.

Q And you signed them? A Yes. And more often, the majority of the time, Mr. Dozier brought in the check-book he wanted and indicated the number of checks and stood there until I signed the checks and took them out.

Q Was that check already made out to pay bills? A The checks that I signed in advance were in blank. They were not made out.

Q You and I are not talking of the same thing. I am talking of cases where checks were made out to pay bills, not the check-book brought in, but the checks. A The checks were brought in and I countersigned them.

Q The checks was made out in typewriting? A Yes—not always.

Q All right. Made out either in writing or typewriting. A Yes.

Q And was put on your desk with the bill so that you could look at it and sign the check, wasn't it? A Yes.

Q That is right, isn't it? A Yes.

Q And you signed the check if it was all right? A Yes.

Q And then you handed it back either to Mr. Aubin or Dozier, didn't you? A Yes.

Q That was the usual practice? A It was part of our practice.

Q All right, and you usually handed them back in a blue envelope, didn't you? A Brought in a blue envelope and returned in a blue envelope.

Q Exactly so. Now, do you remember that on January 15th, there was put on your desk a blue envelope with a number of checks and vouchers, including this check which is the subject matter of this suit? A It was not done.

Q It was not done? A No. I never saw this check until January 17th.

Q Do you say that no checks were put on your desk that day? A I don't think there was any check.

Q Didn't sign any check? A This check was signed on February 14th.

Q No checks were put on your desk that day; is that right? A They were signed, to the

best of my knowledge and belief, they were signed ahead; there were several checks after that of January 14th that were paid out for bills which, of course, they can show just what they show.

Q What date are you speaking of now? A I am speaking now of the 14th of January.

Q Did you sign checks on January 14th or January 15th? A I did not sign any checks on January 15th, and I was not there on January 14th, not at the office.

Q You were there on January 15th, weren't you? A I was there waiting—yes; January 15th; yes.

Q Yes. A Yes.

Q That was the day you were holding your meeting? A Yes, the day we held the meeting in the afternoon.

Q Do you remember that when you came back from your lunch on that day, January 15th, you found on your desk the blue envelope and a series of bills and checks to be signed? A There were not any checks put on my desk, when I came back from lunch. Mr. Dozier left the office—(interrupted).

Q All right. You have answered the question. And do you remember, having signed those checks, you walked into the other room and handed the blue envelope to Mr. Dozier? A I did nothing of the kind.

Q And that included in that envelope was this check that is the subject matter of this controversy? A I did nothing of the kind.

Q All right. Now do you remember the meeting of January 15th? A Very well.

Q Yes. Do you remember that some little criticism was voiced by Mr. Dozier of the fact

that Mr. Toothe had not kept the minutes up? A Yes; he started to make a remark, but he soon stopped.

Q And you were presiding at that time, weren't you? A Yes.

Q And you got up and called on Fisher to preside, didn't you? Do you remember that? A I don't recall whether I did or not.

Q All right, and do you remember that Mr. Dozier, when he had had his meeting with you on January 5th, discussed with you the advisability of making another resolution confirmatory of the previous one of August 15th? A He made no remarks whatever. He offered the resolution at the meeting.

Q No. I am directing your mind back to January 5th, the morning conference. A At January 15th he made no mention of this check.

Q Please listen to me. Do you remember that on January 5th when you and Mr. Dozier had your conference— A Yes.

Q —that in connection with the arrangements that were made with reference to the purchase of this stock that he said, or you suggested that he put through another resolution? A He said nothing of the kind.

Q It was not discussed? A No, sir; it was not.

Q You do remember that in January 15th at the meeting he did make such a resolution? A I did.

Q Yes. Which was not passed, tied two to two. That is right? A Yes.

Q Now, do you remember the meeting was rather late in adjourning that night? A Yes. We waited for Mr. Dozier. The meeting was

called for 3:00 o'clock. We waited until 3:30 for Mr. Dozier.

Q Whatever the reason was, it was late when you adjourned. A Yes, it was later. I don't know just how long it was; not very long.

Q And do you remember that at the conclusion of the meeting you said to Mr. Dozier, "Walter, turn in your stock and papers to Toothe, to Jimmy"? A I said nothing of the kind.

Q And he said, "If not late tonight, I will do it tomorrow morning." A He said nothing of the kind.

Q Didn't have that conversation? A No, sir; didn't refer to it.

Q Now, do you remember that after Mr. Dozier had left and you had, as you say, discovered this check, that you dictated a statement for Mr. Fisher to sign? A A statement for Mr. Fisher to sign?

Q Yes. A There was nothing of the kind, if I remember correctly.

Q Do you remember? A Yes, I remember that we were to have had a statement, but Mr. Fisher did not sign it.

Q Do you remember now that Mr. Fisher and you were sitting at opposite sides of the desk and you called in Miss Jackson and dictated the statement for Mr. Fisher? A I might have done it.

Q And she wrote it out on a little yellow paper, like I hold in my hand? A I don't recall it.

Q Let me show you this; see if you remember that that is the statement that you dictated, after you came back from the Bahamas. A No; I never signed that.

Q I didn't ask you if you signed it, I asked you if that is the statement that you dictated? A I never saw it before.

Q Never saw it before? A Never saw it before.

Q Do you remember that Miss Jackson made that out and came and handed you a copy? A No, no.

Q And Mr. Fisher a copy? A No; she never did.

Q And then you asked Mr. Fisher to sign it and he said he wouldn't sign, that it was not a fact. Do you remember that? A I remember that I asked Mr. Fisher whether he knew about this $65,000.

Q Wait a minute. A Wait one moment. I want to answer that. I never saw that before and nothing of the kind.

Q You never saw this before? A No.

Mr. English: I offer this for identification.

(Paper marked D. 9 for identification.)

Q Just notice this, please. You notice that that speaks of a meeting of February, 1922, doesn't it? A Yes, sir.

Q Do you remember afterwards coming out to Miss Jackson's desk and having her rewrite it to have it August, 1922? A No.

Q Don't remember that, either? A No. Miss Jackson never brought it to me, never had it on— (interrupted).

Q All right. Now, do you remember that there was a change of officers made at the meeting of January 15, 1924? A (No answer.)

(Discussion.)

Q Now, Mr. Hedden, I want to call your attention once more to this yellow paper. It bears date March 12, 1924, does it not? A It does.

Q That was after you came back from the Bahamas? A I will tell you when I came back from the Bahamas.

Q Yes. It was when you got back from the Bahamas? A You mean in the spring?

Q Of 1924, yes. A I didn't go to the Bahamas until— (interrupted).

Q Well, after— (interrupted). A One moment, please. I didn't go to the Bahamas until this summer, and I will give you the date—'22. I will tell you when I went to the Bahamas. I left home for the Bahamas on the 8th of February at 9:00 o'clock.

Q What year? A 1924. I returned on the 12th.

Q Of what? A Of February, 1924; and went home late in the afternoon.

Q Now, give us those dates again, Mr. Hedden, when you left and when you got back in 1924. A I left on the Linarco on the 8th of February at 9:00 o'clock in the morning. I was not in the office at all on the 8th. I arrived at Nassau on the 12th.

Q Of what? A Of February.

Q It could not have been.

The Court: In four days, you couldn't do that in four days.

Witness: I meant I left Nassau for home; and I did not give you when I went— (interrupted).

Q Is this what your diary shows? A Wait one moment. We are all liable to make mis-

takes. I left home for Nassau on the 8th of February. I arrived at Nassau on the 11th of February, 9:30. I left Nassau for home on the 3rd of March in the afternoon. I arrived from Nassau on the 6th of March, 9:30 A. M.

Q All right. Then by the 12th of March, 1924, you were back in Newark, weren't you? A On the 12th of March, 1924, Fisher was at the Newark office.

Q Yes. A Yes. He presented his resignation to take effect the 15th.

Q And you were there on March 12th, when Fisher was, weren't you? A Yes.

Q And this paper, D. 9 for identification, is dated March 12th, isn't it? A It may be it is, yes.

Q And when Fisher presented his resignation you wanted to get his statement, didn't you? A No. I spoke to Mr. Fisher long before that regarding his statement.

Q I see. A I spoke to him along in January.

Q (By the Court.) On that day? A Yes.

Q How do you account for the fact this was written out? A That I don't know. So many things were written out I can't say.

Q It seems to be on office paper. A Those were office pads and all the stenographers had them. It is not a formal pad. It is just for memorandum pads.

Q Dozier was not with you March, 1924? A No; he was not.

Q You cannot fasten that on him. A I haven't tried to.

Q Now, do you remember the meeting of January 15, 1924, some change was made in the officers? A Yes.

Q You remember that. And do you remember that the resignation of Mr. Dozier as vice-president and treasurer was accepted? A I do.

Q And Mr. Toothe was elected treasurer? A Yes.

Q Do you remember that? A Yes.

Q He had been secretary before that, hadn't he? A Yes.

Q So that made him secretary-treasurer. A Yes.

The Court: January 15th?

Mr. English: January 15, 1924.

Q Do you remember that a new resolution was passed, authorizing the bank with respect to the signature of checks? A Yes.

Q Yes. So that the signature on the checks was to be that of James H. Toothe and countersigned by either you or Mr. Fisher? A I do.

Q Remember that, yes. Now, don't you remember saying to Mr. Dozier to turn over the books of the company and the stock and all the other papers to Mr. Toothe as the new treasurer? A I remember distinctly that I did not.

Q Oh, did not? A Absolutely untrue.

Q Very well. Now, did Mr. Toothe—you weren't at the office the next day, you say? A I was not there on the 16th.

Q Did Mr. Toothe tell you that on the next day Mr. Dozier was back and had turned all these papers over to him? A He did.

Q Told you that? A Yes; he did.

Q That was the next day. It was on the 17th, the day you got back, yes, but did he tell you that the day before that, the 16th, Mr. Dozier had been there all day and had cleaned up his desk and had turned all these papers over to

him? Did he tell you that? A He told me he was there; yes.

Q Did he tell you that the two of them had been down to the deposit box in the vault of the Fidelity Union Trust Company? A He did; yes.

Q That there had been put in them this stock of Dozier's, among other things? A He did; yes.

Q You have not made any demand on Mr. Dozier to hand back that stock, have you? A The stock does not belong to us. It is there in escrow. Mr. Dozier put the stock, I understood, in the box.

Q You have not tendered that stock back to Mr. Dozier, have you, either in the letter which your lawyer wrote, or in any papers you filed in this case? A No; I have not.

Q Now, did you go down to the box to see what was in there, or did you just take Mr. Toothe's word for it? A I did not.

Q You say that you remember back in August, 1922, Mr. Dozier did go to California. The fact is clear, isn't it? A Yes.

Q Can you now remember that he was not particularly—(interrupted).

The Court: What year is that?

Mr. English: 1922, we are back to now.

Q Do you remember that that summer Mr. Dozier complained of not being in good health? Does that come back to your mind now? A No. Mr. Dozier—(interrupted).

Q All right. But he had been working very hard on the Lakehurst camp job? A Mr. Dozier worked no harder on the Lakehurst camp job, in

fact, not as hard as Mr. Doe and Wathy and myself.

Q He didn't work hard? A No. No harder than a man doing his duty would work.

Q Do you remember that in that meeting he asked to be relieved so that he could get a good vacation? A The meeting was never held.

Q In August 15th, 1922? A August 15th?

Q 1922. A I never saw the resolution.

Q Well, do you remember reading in the minute book this resolution, which is certified to by your grandson, Mr. Toothe, and also over your own signature, "The treasurer reluctantly said to the Board that owing to his continued ill health and nervous mental condition due from strain and overwork incident to the construction of camps at Lakehurst, N. J., during the war time that he felt it would be unwise for him to continue active management in the company's affairs and asked to be relieved from further duties involving active participation in the company's management, or that he would hand in his resignation as an officer of the company. After a cursory and general discussion of the matter on motion duly made, seconded and carried it was unanimously resolved to grant a two months' leave of absence to the treasurer, Mr. Dozier not voting." That is in the books anyway, isn't it? A It is in the books.

Q I read it, didn't I? A Surely.

Q And then on motion duly made and seconded it was resolved to grant it. Then there is the resolution about the purchase of stock, that is in the book, too, isn't it? There it is (indicating). A Yes.

Q And that is over your signature and Mr. Toothe's, isn't it? A Yes.

Q Now, you speak of Mr. Doe and Wathy in connection with that Lakehurst camp. That was begun while they were in the company, wasn't it? A That was begun before they were in the company. Well, the contract was awarded to me personally.

Q Yes. A And then the company was organized, as I said before; Mr. Dozier and I had gotten on so very nicely and I thought I would do something for him.

Q You are off the question. The question is whether it was done when Doe and Wathy were in the company. It was, wasn't it? A Yes.

Q And it was continued after they got out, wasn't it? A It was completed long before they got out.

Q Long before they got out? A Yes.

Q Well, are you sure about that, Mr. Hedden? A Yes; unless it was the accounting. That contract was taken in '18.

Q Yes. And didn't Mr. Dozier, after they got out, assume additional burdens in connection with that matter? A No; he didn't for the simple reason that the Government had their own accountants on that. The last check, the one you are referring to now is Camp Kendrick.

Q No; I am talking about Lakehurst. A That is Lakehurst. There were two Lakehurst operations. First the Lakehurst—the Russian Proving Grounds, and after that came Camp Kendrick, but that we stopped on account of the Armistice and Mr. Dozier had not as much to do then as he did before, because the Government had its own accountant there; every item was checked up by the Government.

Q Mr. Dozier had to sit in on all that as the accountant for the company, didn't he? A What is that?

Q Mr. Dozier had to sit in on all that as the accountant for the company, didn't he? A No more than any other accountant would do, as I say.

Q No more than any other accountant would do, but he had to do that. A All right. But he was there as the accountant.

Q In behalf of your company? A Yes.

Q Now, are you quite accurate in your recollection that this Lakehurst job was taken back before the company was incorporated? That was Camp Vail, wasn't it? A He had nothing to do with Camp Vail. That was operated by myself.

Q All right. A That contract was signed in '17 and constructed during the winter of '18, during the hardest winter that we had had for many years, and after—about the time of closing this work at Camp Alfred Vail, a Captain Coleman was sent to me by a friend of mine from New York—from Washington. Then he referred to Mr. Sterrit, William Sterrit, who had charge of construction, and he asked me if I would come to Washington—no company then, it was me personally—and be there on a certain day. If I remember correctly, it was to be there on a Monday morning, and I said yes. I was there on Monday morning and it only took me a short time to go over the questions he asked me, and the contract was awarded to me. I signed the contract and then on a Monday morning, when I was at my breakfast table 8:00 o'clock, they 'phoned me from Washington and asked me if I would be down at Lakehurst to start the work. Well, that meant—I had no plan to design these buildings under Captain Coleman.

Mr. English: That doesn't interest me, unless your Honor wants it.

Mr. Lum: Has this anything to do with the case?

Witness: He is trying to mix these two together.

Mr. Lum: Never mind.

Mr. English: I am not trying to mix anything.

Mr. Lum: Your Honor asked the question, so I am not objecting.

Mr. English: It doesn't interest me.

Witness: There were two contracts— Camp Vail was not completed— (interrupted).

Mr. English: That is all.

JAMES H. TOOTHE, sworn for the complainant.

Direct examination by Mr. Lum.

Q Where do you live, Mr. Toothe? A Nutley, New Jersey.

Q You are the grandson of Mr. Charles R. Hedden? A Yes.

Q Are you an officer of the Charles R. Hedden Company? A Yes.

Q What officer? A Secretary and treasurer.

Q When were you elected secretary? A January 15, 1924.

Q Were you at that meeting when you were elected? A Yes.

Q And when were you first elected secretary of the company? A About February, 1922.

Q And were you present at that meeting? A No.

Q Are you married? A Yes.

Q When were you married? A February 4th.

Q You are quite sure of the date? A Absolutely.

Q And did you go on a wedding trip? A Yes.

Q How long were you away? A From the 4th of February until the 23rd.

Q After you were elected secretary, who kept the minutes of the meetings? A Mr. Dozier.

Q Did you and he have any conversation about that? A Well, there were—there was only once that he told me that he was familiar with the contracts, bonds and finances of the company, that it would be easier for him to do the minutes than for me to do it.

Q And how long did he continue to keep the minutes of the meetings? A Until he left.

Q Did you ever write up any of the minutes of any of the meetings? A Not until after he left.

Q On the 14th of February, 1922, where were you? A At Montreal.

Q I show you minutes of a meeting purporting to be held on the 14th of February, 1922, signed by Walter J. Dozier, certifying the following being all the stockholders present, Charles R. Hedden, Walter J. Dozier and James H. Toothe. You are quite certain you were not present at that meeting? A Yes.

Q When did you arrive back from your wedding trip? A The day after Washington's birthday.

The Court: The meeting was on what date?

Mr. Lum: 14th of February. He was married on the 5th.

Q And what was the custom with reference to the holding of monthly meetings, after you became secretary? A Well, there were not any held.

Q What was done with reference to writing up minutes of meetings? A Well, it is—we obtained a job out of town and had to get a bank account there. You have to write up minutes to get the resolution passed and the signature cards and things like that were done outside and written up and put in the book.

Q But I mean, were formal meetings held every month? A No.

Q I note there are a great many minutes here after you became secretary, signed by you and over the seal, initialled by you. Will you explain the manner in which they were signed and initialled? A Well, this book is brought in.

Q Brought in by whom? A By Mr. Dozier, always by Mr. Dozier; nobody else brought it in.

Q Brought it in to whom? A To me.

Q And then were you directed to do anything? A I was directed to put my initials and the seal on each page of the book.

Q Did you do so? A I did.

Q Did you read the minutes? A No.

Q What was your position at the time with the company? A Well, I was secretary but I was handling some of the inside of the office, taking care of the jobs, plans.

Q Did you have any active duties or did you perform any active duties with reference to the

meetings or the minutes or anything of the kind? A No.

Q Were any of these minutes signed by you read by you at any time? A No.

Q And were you present at a meeting in August, 1922, when a resolution was passed, touching the purchase of Mr. Dozier's stock by the company? A I was not.

Q Are you quite sure? A Absolutely.

Q When did you first ever hear of any resolution touching the purchase of Dozier's stock by the company? A On January 17th about, oh, quarter after nine.

Q You are quite sure of that? A Oh, absolutely.

Q And how did you then learn of this minute of August, 1922? A Mr. Aubin came running out of Mr. Hedden's room and told me to bring the minute book in to him.

Q Did you do so? A I did.

Q Where was the minute book kept at that time? A In a locked compartment in the safe cabinet.

Q Who had the key to that locked compartment? A I had it then. Mr. Dozier had given it to me on January 15th.

Q Up until the 15th of January who had had it? A Mr. Dozier.

Q Did you ever see this minute book lying around on any open shelf in that cabinet? A I did not. I only saw the minute books when they were brought to me.

Q Do you remember the meeting of January 15, 1924? You were present at that? A Yes.

Q And do you remember a resolution touching the purchase of stock by the company being brought up at that meeting? A Yes.

Q By whom was it brought up? A By Mr. Dozier. He handed a yellow piece of paper to me for me to read.

Q Did you read it? A Yes.

Q Had you ever seen that yellow piece of paper before? A No.

Q Did you know what was on it until you read it? A No; I did not.

Q And at his direction did you read it? A I did.

Q And was that the resolution? A That was the resolution.

Q In the minutes. And that was then voted on, I believe, and resulted in a tie.

The Court: Does that refer to the August resolution?

Q Did that resolution refer to— (interrupted).

The Court: No, no; read it.

Mr. Lum: Suppose I have this identified as the yellow slip.

Q Is this the yellow slip that was handed to you by Mr. Dozier at the time? A It is.

Q And was the second sheet that is attached to it at the time? A No; it was not.

Mr. Lum: I offer it.

(Paper marked Exhibit C. 6.)

Mr. Lum: "Resolved that minute record —resolved that the Charles R. Hedden Company purchase shares of stock of the Charles R. Hedden Company now standing in the name of Walter J. Dozier on the books of

the said company at the book value thereof as shown on treasurer's report submitted at this meeting and accepted and approved."

Q At that time had you ever heard of that resolution of August, 1922? A No.

Q Had you any knowledge whatever that the company contemplated buying Mr. Dozier's stock at that time? A No.

Q Did you vote in the negative on that proposition? A I did.

Q And did you ever consent directly or indirectly to the company buying Dozier's stock? A No.

Q Were you ever consulted on that proposition up till that meeting? A Never have mentioned—never.

Q Now, do you recognize this yellow sheet? A Yes.

Q Where did you— (interrupted).

Q (By the Court.) You became a stockholder when?

Q When did you become a stockholder? A March 1, 1922.

Q This yellow sheet, do you recognize it? A Yes.

Q Where did you first see that? A Well, I grabbed it in a bunch of papers off the desk, after that meeting.

Q (By the Court.) Where did you get your stock?

Q Your stock came from whom? A It came from the company.

Q Yes; but how did you come to acquire it? A Well, Mr. Hedden gave it to me.

Q (By the Court.) Your grandfather gave it to you? A Yes.

Q (By the Court.) Wedding present? A No.

Q Then this yellow sheet headed "Meeting of Board" was found by you, after that meeting of January 15th? A Yes.

Q Do you know whose handwriting that is? A It is Mr. Dozier's.

Q Had you ever seen it before? A No.

Q Although you were secretary of the meeting, this sheet, prepared to cover all the business of the meeting, was not prepared by you. A No, sir.

Q And did you ever see that before the meeting? A No.

Mr. Lum: I offer this in evidence.

(Paper marked Exhibit C. 7.)

Q This check for this sixty-five thousand-odd dollars, when did you first see that? A From two to three days after the meeting.

Q Had you ever heard of it before? A No.

Q Had anything about the book value of that stock ever been submitted to you? A No.

Q Had you heard any discussion as to the book value of the stock at that time? A Only with Mr. Hedden and not in the office.

Q Had Mr. Dozier ever spoken to you on that subject? A Never.

Q (By the Court.) How did you come to see the check? A It came back.

Q (By the Court.) Eh? A The bank sent it back, upon request.

Q Came back from the bank, you mean? A Yes; they sent a statement back very soon.

Q And at this meeting of January 15th was any reference whatever made to any previous resolution of August, 1922? A No.

Q When the resolution offered was not passed, did Mr. Dozier then refer to the August resolution? A No; he did not.

Q I notice a form of certificate to these minutes, "This is to certify" and so forth; was that the same form that was always adopted from the beginning? A Yes.

Q And was it ever suggested to you that you should read those minutes? A No.

Q Were you ever asked? A No.

Q What were you told to do? A Sign it.

Q Do you know anything about any agreement for the purchase of stock being submitted to Mr. Hedden by Mr. Dozier—Mr. Dozier to Mr. Hedden? A I did not learn about that until after January 15th.

Q Now, did Mr. Dozier, after this meeting of January 15th, hand some things to you? A You mean immediately afterward?

Q Yes. A No.

Q When did he? A Between 9:00 and 10:00 on January 16th.

Q Had you ever heard anything at that time about the purchase of his stock by the company? A Only that resolution on January 15th.

Q The one you mean that was not passed? A Yes.

Q What things did he hand to you? A The next morning?

Q Yes. A He gave me keys and a list of the stocks and deeds.

Q And his own stocks? A His own stocks.

Q What kind of a receipt did you give him? A I didn't give him any.

Mr. Lum: Have you got that receipt, Mr. English?

Mr. English: Yes. He said he didn't give any.

Q Did you give a receipt for the stock to Mr. Dozier? A No.

Q Did you give a receipt—did Mr. Dozier ask you to sign a receipt? A Yes; he laid a thing down on the desk and told me to check it over and sign it. I said I wouldn't sign it. He said, "I don't care whether you sign it or not."

Q You did sign for the receipt of the stock book and the ledger? A Yes.

Q Was that for a note, deed? A Hedden Construction Company, yes.

Q And so forth? A Yes.

Q Did you refuse to sign any receipt for Mr. Dozier's two hundred and seventy-five shares of stock? A Yes.

Q And this is the receipt that he offered, that he handed to you? A Yes.

Q January 15, 1924? A Yes.

Mr. Lum: I offer these.

(Papers marked Exhibit C. 8.)

Q Were you present at my office at a meeting on January the 17th, 1924, and your grandfather? A I think I was.

Q Had the check on the Montclair bank then been discovered by your grandfather? A Yes.

Q And were you there the next day? A Yes.

Q Do you remember who else was present besides your grandfather? A Mr. Fisher.

James H. Toothe, cross.

Q You, Mr. Fisher and your grandfather were the three acting directors of the company? A Yes.

Q Was the subject of the resolution of August, 1922, then referred to? A It was.

Q And did Mr. Fisher say anything?

Mr. English: I object. Mr. Dozier was not there.

Q Did Mr. Fisher say anything?

Mr. English: I object on the ground—

The Court: The objection is overruled, if he said anything. What he said is another question.

Q Did he say anything? A Mr. Fisher?

Q Yes. A Yes.

Q Now, what did he say?

Mr. English: I object.

The Court: I will hear what he said subject to motion to strike out.

Q Go ahead. A Mr. Hedden asked—

Q (By the Court.) What did he say?

Q What did Mr. Fisher say? A He said, "I never heard anything about the resolution of August 15th and don't know anything about the $65,000."

The Court: The motion to strike out is granted.

Cross examination by Mr. English.

Q Mr. Toothe, when did you first become connected with the Charles R. Hedden Company in any capacity? A October 6, 1919.

Q And what did you start in at? A Timekeeper.

Q Timekeeper, and that continued up until about the time of your marriage, when you were made secretary? A Yes.

Q Did you know you were going to be made secretary of the company at the meeting in February of 1922? A At the meeting?

Q Did you know in advance they were going to make you secretary, or did you find that out when you got back? A Mr. Fisher told me at my wedding; he was there.

Q That you had been or would be made secretary? A Would be.

Q Would be made secretary, yes, and the meeting was held while you were away and you were made secretary? A Yes.

Q And from that time on until the present you have continued as secretary? A Yes.

Q Now, do you know the by-laws required monthly meetings of the directors? A Yes.

Q And monthly meetings were held, weren't they? A No.

Q Well, whether you call them meetings or not, the directors, the men who did constitute the board of directors physically got together, didn't they? A No.

Q No? A No.

Q Never at all? A No.

Q Do you remember, after you became secretary, you asked Mr. Dozier if he wouldn't help you out with the minutes and he said, "Why, yes, Jimmy, I will." A No.

Q Don't remember that either. Do you say it was not stated or you don't remember it? A I said it was not stated.

Q And can you give any rational explanation of all this large book of minutes, covering many pages, signed by you, sealed by you, signed by your grandfather, reciting large volume of business done, motions made and people present and all that? No explanation of that at all? A (Witness nods no.)

Q Did you ever have custody of the minute book at all? A Never.

Q Just a perfect mystery, the whole thing. A Just to sign it.

Mr. English: Mr. Lum, will you produce the affidavit, signed by Mr. Toothe and dated— (interrupted).

Mr. Lum: Use your copy. I haven't it here.

Mr. English: You agree this copy which you have is all right.

Q After the 15th or 16th of January, 1924, you know that your grandfather consulted Mr. Lum, don't you? A Yes.

Q And you got in on the conferences? A Yes.

Q Some of them? A Some of them.

Q Did you know that a suit was brought on behalf of the company in your name, don't you? A (Witness pauses.)

Q Do you know that or not? A One way of putting it.

Q Well, let me show you a copy of a bill of complaint in the case of James H. Toothe, complainant, against Walter J. Dozier, defendant, filed January 31, 1924. You knew that bill of complaint had been filed, didn't you? A Had been filed?

Q You knew of the fact that that suit was being brought? A Some suit was brought; yes.

Q Yes. And you knew that it was brought in your name, didn't you? A Yes.

Q You read the bill over, didn't you? A No.

Q Mr. Hedden read it over too, didn't he? A I don't know whether he did or not; I didn't read it.

Q You left that to Mr. Lum. So you don't know anything that is in it? A I know some things in it.

Q Do you know it says in paragraph 4, "copy of the resolution passed on August 5, 1922"? A I knew it afterwards.

Q Yes. Well, you know that this bill says that on August 15, 1922, Mr. Hedden, Mr. Dozier and Mr. Fisher were the directors and at a meeting of the board held on that date that resolution was adopted. You know that. The bill says that, doesn't it? A Yes, it was the minute book.

Q And the bill says so, too, doesn't it? A Yes.

Q Now, did you know that in August of 1919 —of 1924, another suit was brought on in the name of the Charles R. Hedden Company in the Supreme Court? Did you know that? A I heard something about it.

Q Did you read over the bill of complaint in that? A No.

Q Didn't read that either. Did you know or do you know that in the sixth paragraph of that it sets up the adoption of that same resolution of August 15, 1922? A I didn't know that until later.

Q You left that to your lawyers too, is that right? A They did it.

Q You do know that in February of 1924 you made an affidavit before Eleanor Lowenstein, an attorney at law of New Jersey, don't you? A I signed some papers.

Q Yes. In the office of Mr. Lum? A I don't know whether it was or another office.

Q And you know she is a lawyer in their office, isn't she? A Stenographer or something.

Q Well, she is employed in the office in some capacity? A Yes.

Q And you knew that that affidavit was to be handed to Prosecutor Bigelow, didn't you? A No; I did not.

Q Well, you knew it was for use in connection with this matter in some way, didn't you? A Yes.

Q And you knew that your grandfather made an affidavit, too, didn't you? A No; I didn't know that; can't remember that.

Q You do know that he made an affidavit though? A Some sort of affidavit.

Q Some sort of affidavit, and you undertook to state the truth in that affidavit, didn't you? A Tried to.

Q Yes. You appreciate the solemnity of making an affidavit, don't you? A Well, no. I haven't made many. This was the first time.

Q How old a man are you? A Twenty-eight.

Q Do you know what it is to take an oath? A Yes.

Q Yes. Do you know the same solemnity attaches to a signed affidavit as does in court? Don't you know that? A No.

Q Are you in the habit of making loose statements in affidavits that you swear to? A Well, these are the only ones I made.

Q Well, did you misstate the facts in this one? A I don't know whether they are or not.

Q Well, did you undertake to state the truth in this one? A I didn't draw it up.

Q Did you read it over? A Very hastily.

Q As hastily as you did read it, did you find that it stated the truth? A It does not state the truth.

Q But you signed it. A Maybe I did.

Q And swore to it. A Yes.

Q Who was there when you went through this form of making that decision in such a hasty manner? A I don't know. I signed half a dozen and I don't remember.

Q Have you been equally careless with the half dozen? A I guess I have.

Q And that means nothing to you one way or the other? A No.

Q No.

Q (By the Court.) What did you say? A In court.

Q (By the Court.) What? A He said, and that didn't mean anything to me in one way or another. I said in court it does.

Q Do you distinguish between swearing in court and swearing out of court? A Well, it is a little different.

Q When the papers are to be used in court or in court proceedings? A Well— (interrupted).

Q (By the Court.) What is your answer? A I haven't given it enough thought.

The Court: Give some thought now.

James H. Toothe, cross.

Q In other words, Mr. Toothe, you swear to anything that is put before you; is that right? A Yes.

Q You do. And you swear on the stand anyway it is suggested to you; is that right? A If my attorneys advise me, what they say.

Q I see. Your attorneys say what to say and then you say it. A Yes.

Q Well, now, did your attorneys advise you—(interrupted).

Examination by the Court.

Q Do you mean what you are saying? Do you understand what you are saying? A I think so.

Q Do you understand at all what you are saying? A I don't know whether I have got it clear or not. I don't think I have.

Q Do you mean to say that you will come here and swear to anything that your attorneys tell you to swear to, whether it was true or not? A Not just a deliberate lie.

Q What? A I wouldn't swear to a lie.

Q Would you swear to an untruth? A No; I would not.

Q Even though they told you? A No; I would not.

The Court: Go on.

Examined by Mr. English.

Q Now, this affidavit, which you swore to before Eleanor Lowenstein, you said this—see if I read it correctly; here is a copy with your signature—"that he"—that is you—"is a stockholder of Charles R. Hedden Company, a corporation of New Jersey; that on August 15, 1922,

he was not a member of the board of directors, and at that time a resolution on which he had no power of voting was submitted to the then board of directors, consisting of Charles R. Hedden, Harold F. Fisher and Walter J. Dozier, said resolution was as follows: 'Further resolved that should the treasurer at any future time and at his pleasure withdraw from active management of the company's affairs, his stockholdings in the company shall be purchased by the Charles R. Hedden Company at the book value per share at the closing of business for the fiscal year ending December 31st, preceding his intention to withdraw and date of resignation.' " That is what you swore to, wasn't it? A Uh.

Q That is what you swore to? A Uh.

Q (By the Court.) What is your answer? A Yes, sir.

Mr. English: He grunted "uh."

The Court: Well, I don't take grunts.

Q That is what you swore to, isn't it? A Yes.

Q You knew that that was to be used in an effort to hold Mr. Dozier in criminal proceedings, didn't you? A No.

Q What did you understand it was to be used for? A I don't know that.

Q What is that? A I thought it was a suit to recover the money for— (interrupted).

Q Well, would you swear falsely in a suit to recover the money? A No.

Q Then why did you swear the way you did, as I just read to you? A Well—

Q Listen to me and turn around and swear now that you never heard of that resolution, when back in February, 1924, you swore you

were there and it was passed. Now, how do you explain that? A Well, I told Lum about it.

Q (By the Court.) What?

Q You told Lum about it? Does that excuse you?

Q (By the Court.) You told Lum about what? You said you told Lum about it. A Well, from the face of the minute book the meeting was held, but it was not actually held.

Q You were there—

The Court: What does he say as to that?

Mr. English: He says. "He is a stockholder of the Charles R. Hedden Company, a corporation of New Jersey; that on August 15, 1922, he was not a member of the board of directors, and at that time a resolution on which he had no power of voting was submitted to the then board of directors, consisting of Charles R. Hedden, Harold F. Fisher and Walter J. Dozier, said resolution was as follows: 'Further resolved that should the treasurer at any future time and at his pleasure withdraw from active management of the company's affairs, his stockholdings in the company shall be purchased by the Charles R. Hedden Co. at the book value per share at the closing of business for the fiscal year ending December 31st, preceding his intention to withdraw and date of resignation.' "

The Court: What is your explanation?

Mr. English: That is what I am asking.

Q What is your explanation, swearing two ways, one in this way and one as you swore today? A That was drawn according to the minute book. That is all I can say.

Q You said that was passed. A On the face of the minute book it is true.

Q It is true anyway, isn't it? A No.

Q Then why did you swear to it? A It is in the minute book.

Q Well, do you swear to a false minute book and say it is true? Is that your habit? A Well, I signed everything in the minute book.

Q Did you sign it because it was false? A No; I did not.

Q Wasn't it true when you signed it? A No; it was not.

Q If it was not true, why did you sign it? A Well, I don't know.

Q Why did you put the seal on it? A I don't know.

Q And why did your grandfather sign it?

The Court: You are talking of one thing and he another.

Mr. English: No. I am talking about the minutes. He knows.

Q You know I am talking of the minute book, don't you? A Why did Mr. Hedden sign it?

Q You signed the minute book? A Yes.

Q Every time? A Yes.

Q From month to month? A Yes.

Q Put the seal on? A Yes.

Q And initialled the seal? A Yes.

Q And your grandfather signed it? A Yes.

Q All false? Eh? A No.

Q That whole minute book is made up out of the whole cloth. A Nothing to it at all, not these, not all of them.

Q Which will you distinguish on? You signed them and they did not exist. A I signed on somebody's orders.

James H. Toothe, cross.

Q You did not sign sixteen on Dozier's orders. A It was sent over to me to sign.

Q You signed on somebody's orders. Who gave you orders? A I say, I don't know whose orders. Counsel's orders.

Q Counsel told you to swear to this although it was not true? A (No answer.)

Q Where did they get the information from?

Examined by the Court.

Q In the affidavit you say that a resolution was offered and it was passed. Now you tell me that no such meeting was held in which such resolution was offered or passed. How could you swear both ways? A You cannot swear both ways.

Q (By Mr. English.) Then one statement is false. A One is wrong.

Q Which one is wrong? A That one there.

Q The one in the affidavit ?

Q (By Mr. English.) Is this any more false than the other?

Q How did you come to make the false affidavit, the one you say is false? A Well, I signed that. It was drawn up from the minute book and from the face of the minute book it is copied just from the minute book.

Q Well, didn't you read the affidavit before you signed it? A No, I never read.

Q Didn't you read this? A Very hastily; I couldn't tell you what is in it.

Q Did you raise your hand and swear in the presence of God? A I don't think I raised my hand. It is quite a while ago.

Q You knew you were swearing to that affidavit, didn't you, when you signed it and afterwards swore to it? A Yes; I guess I did.

Q Well, don't you know? A I wouldn't swear to it now.

Q What did you think the affidavit was going to be used for? A Well, I didn't know what it was going to be used for, to tell you the truth.

Examination by Mr. English.

Q Now, those receipts, which your counsel marked as exhibit C. 8, are all taken by you, aren't they? That is your pencil check? A I couldn't say, sir.

Q Well, you checked them over, didn't you? A No.

Q Well, Mr. Dozier had six certificates aggregating 275 shares of stock? A Yes, sir.

Q Which he gave to you, didn't he? A Yes.

Q And this was the receipt which he prepared to be signed, wasn't it? A Yes.

Q And you checked that over, didn't you? A I wouldn't swear to it.

Q Well they were there and they were all put in the box, weren't they? A Yes.

Q And here is a receipt for a ledger book and a cash book and a stock book and a stock ledger. He turned those over to you, didn't he? A Yes.

Q And you checked that, didn't you? A I don't know.

Q Somebody did, didn't they? A Yes.

Q Is was checked in your office. A I think it was. I am not sure who put those marks on.

Q You didn't sign the former receipt for the stock certificates. A No.

Q Although you got the certificates, didn't you? A Yes.

Q Did you sign for the ledger or the cash book, for the stock book or the stock ledger, did you? A No.

Q Although you got those, didn't you? A Well, they left them in the office.

Q I mean, they went into your possession as secretary and treasurer? A They were in the office.

Q Yes. Now, here is another different check mark on this receipt of another stock book and ledger, great big mark, that is Dozier's mark, isn't it? A Yes.

Q And that is signed by you as secretary-treasurer, isn't it? A I guess it is. I don't know whether it is my signature or not.

Q Don't know your own signature? A Not that one.

Q That kind of a check is different from the little signature on the cash book and stock book? A Yes.

Q And the little one is yours and the big one is Dozier's, isn't it? A I don't know.

Q You also signed for miscellaneous corporation papers, like demand notes and deeds, and title policies and things like that? A Yes.

Q Is that your signature? A Yes.

Q Is that your check or his? A I wouldn't swear to that now.

Q Now, whether you signed the receipt or not, you got all the papers that are mentioned in that bunch of receipts, didn't you? A Yes.

Q And say that you heard your grandfather at home discussing this question of the purchase of stock. When was that? A A little bit before Christmas and a little after.

Q A little bit before Christmas, 1923; and you knew that he and Mr. Dozier were having a

long series of negotiations over the purchase or sale of the stock? A I did not.

Q Well, you picked up that fact from what you heard discussed, didn't you? A I did not.

Q You did hear your grandfather discussing it at home? A With me?

Q Discussed it with you, yes, about the purchase of Dozier's stock; that is what he discussed with you, isn't it? A Yes.

Q Did you and he discuss the price to be put on it? A The price?

Q Yes. A One price was mentioned.

Q And did you and he discuss about having this account stated out of the books to see what the book value was? A I didn't get that.

Q Did you and he discuss about having this account stated out of the books to see what the book value was? A No.

Q To see how it matched up with the price you and he named? A No.

Q Do you remember after the meeting of January 14, 1924, that all hands in the office got busy on figuring up the stock value? A Not everybody.

Q Well, if not everybody some of them? A Some.

Q You did, for one. A I did not.

Q Mr. Aubin did? A He did not.

Q Mr. Fisher did? A Yes.

Q Mr. Dozier did? A Yes.

Q Mr. Whitehurst? A Yes.

Q And Aubin was consulted in that? A No; he was not.

Q He didn't do a thing? A No.

Q Were you out keeping time or were you in the office? A I was in the other room.

Q Do you know what Aubin was doing when you were in the other room? A Entering bills.

Q Now, you see that this check has a very frank statement on the back of it, what it is about, don't you? A Yes.

Q That is Exhibit C. 5; it says "For the purchase of two hundred and seventy-five shares of common stock of the Charles R. Hedden Company in the name of Walter J. Dozier." It says that doesn't it A Yes.

Q I now show you a voucher which has not been referred to yet. When did you first see that? It has been produced by your counsel. A Mr. Aubin showed it to me.

Q And when did he show you that? A January 17th.

Q January 17th and it is dated January 14, 1924, is it not, the same date as the check? A Yes.

Q And says, "For the purchase of two hundred and seventy-five shares of the common stock of the Charles R. Hedden Company standing in the name of Walter J. Dozier at the book value, period ending December 31, 1923, in accordance with the resolution of the board of directors passed August 15, 1922, and recorded in minute book page 158." That contains a notation of Mr. Aubin, that was entered in the book, doesn't it? A Yes.

Q Gives the page of the book. A Yes.

Q Yes. Signed by Mr. Dozier. A Yes.

Q And has on it in rubber stamp "Vouchers No.———"; that is right? A Yes.

Q That is the usual office practice, isn't it? A Yes.

Mr. English: Mark that for identification.

(Voucher marked D. 10 for identification.)

James H. Toothe, cross.

Q When did you tell Mr. Hedden that Mr. Dozier had turned over to you the stock and books and the other papers? A When he came in the office on January 17th.

Q The next day you told him about it? A No—yes; January 17th.

Q You put them in the box on the 16th of January, Mr. Dozier took you down and introduced you to the officers of the vault. A I don't remember being introduced to anybody. He had the key and he opened the box.

Q You had to qualify as a new treasurer, didn't you? A Yes; but that wouldn't do; you have to have a resolution passed.

Q Yes, but you have to take the resolution down to that vault officer and get the proper entry made in his books, don't you? A I don't know whether we had the resolution or not.

Q But the arrangements were made that Dozier went out and you went in as the officer in the company in charge of those records. A Yes.

Q And in the box. And that same day these physical papers including the stock were put in that lock box of the company, weren't they? A Yes.

Q And you took the key with you, didn't you? A I think I did.

Q Yes. Dozier was all through then, wasn't he? A Yes.

Examined by the Court.

Q Was Dozier all through with the company then, I mean on the 16th. A He was supposed to have been through on the 15th.

Q He had been getting a salary of how much before this? A He has.

Q What was his salary before them? A Mr. Dozier?

Q Yes. Pretty substantial salary? A He was drawing $12,000 a year.

Q That was ended? A Yes, sir.

Q What was your understanding of why he was quitting? A I couldn't make it out. I didn't understand. I asked him what he is going to do about it.

Q You didn't know of any other position that he was taking? A Now?

Q I say, you didn't know of any other position he was about to take? A No.

Q And you couldn't understand why he was giving up a $12,000 job? A Except he resigned.

Q Could you understand why a man would want to resign a $12,000 job without having anything else in view, I mean, did that suggest itself to you? A No; it did not.

Q Weren't you surprised that he was giving up a $12,000 job without any reason at all? A I knew before; I knew December 31st that he was going to resign January 15th.

Q Did you know the reason why? A Because he and Mr. Hedden could not get along together.

Q That was your understanding? A Yes.

Examination by Mr. English.

Q And you knew that Mr. Hedden, or the company, was going to buy stock, didn't you? A No, I did not.

Q You learned that between that date— (interrupted). A I learned it on the 17th.

Q Oh, you learned it before that, didn't you? A No; I did not.

James H. Toothe, re-direct—re-cross.

Re-direct examination by Mr. Lum.

Q Mr. Toothe, when you gave the information to your counsel regarding this matter, what did you state to him as to your knowledge of the August resolution?

Mr. English: I think I will object to the statement between counsel and client.

The Court: Admitted.

Q You understand the question?

(Question read as follows: "When you gave the information to your counsel regarding this matter, what did you state to him as to your knowledge of the August resolution?")

A Shall I tell it? Well, I said the meeting was never held but in the face of the minute book it was there.

Q And what were you advised at the time as to whether or not the resolution was legally binding on you? A You didn't think it was legal any way. In any case it didn't make any difference.

Q Were you so advised?

Mr. English: I object.

The Court: It is for that one purpose only.

Q Were you so advised? A I was.

Re-cross examination by Mr. English.

Q Do you remember a meeting of October, 1922, of the directors? A No.

James H. Toothe, re-direct.

(Discussion.)

Q Now, Mr. Toothe, do you remember a contract which your company had with—or a claim which your company had up in New Haven in connection with a Kelly Tire matter? A Yes; I remember something of it.

Q And you remember that yourself. Do you remember you got some money by giving a bond along with the Globe Indemnity Company?

The Court: What is the purpose?

Mr. English: Just to test his recollection.

Q Do you remember that? A Very slightly.

Q Very slightly? A I can't tell anything about it.

Q And do you remember all that matter, including the kind of bond to be given and the agreement and the whole business, came up at the meeting which was held in October, 1922, after Mr. Dozier got back from California? A No.

Q Don't remember that? A No; it was not.

Q I see you signed your name to the minute. A Yes.

Re-direct examination by Mr. Lum.

Q When were the minutes written up with reference to this meeting, do you know, and were more than one set written at one time? A That whole bunch, that whole book there all that year. It was around Thanksgiving, the latter part of November.

James H. Toothe, re-direct.

Q Who dictated them? A Mr. Dozier dictated them.

Q (By the Court.) Did you hear him? A No, sir.

Q How do you know that? A I have seen Mr. Dozier stand over Miss Jackson dictating the minutes.

Q (By the Court.) What minutes did you sign at one time? A From the— (interrupted).

Q (By the Court.) Show them to me. Show them to the Court. A I think I signed this whole book from March 9th.

Q Until what year?

Q (By the Court.) What year? A March 9, 1922, until the 16th day of January.

Q (By Mr. English.) This year? A 1923.

Q (By the Court.) Signed them all at one time at one sitting, eh? A (No answer.)

Q (By Mr. English.) Do you know what you are saying to the Vice-Chancellor? A Why I signed all these minutes.

Examined by the Court.

Q You signed all because your name appears there. Did you sign them all at one sitting at one time? Did you sign all of them at one time? A I can't say whether these were all signed at one time or not.

Q You undoubtedly signed each of them. A I will say seventy-five per cent. of them were signed at one time.

The Court: Straighten your witness out, if you can.

Examined by Mr. Lum.

Q Mr. Toothe, have you a distinct recollection of when and where you signed those minutes? A The latter part of November, 1922, in the office.

Q (By the Court.) All of them?

Q How many times did you sign, do you think, at that time? A How many minutes?

Q How many times did you sign your name?

Q (By the Court.) In November, 1922. A You mean the initials or the name?

Q Your name. A I should say, from six to eight times.

Q Do you remember the date of the first minutes that you signed after you became secretary? A January 14th.

Q (By the Court.) What year? A 1922.

Q Did you sign on February 14, 1922? A I did not.

Q Now, I am asking you—the minute, not the date of the minute; when did you sign the minutes of February 14, 1922? A Well, at least two months before that.

Q Did you sign any other minutes at that same time? A Well, I signed the meeting probably—the meeting right after that.

Q You mean the March meeting? A Yes, March meeting.

Q Well, now, when did you next sign, if you recall? A The fall.

Q You signed then no minutes between April and fall? A No.

Q Are you sure of that? A Pretty sure.

Q And when did you next sign?

Q (By the Court.) How many had you signed in the fall?

Q How many had you signed in the fall? A I said there were about six or eight meetings I signed in the fall.

Q (By the Court.) At one time, eh? A It took me at least fifteen minutes to sign these vouchers.

Q (By Mr. English.) Of which year? A 1922.

Q Then, when did you next sign, after that fall of 1922? A I can't answer that. I don't remember.

Q Well, about when?

Mr. English: He says he can't answer.

A I can't tell you.

Q How many did you sign on that next occasion? A It would be more than one meeting.

Q How many times did you sign minutes in the year 1923, on how many different occasions? A In 1923?

Q Yes. A I can't answer that.

Q Can you give us any idea? Can you tell us about how many? A I can say two or three times.

Q And have you any recollection of the date? A No.

Q Or how many you signed at any one time? A No; I have not.

Q Did you assume any duty or responsibility in connection with these signings so they would impress themselves upon you? Or did you merely follow directions and instructions? A I followed directions.

Q Did you assume any responsibility? A No.

Mr. English: I object to that.

Cross examination by Mr. English.

Q Now, Mr. Toothe, Mr. Dozier used to make notes in the meetings on a yellow memorandum

pad you had there in the office, didn't he? A He did once or twice.

Q Yes. You have seen him do that, haven't you? A Once or twice.

Q Once or twice. All right. And then he would sit down with Miss Jackson, the stenographer and dictate the minutes from his yellow memorandum. You have seen him do that once or twice, haven't you? A That is about all, about two times.

Q But you have seen him do that thing, haven't you? A I have seen him write down in the memorandum pad at the meeting; yes.

Q And that was dictated to Miss Jackson, the stenographer? A I can't say I saw him with the yellow pad in back of Miss Jackson.

Q But he used to dictate to Miss Jackson. A Yes.

Q Did you ever pay any attention to that steel cabinet? A Never did.

Q Never noticed whether the book was kept there or not? A Did I notice it?

Q Yes. A Certainly I noticed it.

Q Well, did you notice whether it was there or not? A Yes.

Q It was there on the safe cabinet? A Yes.

Q It was on the shelf? A Which shelf? You can't get a book on the shelf. It was inside in a locked compartment.

Q Could you see inside of the locked compartment? A I have seen him take it out.

Q What? A This minute book.

Q You say you couldn't get this book in the safe deposit. Here is a picture your counsel had taken. There is plenty of room in there, isn't there (indicating)? A Where?

The Court: On the shelf.

Witness: For the stock ledger and for the stock book on the shelf.

Q That is a big enough shelf shown in that picture to put in a minute book, isn't it? A That is where the book is kept.

Q I am not asking that. I am asking you if on that shelf there is not room enough to put a book of that size, this minute book. A I couldn't say. It is pretty tight there. This is a large voucher record.

Q It doesn't have to go where the voucher record was. There is room, isn't there? A Yes, sir.

Mr. English: Mark this picture for identification.

(Picture marked D. 12 for identification.)

Q You know that Mr. Dozier kept a duplicate set of the minutes, don't you? A Duplicate set?

Q The same sort of a looking set? A I know a copy of the by-laws was kept.

Q And that was a book he kept in his private locked box? A No.

Q And the official book of the company was kept in this safe deposit steel safe cabinet in the office? A (No answer.)

Q You never paid much attention to those minutes anyway, did you? A I signed them.

Mr. English: Yes. I understand you signed them.

GEORGE A. AUBIN, sworn for the complainant.

Direct examination by Mr. Lum.

Q What is your business? A Why I am at present assistant treasurer of the Charles R. Hedden Company.

Q How long have you been employed as such? A Since October, 1919.

Q Do you know Mr. Dozier? A Yes, sir.

Q How long have you known him? A Since my connection with the Charles R. Hedden Company.

Q And do you know Mr. Hedden? A Yes, sir.

Q And have known him for how long? A Since the same time.

Q (By Mr. English.) How long is that? You haven't told us. A Since October, 1919.

Q And how long have you been bookkeeper of the company? A Since that time.

Q And what was your position with reference to Mr. Dozier? A Why, I was bookkeeper and assistant to Mr. Dozier.

Q And were you able to observe what was the relationship so far as trust and confidence was concerned, between Mr. Hedden and Mr. Dozier? A I was.

Q And what did you observe? A I noticed that they were very friendly and often went on parties together and played golf together and as very close friends, as two very close friends.

Q Do you know whether Mr. Dozier was in touch with Mr. Hedden's affairs, outside of the company interests? A Why, I knew he handled his personal matters.

Q You knew he took care of Mr. Hedden's income tax returns? A Mr. Dozier did.

Q And did you ever hear of Mr. Hedden questioning his stability and reliability in any way whatever? A None whatever.

Q Now, who was the president of the corporation while you were there? A Mr. Charles R. Hedden.

Q And who was vice-president? A Why, in the beginning, Mr. Charles L. Doe and subsequently Mr. Harold F. Fisher and Mr. Dozier was vice-president and treasurer.

Q And who had charge of the finances, control of the bank accounts and money? A Mr. Dozier exclusively.

Q Do you know who took care or charge of the minute book of the corporation? A Mr. Dozier.

Q How do you know that? A Why, he did it in the beginning and I knew he did not have a very favorable opinion of Mr. Toothe and that, inasmuch as he had been carrying on the minutes before, why, I know that Mr. Toothe never did it.

Q And do you know where the minute book was kept? A In the steel cabinet.

Q Do you know what part of the steel cabinet? A Why, Mr. Dozier had a private compartment in which there were—they were always kept there.

Q I show you a photograph. Do you recognize that as a representation of the steel cabinet? A I do.

Q Will you mark the part of the cabinet in which the minute book was kept? A In there (indicating). And he also had a private drawer there.

Q Where is "in there"? Let him mark it. A Right there (indicating).

Mr. Lum: I ask that be marked in evidence.

(Photograph formerly marked D. 12 for identification now marked Exhibit D. 12.)

Q How do you know, Mr. Aubin, that that minute book was kept in that compartment? A Why, because Mr. Dozier—the minute book was never any other place. I have tried to get it a couple of times for Mr. Hedden and was unable to do so.

Q When were those occasions when you tried to get it a couple of times for Mr. Hedden? A Why, in the latter part of 1923.

Q Where did you look then when you tried to get it? A Throughout that cabinet.

Q And was that minute book in any part of that cabinet in which you could find it? A No, sir.

Q Did you ever see Mr. Dozier take the minute book out of that cabinet? A I did.

Q On how many occasions? A Why, I couldn't say the number of occasions, but—I didn't watch him very closely as to the minute book. He and I had exclusive entrance to that cabinet and he came and went as he pleased, and I didn't take note of what he done in every instance.

Q That is not the question. On any occasion did you ever see Mr. Dozier take the minute book from the cabinet? A On several occasions.

Q And from what part of the cabinet did he take it? A That compartment, locked compartment.

Q Did you ever see him take it out of any other part of the cabinet? A None whatever.

Q Who had the key to that locked compartment? A He himself only.

Q Did you ever know that Mr. Dozier kept a duplicate set of minutes in a book somewhat similar to this? A Why, I have a faint recollection that he made copies of them, but I don't know whether he kept a copy of that book or not.

Q Did you ever see before today that book that was just produced here? A I never did.

Q Did you ever hear it referred to in the office in any way at any time? A No, sir.

Q Now, did Mr. Dozier have any talk with you shortly before he went to California in August, 1922? A At that time he gave me explicit instructions not to give any financial information to anyone, including Mr. Hedden.

Q Did he say anything to you about stock at that time? A No, sir. Pardon me. We were working nights then and sort of—at a dinner at Achtel-Stetter's, he made an inference about a contract he should have agreed—should have signed by Mr. Hedden on his long association.

Q Did he say whether Mr. Hedden had agreed or refused to sign the agreement? A Well, no. At that time I don't think he had presented it to him at that time.

Q Did he say anything to you at that time about any resolution being passed by the company to buy his stock? A None whatever.

Q When did you first hear of any such resolution? A On January 16th, when he dictated an entry into the journal and he mentioned it therein.

Q Had you ever heard that subject of the company buying his stock referred to before that 16th of January, 1924. A Well, there were always—well, on a couple of occasions there they had; that topic was brought up.

Q By whom? A Well, you could hear them discuss it. Mr. Dozier came out sometimes angry and made reference to it, he sitting opposite me.

Q In the same room with you? A In the same room with me.

Q Did he ever tell you that the company had passed a resolution agreeing to buy his stock? A No, sir.

Q Now, after Mr. Toothe was elected secretary did you hear Mr. Dozier say anything about the preparation of the minutes, who continued to do it? A He did.

Q What did he say? A I don't know whether he said it in a conversation with me, but inferred.

Mr. English: No. I object to what he inferred.

The Court: No. What was said?

A I don't remember just what was said, only a couple of words. He was not capable of doing it.

Q Did he say who would do it? A No; he would not.

Q Do you know who did prepare the minutes? A Mr. Dozier.

Q How do you know that? A Why, I saw him working them up on the other side of the desk from me.

Q With whom? A By himself, and standing over Miss Jackson and dictating them to her.

Q Do you know whether regular monthly meetings were held in that office? A No, sir; I do not.

Q Did you ever see the directors sitting around the board at any regular monthly meetings? A No, sir, they were in together, but I don't know whether they had meetings or not.

Q Did you pay any particular attention to what Mr. Dozier dictated to Miss Jackson? A No, sir.

Q Well, was it short or long? A Well, sometimes he would stand there half a day dictating—a whole afternoon or the biggest part of the morning, or something like that.

Q And do you know at that time what he was dictating, whether it was minutes or what it was? A It was the minutes.

Q Do you know how many meetings were held in any year? Do you have any knowledge of that? A No.

Q Do you know who signed the minutes— A Why—

Q —after Mr. Toothe, the secretary? A Why, I didn't know at that time. I know now.

Q Did you ever see any minutes submitted to Mr. Toothe? A All I know and recall is Mr. Toothe had initialled several or quite a number of pages and put the seal on, and Mr. Dozier said, "George, look at this. This is legal," and put his hand on it.

Q How many did Mr. Toothe sign at that time, if you remember? A I don't remember how many.

Q Well, was it once or several times? A I only remember this one time in the latter part of 1923, when he initialled those letters.

Q (By the Court.) About how many times do you recall he signed it? A Why, I don't know how many he signed.

Q (By the Court.) I mean at that time. A I don't know how many he signed at that time. I saw him put his hand on the book.

Q (By the Court.) Do you know whether he signed more than one? A No, sir.

Q Was Toothe present when he put his hand on the book and said to you, "That is legal"? A No, sir; he was not.

Q What was his position there? A He was secretary.

Q Actively, practically, what did he do? A Why, he was working in the engineering department, getting prices on material most of the time.

Q Did he assume any responsibility in any department or under whose direction did he come? A Well, he worked in the construction department, helping everybody.

Q (By the Court.) What do you mean "helping"? A Well, the estimators and the engineer and taking care of the plans and preparing and estimating, getting prices on materials and calling up sub-contractors for bids, and the like of that.

Q After—

Q (By the Court.) He did some of the detail work? A Some of the detail work; yes, sir.

Q After Doe and Wathy left, who directed the financial policy of the company and took care of the bank book, finances, and so forth? A Why, Mr. Dozier always took care of it.

The Court: They left when?

Q When did Doe and Wathy leave? A Well, the first part of 1922.

Q Yes, they were both gone by February, 1922? A Yes.

Q Did you ever see any slips of paper between the pages of the minute book? A Yes, sir.

Q How did you come to see those? A Why, Mr. Dozier prepared them and would bring them in to Mr. Hedden for signature.

Q Have you ever seen Mr. Dozier submit other papers to Mr. Hedden? A Why, yes.

Q And what was Mr. Hedden's custom with reference to signing things submitted to him by Mr. Dozier? A Why, any time we brought papers into his room, we put them on his desk and he signed them and returned them to us.

Q Did he ever, so far as you know, question any act or anything done by Mr. Dozier? A None whatever.

Q Now, do you know whether there were ever any blank checks signed there by Mr. Hedden? A Yes, sir.

Q How do you know that? A Why, we often did, as occasion demanded it. Sometimes Mr. Hedden would go away over a week-end or spend a day and we anticipated our requirements and we didn't know just what—we would have him sign checks, and when he was away in the Bahamas we tried to figure what money we needed and he would sign the checks in blank in the check book.

Q Were these checks signed in blank by Mr. Hedden left in the check-book or were some of them taken out? A In fact, some were taken out. In fact, I always had a few in my petty cash books, and I know Mr. Dozier had a few in his petty cash book.

Q How many banks did the company have at that time? A Four.

Q (By the Court.) At that time? A At what time?

Q In 1923 and 1924? A Four.

Q Now, in the early part of January, 1924, did the company have an account in the Montclair Essex Trust Company? A Yes, sir.

Q Did Mr. Dozier have any conversation with you with reference to that account at that time? A No, sir.

Q Sure of that? A Oh, well, except inasfar as the check-book was concerned.

Q What did he tell you? A Why, he told me not to touch it.

Q Did he say why? A No, he did not. And he always kept that book on his desk.

Q (By the Court.) When did he say not to touch it? A Why, in the first—well, the first part of the year, the new year, say, around the 2nd or 3rd of January.

Q After he told you that, did you draw any more checks on the Montclair Essex Trust Company? A I did not.

Q Did you see the check-book of the Montclair Essex Trust Company after that? A No.

Q Now, at the time that Mr. Dozier told you not to draw any more checks on the company's account of the Montclair Essex Trust Company, do you know whether there were any checks in that book or on that account which was signed by Mr. Hedden in blank? A Well, I know that right at the close of the year or the first part of January, we had Mr. Hedden sign several pages of blank checks in three of the books. Now, whether there was signed checks in there, I couldn't say, that were unused.

Q I see. Do you know whether a check of the Harrison Radiator Company for some eighty-two thousand odd dollars was received by the Hedden Company in January, 1924? A Yes, sir.

Q When did you first know that that check had come in? A Why it came in on the— (interrupted).

Q When did you know that it had come in? A Why, on the 11th or 12th.

Examined by the Court.

Q Did you know on the 11th or 12th that it had come in? A Yes, sir.

Q Now, when, in fact, did it come in? A Why, either late that afternoon or the following morning.

Q You knew it? A I knew of it, yes, because it was a monthly requisition.

Q I say, you knew of it at the time it came in? A Yes, sir.

Examined by Mr. Lum.

Q And did Mr. Dozier know of it? A Yes, sir.

Q Did you speak of it to Mr. Hedden? A No, sir.

Q Do you know whether Mr. Dozier did? A I haven't any idea.

Q And where, in the ordinary course of business, would that $80,000 check have been deposited? A In the Fidelity Union.

Q Was this Montclair account a large account? A No, sir.

Q And do you know where the Harrison Radiator check was deposited? A In the Montclair Trust.

Q Did Dozier say anything to you at all about that? A No; he did it himself.

Examined by the Court.

Q Well, when did you first learn that it had been deposited? A Why, I couldn't say exactly the date when it was deposited.

Q Well, when did you learn when it had been deposited. When did you learn that it had been deposited? A Why, on the 17th.

Q Was that an unusual amount to deposit in that bank? A Yes, sir. We never put checks of that amount in there. The Fidelity was our main bank.

Q What was that bank used for? A Why, for current accounts. We had opened an account in that bank when we built the building there; we built the Montclair Trust, and as customary we generally open up an account in the bank building.

Q You had finished that how long before January, 1924? A I guess it must have been a year or so at least; about a year.

Q What was the amount of the balance you kept after you had finished it? A Why, a couple of thousand dollars, two or three thousand dollars. I would put in $10,000, say, and draw checks against it and leave a couple of thousand.

Q Well, you would draw the checks within what time; immediately, you mean? A Well, within the course of a month, yes.

Q The average balance there was $2,000? A Well, that would be the highest.

Q And the average amount of deposit that you made? A Oh, not more than $15,000 or $20,000 at the most.

Q Over what period? Over a monthly period? A You see—

Q What was the maximum amount, other than this large sum, that you would deposit, after you had finished work up there? A Why, I don't think more than $20,000.

Q At one time? A Yes, sir, you see our checks only come—

Q I mean, in one check, one deposit? A Yes, sir. You see, we do not have many checks and they all come in—sometimes we only have five checks, and in this case it was $82,000 and that was only one month's requisition.

Examined by Mr. Lum.

Q Did you ever know of any such check of any such amount at any time being deposited in the Montclair Essex Trust Company? A No, sir.

Q (By the Court.) What was the closest approach to it? A I think, $20,000.

Q (By the Court.) That is after you had finished the building there? A Yes, sir.

Q How much of a loan did the company have at that bank? A Oh, I think we started with about $7,000, $7,500.

Q Do you know whether any deposits had been made in the Montclair Trust Company from June, 1923, to January, 1924? A I think there were several.

Q Would the books show, if there were? A Yes, sir.

Q Look at that book and see—what is that book? A That is a pass book.

Q Of the Charles R. Hedden Company? A Yes, sir.

George A. Aubin, cross.

Q With what bank? A Montclair Essex Trust.

Q Is it the regular one kept by your company with them? A Yes, sir.

Mr. Lum: I ask to have it marked in evidence.

Cross examination by Mr. English.

Q Would it be possible to deposit, without the pass book? A It is possible, but not at all probable.

Q Could it be deposited without a receipt that would appear on a monthly statement from the bank? A I don't think that would be good business.

Q No, probably not.

Q (By the Court.) Did you carry the cash book to your deposit? A Yes, sir.

Q (By the Court.) Always? A Yes, sir.

Q Who made the deposit? A Why, I generally made the deposits.

Q Did you go up to Montclair to do it? A No, sir. I prepared them and sent them up unless Mr. Dozier instructed me otherwise.

Examined by the Court.

Q Who did you send them with? Who made the deposits? Who carried them there? A I might send up with the boys in the office, whoever would be going up in that direction.

Q Always got a receipt for it? A Yes.

(Pass book marked Exhibit C. 9.)

George A. Aubin, further direct.

Further direct examination by Mr. Lum.

Q Now, looking at this C. 9 will you tell us whether any deposits whatever were made in this account from June 28th until this $82,000—

The Court: June 28th—

Q June 28, 1923, until this $82,000 check in January, 1924? A There seems to be none.

Q (By the Court.) Were there any deposits made between those dates? A I couldn't say, unless I refer to my book.

Q Can you refer to your book? A Yes, sir.

Mr. Lum: It appears from the cash receipt book of the company that other deposits were sent up by mail. I have asked the witness this evening to make an exact statement of them for the record.

The Court: Montclair bank—many were there?

Mr. Lum: Quite a number, eight or ten probably.

The Court: Have him read them in the record.

Mr. Lum: When they are completed. He will have them tomorrow morning.

The Court: Withdrawn, showing the balance.

Mr. Lum: Yes. They are not quite completed.

The Court: All right. I thought they were. Leave that for tomorrow.

Mr. Lum: Yes; it will save all of our time; and they are as familiar with the books as we are.

The Court: All right.

George A. Aubin, further direct.

Q Mr. Aubin, the meeting of January 15, 1924, were you present at that directors' meeting? A No, sir.

Q Do you know what time the people got there? A 3:30 in the afternoon.

Q Who was the last person to arrive? A Mr. Dozier.

Q Do you remember how he came in, whether quietly or otherwise? A He came in hustling and bustling and smoking a cigar.

Q What time did the meeting get out? A About 5 o'clock or a little after.

Q That afternoon or evening did Mr. Dozier say anything to you about any sale of his stock? A Why, he had all of us employees, the male employees around him, and in sort of an off-handed way, told us he was through with the company. He gave a lecture to each one of us.

Q Did he say anything about the purchase or sale of any stock? A No, sir.

Q Was that subject mentioned at all by him to anyone there on that day that you heard? A I don't think so.

Q (By the Court.) What kind of a lecture did he give you? A Why he told us all how good we were and how bad we were and our faults and so forth, everybody, and he also—Mr. Hedden—said—oh, well, he was hard on his employees and never appreciated anybody's efforts, and the like of that.

Q Mr. Hedden said or Mr. Dozier? A Mr. Dozier.

Mr. English: He said Dozier said it.

Q Now, on the next day— (interrupted).

The Court: He said that Mr. Hedden said it.

Witness: No. Mr. Dozier said that Mr. Hedden never appreciated the efforts of anybody that worked for him and never showed his appreciation, and the like of that; was always out for everything he could get.

Q (By the Court.) Who was? A Mr. Hedden.

Q On the 16th of January— (interrupted).

Q (By the Court.) He was diagnosing Hedden then? A Exactly; yes, sir.

Q (By the Court.) And praising you? A No, sir; I got mine with the rest of them.

Q On the 16th of January did you see Mr. Dozier? A No, sir—yes, sir.

Q About what time? A He came in about 9:30.

Q How long did he stay that day, do you know? A Why, shortly before noon.

Q Was Mr. Hedden there while Mr. Dozier was there? A No, sir.

Q Did he dictate anything to you? A Yes, sir; the journal entry stating the sale of his stock to the company.

Q Did you make that entry at his direction? A Yes, sir.

Q Where is it? Is it on this voucher? A It is dictated in that and in my journal.

Q (By the Court.) That was the day after he said he was through? A Yes, sir; the following morning.

Q (By the Court.) Well, did you understand that he was through? A No, sir. There is the entry.

George A. Aubin, further direct.

Q Had you ever heard the purchase of his stock referred to by him or Mr. Hedden or anyone else up till he dictated that to you? A No, sir.

The Court: Showing the witness something.

Mr. Lum: Referring to the journal entry for the month of January, 1924, sheet number 372. (To witness:) Will you please read that into the record?

Mr. English: You mean the same language as the voucher?

Witness: I think it is, sir.

Q (By the Court.) Did he dictate the entry in the journal or the entry upon the voucher? A He dictated the entry to me to enter into the journal from the voucher.

Q Did he have the voucher with him? A Yes, sir.

Q (By the Court.) Did you take his dictation, or did you take the voucher? A No, sir; his dictation, sir.

Q Do you know who had filled out the voucher? A Why, apparently, Miss Jackson did.

Q Now, I note this voucher is dated January 14, 1924. Had you ever seen that before? This has 16 on it? A No, sir.

Q Although you were the bookkeeper? A Yes, sir.

Examined by the Court.

Q What date did you make the entry in your journal? A On the 16th, sir.

Q How did that appear? A The substance of the entry?

George A. Aubin, further direct.

Q No. How does it appear that you entered it on the 16th? A He came in that morning.

Q How does it appear? Anything in the record to show that it was entered on the 16th? A No, sir. It is dated the 14th, sir.

Q Does the journal contain daily entries? A No, sir.

Q The journal does not? A No, sir.

Q What is your primary book into which entries into the journal are made? A Well, this is the primary book, sir.

Q Then you have daily entries, haven't you? A Well, no, sir. You see, in our system of accounting this book is—well, there are only entries in this book; that does not affect the other ledgers; and there are very few in number each month.

Q What is the date of the preceding entry? A December 31st.

Q And what is the next one? A Preceding that, sir?

Q No, after. A January 1st, wherein we reversed some of the previous entries to adjust the books, the closing entries of December 31st.

Examined by Mr. Lum.

Q What is the next one after the— (interrupted).

Q (By the Court.) I want to know if there is anything in the book to indicate the date upon which you made the entry in the journal? A No, sir; there is not.

Q Have you a very definite recollection of that, sir? A Yes, sir.

Q Could you be mistaken as to the date? A No, sir.

George A. Aubin, further direct.

Examined by the Court.

Q Why couldn't you be? A Because I remember.

Q Why couldn't you be mistaken? A Because I remember so explicitely and the following day—

Q It is an awful statement to make, because we all forget. A Yes; but this one here is such a large amount, the entry is so large itself.

Q I am only speaking of the date. A Yes, sir.

Q And that, you say, was January 16th? A Yes.

Examined by Mr. Lum.

Q You are sure you had not seen the voucher D. 10 for identification up to that time? A No, sir.

Q When did you get the voucher? A That same day.

Mr. Lum: I offer this.

Q (By the Court.) After he dictated it? A After he dictated it, sir.

Mr. Lum: I offer this in evidence.

Mr. English: What is this?

Mr. Lum: The voucher, D. 10 for identification.

(Paper formerly marked Exhibit D. 10 for identification now marked C. 10, Exhibit.)

Q Now, this purports to be dated the 14th of January, 1924? A Yes, sir.

Q Was it entered in any book on that date? A No, sir.

George A. Aubin, further direct.

Q Does it appear anywhere on your records as of the 14th? A No, except this here entry as of the 14th.

Q Well, now, I notice— (interrupted).

Q (By the Court.) What entry as of the 14th? A In the journal, sir.

Q And that, you say, was actually made on the 16th? A Yes, sir.

Examined by the Court.

Q Why did you make the entry on the 14th? Why did you make an entry as of the 14th when, in fact, you made the entry on the 16th? A Well, because it was a custom to make it as of the day.

Q Of the disbursement? A Of the actual occurrence of it.

Examined by Mr. Lum.

Q I notice your signature on the "Entered" there. A On what?

Mr. Lum: "Entered." On the stamp.

The Court: On the voucher?

Mr. Lum: Entered on voucher C. 10.

Witness: Yes, sir.

Q When did you make that? A After I had entered this here—this memorandum in this journal.

Q You are quite sure that was not on there on the 14th? A No, sir.

Q You mean, no, sir, that you are not quite sure or that it was not there? A That it was not there on the 14th.

Q Have you ever heard of any resolution of August 15, 1922, before that? A No, sir.

Q Did Mr. Dozier tell you at the time he made that entry that any check had been given in payment of his stock? A No, sir.

Q When did he tell you that? A He never told me. We found it on Thursday morning when we went to reconcile for the payroll.

Q (By the Court.) How is that? A Reconcile our cash check-books for the payrolls.

Q (By the Court.) How did you accomplish that? A By adding up your deposits and disbursements in the check-books and taking your four bank balances and see where you have most money and make your provisions accordingly.

Q (By the Court.) Had you any knowledge of this check at that time? A No, sir.

Q Mr. Dozier had not said anything to you about it on the 14th, 15th or 16th? A No.

Q (By the Court.) When you went up to make your balance, or to determine your balance, how did you come to find your check? A Well, it was right there written in.

Q Written on what? A On the stub of the check.

Q Of what bank-book? A The Montclair Essex Trust.

Q (By the Court.) Whose handwriting? A Mr. Dozier's.

Q And have you that book here? A I think we have, sir.

Q (By the Court.) The check stub? A Yes, sir.

Q Check stub? A Yes, sir.

Q Just refer to that. What checks do you find drawn on this— (interrupted).

The Court: What is "this" first?

George A. Aubin, further direct.

Q What is this book that I show you? A This is the check-book.

Q (By the Court.) Check stubs? A Stubs, yes.

Q (By the Court.) Of what?

Q On the Montclair— A Montclair Essex.

Q From what date to what date? A From August 10, 1923.

Q To. A July 15, 1924.

The Court: Have it marked.

(Check stub marked C. 11.)

Q Coming now to January 14th—first, back in December, 1923, whose handwriting are these various entries, referring to check 5468, until January 14, 1924, that is including 5478, whose handwriting? A They are mine, sir.

Q Now, coming to January 14, 1924, whose handwriting are those entries made in? A Mr. Dozier's.

Q I show you three on the next— (interrupted).

The Court: How many are there?

Q Are there fourteen as of January 14, 1924? A Yes, sir.

Q (By the Court.) Entries? A Yes, sir.

Q (By the Court.) And all in Mr. Dozier's handwriting? A Yes, sir.

Q Coming now to the next check—that last one was 5492, that is in Mr. Dozier's handwriting? A Yes, sir.

Q Coming now to 5493, in whose handwriting is that made? A That is mine.

Q And what is the date? A January 14th. Well, it had been 11, and corrected—it had been January 11th and corrected to 14.

Q (By the Court.) Did you make that entry? Did you fill that stub out on the 14th? A I couldn't say it was the 14th.

Q Do you know what date it was filled out? A No, I don't recall. It must have been subsequent to this time.

Q There are seven right in a row of January 14th all in your handwriting? A Yes, sir.

Q And do you recall seeing that check-book on the 14th of January? A Yes, sir.

Q And were all of these checks filled in, the stubs filled in in Mr. Dozier's handwriting? A I couldn't say. I believe there was a clip on this side as far as here (indicating), a big clasp. I worked from there on.

Q Did you look back at those stubs that were under the clasp? A No, sir.

Q Did you have any suspicion at all with reference to any such checks?

Mr. English: I object to that.

Q Was there anything to attract your attention to what was under the clasp, in any way? A No, sir; because I had done that before.

Q And when did you first look behind the clasp and discover this stub of $65,000? A On January 17th.

Q And what more—what was the occasion of your looking back then? A To reconcile our cash account for the payroll.

Q And what did you do as soon as you discovered that stub there? A Took it in to Mr. Hedden.

George A. Aubin, further direct.

Q Was he familiar with the matter at that time? A Apparently not.

Q Did he seem surprised? A Very much so.

Q And was he calm and gentle?

Mr. English: I object to that.

Q How did he take that news when you gave it to him?

Mr. English: I object to that.

Q (By the Court.) What was his attitude?

Q What was his attitude? A Why, he just like flew off the handle and immediately called up the Montclair Essex Trust.

Q Were you there when he called up the Montclair Essex Trust? A Yes, sir.

Q What did he say to them? A He got hold of the clerk, I think it was first, and told him to cancel it and they put on Mr. Appleton and he told him to stop payment on it and he was informed the check had been paid.

Q Do you know where he went then? A Why, he immediately called up, I think it was your office.

Q And did he leave the office shortly thereafter? A I think he did, yes, sir.

Q When did you first have, yourself, any knowledge that there was a stub in that checkbook in the handwriting of Mr. Dozier, covering that $65,000 check? A On January 17th.

Q Now, there were several checks, stubs there in a row in Mr. Dozier's handwriting. Do you know whether at that time any checks had been filled out, signed in blank by Mr. Hedden? A We had.

New Jersey State Library

George A. Aubin, further direct.

Q In that bank-book? A Yes, sir; and in two of them.

Q Well, did you say in this book? A Yes, sir.

Mr. English: A moment ago he said he didn't know.

Q When you took that dictation there was a reference of August 15, 1922. Did you refer to that to Mr. Hedden? A Why, yes, sir; I told him of this entry and he immediately called Mr. Toothe to bring forth this minute book and he looked on this page and it stated in this original entry.

Q Were you present when he sent for Mr. Toothe to get the minute book? A Yes, sir.

Q Were you present when he looked at the minute book? A Yes, sir.

Q (By the Court.) Was that all on the 16th? A The 17th.

Q (By the Court.) When he dictated it? A He dictated this entry on the 17th.

Q But what you are telling us of the 17th was with Mr. Hedden? A Was with Mr. Hedden.

(Adjourned until tomorrow morning at 10 o'clock.)

George A. Aubin, further direct.

CONTINUATION of the taking of testimony in the above entitled cause before John H. Backes, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, this 17th day of March, 1925.

Appearances as heretofore.

GEORGE A. AUBIN, resumes the stand.

By Mr. Lum.

Q Have you checked up the deposits that were made at the Montclair Trust Company by mail? A I have.

Q Have you prepared a statement of it? A Yes, sir, here are all the deposits, substantiated by the pass-book of the Montclair Trust Company made by me.

Mr. Lum: I offer in evidence that yellow sheet, which is a transcript from the separate sheets which have been shown.

The Court: Have it transcribed in the record.

DEPOSITS IN MONTCLAIR ESSEX TRUST CO.

1923

June	6		646.15
"	14		15,894.00
"	18		5,000.00
"	19	Mail	6,399.03
"	30	"	2,576.42
July	14	"	6,848.45
Aug.	17	"	6,846.97
Sept.	14	"	1,000.00
"	19	"	5,415.48
"	19	"	1,800.00
"	28		17,409.00

Oct.	19.....	"	12,616.25
Nov.	16.....	"	7,000.00
"	22.....	"	13,355.20
Dec.	11.....	"	5,000.00
"	14.....	"	11,355.15
"	19.....	"	4,923.17
Jan.	12		82,923.83

MONTHLY BALANCE IN MONTCLAIR ESSEX TRUST CO.

1923		Balances Hedden	Bank
Jan.	31.....	4,056.95	4,724.45
Feb.	28.....	1,243.00	1,394.49
Mar.	31.....	1,149.87	5,665.92
Apr.	30.....	3,267.82	7,836.72
May	31.....	935.19	935.19
June	30.....	4,284.43	5,138.59
July	31.....	285.48	3,172.39
Aug.	31.....	534.77	1,270.37
Sept.	30.....	15,484.38	19,544.18
Oct.	31.....	785.35	1,385.97
Nov.	30.....	3,063.16	6,790.94
Dec.	31.....	83,284.39	415.09
1924			
Jan.	31.....	1,041.57	1,502.02

Q (Showing witness.) Will you tell me whose handwriting that is on that yellow sheet? A Mr. Dozier's.

Q (Showing witness.) I show you the following yellow sheets—twenty—do you recognize Mr. Dozier's handwriting? A I do.

Mr. Lum: I want this marked for identification. I am not using it with this witness, but I must use it with the witness who found it.

(Paper marked C. 12 for identification.)

George A. Aubin, cross.

Cross examination by Mr. English.

Q What is that paper that you last identified, Mr.—

Mr. Lum: I object.

The Court: Objection overruled.

A Why, these are the work sheets of Mr. Dozier's statement of December 31, 1923.

Q And that was a statement which was prepared in a meeting to fix the book value of the stock? A Apparently so—I haven't checked it over.

Q Well, this is not the first time you saw it? A I saw it after it was found.

Q You saw it when it was being worked on? A I have seen lots of sheets of that kind. I haven't seen these particular sheets.

Q Would you say that you haven't seen these particular sheets? A The entire twenty sheets? I would not say I seen every one of them.

Q You have seen some of these twenty sheets? A Yes, sir.

Q And you and Mr. Dozier and Mr. Whitehouse worked on the different sheets— A There was nobody worked on these sheets but Mr. Dozier, and those few figures that I have put in there were just analysis figures obtained from my books.

Q Will you identify for us the figures that you put in? A Yes, sir, these here (indicating on paper.)

Q You refer to the seventh page, is that right? A Yes.

Q Now, is that almost all your figures? A (Indicating.) No, sir, just these here.

Q You indicate a series of entries in figures in the middle of the page? A Yes, sir.

Q Any others in this your handwriting? A No, sir.

Q How did you come to make entries on the sheet, part of which is Mr. Dozier's handwriting? A These were taken from our books possibly to facilitate matters—to help.

Q Relative to construction work pending—work on which was pending, yes, or no? A Yes, sir.

Q And to facilitate what you said? A Well, to help him out in getting these figures.

Q And what he was trying to find out was the value of the contract and how much work had been done and what was the value of the work to be done? A He had it already. I just gave him an analysis.

Q Well, and that was for— A Just an analysis. He had the figures already.

Q And what he was seeking was what the value of this job would be to December 31st, and what it would be after? A No, sir, Mr. Hedden's percentage on the job.

Q Which had been earned and not paid up to December 31st, is that it? A Well, from this statement as submitted at that time, but not approved.

Q I understand that, and as far as your books showed Hedden's percentage which had been earned and not actually paid and received by Hedden Company up to December 31, 1923? A That was shown as approved by Mr. Dozier, but not accepted by the architects.

Q They are shown by your books, aren't they?

Q Retained by the owner, but as far as your books show, earned by the Hedden Company, but not yet approved by the architect? A Yes, sir.

Q And the importance of it was that it showed what the value of this construction was up to December 31, 1923? A Yes, sir.

Q Which had a bearing on the value of the stock? A Yes, sir, certainly.

Q And that is one of the things that Mr. Dozier was working out along with the rest of you, wasn't it? A Well, he wasn't working that out with any of us. He did that himself.

Q It was one of the objects of making this statement to ascertain the book value of that stock? A I don't know that it is the only statement.

Q Now, when did you—you begin working for the Hedden Company in 1919? A Yes, sir.

Q And you continued that job until down to the present time? A Yes, sir.

Q Are you a stenographer? A No, sir.

Q You don't take dictation in the ordinary sense, do you? A No, sir.

Q Was your desk in the same room with Mr. Dozier? A We had a combination desk—he sat opposite me.

Q A large desk—one on each side? A Yes, sir.

Q And that steel safe, cabinet, which has been referred to— A That was in the same room.

Q Do you want to swear that the minute book was never kept on the shelf in that— A Yes, sir.

Q Never saw it? A No, sir.

Q Want to say it was always kept in that locked box? A I won't swear to it.

Q When it wasn't kept in the locked box, where was it kept? A I don't know.

Q What else was kept in that locked box? A Mr. Dozier's personal papers.

Q Anything else? A I don't know.

Q Ever see that box opened? A Yes, sir.

Q Who did you see open it? A Mr. Dozier.

Q Ever see Mr. Whitehouse go to that box and open it? A He never did.

Q You mean he never did or you never saw him? A He never did.

Q Were you always in the room every minute of the day? A I was always in the room. He had no business in that place, and if he did, he wasn't supposed to.

The Court: I want to ascertain if counsel understand that the affidavits annexed to the bill and the respondent's affidavit is part of the record—as proof in the case?

Mr. English: I will answer that only by saying that it has always been my idea that such affidavits spend their force only when they are used and considered by the Court.

The Court: I don't want to be bound by them in this hearing unless they are offered in evidence.

Mr. Lum: My understanding is the same.

Mr. English: I have no objection to their being considered in the case.

The Court: I want to understand whether I am to dispose of the case on the evidence produced or whether the affidavits in the moving papers are also to be considered in the case?

Mr. English: I never understood that they were.

George A. Aubin, cross.

Mr. Lum: No.

Q Do you know that Mr. Dozier kept a duplicate set of minutes Miss Jackson wrote up for him? A I have an idea that he did keep a set of minutes.

Q Were they in the same cover as the official minute book, the same kind of a cover? A I don't know.

Q Don't you think that you could have been mistaken when you say you saw a black covered minute book in that box, as between Mr. Dozier's official minute book and one kept by him— A I don't think so.

By the Court.

Q Did Mr. Dozier tell you that he had an extra set of minutes? A No, sir.

By Mr. English.

Q You told us yesterday that in August, 1922, Mr. Dozier, as you expressed it made a veiled intimation about a stock purchase. What was that veiled intimation? A Why, something about an agreement to buy stock in case of Mr. Hedden's death.

Q Between him and Mr. Hedden? A Yes, sir.

Q Where were you when you discussed that with him? A We were down in Achtel-Stetter's dining room.

Q Having dinner together? A Yes, sir.

Q And he told you about a conference he had with Mr. Hedden? A No, sir, he didn't tell me about a conference.

Q But he discussed some discussion he had had with Mr. Hedden, or had some agreement with him? A He said he had an agreement.

Q He said he had an agreement? A Yes, sir.

Q You told us yesterday that on a couple of occasions you heard Mr. Hedden and Mr. Dozier discussing the question of the stock purchase. When was that couple of occasions? A Well, I don't recall them just right now—in the course of the events in the last year or so.

Q Did this discussion take place in Mr. Hedden's room or out in the room where you were? A In Mr. Hedden's room.

Q Could you overhear them? You could hear them? A Well, I might have gone in there with some papers and interrupted the conversation—something like that.

Q Do you remember now anything that was said? A No.

Q But you do remember that you went in and out and that you heard conversations referring to the purchase of the stock? A There was something like that in the air—I just adduced that, I might say.

Q Do you remember the occasion when you said Mr. Dozier was rather angry following one of these discussions? A Toward the latter part of 1923 he was quite angry all the time.

Q He was rather unhappy? A Well, not unhappy, though he used to get angry quite frequently.

Q In connection with the discussions over the purchase of the stock or over other things, too? A I don't know whether it was the purchase of stock or anything else. It didn't take very much to get him angry.

Q Now, you assumed no responsibility for these minutes, did you? A Absolutely not.

Q You didn't pay any particular attention to Mr. Dozier, whether he was dictating minutes or not? A Absolutely not.

Q And when you said that he dictated minutes to Miss Jackson, you didn't undertake to be positive that he was dictating for half a day his minutes, did you? A I did.

Q If you were in no way responsible and not paying any particular attention to it, why do you undertake to say that? A Because I was in that office and saw him. If he was doing work in the office ten feet away from me, don't you think I would hear it? I am not deaf.

Q Could you give us any particular time of the month it was when this occurred? A No, I could not.

Q Now, the directors had meetings together, you said yesterday? A What do you mean directors met together?

Q You said that the gentlemen who constituted the Board of Directors had meetings together—you weren't there, so you don't know what was said, but you do know they had meetings together? A They must have had meetings, I assume. Whether they were directors' meetings or not, I don't recall exactly.

Q But the men that constituted the Board of Directors did have meetings in Mr. Hedden's room? A They were frequently in together with Mr. Hedden. There was only three of them —three or four of them.

Q Don't you remember that following these meetings on various different occasions Mr. Hedden dictated minutes to Miss Jackson? A No, sir, I don't remember that.

Q Didn't pay any attention to it? A He didn't give dictation right after meetings.

Q Not right after—within a very short time after? A Once or twice he may have done so, but it wasn't his custom.

Q You remember once or twice that this occurred? A I remember when I first came with the company, why, in '20, he wrote up the minutes after a whole year.

Q That's a little late. Can you give us any other occasion when you remember he came out of the directors' meeting and wrote up minutes? A I don't remember any of the others.

Q Now, Mr. Hedden used to sign checks sometimes in blank, you said? A Yes, sir.

Q Do you remember seeing an iron safe in the office? A Yes, sir.

Q Did you have a key to a compartment in it? A Yes, sir.

Q You used to put these signed blank checks in that compartment? A No, sir.

Q Never? A No, sir. Every once in a while I would take one or two at Mr. Dozier's directions and put them in my petty cash box.

Q And didn't you keep the petty cash box in the iron safe? A Yes, sir.

Q So that once in a while you did? A Yes, sir.

Q You had a key to that? A Yes, sir.

Q Now, that was your usual custom right along, to take some of these signed checks and put them with that petty cash, and put the whole thing in that iron safe? A It was not, sir. The blank checks were left in the check-book unless I had instructions to take one or two particular checks and put them in my petty cash box. The check-book was left in the iron safe.

Q You locked it in there? A I had the combination, so did Mr. Dozier.

Q So that you don't mean to say that you were so careless as to take signed checks and leave them lying around promiscuously in the office? A That isn't promiscuous.

Q What's that? A That isn't promiscuous.

Q These checks were of no value until signed by Mr. Dozier and someone else? A No, sir.

Q What other signatures would make the check good? A Either the treasurer and the president or the treasurer and the vice-president.

Q Now, where is that statement of the Montclair Trust Company—do you know when this Montclair Trust Company account was opened? A In '23, I believe—'22.

Q Look at the pass book, and see if you cannot tell exactly? A I believe the first deposit is September 11, 1922.

Q The date of the first deposit is September 11, 1922? A Yes, sir.

Q Do you know who opened this account at the Montclair Trust Company? A Mr. Dozier.

Q Do you remember that Mr. Dozier was in California in 1922? A Yes, sir.

Q Do you remember when? A In August.

Q When did he get back? A He was out a month and a half.

Q When did he get back? A Well, the latter part of September, first part of October.

Q Don't you know that on September 11, 1922, when this account was opened Mr. Dozier was in California? A I don't know whether it is the first deposit.

Q It certainly was as early as that? A It may have been earlier.

Q Have you got another bank book that is earlier? A Yes, sir.

Q Let's have it. Now, my question is whether the Montclair Trust account was not opened in September 11, 1922? A My records here show that it was.

Q And the pass book is correct then in that respect, from your records? A Yes, sir.

Q Now, then, the fact was that Mr. Dozier was then away and it could not have been opened by him? A I wouldn't say it was the fact.

Q I don't say was it the fact, I say if the fact was that he was then away, it could not have been opened by him?

The Court: It is so obvious—

A I don't know the exact date that he was away.

The Court: You need not answer.

Q If the fact was that Mr. Dozier was then away, you are mistaken then when you say he opened it, aren't you?

The Court: He says he don't remember when Mr. Dozier was away. Why press the witness?

Q This statement that you produced this morning, does that undertake to show the deposits made from time to time in this bank account or just the monthly balances? A There is one sheet there which shows the deposits made over a certain period.

Q What was the date—just look at it? A From June 6th to January 12th.

Q It is deposit, is it? A Yes, they are deposits.

Q Eh? A This statement shows the monthly balance at the end of the month. The balance shown is from our records and as shown by the bank records.

Q Now, these are deposits from time to time, running all the way from the smallest, which appears to be $646.15 to $82,000 and the next highest to that is $17,409, is it not? A Yes, sir.

Q And there is another one over $15,000? A Yes.

Q And another of over twelve? A Yes.

Q And another of over thirteen—true? A Yes, sir.

Q So that was a fairly substantial bank account, wasn't it, or don't you consider that substantial? A It wasn't as substantial as the others.

Q I see that after Mr. Dozier left in 1924, your pass book shows other deposits in that same account? A Yes.

Q Six thousand and odd, ten thousand and odd? A Yes, sir.

Q Now, on January 14, 1924, and that number of checks were drawn, were those entered in that —his check stub book shows— A Yes, they were, yes, sir.

Q You were able to begin to draw with check No. 5493? A Yes, sir.

Q That is correct? A Yes, sir.

Q At that time had the balance been stated on the check stub so that you knew how much to draw against? A No, sir.

Q Do you say you sat down and drew checks for substantial amounts without knowing what the balance in the bank was? A These are not substantial amounts.

Q For any amount? A If I knew that I had sufficient balance I did.

Q Do you think that is good business or good banking for a man to draw out checks, not knowing how much he has in the bank? A If you have an idea how much you have in the bank.

Q Here's a check for $8,000, that is a substantial amount? A It is pretty good.

Q Here is another for $4,000? A Yes, sir.

Q Another for $2,000? A Yes, sir.

Q Wouldn't you say they were substantial checks? A Yes, sir.

Q Wouldn't you be interested to know whether you had sufficient in the bank—sufficient to draw out an amount aggregating— A Not if I had more. I did know that I had it.

Q You know that because it is there at the top of the book— A That was there after I made my reconciliation on the 17th.

Q You say you put that in on the 17th? A Yes, sir.

Q Did you look back into this book to see what the balance was when you draw all these checks on January 14th, and did not at that time make these entries at the top of the page indicating the balance? A Yes, sir.

Q Want to swear to that? A Yes, sir.

Q I see under January 1, 1924, under heading Account Balance, $38,284.39—that's your writing? A Yes, sir.

Q When did you make that one of January 1? A Maybe a few days afterwards.

Q Few days after January 1—how many days after? A Two or three days after.

Q Now, I see on the stub under date of December 31, Labor Statement, December 31, 1923, Harrison Radiator job? A Yes, sir.

Q For $82,923.83? A Yes, sir.

Q That check was not in fact deposited on that date? A No, sir.

Q It was deposited as of that date? A Yes, sir.

Q That is the way you entered it on your books? A Yes, sir.

Q Because that was considered a check as of the year 1923? A Yes, sir.

Q That check officially wasn't received until about the 11th of January? A You are right.

Q Then you were wrong when you say you made that balance on January 1, 1924, or two or three days after that date, aren't you? A Yes.

Q You made that, as a matter of fact, about the time the Harrison Radiator check came in? A I guess you are right.

Q Now, that balance was made at the time these checks were drawn out on January 14th, or about that time? A It was not, sir.

Q About that time? A Must have been made prior to that.

Q Prior to that, but about that time? A Well, there may have been a few days difference. I don't recall the exact status of it.

Q Whose red lines are these on the check stub where the last check dated December 31— A Those are mine.

Q Yours? A Yes, sir.

Q When did you make those? A I must have made them about the time I closed the books.

Q After the Radiator check came in? A Apparently, yes, sir.

Q Well, most apparently, because this states the balance—that's the fact, isn't it? A No, sir, I wouldn't say it was the fact.

George A. Aubin, cross.

Q Well, would you say that you could have made those red ink entries which includes the Harrison Radiator check before the check was received? A It could have been done.

Q Do you say it was done? A I wouldn't say it was done.

By the Court.

Q How could it have been done? A Because we knew that that amount had been approved and for our reconciliation was put in the Thursday before the Monday—

Q That isn't your practice—that isn't good bookkeeping, is it? A No, sir, it isn't.

By Mr. English.

Q You didn't do any such thing—do you mean to go on record as a bookkeeper of a good many years experience and say you would do a thing like that? A I do do it, sure.

Q You would strike a balance on supposed deposits that had never been made? A I have to follow instructions.

Q Have you ever done it? A Yes.

Q Did you do it in this case? A Well, yes, sir.

Q You are swearing now that that balance was struck before that check was deposited? A I wouldn't say that.

Q What do you say about that? A I wouldn't swear that that check was not there.

By the Court.

Q What is your best recollection? A To tell you the truth, your Honor, I was working day

and night at that time. It is hard for me to recollect.

By Mr. English.

Q You really don't know very much about what you are testifying? A I do so, but not every minute detail.

Q Do you know Mr. Whitehouse? A I do.

Q He is a nephew— A Yes, sir.

Q Nephew of Mr. Dozier who used to come in and help out on the books? A Yes.

Q He came in in the early part of January, 1924, and helped out? A Yes, sir.

Q He reconciled and balanced up the check-books? A He never did, sir.

Q Did he work on the check-books? A He never did, sir.

Q What? A No, sir.

Q How do you know? A Because I know that he wasn't supposed to work on those books. I had work outlined for him.

Q Well, not what he was supposed to do—do you know whether he did or not? A He might have when I wasn't there.

Q Do you testify that he never had that book in his hand at that time? A He may have had it when I wasn't there.

Q You know the cash book, don't you? A Yes, sir.

Q Did he ever have that in his hand? A No, sir.

Q (Showing witness.) Now, I show you the cash book which you handed to me, and I turn to page 123, headed: "Cash Disbursements, December, 1923"—that is in your handwriting? A Yes, sir.

Q And whose? A That is in my handwriting.

Q You see these pencil footings on that page? A Yes, sir.

Q They are not in your handwriting? A No, sir.

Q They are Mr. Whitehouse's, aren't they? Now, calling your attention to the pencil footings on page 123? A They look like Mr. Whitehouse's.

Q Then would be be so positive as you were before that Mr. Whitehouse never had the cash-book in his hand? A No, sir, I would not.

Q And to reconcile this cash-book he would have to have in his hand the check-book upon the Montclair Bank? A No, sir.

Q You are still positive that he never had it in his hand? A No, sir.

Q Do you see the figures 4937? A Yes, sir.

Q And corresponding figure in the check stub book, did you see that? A Yes, sir.

Q The corresponding figures in the check stub book and the cash-book? A Yes, sir.

Q The next corresponding figure in this check stub book is $5.16, is that correct? A Yes, sir.

Q The next one is $3,000, also in the cash-book? A Yes, sir.

Q Corresponds all the way through, doesn't it? A (No answer.)

Q If he reconciled the two he had to have the check-book? A He could get the balance, sir, and he could reconcile the book from the balance.

Q And after he has got everything he has to get the book to reconcile it? A He merely helped me to do the work.

George A. Aubin, cross.

Q Do you think that a proper reconciliation can be made of a check-book and a cash-book by an accountant, if he doesn't have even the check-book? A If you are taking an accounting as an audit, you cannot, but if it isn't any audit—simply someone else doing routine work he can by having someone else supply the figures.

Q This was an audit, or what would you call it? A No, sir, it wasn't.

Q Do you remember when the Harrison Radiator check came in Mr. Dozier called your attention to it, and told you not to draw any more checks on it? Did he tell you not to draw any more checks on it? A He told me the first of the year, yes, sir.

By the Court.

Q Told you what? A Not to draw any more checks on the account.

Q He told you when the Harrison Radiator check came in? A It was prior to that.

By Mr. English.

Q That may be, but he also told you that when the Harrison Radiator check came in? A No, sir, he gave me instructions—

Q When were these instructions? A The first part of the year.

Q Can you give us the date? A No, sir.

Q January 11th is the first part of the year, isn't it? A Well, a little earlier than that.

Q Can you give us the date? A No, sir.

Q Now, when did you say was the first time you saw that check for $65,000 which is the subject matter of this suit? A On the 17th—January 17th, 1924.

George A. Aubin, cross.

Q When did you say was the first time you saw the voucher which accompanies the check or corresponds with the check? A January 16th, 1924.

Q And what were the circumstances of that—where did you see it? A The entry into the journal.

Q You testify—calling attention to page 372 of the journal? A Yes, sir.

By the Court.

Q Voucher of what?

Mr. English: Voucher of Exhibit C. 10.

Q You said that Mr. Dozier dictated that to you? A Yes, sir.

Q Did you write it down as he spoke? A He dictated the entry as a whole.

Q Did you write down as he spoke? A Yes, sir.

Q What did you write on? A In this book.

Q You stood right there and he gave you the words and you wrote it down? A Yes, sir.

Q Didn't he hand you that voucher and say: "Enter it up"? A No, sir.

Q The night of January 15th? A No, sir.

Q Did he have any paper before him when he gave you that? A No, sir—he had that paper.

Q You saw it? A Yes, sir.

Q Then you did see it before the 16th? A I saw it on the 16th. I didn't say I saw it on the night of the 15th. On the 16th I saw it, when he gave me this entry—dictated this entry.

Q What time was that? A About 9:30 or 10 o'clock.

Q And that was the first time you had ever seen this voucher? A Yes, sir.

George A. Aubin, cross.

Q What did you do with that voucher after that? A Put it in the safe.

Q What did you do with it after that? How long did it remain in the safe to your knowledge? A Well, Mr. Dozier called up for it the next morning.

Q What day was that? A That was on the 17th, very early.

Q Called up—where did he call? A I don't know where he was.

Q Where were you?

By the Court.

Q Telephone call? A Yes, sir.

By Mr. English.

Q You were where? A I was in the office.

Q Then what did you do after that? A He asked me to let him have it to make a picture of it.

Q Did you let him have it? A Yes, sir.

Q And where did you give it to him? A Downstairs in the building.

Q Isn't it a fact that on the morning of the 17th you were downstairs in this building, the Prudential Building, waiting for Mr. Dozier to come in? A No, sir, I wasn't.

Q With the voucher in your hand? A No, sir.

Q And said to him: "The men in the office, Toothe and Hedden are on the rampage and here is this voucher that you wanted to make a—" A No, sir.

Q And Mr. Dozier had the checks and told you to mail them to the Montclair Bank? A No, sir.

Q And you handed them back to him and said to send them in the regular way? A No, sir.

Q Mr. Dozier took the voucher, did he? A Yes, sir.

Q You sent for it about noon that day? A No, sir.

Q Over at the Newark Athletic Club where he said he was going? A No, sir.

Q And Mr. went over and got it for you? A Yes, sir.

Q You say "no, sir," "yes, sir"—which do you mean? A He wanted me to meet him at lunch and after I found out what happened I wanted nothing more to do with it.

Q And you weren't willing and didn't want to have anything more to do with it? A I got hold of Mr. on the wire and asked him to do it.

By the Court.

Q Do what? A Go over and get this voucher.

By Mr. English.

Q However it came about Mr. got this and brought it back to you? A Yes, sir.

Q When was this red ink entry made on page 372 of the journal? A After we had obtained audition.

Q Is that your writing? A Yes, sir.

By the Court.

Q Immediately after the 17th of January? A Yes, sir.

George A. Aubin, cross.

By Mr. English.

Q Who told you to write that in? A Mr. Owens.

Q And who is Mr. Owens? A He is a certified public accountant.

The Court: Read it.

Mr. English: (Reading)—"See Minute Book, page 198. Resolved that the report of the treasurer be spread upon the minutes and approved, subject to audit—stars— Mr. Dozier then made a motion that Charles R. Hedden Company purchase — stars — and approved—period— This motion was seconded, but as there was a tie vote among the directors, the motion was laid upon the table. Paragraph— Meeting of January 15th, 1924." You say the auditor, Mr. Owens, told you to put that in? A Yes, sir.

By the Court.

Q Why was that put in that book? A To void this entry, sir.

Q Void which entry? A The entry which corresponds to this voucher.

Q Voucher for the purchase— A Purchase of stock.

Q Fifty-five thousand— A $65,000.

By Mr. English.

Q And when after January 14th was that put in? A About three to seven days—the first of the following week I think it was.

George A. Aubin, cross.

By the Court.

Q Did Mr. Hedden know that that was put on there? A I showed it to him that morning.

Q Mr. Hedden? A Yes, sir, on the 17th.

Q The red ink entry which you say was directed to be put in by the accountant to void the $65,000, did Mr. Hedden— A I think Mr. Hedden was familiar with it.

Q Did he see it at the time? A It wasn't put in at that time. When we got the auditor into the office we started to go over all those matters.

Q You said it was put in on the 17th—you were wrong then? A After the 17th.

By Mr. English.

Q You said three days or a week after January 14th? A After we got the auditor in.

By the Court.

Q Did Mr. Hedden see that entry in red? A I think he did.

Q Did he at the time? A I don't recall—the book was several times in his hands.

Q Do you know whether he approved that entry of the voiding of the $65,000 item? A Yes, sir.

Q When? A I could not say just when, but this book was brought in to him on several occasions and those entries were there.

Q Do you know whether he approved the red ink entry? A No, sir, I don't.

By Mr. English.

Q This entry on page 372 in red ink and the entry of the voucher is dated January 14, 1924? A Yes, sir.

George A. Aubin, cross.

Q That corresponds to the date of the check and the date of the voucher, does it not? A Yes, sir.

Q And you cannot give us the exact date when the red ink entry was made? A No, sir.

By the Court.

Q Which red ink entry do you mean—on page 372, or— A There is only one, sir.

Q Do you think it was some days after the date of the date the original entry was made? A Yes, sir.

Q Now, you have a profit and loss set-up in this, and a pretty complete statement in this book, this journal just prior to page 372, have you not? A Yes, sir.

Q Where does that statement begin—what page does it begin on? A (Indicating.) It starts about here.

Q It starts on page what? A On page 359.

Q And runs from page 359 to page 370, inclusive, is that correct? A Yes, sir.

Q Then you have on—page 371 is blank—correct? A Yes, sir.

Q And page 372 is this entry about the voucher? A Yes, sir.

Q And the red ink entry we have talked about? A Yes, sir.

Q Now, turning to page 373, you have another set-up of the profit and loss statement? A Yes, sir.

Q How many pages does that cover? A To 390.

Q And all of these are in your handwriting? A Yes, sir.

Q This set-up beginning on page 373 was by order of the new accountant, Mr. Owens, wasn't it? A Yes, sir.

Q And when did you write that in? A I could not remember the date.

Q Well, approximately? A Maybe a month afterwards.

Q As of the same date as the previous? A Yes, sir.

Q And it was designed to show a less valuable situation than had been set-up in the profit and loss statement prior to page 372, wasn't it? A Yes, sir.

Q So as to make the value of that stock look less? A It was the annual statement, sir.

Q It did, in fact, make the value of the stock look less? A Yes, sir.

Q Very much less? A Yes, sir.

Q Then it was at the time you wrote in this other one? A Yes.

Q And you wrote in this second one at the orders of Mr. Owens, the new accountant? A I wrote this in by orders of Mr. Dozier.

Q First by orders of Mr. Dozier and then by Mr. Owens? A Yes, sir.

Q And there is quite a discrepancy between them? A Yes.

Q And there is one empty page, and then on page 372 you say you wrote in red ink this resolution on the statement which was submitted at the directors' meeting on June 18th? A I don't know.

Q You know a statement was submitted which was accepted subject to audit? A Yes, sir.

Q And there is no difference between the one on 370—it contains all the facts of that statement? A Yes, sir.

George A. Aubin, cross.

By the Court.

Q How about your accounts and transcriptions from your books? A I don't understand your question.

Q Do you know the difference between a transcription and a deduction from a book? A A transcription is transcribed from one book to another.

Q What is a deduction? A A deduction is an analysis.

Q Which is this? A An analysis.

Q That was made by you for your business management from your books? A Yes, sir.

Q Now, the second one made by the accountant, is that a correction? A Yes, sir.

Q Made from the set of books? A Yes, sir.

Q You call it an analysis? A Yes, sir.

By Mr. English.

Q And that was the product of about a week or ten days work which you, personally, and Dozier, and Mr. Fisher and Mr. Whitehouse—all four of you had a hand in it? A In making the routine work, the preliminary work, not in the analysis.

Q But all four of those persons I have named had something to do with the preliminary? A Yes, sir.

Q Which is boiled down, so to speak, and set-up in this statement? A Mr. Dozier boiled it down.

Q I didn't ask you who did the boiling—as the product of the work of those four men you changed the calculations? A Yes.

Q Now, how many accounts did you say that company had? A They had four active ones and one inactive one.

George A. Aubin, cross.

Q What were the active? A Springfield Avenue Trust, Montclair Trust Company, Fidelity Union and the North Ward National Bank.

Q You told us yesterday that Mr. Hedden early in January signed checks in blank on three of those accounts? A Yes, sir.

Q And you cannot be positive which of the three? A No not which of the three, no, sir.

Q You could not be positive about that? A No, sir.

Q Now, what time did you show Mr. Hedden that voucher, C. 10? A I didn't show him that voucher.

Q When did he first see it? A When Mr. Owens showed it to him.

Q That is the first time Mr. Hedden ever saw it? A I wouldn't be positive about it.

Q Give us your best recollection? A I don't recall.

Q You cannot say now when it was that that voucher was first shown to Mr. Hedden? A No, sir.

By the Court.

Q Do you know whether it was ever shown to him? A Yes, sir, it was shown to him.

By Mr. English.

Q How do you know that? A Well, he seen all those papers.

By the Court.

Q How do you know it? I am afraid by your statements you are depending upon the orderly course of procedure in your office. Do you know

whether he ever saw it? A I believe Mr. Owens showed it to him.

Q Do you know? You are satisfied that he saw it, but you don't know if he saw it? A No, sir.

By Mr. English.

Q And you don't pretend to have been there when he saw it for the first time? A No, sir.

Q And you have not no knowledge when that was? A Shortly after the auditors came into the office.

Q And they came in about a month afterward—

By the Court.

Q How do you know that? A The auditors were in a week after.

Q How do you know that Mr. Hedden ever saw that voucher? A Well, I cannot say so.

By Mr. English.

Q Can you tell us when the auditors first came in to the office? A Why, the following week.

Q That is the week following January 15th, is that it? A Yes, sir.

Q That was a Tuesday, was January 15th? A Yes, sir.

Q And the following week after that they came in? A Yes, sir.

Q And up to that time you hadn't shown it to Mr. Hedden? A He had seen this entry.

Q I didn't ask you that—I am asking about the voucher? A No, sir.

Q When did he see the entry? A On January 17th.

George A. Aubin, cross.

Q And you didn't tell him about the voucher then? A No, I guess I didn't.

Q You had the voucher then, didn't you? A Yes, sir.

Q Why didn't you show it to him? A Because I showed him this entry.

Q Never mentioned the voucher at all? A No, sir.

Q When did you first see the check, Exhibit C. 5? A Oh, the latter part of that week.

Q At the time you were looking at the entry on page 372 of the journal on the 17th, you hadn't then seen the check? A No, sir.

Q When did you first see the check stub entry in the book? A On the 17th when I reconciled my check-book for my pay-roll.

Q Did you make out your pay-roll on Tuesday? A On Thursday.

By the Court.

Q Then you saw it? A Yes, sir.

By Mr. English.

Q Now, the entry on the back of the check and the entry on the voucher and in the journal all correspond very nicely, don't they? A Yes, sir.

Q That is true? A Yes, sir.

Q And all very frankly set-up? A Yes, sir.

Q And the first reference to the voucher in the minute book entry was made of August 15, 1922? A Yes, sir.

Q Now, I see that the voucher by its language refers to page 158 of the minute book? A Yes, sir.

Q (Showing witness.) And page 158 of the minute book which I now show you contains

the resolution to the effect that if the treasurer should at any future time withdraw the company would buy his stock. That is true, isn't it? A Yes, sir.

Q I see that the red ink entry on page 372 of the journal refers to the minute book page 198, that is correct? A Yes, sir.

Q (Showing witness.) I show you page 198 of the minute book, that refers to the resolution which was offered but not adopted on January 15, 1924? A Yes, sir.

Q That is correct? A Yes, sir.

Q There is no reference in the red ink entry of the journal on page 372 to the minute book at page 158, where the record of the August, 1922, meeting is set-up? A It shows not in the red ink.

Q Not in the red ink—that is my question? A No, sir.

By Mr. Lum.

Q Mr. Aubin, the Montclair account you say was opened in September, 1922? A Yes, sir.

Q (Showing witness.) That is the first check-book? A No, there was another check-book issued by the bank.

Q Whose handwriting is this on this entry of September, 1922? A Mr. Dozier's.

Q Referring to page 1 of the check-book, check No. 5000, running on to two pages, to check No. 5005, referring to the handwriting on the back of that page, in whose handwriting are the different entries?

Mr. English: I object to it until he identifies what bank the check book is on.

The Court: Overruled.

George A. Aubin, cross.

A That is Mr. Dozier's handwriting.

Q What book is this I have shown you? A The Montclair Trust Company's check-book.

Mr. Lum: Offered in evidence.

(Book marked Exhibit C. 13.)

Q Reference was made to a deposit after Mr. Dozier left by Mr. English of $10,000. Do you know who made that deposit? A We have since found out that Mr. Dozier made that deposit.

Q That was after he had left? A Yes, sir

Q What was that made up from? A Just a deposit credited to his personal account.

Q He made a deposit in the account of the Hedden Company after he left? A Yes, sir.

Q For $10,000? A Yes, sir.

Q What did he deposit? A I could not say whether is was a check or cash.

Q Wasn't it his check to Hedden Company? A Mr. Dozier's personal check.

By Mr. English.

Q Mr. Aubin, you referred to a memorandum check-book that the Montclair Bank issued at the bank? A Yes, sir.

Q What was that—one or three on a page? A Three on a page.

Q Didn't have your company's name on it? A No, sir.

Q And it was issued at the time the account was opened in September, 1922? A Yes, sir, I believe it was.

Q And subsequently, the bank furnished you with a more substantial check-book with the company's name on it? A No, sir, we had them printed ourselves.

Q You got them, anyway? A Yes, sir.

Q When the bank account was opened in September, 1922, the bank gave you a temporary check-book, didn't it? A Yes, sir.

Q And did you subsequently after using this check-book have a check-book printed up? A No, Mr. Dozier did that.

Q Mr. Dozier, after he came back from California had a check-book printed up with the company's name in it? A I wouldn't say after he came back from California.

Q Well, he certainly couldn't have done it while he was in California? A I don't remember when he had it printed up.

Q Everybody agrees that he went away to California in the summer of 1922? A Yes, sir.

Q That is agreeable then—now, he couldn't have done it out there? A No, sir.

Q Whenever it was, he had the company's check-book printed up for the Montclair Trust Company account? A I wouldn't say before or after he went to California. He had it printed up.

Q He certainly didn't have it printed before the account was opened, did he? A No, sir.

Q So it was done some time after September 11, 1922? A Yes, sir.

Q Then some time after September 11, 1922, Mr. Dozier had a check-book printed with the company's name on? A Yes, sir.

Q Now, isn't it a fact that after he got the printed check-book he took the temporary check-book and in his own handwriting copied—beginning with No. 500 and running over through 505—copied from the temporary book? A I could not say that without referring to my other check-book.

The Court: What is the consequence—

Mr. English: Counsel tries to make your Honor think that this deposit was made by Mr. Dozier on September 11, 1922, and the point—what I am doing is simply having the witness show that he got the temporary check-book and copied it in.

Q You know that is a fact, don't you, Mr. Aubin? A I don't know that is a fact unless I refer to it.

Q When you get off the stand will you go up and get that temporary check-book? A Yes, sir.

(Affidavit of James H. Toothe, sworn to on February 4, 1924, is marked D. 11 for identification.)

PAUL K. OWEN, sworn on behalf of the complainant, testifies as follows:

Direct examination by Mr. Lum.

Q What is your business, Mr. Owen? A I am a certified public accountant.

Q How long have you been such? A Five years.

Q Have you done any work for the Charles R. Hedden Company? A I have.

Q When were you called in by that office? A January 21, 1924, I believe.

Q Had you ever done any work for the company before that time? A No, sir.

Q What were you called in to do? A To make an audit of the books and records for

1922 and 1923, and determine the book value as of December 31, 1923.

Q Mr. English is interested in that little book that you just took out of your pocket—what is that? A My personal diary.

Q You refer to that for what purpose? A To get the date when I started the engagement.

Q Have you checked your date? A My preliminary conference was on January 18th, and arrangements were made to start work on January 21st.

Q And did you make a complete audit of the books for the purpose of determining the book value? A I made a balance sheet audit of the books.

Q And are you familiar with these books that are before you and the other books of the company? A I am.

Q Just state very briefly what was the condition that you found in the books when you found that?

Mr. English: If your Honor please, may I ask counsel if the object of this is to go into the question of the value of the stock? It has the difficulty of not being relevant, if that were my understanding of the case.

The Court: There might be—if not primarily relevant, it might be secondary.

Q What did you find to be the book value by your figures?

Mr. English: I don't want to be bound by this—any subsequent account if we go into it by stating something—

Q Tell us what work you did and what conclusion you reached as to the book value? A

Paul K. Owen, direct.

I went over the cash account for the years 1922, 1923, and I went over the journal—

By the Court.

Q All of the books? A All of the books.

Q What was the result? A After eliminating—

Q What was the result of your work? Have you got it there? A Yes, sir, this is my 1923 report.

Mr. English: Result in what respect did your Honor mean?

The Court: His analysis of the books and the result that he reached from the figures in the books.

Mr. English: As bearing on book value or as bearing on what?

The Court: The book value, yes, and to at this time bind you to the figures. As you suggested, if counsel reach that point, it will undoubtedly have to be sent to a master. I suppose he wants to show gross exaggeration and also the true value, so as to show fraud in the entire practice—and that is about as far as you will go.

Mr. Lum: I had no idea of going any further. That is what I had in mind to do.

Q Will you briefly give us the result of your figures? A The figures contained in my report show the book value to have been a trifle less than $14.00 per share—that is without considering the profits on construction work in progress. Subsequent to this report, in the year 1924 those items were completed, and based on those figures,

my total book value is a little over $38.25 per share.

Q Did you take good will in at all? A No.

Q The good will included in the statement submitted by Mr. Dozier at the meeting of January 15th is one dollar. Did you take that in at one dollar or eliminate it entirely? A I eliminated it entirely.

Q And isn't that item of good will usually according to agreement? A Yes.

Q Many different ways of figuring that? A There are.

Q In your examination of the books, you found also how much capital was invested? A I did.

Q How much? A $90,000.

Q And against that how much stock was there? A Ninety—ninety shares at $100 each.

By the Court.

Q The natural inference is from your statement that the company has lost money? A It appears so.

By Mr. Lum.

Q Was that true for more than one year? A Yes.

Q And as you found the books was that loss accurately shown, or did the books seem to show profit? A The books showed a profit in every way.

By the Court.

Q How do you make out a loss then. It was your business to make your deduction from the figures as disclosed by the books, wasn't that

your function? A My function was to accurately state the facts as I found them from the books.

Q And each year they showed a profit? A Each year they showed a profit.

Q How did you develop a loss? A By eliminating profits on constructural work in progress, and my report is so qualified.

Q That annual increase of value of the stock, as you fix it is from fourteen to thirty-eight? A That's right.

Q And now, because of that you tell me that the books show a profit, and your function was to make a deduction from the book entry—how do you explain that? A The books as I originally found them showed a book value of $147.56—

Q What did you take upon yourself to cut out? A I cut out estimated profits on over a hundred thousand dollars, which in actual—

Q Future work? A Yes, naturally, when that work was completed there was the value of the work completed $57,000.

By Mr. Lum.

Q So, did you stick to the facts? A I did.

The Court: Stick to what facts? The facts that have been produced here?

Mr. Lum: The facts as to what the normal profit and not somebody's conventional estimate as to what some profit might be in the future.

The Court: What did he know about the facts? He was an accountant. How did he know whether there would be one hundred and fifty thousand dollars profit on a construction contract or fifty?

The Witness: After the contract was completed, go back and check up the actual facts—

The Court: By the book entries?

The Witness: By the book entries.

The Court: That is what you mean by facts?

The Witness: Yes.

Q When I said facts, I referred to the book entries, check vouchers and so forth—did you check them up in your account? A I used the book entries as a basis and modified them properly by other records that I found, or other evidence I found.

By the Court.

Q Why did you take it upon yourself to modify any entries in their books? A Well, if their books showed a cash balance of one hundred thousand dollars at the end of the year and the actual cash balance is less than twenty, it certainly is up to me to make the adjustment in my report.

By Mr. Lum.

Q Now, Mr. Owen, did you find a paper labeled "Supplemental Account" when you were there? A I found a paper so labeled, yes.

Q Have you it? A Yes.

Q By whom was that found? A This was handed to me when I began my examination of these books.

Q By whom? A Mr. Toothe, I believe.

Mr. Lum: "Supplemental to Sixth Annual Report of the Charles R. Hedden Com-

pany for the fiscal year ending July 31, 1923." I offer this paper in evidence.

(Paper marked Exhibit C. 14.)

What is your source of information about that paper?

The Court: Mr. Toothe handed it to him, he said.

Q When did you first see that paper? A I believe on January 21, 1924.

Q Who gave it to you? A I believe Mr. Toothe did.

Q Well, now, who handed you this? A Mr. Toothe, I believe.

Q You don't know where he got it from or anything about it? A Yes.

Q To what was your attention directed first, as to that? A Nothing.

Q What did you notice? A I noticed the words: "Supplemental to Sixth Annual Report of the Charles R. Hedden Company" on the top sheet, and I made inquiry as to where the rest of it was that this was supplemental to.

Q Who did you ask about that? A Both Mr. Toothe and Mr. Aubin.

Q And did you ask Mr. Hedden? A I don't think so, no.

Q Did you receive any information from them? A No, they did not know.

Mr. English: I object to that.

By the Court.

Q They said they did not know?

Mr. Lum: Yes.

Paul K. Owen, direct.

By Mr. Lum.

Q Did you find what it was supplemental to? A Eventually, I did.

Q What do you mean "eventually"?

The Court: Oh, after a while.

Q How long—that is what I mean? A April 14th.

Q And how did you find out on April 14th what it was supplemental to? A I was going through the fire insurance policies where, amongst which, I found the three sheets that this is supposed to be supplemental to.

Q (Showing witness.) I show you Exhibit C. 12 for Identification—do you recognize that? A Yes, sir.

Q What is that? A That is the original from which this appears to be typed.

Q What do you mean by this? A C. 14.

Q It is the original from which C. 14 seems to be typed? A Yes.

Q And did you make inquiries about it? A I did.

Q That is about C. 12? A Yes.

Q From whom? A From Mr. Toothe and Mr. Aubin.

Q What did you learn?

Mr. English: I object. I don't think counsel can ask this witness concerning some statement they might make which is binding on us.

Q Were they able to give you any light as to it?

Mr. English: I object—

Paul K. Owen, direct.

By Mr. English.

Q Yes or no? A No.

By Mr. Lum.

Q Do you know the handwriting on this? A I believe it is Mr. Toothe's.

By Mr. English.

Q Referring to C. 12? A C. 12.

The Court: In the supplemental?
Mr. Lum: No.
The Court: The original.
The Witness: That was the original.

By Mr. Lum.

Q (Showing witness.) This yellow sheet, what does that show as to book value—referring to C. 12. Is there any item in Mr. Dozier's handwriting of book value? A "Book value per share of 900 shares common stock outstanding, December 31, 1923, $58.17."

Q Did he have any item there about good will in his handwriting? A That follows here: "Good will value as per detailed statement dated December 31, 1923, $52,354.61." Then he has got here: "Book value per share of 900 shares of common stock outstanding December 31, 1923, $58.17."

Q And did these figures of Mr. Dozier referred to anticipate a profit in the next year? A They estimated profits on construction work in progress.

Q And how much were the figures he put in for that? A In 1922, $40,000, of which I believe

Paul K. Owen, direct.

$17,500 was still in progress at the end of the year 1923, besides that at the end of 1923 he put in estimated profits and losses $116,-779.

By the Court.

Q That means estimated profits, doesn't it, when you say estimated profits and losses? A 116,779.

Q An estimated profit? A Estimated profit on construction work in progress.

By Mr. Lum.

Q And were you able later to check that up in very different figures as to what actually was the profit? A I was.

Q And what did the actual result show? A $57,061.82.

By Mr. English.

Q As based on what figure? A As based on $134,279.

Q You haven't given us that before? A I gave you before $116,779. Well, now, add to that, $17,500.

By Mr. Lum.

Q Will you tell us whether or not the withdrawal on January 14th of fifty or sixty odd thousand dollars from this company could impair its capital? A It did.

Q I show you cash book, page 372—you have it there, of course—referring to that red ink entry did you cause that to be made? A It is in the journal, not in the cash-book.

Paul K. Owen, direct.

Q I beg your pardon. You have it there? A I think so.

Q Will you explain to us why that entry was made—just what the significance and meaning of it is?

(At this point recess is taken until two o'clock in the afternoon.)

AFTER RECESS.

PAUL K. OWEN, resumes the stand.

Q (Repeated by stenographer.) Will you explain to us why that entry was made—just what the significance and meaning of it is?

By the Court.

Q Made by your direction, wasn't it? A My advice about it was asked—

Q It was made by your direction? A It was made by my advice.

By Mr. Lum.

Q Go ahead. A In January, 1924, when I was asked to make an examination as of December 31, 1923, and incidentally, this entry was shown me in January, 1924, which was beyond the scope of my engagement at that time. At that time the entry had not been transcribed from this sheet into the general ledger of the concern.

By the Court.

Q Which sheet do you mean? A From the journal sheet.

Paul K. Owen, cross.

Q From the journal into— A Journal sheet had not been posted to the ledger and I was— my advice was asked as to how to eliminate it, and I examined the entry and was shown the minutes of January 15, 1924, which appeared to me sufficient to void it, and there is no such thing as a red ink entry. There is a notation here as to why the figures on the original entry were crossed through, and that's all.

Q That is the one that has been read in the record—that is in red ink, is it not? A Here is the original—

Q That is in red ink, isn't it? A In explanation of what—

Q Will you answer my question—that is in red ink, isn't it? A What is in red ink?

Q The notation that you are referring to? A Yes, sir, the notation is in red ink.

Q Go on? A There is no such thing as a voiding entry that was made at this time.

Q Nobody has asked you that? A The red ink notation as to why the original entry was crossed through.

By Mr. Lum.

Q Did Mr. Hedden have anything to do with directing that entry in any way? A No, sir.

Q And at what time was that entry made? A The red ink notation was made some time during January, 1924, I believe.

Q And after you started to work? A After I started to work.

Cross examination by Mr. English.

Q Mr. Hedden saw that red ink entry then, didn't he, after it was made? A Not to my knowledge.

Paul K. Owen, cross.

By the Court.

Q Whom did you advise to make the entry? Whom did you advise as to the making of the entry? A Mr. Aubin.

Q Not Mr. Hedden? A No.

Q Didn't consult him? A No. I confined myself almost exclusively to Mr. Toothe and Mr. Aubin. I found Mr. Hedden referred all matters to him, and I was engaged originally by Mr. Toothe in Mr. Aubin's presence.

By Mr. English.

Q You did talk to Mr. Hedden about the matter, didn't you, before you began the examination of the books? A I believe so, yes.

Q Well, there is no doubt about it, is there? A No.

Q How long have you been a certified public accountant? A Five years.

Q Where is your place of business? A Chamber of Commerce Building, Newark, and 2 Rector street.

Q Do you operate under your own name or under a firm name? A Under my own name.

Q What is the name you do business under? A Paul K. Owen.

Q And where were you certified? A Certified in the State of New Jersey and in the State of New York.

Q Did you ever work for Mr. Hedden before? A No, sir.

Q Now, do you know how he came to call you in? A They had heard of me and read of me and wanted somebody to devote—wanted a C. P. A. to devote his personal attention to it, and they had known that I had gone out for myself shortly before that.

Q Your instructions then were to audit the books for the years 1922 and '23, is that it? A Yes, sir.

Q Principally with respect to fixing the book value? A Yes, sir.

Q Didn't find any shortage in the books or anything like that? A No, sir.

Q And you devoted yourself to fixing a true—making a statement which would fix a book value on the stock, is that it? A I prepared a balance sheet which—

Q (Question repeated by stenographer.) And you devoted yourself to fixing a true—making a statement which would fix a book value on the stock, is that it? A Yes.

Q Were you informed that the book value had been stated in an audit prepared under Mr. Dozier's directions, were you not? A There was no audit.

Q You learned that there had been submitted to the board of directors at the meeting of January 15 a financial statement, didn't you? A No, sir.

Q You didn't know that? A No, sir.

Q Weren't you told that? A I don't remember being told that.

Q Did you examine the minutes of the meeting of January 15, 1924? A I did.

Q That is where you got the information which was the basis of your red ink notation in the journal, wasn't it? A Yes, sir.

Q Did you notice when you examined the minutes that the board accepted a financial statement subject to audit? A Yes, sir.

Q Now, you knew then, that there had been a financial statement prepared? A According to the minutes and according to this Exhibit 14, I believe.

Paul K. Owen, cross.

Q And you knew that that financial statement fixed a book value on the stock, didn't you?

By the Court.

Q It showed the book value of the stock? A It showed the net worth.

By Mr. English.

Q Don't you know that that statement showed the book value of the stock if you wanted to look at it and figure it out from that? A Yes.

Q And you learned of that before you began your examination of the books, didn't you? A I believe so.

Q That is, you learned it from Mr. Hedden, conferences with him and Mr. Toothe and Mr.— A And Mr. Toothe and Mr. Aubin.

Q And Mr. Hedden? A Possibly.

Q And you started out to reduce the book value of that stock, didn't you? A No, sir.

Q You were in court this morning? A Yes, sir.

Q Do you remember that I showed Mr. Aubin the profit and loss statement preceding page 372? A Yes.

Q Did I show him the profit and loss statement following page 372? A You showed him the closing analysis of this—

Q There were two sets of profit and loss statements in this book? A Two sets of analysis sets.

Q One preceding page 372 and the other following? A Yes, sir.

Q And the one that follows is the one that you prepared? A Yes.

Q And that shows a very much less book value than the one which precedes page 372? A Yes.

Q And did you hear Mr. Aubin say that the object of the second statement was to boil down the value of the stock? A I don't recall that.

Q You don't recall that—well, that was the object of it, wasn't it? A No, sir.

Q Well, that was the object of it if you succeeded in what you did in putting quite a different value on the stock than the Dozier statement showed, didn't you? A Yes, sir.

Q And what elements did you take into consideration in reaching your conclusion? A I took into consideration the assets at cost and the liabilities.

Q Now, when was your audit completed? A June 9, 1924.

Q And turned over to— A As of December 31, 1923.

Q Beg pardon? A As of December 31, 1923.

Q And turned over to the officers of the company? A Yes, sir.

Q And from June 9th on, they had the full benefit of your conclusions? A I believe so.

Q Now, you say that they had operated at a loss? A Yes.

Q That's what it showed, did it? A Yes.

Q Have you ever happened to see the papers in a case pending in the New Jersey Supreme Court in the suit of Charles R. Hedden Company against Dozier and others, which is marked in this case Exhibit D. 6? A I believe I heard of it.

Q And did you hear that it was begun by summons filed July 21, 1924, some five weeks or more after your report was in? A No.

Q Didn't hear that? A No.

Q (Showing witness.) Well, I will show you this Exhibit D. 6 for identification, and call your attention to the fifth paragraph—see that I

read it correctly: "That on or about the 1st of December, 1923, while said corporation was still in existence, and carrying on its business with great profit, the defendants Walter J. Dozier, Harold F. Fisher, Harold Williams and Fisher Williams Corporation, through its agent and servant wilfully, maliciously and unlawfully combined, conspired and confederated together and entered into an unlawful conspiracy to prevent the plaintiff from carrying on its business with profit, to destroy its credit, good will and reputation, to deprive it of its working capital, to entice away from it and secure the services of its various trusted employees who had been in the services of said company during the years of its prosperity and by divers means discredit said company with the intention of putting said company out of existence or making it impossible for said company to operate along its legitimate line of business with any profit to itself or to its stockholders."

Were you consulted about this case?

Mr. Lum: I object.

A Which case?

Q The case I am referring to, namely, the lawsuit. Were you consulted about that? A I don't know.

By the Court.

Q Don't you know whether they talked to you about it? A Yes, they spoke to me about it.

By Mr. English.

Q Did you ever go to Mr. Lum's office for a conference in the matter? A I have been at Mr. Lum's office.

Paul K. Owen, cross.

Q Didn't he advise the bringing of the lawsuit against Dozier and others?

Mr. Lum: Just a minute. I think the witness is confused. I think that it should be made clear that this is not—

The Court: Cross examination—make your objection; I overrule it.

Mr. Lum: I just wanted to prevent confusion, sir. I am inclined to think that there is some little confusion—

Q Mr. Owen, the case I am talking about is the case in conspiracy brought by Hedden Company against Dozier and others.

By the Court.

Q Did you know of that suit at the time or before it was brought? A I knew of some suit, yes, sir.

By Mr. English.

Q It was discussed last summer? A I don't know the time it was discussed.

Q Was it before or after you had finished your audit? A It was after that.

Q Your audit was finished on June 9th? A Yes.

Q And you were engaged in a conference with the officers of Hedden Company and Mr. Lum after that? A No.

Q You just said you were? A I was at one conference with Mr. Fairlie.

Q Mr. Fairlie—Mr. Lum's partner? A Yes.

Q After your audit was completed? A That's right.

Q And that conference was to bring a suit against Dozier and others? A Yes, sir.

Q And the suit was a suit to be brought in the Supreme Court of New Jersey? A I don't know.

Q It was a suit to recover money under the theory of a conspiracy, wasn't it? A Yes.

Q You remember that—then, do you remember that the amount claimed in that suit was $150,000? A No, I don't.

Q You gave Mr. Fairlie some information which he could use in preparing the papers in that suit, I take it? A He had my report.

Q Yes, he had your report. Now, do you remember that it stated in the papers in that suit, that on or about the 1st day of December, 1923, while the corporation was still in existence and carrying on its business with geat profit, the defendants, Dozier and others did certain things—do you remember that statement? A No.

Q Did you see it in the complaint? A Never saw complaint.

Q But you see it is in the complaint now? A Yes.

Q That they were then, in 1923, carrying on their business with great profit? A Yes.

Q You say your report shows that they didn't carry the business on with profit, is that right? A Yes.

Q Now, you told us that you cut out estimated profits of over $100,000? A Yes.

Q And you also cut out good will? A Yes.

Q What else did you cut out?

The Court: Cut out?

Mr. English: Cut out of the Dozier report.

Q You cut it out of the Dozier report, is that right? What are you referring to—I have asked you a question. A To my report.

Q I am not asking you about your report. I am asking you about the Dozier report. A I am finding out. I cut out profits by increasing expenses by approximately $2,800, and by decreasing income, which including the estimated profits, by about $128,000, and I have increased his report by increasing income $34,500 and decreasing expenses by a little over twenty—a little less than twenty thousand two hundred.

Q Now, you cut out of the Dozier statement all of the profit there which had been accrued or was anticipated in connection with any contracts which were not completed, didn't you? A Yes, sir.

Q No matter how long they had been running? A That is right.

Q Do you know the method by which the figures set-up in the Dozier statement were arrived at? A No, sir.

Q Well, to take a given contract, you had stated in it the price, didn't you, the contract price? A Yes, sir.

Q And you also could ascertain from the papers what the extras would be, couldn't you? A Yes, sir.

Q So then you had a fixed figure made up of contract price and extras and you could start with that? A Yes, sir.

Q Then you got up to December 31, 1923, and you had the actual cost paid on that contract, didn't you? A I arrived at it.

Q That was ascertainable from the books, wasn't it? A No, sir.

Q It could be, couldn't it? A Yes, it was.

Paul K. Owen, cross.

Q It would show it on the books—the books showed if they spent any money on a given contract? A The books were supposed to show it.

Q Didn't they? A No, sir.

Q Didn't show an entry of that? A They showed the most of it.

By the Court.

Q The vouchers showed it? A May I explain?

Q The vouchers or entries had not been made in the book? A Duplicates of 1923 were not made to 1924.

By Mr. English.

Q There was data in the office, either vouchers or entries from which you could arrive at the actual money expended on a given contract up to December 31, 1923? A Yes.

Q Then you could take the estimated cost to complete that contract after December 31, 1923? A No, sir.

Q You say you couldn't? A Yes.

Q But an expert engineer or estimater or appraiser, who was skilled in that matter, could, couldn't he? A Mr. Hedden told me he couldn't.

Q You heard what I said. I asked you if an expert engineer or estimater—

The Court: How does this man know?

Q The Dozier report was based first on the contract, or taking the contract price, plus the extras, wasn't it? A There was nothing in the Dozier report about the contract price, plus the extras.

Q Well, the Dozier report included in the value of the good will and a certain proportion of the value of the contract which had been performed, which represented work which had been performed up to December 31st, didn't it? A Actual labor.

Q The Dozier report included in the book value of the stock a certain proportion of the value of the contracts which had been begun and were partly performed in 1923? A Yes, sir.

Q Do you know how that proportion was arrived at? A No.

Q You could not analyze that from the report? A No.

Q You threw out all of that work which had been performed in a given contract up to December 31, before the contract was completed, entirely completed? A In my report—it is in the figures I gave you this morning in—

Q Wait a minute. You gave us two sets of figures this morning. You gave us a figure of $14.00 a share book value? A That is according to my report without any profits.

Q In arriving at that figure of $14.00 a share, you throw out all of the profit which the company had earned on any given contract up to December 31st, where the contract had not been completed, isn't that true? A Yes, sir.

Q Now, you gave us another set of figures, $38.25 per share? A Yes, sir.

Q In that second figure, did you take into consideration the profit? A Yes, sir.

Q And you qualified that by finding out what the exact ultimate cost of the performance of the contract was, didn't you, and so, estimating from that, the profit on the entire contract, is that true? A I took the proportion of the cost in-

curred in 1923 to the total cost and took that proportion of the actual profit of it.

Q Now, the extent of the cost, of the total cost, as between 1923, and after December 31, 1923, would largely depend on the character of the management of the job after December 31, 1923, wouldn't it? A Not necessarily.

Q Not necessarily, but it might, mightn't it? A It might.

Q In other words, if, after December 31, 1923, they had had bad management on that job and ran up on the running expenses, it would cut into the profit, wouldn't it? A Yes.

Q And it would cut into the profit which you estimated for so much of the job as had been performed up to December 31, 1923? A Yes, sir.

Q You don't know whether the management was good or bad at that time, do you? A No.

By the Court.

Q Well, your estimate was based on performance— A My estimate was based on actual figures.

Q After the contract had been completed? A After the contract was completed.

Q So it had no element of speculation in it at all? A No.

By Mr. English.

Q So that your figures were taken on the total cost of the entire job, some of that cost having been incurred in 1923 and some of it in 1924. If, as a matter of fact, the management for 1923 was a wasteful management, resulting in loss of profits, it would be reflected on the

total profit on the entire job, wouldn't it? A Yes, sir.

Q And you cut into a profit which had been earned on a job up to December 31, 1923? A Yes.

Q Now, don't you, as an accountant, know that the value of estimated profits in a construction job depends to a large extent on the engineering or appraising ability of the estimater? A Yes.

Q And that is a matter about which different engineers and estimaters might differ, isn't it? A Yes.

Q And the total value of the whole job would depend on the character of the management with respect to wasteful expenditures, wouldn't it? A Yes.

Q And if you had a fixed contract for a fixed price, whether or not you made money or lost money on it would depend on how the job was managed with respect to keeping down expenses? A Yes.

Q You cannot say whether this was well managed or not after December 31st? A No.

Q Now, you threw out the good will entirely? A I threw out $1 that I found on the books.

Q So that you didn't even give it a dollar valuation? A I was asked not to give it a valuation.

Q Who asked you? A Mr. Toothe and Mr. Aubin.

Q Asked you to give it no value in estimating the book value of the stock, is that right? A Yes.

Q Did they ask you to throw out any statement of profit which had been earned up to

December 31st on any given contract? A They asked me to.

Q So you were first to throw out the good will? A Throw out the $1 of good will.

Q And give no value for the good will? A No.

Q Your instructions were first to put no value on the good will as bearing on the book value? A My instructions were to eliminate the $1.

Q When you eliminated the $1 you gave no value to the good will? A By doing that.

Q Your second set of instructions were to throw out of the statement as bearing on the value of the stock any question of proportionate profit based on the amount of work done or profit received on a contract not finished by December 31, 1923? A Originally, yes.

Q And that is what you did? A In my report, yes.

Q Now, from an audit of the Dozier statement which you say you had, did you see how the good will was figured up to arrive at the value which was put on it? A Not until I found out.

Q Well, of course you didn't do it before you found out? A Not until April, 1924.

Q I don't care when it was—you did find out? A I did.

Q Found out how it was figured up? A I did.

Q You found out that they took the earnings for a five-year period, didn't you? A They took figures for a five-year period.

Q The average income for a five-year period? A Not according to the books.

Q I am not asking you according to the books. I am asking you according to the Dozier statement. Didn't that statement, in figuring the

good will, take the income covering a period of five years? Look at it, and see if you cannot answer the question, and tell us what paper you are referring to—that is not the Dozier statement—I said refer to the Dozier statement that you testified to on your direct examination. I show you C. 12 for identification—does that show you how the good will was arrived at in that statement? A It does.

Q Now, I ask you, since looking over the statement, didn't that C. 12, in making up the value of the good will start off with the income of the company for the five years previous beginning 1919, '20, '21, '22 and '23? A It had figures how much each year equals, net income for each of those years.

Q You don't agree as to whether it was a correct statement of net income? A Yes, sir.

Q And that was what the books showed, wasn't it? A No, sir.

Q It showed a series of figures for the years, taking the average net income for that five year period? A Yes, sir.

Q Then it included in it the amount of capital and surplus employed during that same period? A That's what it said.

Q That's what it said—I am trying to find out how it was arrived at? A And it struck the average capital stock for the five-year period.

Q Then it deducted six per cent. on the average capital stock employed during that five-year period? A Yes.

Q And then it made a statement of average cost profits, that's right? A It shows it here.

Q And then it stated the value of the good will for a three and a half period, is that right? A It says so.

Q You examined the books for the years 1922 and '23, I understand? A Yes, sir.

Q Didn't go back of that? A No, sir.

Q How are you able to say that the statement of income for the years 1919, '20, '21, is not accurate? A I looked at the income reports and surplus, and profit and loss account.

Q Then you did examine books before that? A I don't call that an examination of the books—not similar to what I did in 1923.

Q Oh, you didn't make an accurate examination in order to tell that? You just made a crazy statement? A I was trying to find out the net income.

Q And you didn't take the books and examine the books? A No, that was done by someone else before me.

Q I don't care what someone else did. Do you know what average income this company paid; what average dividends this company paid for that income. During those five years the company paid forty per cent. A I believe it is forty per cent.

Q Forty per cent. for five years—that is an average of eight per cent., isn't it? A Yes.

Q It had to pay that on a capital of $90,000, didn't it? A Evidently, yes.

Q And it paid out salaries in addition to those dividends, didn't it? A Yes, sir.

Q Do you know what the salaries were? A For 1923?

Q Yes. Mr. Hedden got $18,000, didn't he? A His account has been credited with an amount to make it $18,000.

Q All right, if his account was credited with it, he got it and— A No, a considerable part of it is still owing to him on the books.

Q And Dozier got $12,000? A Yes, sir.

Paul K. Owen, cross.

Q And Fisher seven? A Yes, sir.

Q And Toothe $3,500? A Yes.

Q Do you know what salaries were paid in 1922? Same figures, weren't they, except that Toothe got $2,700 instead of $3,500? A Yes, sir.

Q So when you check over the income tax return and those other things in '20, '21 and '19, you didn't ascertain what the salaries were? A I did make a sheet showing the salaries for each year.

Q Well, you know then that they were about the same, don't you? Did you look back to the days when Mr. Doe and Mr. Wathey were in the company? A Only as far as the capital stock is concerned.

Q Did you find out what salary Mr. Doe got back in 1920? A Yes, sir.

Q $14,000, wasn't it? A No, I only went back to 1921.

Q Well, Doe in '21 got $12,000? A Doe got $12,000.

Q And Dozier twelve? A Dozier twelve.

Q And Hedden eighteen? A Hedden eighteen.

Q Wathey six? A Wathey six.

Q On top of that the company was paying eight per cent. dividends, wasn't it? A Yes.

By the Court.

Q Paying that out of the profits? A I didn't find out.

By Mr. English.

Q Did you know that in addition to the salary, Mr. Hedden was getting commission on

certain work? Did you find that out? A I think I did, casually.

Q On the Lakehurst job? A I think so—I am not sure.

Q And on the Lehn and Fink job? A I don't know.

Q Now, this Exhibit C. 14, it says on the outside: "Supplemental to the Sixth Annual Report," and there is no supplemental report in there, is there? A No, sir.

Q Did you pull it out? A No, sir.

Q You see the thing has been taken apart and put together again— A I handled it so much it came apart during my handling.

Q When you had it originally, did it have the supplemental report? A No.

Q Was the supplemental report separate? A That is the supplemental report.

Q I know it is the supplemental—it is the amended report? A I so found.

Q That this was the amended financial report? A Yes.

Q And you put on the front of it— A That's the way it was handed to me.

Q You said it fell apart? A It fell apart. I handled it so much. I found it in April, 1924, and when I had looked it over I put this notation on the sheets I found April 1924: "Discovered—

Q I don't care what the notation is. You found it in April, 1924? A Yes.

Q That is the supplemental? A I think so.

Q And it relates to the good will primarily? Good will value? A Good will value, yes, which went into the total. $237.16.

Q Per share for the stock? A Yes, sir.

Q Now, do you know or did you learn from your examination that back in 1922 Mr. Hedden

paid $150 a share for the stock he bought from Messrs. Doe and Wathey? A It is—

Q Did you learn that from your examination of the books? A The books don't show that.

Q I didn't ask you whether the books showed it. I asked you whether you learned it. Did you find out from the examination of the books? What did you say? You say the books didn't show it? A The books didn't show it.

Q Did you find it out otherwise? A Yes, sir.

Q You learned that to be the fact that he had paid that? A Yes, sir.

By the Court.

Q Did you know of it at the time that you made this examination? A I adduced it, but there is nothing in the books relative to a personal purchase and sale of stock on the outside.

By Mr. English.

Q Well, did anybody tell you that?

The Court: At the time?

A Yes, sir.

Q At the time you made your examination? A During the course of my examination.

Q Who told you that? A Mr. Hedden, I believe.

Q Now, when you made up your statement you didn't confine yourself to the books, did you? You said that you included other records and other evidence? A Yes, sir.

Q What other evidence did you include? A Bills, checks, bank deposits.

Paul K. Owen, cross.

By the Court.

Q Things that had not been posted? A Things that had not been entered in 1923 that should have been entered.

By Mr. English.

Q Did you take into consideration what people told you in the office? A Only after I verified it, or my report is qualified.

Q Right there you did not confine yourself to the facts, did you? A No.

Q You were influenced by things told you in the office? A Yes, sir.

Q And that all goes into the valuation you put on this stock as shown in your report? A Yes, sir.

By the Court.

Q Do you understand what counsel is asking you? A I think so.

Q Were you persuaded by anything that was told you outside of the records in making up your estimate of the value? A I was told to put no profit on uncompleted work; I was told to eliminate a dollar of good will, and I was guided by their instructions.

By Mr. English.

Q If there had been included in the profits of the year 1923, a proportionate amount of profit on uncompleted contracts up to December 31st, that would have raised the book value of the stock on your statement, wouldn't it? A Yes, sir.

Paul K. Owen, cross.

By Mr. Lum.

Q What was the indebtedness of the company on December 31, 1923? A Total liability $389,104.68.

Q That is notes and merchandise indebtedness? A Yes, sir.

Q And do you remember when you were first in the office of Lum, Tamblyn and Colyer, what month, and what date? A I do not, but I can look it up, I suppose.

Q Was it in the summer, or the fall, or more recently yet? A I don't recollect.

By Mr. English.

Q There was a deficit that year? A Yes, sir.

Q You figured out a deficit? A Yes, sir.

Q By leaving out the profits on the unfinished contracts? A Yes, sir.

Q And by leaving out any value on good will? A That didn't affect it.

Q Leaving out the profit on unfinished contracts did affect it? A Yes, but—

By the Court.

Q But what? A But including the proportion of profit, I actually subsequently determined there would still be a deficit for that year.

By Mr. English.

Q Had all the contracts been finished by June, when you finished your report? A No, sir.

Q Then you don't know whether there was or not? A I know now.

Paul K. Owen, cross.

Q You are speaking about your report? A My report doesn't show it.

By the Court.

Q How did you arrive at the value of the stock, thirty-eight dollars plus, based on the entire profit? A I know those contracts were completed in 1924—that is a year after the statement in dispute.

Q In 1924? A I am making an examination of the books now for 1924, but my examination hasn't gone very far.

Q Not completed? A No.

By Mr. English.

Q In stating your conclusions for the year 1923, you deduct the $65,000 which was paid to him on that check? A That don't enter into it because it only happened in 1924.

Q I want to know whether your statement is based on there being in the treasury the $65,000 or that $65,000 being out? A It is out. That didn't exist in 1923 as a deduction.

By the Court.

Q Where are the figures upon which you base the value of $38, plus?

By Mr. Lum.

Q Will you show me the statement upon which you base your estimate of $38, plus? A (Witness hands paper to counsel.) That shows the actual profit, the estimated profit—

Q That gives you $38? A Well, $38—

The Court: Is counsel through with the witness?

Paul K. Owen, cross.

Mr. Lum: Except for offering the sheets upon which he bases his calculations.

A (Continuing.) This shows the proportion of profits to December 31, 1923, is $21,877—

By the Court.

Q Not asking you for proportion. You said that you figured the profits of the completed contracts. Now, where is your record of that? A Total profit and loss upon completion report here.

Mr. Lum: I ask that that be marked in evidence.

(Paper marked Exhibit C. 14.)

By Mr. English.

Q Now, is this the paper from which you arrived at $14 a share? A No, sir.

Q Is it the paper from which you arrived at $38 a share? A Yes.

Q When did you make this paper up? A Very recently.

Q Very recently? A Yes.

Q Then it has no place in your report at all? A No, sir.

Q Now, did you charge in the liability of the Hedden Company on the different sub-contracts? A Yes, sir.

Q Did you charge into the liability of the Hedden Company its liabilities on the sub-contracts? A I charged in the liability of the Hedden Company to the sub-contractors.

Q That is on the theory that the sub-contractors might fail and the Hedden Company

would stand behind them? A What the Hedden Company actually paid the sub-contractors.

Q Suppose they were paid for the job by the owner—

The Court: Then it would be taken out of the Hedden Company, wouldn't it? There is no use in examining the witness on things that we know.

Q Suppose there was a $100,000 contract which the Hedden Company had? A Yes, sir.

Q Suppose they sub-contracted the work on $50,000 of that contract? A Yes.

Q Did you charge the Hedden Company in your statement with a liability of $100,000 or $150,000? A No, I charged them with the fifty thousand, plus whatever they expended themselves for things that were not left to sub-contractors.

Q What was the first fifty you charged them with? A The first fifty is what the sub-contractors sent in bills for.

By the Court.

Q For what the sub-contractors were to get? A Yes.

Q And the work that Hedden Company was to do you charged them with what disbursement? A The total cost, including the cost that Hedden Company had to pay to their own labor and material men, and besides what they had to pay to sub-contractors.

Q In other words, there was no profit to Hedden & Company out of that fifty thousand? A No, the fifty thousand is what—

Q Fifty thousand is actual out-go that they had to pay out of their net profit to them out of

it, if their contract price was $100,000? A Yes.

By Mr. English.

Q If the job wasn't completed by December 31st, did you charge up the actual work the sub-contractor didn't do? Did you charge up the whole liability of the Hedden Company on the sub-contract? A Only that for which bills had been rendered by the sub-contractor, which amounts in the total to just for the work done.

By the Court.

Q You didn't charge that—you credited it? A I charged it against the cost of the job and credited the sub-contractor as doing it.

By Mr. English.

Q As of what date did you do that? A December 31st.

Q Is that set up in this paper, C. 14? A No, sir.

Q Well, you say this C. 14 is the entry that shows the full— A That doesn't show the total costs. The total costs are in here, and the subs are in there.

Mr. Lum: The paper just referred to by the witness as "in here" is offered as C. 15. "In there" is C. 14.

(Paper marked Exhibit C. 15.)

Q When did you get up this paper, C. 15? A Just lately.

Q That hasn't anything to do with your report, has it? A No, sir. You have asked me about the sub-contracts—

Paul K. Owen, cross.

Q No, you misunderstood me. I asked you about C. 15, and that, you told me, has nothing to do with your report? A Correct. C. 15 shows total cost, cost to December 31, 1923; percentage of the cost of 1923, and the total cost; total profit and loss, and profit and loss to December 31, 1923.

By the Court.

Q All estimates? A All actual.

By Mr. English.

Q That you made up lately, you say? A Lately.

By the Court.

Q The division was an appraisement? A The division is based on the percentage of cost of the actual net profit and loss of each job. C. 14 shows that same percentage, which is simply a repetition of what you have there—shows the total profit and loss upon completion—repetition of what you have there—the proportion of profit and loss to December 31, 1923, which you have there, and then it shows the estimated profit or loss as shown on the books.

By Mr. English.

Q You have been referring to C. 14 and C. 15, haven't you? A Yes.

Q You had a third paper in your hand a minute ago—what is that? A This shows the gross income, net profit or loss actually, and the total cost set apart in the Charles R. Hedden Construction Company's accounts and the sub-contract construction accounts.

Q And that was made up recently, too? A Yes, sir.

The Court: Well, do you want to put that in, Mr. Lum?

(Paper marked Exhibit C. 16.)

Q C. 14, C. 15 and C. 16 were all made up lately? A Yes, sir.

Q Have no place in your report at all? A No, sir.

Q And you got the information from Mr. Toothe or somebody else? A Yes.

Q C. 14, 15 and 16? A I got it from the books and my papers.

Q When did you do this? A Lately.

Q Within a few weeks? A Yes, sir.

Q Getting ready for this trial? A Yes, sir.

Q And the amount of ultimate profit as between December 31, 1923, and after that date, depends to a large extent on the business management of those jobs to December 31, 1923?

The Court: I will give you the answer—yes.

Q Who asked you to make up these three sheets, C. 14, C. 15 and 16? A Mr. Lum and Mr. Toothe.

The Court: Counsel offers in evidence the exhibits marked for identification.

Mr. Lum: And any being referred to again, I will get at any time on Mr. English's request.

The Court: You can only offer in evidence papers that are marked for identification.

Mr. Lum: Yes, but there has been a great many referred to which I am not putting in evidence now, because we are not here on an accounting.

The Court: I will permit you, Mr. Lum, after reading the record, to make an additional offer.

Mr. Lum: For instance, Mr. Owen's report I didn't put in evidence.

I offer the report.

(Report marked Exhibit C. 17.)

As your Honor suggests, I can offer in evidence exhibits marked for identification?

The Court: Yes.

Mr. Lum: I offer in evidence the followings exhibits marked for identification.

The Court: All the exhibits that have been heretofore marked for identification.

COMPLAINANT RESTS.

DEFENDANT'S CASE.

WALTER J. DOZIER, the defendant, sworn as a witness on his own behalf, testifies as follows:

Direct examination by Mr. English.

Q Mr. Dozier, just give us briefly your business career—what has been your business experience A Accountant, confidential man, secretary.

Q And before you went with Mr. Hedden, with what individuals or concerns were you em-

ployed? A I was private confidential secretary to Mr. William R. N. Martin, of Greenwich, Connecticut, five years before going with Mr. Hedden.

Q Anybody else? A Before I went with Mr. Martin I was with the Old Dominion Steamship Company.

Q And what was Mr. Martin's business? A Mr. Martin was a capitalist, owner of Rogers Peet & Company and the Hotel Martinique and a real estate operator.

Q You are apparently very deaf and use an instrument to your ear? A Yes, sir.

Q How long have you been so afflicted? A Eighteen or nineteen years.

Q As seriously as you now appear? A No.

Q How long have you been in the present condition? A About 1918.

Q How old are you, Mr. Dozier? A I am fifty-five.

Q Do you remember when you first went with Mr. Hedden? A Yes, in the spring of 1911.

Q And what was his business association at that time? A Mr. Hedden was president of the Hedden Construction Company.

Q And how long did that last? A You mean our association?

Q No, the Hedden Construction Company—how long did that last? A The Hedden Construction Company went out of business in 1917 or '18, and then we continued with Mr. Hedden—continued with Mr. Hedden in the formation of another company.

Q And what was that company? A Charles R. Hedden Company.

Q And the parties of which that company was formed were Mr. Hedden, yourself, Messrs. Doe and Wathey? A Yes, sir.

Q You were secretary and treasurer? A Yes. At the beginning merely the treasurer.

Q And you afterwards became vice-president and treasurer? A Yes, sir.

Q Now, it appears that Mr. Doe and Mr. Wathey went out in the latter part of 1921? A Yes, sir, or the first part of 1922.

Q What caused that, do you know? A Mr. Doe retired from the company on account of Mr. Hedden's management of the concern.

Q And you and Mr. Hedden bought his stock? A We did.

Q What negotiations led up to that, do you know, as between yourself and Doe and Wathey? A Well, Mr. Doe wanted to retire and he offered his stock at first $175 a share, and we finally agreed and compromised on $150, and Mr. Hedden came up to my house and we agreed to the purchase of Mr. Doe's stock at my house.

Q At? A $150 a share.

Q And it was divided between you and Mr. Hedden? A Divided between—he took one-half and I took one-half.

Q How did you arrive at $150— A Verbally.

Q How did you and Mr. Hedden arrive at the figure $150 to buy this man out? A Verbally.

Q What do you mean by that? A Mr. Doe said he would be contented to receive $150 a share for his stock on the evident value of the stock at that time.

Q How did he arrive originally at the figure of $175? A That was Mr. Doe's figure.

Q Based on what? A I don't know.

Q How did you arrive at a fair value in your own mind? A From the good will and the value at the time of the stock.

Q Did you make a statement—go over the books of the company? A No, only done it verbally.

Q You were familiar with the assets and liabilities and the business of the company? A Yes.

Q And its earning capacity? A Yes.

Q Take all that into consideration? A At that time, yes.

Q Were you familiar with the book values of the stock at that time? A I was.

Q Was Mr. Hedden? A Mr. Hedden was, too.

Q How did he get the information? A From our statements and general conversation—general talk and the value of the security at that time.

Q You made a statement every year, didn't you? A We did.

Q Was this purchase made after the statement for the year 1921 had been made out? A No, made before.

Q The statement had been made before that? A Made after.

Q Do you remember when Mr. Fisher came into the company? A Yes, in 1922.

Q Do you remember that a formal contract was drawn up between—

The Court: Whose stock did he buy?

Q Whose stock did Mr. Fisher buy? A By consent of the company we increased the organization's stock.

Q The Doe and Wathey stock you individuals took that in the company and Mr. Fisher took the new stock—the company had issued new stock? A Yes, sir.

Q And Mr. Fisher bought some of it? A Yes.

Q How much did he pay for that new stock? A 150 shares.

Q Do you know how much he paid a share? A He paid—Mr. Hedden and Mr. Fisher agreed on the purchase of I think 150 shares at $150 a share for the stock. He paid around $127—

Q That's what he paid the company? A No, he didn't pay that. He paid par.

Q What's the idea of $127? A The $127 was a preliminary payment on his stock and Mr. Fisher gave Mr. Hedden his note and me a note.

Q So that you were protecting your right to buy additional stock? A Yes.

Q Do you remember about the time that Mr. Fisher came in that some negotiations began about the purchase of the stock in case of the death of any of you? A Yes.

Q (Showing witness.) I show you C. 2 for identification, now D. 2, a formal agreement dated February 23, 1922, do you remember that? A I do.

Q Did any conference precede the making and drawing up of that paper? A Several.

Q What were they—what was the general gist of them? A Mr. Hedden—at the time that Mr. Doe went out, Mr. Hedden was given the control of the company, and Mr. Hedden promised me at my house at the time that we would have some paper to protect us in case one of the partners would withdraw. This paper was drawn up shortly after that between all of

the stockholders, submitted to Mr. Hedden, and he declined to sign it.

(C. 2 for identification marked D. 2.)

Q And the persons named in the paper were Hedden, Fisher, Toothe and Dozier? A Right.

Q Now, you say that agreement was not signed by Mr. Hedden. Did any further conferences take place along that same line of the purchase of stock in case of retirement? A Yes. Those conversations were dragging down until the summer of 1922.

Q Conversations between whom? A Mr. Hedden and myself.

Q And where would they take place? A Mostly in Mr. Hedden's office.

Q In the suite of offices in this building? A Yes, in this building.

Q In the Prudential Building? A Yes, Prudential Building.

Q Now, in August, 1922, was there another agreement drawn up? A Yes, there was.

Q (Showing witness.) I show you D. 3 between yourself and Mr. Hedden? A Yes, sir.

Q And when was that drawn up with reference to August 15, 1922—before or after that date? A It was drawn up before. This agreement was presented—this agreement was presented to Mr. Hedden at a conference with him and myself a few days before the meeting of August 15, 1922.

Q And you were at the office here in the— A At the office.

Q What conversation did you have at that time along with the presentation of that paper to him? A Mr. Hedden looked it over and stated that he would have to talk it over with Mr. McCarter.

Q Do you know whether he did? A I don't know.

Q Did he sign it? A He did not.

Q That was several days before August 15th? A Before the directors' meeting, yes.

Q What was your condition of health at that time? A I was rather weakened and nervous.

Q Do you know what the cause was? A Yes, excessive work on the Lakehurst Camp, New Jersey.

Q Was there a meeting of the board of directors held on August 15, 1922? A There was.

Q Who was there? A Mr. Hedden, Mr. Fisher, myself and Mr. Toothe.

Q When had Mr. Toothe been made secretary of the company, do you remember that? A At the annual meeting in 1922.

Q In February? A In February.

Q Up to that time you had been secretary? A I had been.

Q When you were secretary did you prepare the minutes of the company—of the meetings? A I did.

Q What was your practice in that respect? A After every meeting I would dictate the minutes from a little memorandum pad.

Q When would you make up the memorandum pad? A At the meetings.

Q What would you use in the meetings? A A little yellow pad.

Q And you would dictate the minutes to Miss Jackson and Miss Jackson was a stenographer in the office? A She was.

Q Now, after Mr. Toothe became secretary, what happened with respect to the writing up of the minutes? A Mr. Toothe asked me if I would continue writing the minutes for him.

Q What did he say to you and how did he say it? A He asked me in that way. He asked me: "Will you continue writing those minutes," and I said, "I will, Jim."

Q How did he come to ask you to write the minutes? A I don't know.

Q And up to that time had he anything to do with the clerical end of the business, so to speak? A He did not.

Q What was his job? A Timekeeper and material man.

Q On the construction jobs? A Yes, on the construction jobs.

Q Had he had any particular experience, do you know, to qualify him to write up minutes—anything of that kind? A Not to my knowledge.

Q At his request you continued to write up the minutes? A Yes.

Q Did you make a memorandum on that yellow sheet that you spoke of? A I did.

Q And what was your practice with respect to writing them up after the meeting—how long would go by? A Some times the same day, some times the next day—two or three days.

Q Was it your practice to let them go for a whole year? A Never.

Q Or for several months? A Never.

Q After they were written up, what was done with them? A They were put into the book—the minute book.

Q (Showing witness.) I show you the two minute books which are in evidence here. After they were written up you say you put them into the book? A Yes, put into the book.

Q Then what was done with the book? A The book was laid on Mr. Hedden's desk for

his approval—to make any modification if he saw it was necessary.

Q Do you know what he did with it after he got it? A Sometimes he would bring the book out if I was there and ask me who did this belong to.

Q What do you mean by that? A Who did the book belong to.

Q You mean the minute book? A He used to bring it out and say: "Who does this belong to?"

Q What did he mean by that?

The Court: As to where it should be put, I suppose.

A For keeping purposes.

Q I see that the different minutes are signed by Mr. Toothe and the seal of the company. Had that always been the practice? A Yes, sir.

Q When you were secretary, did you used to do that the same way—oh, I see here are some in the early part of the book? A Yes, I did, always.

Q When the minutes were written up did you sign first as secretary and put on the seal? A No, the chairman of the meeting always signed first.

Q And was that practice continued after Mr. Toothe became secretary? A It was.

Q Was the certificate always put on—this certificate? A Yes.

Q Did that always appear? A Yes.

Q And where I see the certificate when you were secretary, it recites, "I, Walter J. Dozier," and where Toothe was secretary it recites, "I, James Toothe"? A Yes.

Q You say it was always put on Mr. Hedden's desk? A Yes, always.

Q Was that true after Toothe became secretary? A After Toothe became secretary.

Q And what official put the book on his desk—on Mr. Hedden's desk? A Who was present?

Q No, who put the book on Mr. Hedden's desk? A Miss Jackson sometimes, and some times after I read it over, I would.

Q And then how would it come back again? A Mr. Hedden would bring it out and lay it on my desk—give it to me or Miss Jackson after it was signed up, and then she would carry it out and give it to Mr. Toothe to look over and sign it.

Q Who signed it then? A Mr. Toothe.

Q You say you remember going to the meeting of August 15, 1922? A Yes.

Q These four parties were there that you have named? A They were.

Q Where was the meeting held? A The meeting was held in Mr. Hedden's office.

Q Had you been accustomed to taking a vacation every year? A Yes, pretty near.

Q How long a vacation did you customarily take? A Sometimes two weeks, sometimes three weeks.

Q In 1922, what request did you make, if any, about a vacation? A I made a request at the meeting for a full month's vacation.

Q Why? A Because I was kind of nervous and broken down from overwork at the Lakehurst Reservation Camp.

Q And what was said by the others at that request? A It was discussed at this meeting.

Q And any extended vacation arranged for? A Mr. Fisher suggested that I get a two months' vacation.

Q Why did he say that, do you know? A I don't know.

Q Was that put in the form of a resolution? A It was.

Q And adopted at the meeting? A It was.

Q I see here that there is this resolution beginning on page 157 with the words: "The treasurer reluctantly stated to the board"—and then it goes on with a motion, resolution, to grant a two months' leave of absence to the treasurer, Mr. Dozier not voting. You let your associates vote you that two months? A I did.

Q Now, there is on page 158 a further resolution, and it is the sense of the resolution referred to several times, that should the treasurer at any time withdraw, the company would buy his stock at the book value? A Yes.

Q What discussion preceded that resolution? A I stated that if my health continued bad, that I would like to withdraw from the company, and I was in no condition to continue business at that time. Mr. Fisher and Mr. Hedden discussed it, and they thought that two months' vacation would pull me around all right, which led down to that resolution. Mr. Hedden having refused to sign the agreement respecting the purchase of the stock in the event of death, I insisted that the company should give me some protection to protect my stock in the event that I wanted to retire from the company, and I talked to them about it, and we discussed it, and they agreed at that time to give me the right to have the company take my stock in the event of my retirement at the book value of the fiscal year.

Walter J. Dozier, direct.

By the Court.

Q Was this discussion at that meeting? A At that meeting, yes, sir.

By Mr. English.

Q And that resolution was the result of the discussion? A Yes, sir.

Q How long after that meeting were the minutes written up? A The following Thursday.

Q When did you leave for California? A The following Tuesday night.

Q Do you know what day of the month that was? A On the 22nd.

Q The 22nd day of August? A Of August.

Q Did you say the minutes were written up before you left? A Yes, they were.

Q Who wrote them up or typed them out? A Miss Jackson.

Q And what was done with them after they were written up? A Placed on Mr. Hedden's desk.

Q How do you know that? A Miss Jackson told me.

Q Did you see them after they came back from Mr. Hedden? A I did.

Q Were they signed or unsigned? A Signed.

Q What was done with them? A They were placed on Mr. Toothe's desk.

Q Did you see them after Mr. Toothe got through with them? A I did.

Q How were they? A Signed.

Q What about the seal? A Signed, sealed.

Q So before you left they were signed by both Hedden and Toothe? A Yes.

Q And the seal on? A Yes.

Q Sure of that? A I am positive.

Q Where was the book put then? A Into the safe cabinet.

Q (Showing witness.) I show you Exhibit D. 12, is that a picture of this safe cabinet? A That looks like it.

Q Whereabouts in that safe cabinet was that book kept? A Usually on either of these—

Q Well, put an X where the Vice-Chancellor can see it. A Usually, whenever we had no books in there, inside, the books generally laid on this third shelf.

Q The third shelf from the bottom? A The top.

Q That is the middle—and when there were books in there, where did it lay? A Wherever Miss Jackson used to put it.

Q Now, did you have a private compartment in that safe? A Yes, supposed to be.

Q This thing marked with an X? A Yes.

Q What did you keep in there? A A few private papers.

Q And where did you keep the key? A In the drawer of my desk.

Q Did you carry that key around with you? A I did not.

Q Was that compartment accessible to any of your other associates in the office? A Yes.

Q Did you have anything else in that— A Shall I say it?

Q Did you have some liquid refreshments in there? A I did.

Q Which was fine once in a while for the other fellows in the office? A Yes. I didn't keep it locked more than two weeks in the year.

Q And they could get into that compartment and get a drink any time they wanted? A All they had to do was put a little eraser in there and open the door.

Q It was not locked? A No, the majority of the time it was not locked.

Q Did you keep a duplicate file of the minutes? A I did.

Q And the other book looked just like the regular minute book except that it was not signed? A Yes.

Q Did you keep a copy in that compartment? A Yes.

Q And some bottles of whiskey, and what else did you keep in there? A A few other insurance papers.

Q And that's all there was in that mysterious drawer? A That's all there was.

Q And you say the minute book that was signed by the officers was on this shelf? A On the shelf always.

Q Now, when you went away to California in August, 1922, did you lock up the original minute book in that drawer? A I did not.

Q Where was it left? A On the shelf—one of those shelves in the safe.

Q I see that where the minutes of the meeting of August 15th are in the book it is almost the end of the book, and beginning very early in the next year you have a new book? A Yes.

Q Do you know how the new book came to be started? A Miss Jackson, the stenographer, suggested it, on account of this being full.

Q The date of the last minutes in the first book is January 16, 1923—that is correct? A Yes.

Q Now, when did you get back from California? A Around the 1st of October.

Q Of 1922? A '22.

Q There is in the minute book a minute of a meeting of the directors held on October 17, 1922,

beginning on page 161 of the minute book. Do you remember that meeting was held? A I do.

Q It recites there that the minutes of the meeting of August 15, 1922, were read? A Yes.

Q Do you remember whether, as a matter of fact, they were read? A They were read.

Q Do you remember that? A I do.

Q How do you remember it? A Because the discussion came up about bond being given in connection with the Kelly Tire and Rubber Company during my absence, and I asked that the minutes of the previous meeting be read.

Q Is there a reference in the minutes of October 17th to the Kelly Tire matter? A The discussion was in that meeting.

Q And you wanted the minutes of the previous meeting read as bearing on that? A As bearing on that.

Q And who read the minutes of August 15th at the October 17th meeting? A Mr. Toothe, the secretary.

Q It appears in the minutes that a motion was made to ratify the minutes of August 15th. Was such a motion made? A Yes, I made the motion.

Q How long after October 17th were those minutes written up? A Not more than three or four days.

Q And dictated by you? A They were.

Q To Miss Jackson? A They were.

Q And then signed in the customary way that you have described? A They were.

Q Now, how long did you continue to prepare the minutes of the meetings of the directors? A Down to the middle of the summer of 1923.

Q Now, there is in this book, this minute book, or these minute books, records of meetings held almost every month, and some mere informal

meetings where there was no quorum, and most of them were there was considerable business appeared to have been discussed. Were these meetings, in fact, held? A Absolutely.

Q Where? A In Mr. Hedden's office.

Q And were the people mentioned in the minutes present at the time? A They were.

Q And do those minutes truthfully and correctly represent who were there and what was done, and the date it was done? A They do.

Q Now, what was Mr. Hedden's custom with respect to signing the papers which were submitted to him—did he take pains to look at them, or did he give them the once over at all? A Mr. Hedden scrutinized very carefully every paper he signed.

Q How do you know? A I know that he would not sign any papers unless—

By the Court.

Q How do you know? A By his examination of it.

By Mr. English.

Q You have seen him examine them? A Yes, I have.

Q Did he ever take them home for a better examination? A He has.

Q What kind of papers did he sign in the office? A Why, he signed contracts, plans and specifications—every necessary official document.

Q What about estimates? A Minutes—corporation minutes.

Q What about checks? A Checks—everythink pertaining to official matters.

Q Do you know whether he gave any attention to these various papers which he signed? A I do not.

Q You don't understand me—do you know whether he gave attention to the papers that he signed before he signed them? A Oh, yes, Mr. Hedden always examined any paper very carefully before he signed it.

Q Have you seen him look them over? A I have.

Q Has he ever sent to you for an explanation— A Yes.

Q More than once? A Yes.

Q Has he ever asked anybody else for explanations? A Yes.

Q Do you know whom? A Aubin.

Q Now, what was the practice of the opening up of the doors of that steel safe cabinet? A Yes, sir, Mr. Aubin open it every morning.

Q Did it have a combination lock? A Combination lock.

Q What was the practice with respect to signing checks in blank in the office? A Mr. Aubin would ask to get a few checks signed by Mr. Hedden at his desk in blank. Mr. Aubin had instructions from me to then abstract these checks and lock them up in his iron compartment—

Q Was there an iron safe in addition to the steel safe? A There was.

Q Where was that? A In my office.

Q In the same office as the steel office was in? A That's right.

Q And was there a compartment in that that had a lock and key to it? A Yes.

Q Who had that key? A Mr. Aubin.

Q Did you have a key to that? A I had not.

Q What were the instructions to Mr. Aubin about those checks? A As soon as Mr. Hedden would sign them to take them out and lock them up.

Q Did you keep them in your possession? A I did not.

Q Now, coming down to the latter part of the year 1915, did you have in the latter part of 1915—I don't mean 1915—the latter part of 1923 did you have at that time any conference with Mr. Hedden with respect to your retirement from the company and the purchase of your stock? A Several.

Q And where did they take place? A Mr. Hedden's office.

Q You mean his private room? A Private room in the office.

Q How many of these conferences did you have in that time, do you know? A Why, I don't know, but pretty near once every two or three weeks.

Q And would they come up because you went in to discuss that, or would they come up in connection with other matters? A Come up in connection with other matters.

Q Give us an example of one or two of them? A In the early summer of 1923, Mr. Hedden had given instructions to me to keep off construction work—the construction work should be cut out. He gave me to understand that his grandson, Mr. Toothe, would look after all of that work which I was looking after at the time, and one question would lead up to another. One question would lead up to another until I finally told Mr. Hedden that I didn't think I would keep off the work.

Q Why didn't you think that? A I didn't keep off the construction work. He said: "I want you to do it." I said: "Mr. Hedden, you and I are getting to the parting of the ways—we are getting to the parting of the ways and don't understand each other any further. I

don't like your management and you don't like me, and the best thing for us to do is to quit. Inasmuch as the company has agreed to take my stock, let's you and I get together. I am willing to sell or I am willing to buy—it is one thing or the other." I said: "I have given you the thirteen years of the best years of my life to bring you up and help you to the best of my resources and ability. I have served you. Now we have got to the parting of the ways," and I said: "Take my stock and let me out."

Q When was that with respect to your letter of December 31, 1923, Exhibit C. 4? Was that before or after that letter? A Before.

Q Before? A Yes.

Q Did you reach any agreement in these preliminary conversations before this letter was written? A He only gave me a slight assurance that the company would take my stock in case I wanted to get out.

Q Then did you write the letter Exhibit C. 4? A Yes.

Q Did you have a conference as a result of that letter? A I did.

Q On what date? A January 5, 1924.

Q Where was it? A Well, in Mr. Hedden's private office.

Q Do you know where Mr. Fisher was that morning? A He was sitting in his office.

Q How near was Fisher's office from Hedden's office? A It was about fifteen or twenty feet.

Q Adjoining? A Adjoining.

Q You mean the discussion was fifteen or twenty feet from him? A Yes, the discussion.

Q What was between Mr. Hedden's office and Mr. Fisher's? A A glass partition.

Q Transom overhead? A Yes.

Q Do you know whether it was open or shut? A I don't remember.

Q One of these regular Prudential Building wooden partitions, and then glass above? A Yes.

Q Wood half way up? A Yes.

Q And then glass above? A Yes.

Q Well, now, what time about did that conference begin? A Around ten o'clock.

Q And when did it end? A Near one o'clock.

Q What was the subject matter of the discussion? A The purchase of my stock.

Q Was any agreement reached as the result of that conference? A There was.

Q What was the agreement? A He agreed to take my stock at the book value.

Q And tell us what was said that led up to that agreement? A I went into the meeting and Mr. Hedden said: "Well, Walter, what do you want?" I said: "To sell my stock, or buy yours." He said: "What do you want for it?" I said: "Mr. Hedden, before we proceed with this meeting I would like to have Mr. Fisher here to hear what we say, and have the stenographer take down what occurs." He said: "Proceed, Walter, proceed with what you want to say." I said: "I either want to sell or buy. I will give you $200 a share for your stock, or I will sell mine—anything that you say." Mr. Hedden discussed the matter, and I gave Mr. Hedden a comparative statement of the old Hedden Construction Company compared with the Charles R. Hedden Construction Company, as an illustration of our respective management.

Q (Showing witness.) I show you Exhibit D. 7, is that the comparative paper that you

spoke of? A That is the one I have reference to.

Q Go on with your story. A Mr. Hedden said he didn't care anything about it, but he would like to have a copy of it. I made a copy of it that day and gave it to Mr. Hedden the following week.

Q All right? A Our discussion in there became quite heated, and I still insisted that we have Mr. Fisher, our senior vice-president in the meeting and Mr. Hedden objected. During the course of the conversation Mr. Hedden wanted to get me to take notes for the purchase of the stock, but I said: "No, I don't want any notes, Mr. Hedden. I cannot use your notes. The company can use your notes." He says: "Why don't you take my notes?" I said: "I cannot use them, as I said before." He said: "Why, Walter, I have $300,000 behind my notes." I said: "Well, Mr. Hedden, it is awfully pleasant news to me that you have $300,000 now behind your notes. When I first came with you in 1912 you and your Hedden Construction Company were on the verge of bankruptcy." I said: "I am delighted to know after my association of thirteen years that you have changed it from bankruptcy to a profit of $300,000." That discussion followed on for over an hour or more. He then finally stated: "Walter, I don't want to buy your stock." He says: "The company will take your stock, and the company will give you the check, and you can go out and make up the statement in accordance with the book value of the stock as of December 31st, and he said—

Q He said what? Try to remember his exact words as near as you can. A He gave me to understand that I was to go ahead and make

up the book value of this stock, and settle it on the basis as I proposed to him.

Q Was anything said by either of you in that conference about the resolution of August 15, 1922? A I told him, Mr. Hedden, that the company had agreed to take my stock under the resolution of August 15, 1922.

Q What did he say to that, if anything? A He didn't say very much about it.

Q Now, when the conference came to an end, what happened then? A Mr. Hedden and myself were very pleasant—he was very pleasant. I told him I would proceed immediately, forthwith, to make up the book value of the stock and try to have it ready for the board of directors' meeting on the 15th.

Q Did you stay in the room or come out? A Came out.

Q Came out alone? A Came out with Mr. Hedden.

Q What was the condition then when you came out? A Very agreeable to each other. Mr. Hedden extended his hand to me that morning and he gave me a cigar. He gave the other boys in the office a cigar, and he apparently was very content at the result of the meeting.

Q Who else did you say he gave cigars to? A Mr. Fisher, and I think Mr. Hohenhauser, and I am very positive he gave one to Mr. Aubin standing there at the time.

By the Court.

Q Do I understand you to say that at that meeting Mr. Hedden offered you $200 for your stock? A No, sir, I offered him $200.

Charles G. Appleton, direct.

By Mr. English.

Q At that time had any statement been made up? A It had not.

Q You said that you would try to get a statement up by the directors' meeting, December 15th? A Yes, sir.

May 20, 1925.

Continuation of hearing pursuant to adjournment at the place and in the presence of the parties as before.

Mr. English: I would like to call one or two witnesses out of order in order to let them go.

The Court: There being no objection you may proceed.

CHARLES G. APPLETON, sworn for the defendant.

Direct examination by Mr. English.

Q Mr. Appleton, have you any connection with the Montclair Essex Trust Company? A I am vice-president of the Montclair Trust Company which was, up to the first of the year, the Montclair Essex Trust Company.

Q Were you an officer or vice-president of the company back in 1922? A I was.

Q Do you know whether any account was opened in your bank by the Charles R. Hedden Company in 1922? A I do.

Q I ask you to produce some papers which you just handed me as you went on the stand,

and show you a letter addressed to your bank dated September 8, 1922, signed Charles R. Hedden Company by George A. Aubin, accounting department. Did you receive that letter at your bank? A I did.

Mr. English: I offer the letter in evidence. (Letter marked Exhibit D. 13.)

Q Following the receipt of that letter, what, if anything, did you do, Mr. Appleton, about getting in touch with the officers of the Charles R. Hedden Company? A I called Mr. Hedden on the telephone, and as he was doing work for the building—$60,000 addition to the trust company, I told him we wanted him to open an account with this bank, which he said he would do.

Q Did you follow that with a letter to his company? A I wrote a letter the same day, September 11th.

Q I show you a copy of a letter addressed to Charles R. Hedden & Company dated September 11, 1922. Was the original signed by you as vice-president? A It was.

Q Is that a carbon copy of the letter? A It is.

Mr. English: I offer the copy in evidence. (Paper marked Exhibit D. 14.)

Q The last letter, Exhibit D. 14 refers to a signature card. I show you a signature card. Did that subsequently come back? A That came back two days afterwards.

Q Did it accompany a letter dated September 12, 1922, from the Hedden Company to your bank? A It did.

Q And that letter is signed by— (interrupted). A Charles R. Hedden, president.

Mr. English: I offer it in evidence.

(Paper marked Exhibit D. 15.)

Q Now, referring to the signature card I have shown you—it is now signed by how many names? A Signed by Charles R. Hedden, president, Harold F. Fisher, vice-president, W. J. Dozier, vice-president and treasurer.

Q When it came to you accompanying the letter of September 12, just referred to, was it then signed by Walter J. Dozier? A It was not.

Q Do you know how long after it was before it was signed, or don't you know? A Some weeks. I don't know how long.

Mr. English: I offer the signature card in evidence dated September 9, 1922.

(Paper marked Exhibit D. 16.)

Q In your letter Exhibit D. 14, you refer to sending a temporary check-book. Do you know whether such a check-book was sent? A To the best of my knowledge and belief it was.

Q I show you a deposit slip of Charles R. Hedden Company dated September 11, 1922, for $8,069.79. Whose writing is that? A It is my writing.

Q And was that deposit made pursuant to the suggestion contained in your letter Exhibit D. 14, and the instructions to Mr. Hedden? A It was.

Mr. English: I offer in evidence the deposit slip.

(Marked D. 17.)

Mr. English: I have asked counsel and subpoenaed the complainant to produce temporary check-book. They now hand me some torn out check stubs which they say is all that is left of the check-book.

Mr. Lum: Mr. Dozier tore those out of the temporary check-book and put them with the checks.

Q I don't know whether you are able to identify this or not, are you, Mr. Appleton? They are checks—stubs—which they say were torn out of the check-book. Does that look like the kind of temporary check-book that you people send out? A I should say that that was.

The Court: That they are.

Witness: They are.

Mr. English: I offer them as one exhibit.

Three sheets of paper consisting of check stubs, first dated September 14, 1922, and the last date November 15, 1922.

(Papers marked Exhibit D. 18.)

Q Do you know, Mr. Appleton, whether the Hedden Company subsequently had a check-book printed? A They did.

Q I show you, produced by counsel of the other side, the return checks which seem to correspond with the check stubs Exhibit D. 18, and I notice they have stamps on the end of the checks—rubber stamp—Charles R. Hedden. Did those checks go through your bank on that account? A They were evidently paid by our institution.

Q Are any of them signed by Mr. Dozier or were they all signed— (interrupted).

The Court: Does not that appear?

Mr. English: Yes; it does appear. I offer them in evidence as one exhibit, from September 11, 1922, through to November 15, 1922—seven checks.

(Papers marked Exhibit D. 19.)

Q Now, Mr. Appleton, you have produced in response to our subpoena a minute book and I now show you a certified copy of—by the Hedden Company of a resolution by the Board of Directors. Was that paper received by your bank? A It was.

Q From— (interrupted). A Charles R. Hedden Company.

Q And about or shortly after the date of the resolution mentioned—the date mentioned in the paper. A Yes, sir.

Q Which is October 17, 1922? A Yes, sir.

Mr. English: I offer that in evidence.

(Paper marked Exhibit D. 20.)

Mr. English: It is a certified copy of a resolution by the board of directors dated October 17, 1922, opening the account with the bank, authorizing notes to be executed and signed by Charles R. Hedden and James A. Toothe, secretary.

Cross examination by Mr. Lum.

Q Mr. Appleton, Mr. Dozier has been a personal friend of yours for several years? A He has.

Q And the contract for the Hedden Company to do work on your building was largely as the result of his friendship and association? A

Not any more so than of Mr. Hedden, whom I had known for a great many years.

Q You say not any more so. You say Mr. Hedden was just as instrumental in getting your contract as Mr. Dozier? Don't you recall that Mr. Dozier spoke, before the contract was taken, of the opening of an account in your bank? A I do not remember such conversation.

Q Would you recall it if there had been such a one? A I believe I would.

Q When was the subject first broached and by whom?

The Court: How is this of interest? To show the gentleman's bias?

Mr. Lum: No. I wanted to show that Mr. Dozier had made arrangements with Mr. Appleton before he went West and that what they were doing was to carry out what he arranged for, but it is all immaterial to the main part of the case. I will not press it further.

Q Do you know anything about the Harrison Radiator check for $82,000 deposited in your bank in January, 1924? A I do know at that time we had a large deposit. I do not know whose check it was.

Q Did anybody communicate with you with reference to that check after it had gone through? A They did not.

The Court: You have no personal familiarity with it.

Witness: No.

Robert K. Seville, direct.

Re-direct examination by Mr. English.

Q Did Mr. Dozier make any arrangement about this Montclair account before he went West? A He did not.

ROBERT K. SEVILLE, sworn for the defendant.

Direct examination by Mr. English.

Q What is your connection with the Montclair Trust Company? A I am the treasurer.

Q And were you treasurer in 1922? A I was.

Q Have you produced the certified check register of your bank? A I have.

Q Is this it, which is now in front of you? A Yes, sir.

Q I show you a check which is in evidence as C. 5. That check was drawn on your bank? A Yes, sir.

Q And was it certified by your bank? A Certified by us January 15, 1924.

Q Is there a record of the certification of that check in this book that you produce? A The record is here.

Q Show it to me, please. A January 15, 1924, Charles R. Hedden Company to the order of Walter J. Dozier, $65,219, dated—this is the date of the check, January 14th—that is the date of the check, Number 5479.

Q Number of what? A The check.

Q Where payable? A Payable at the office of the company.

Q And the date returned? A That is the date returned.

Q What is the date? A January 15, 1924.

Q Now, have you also produced—what do you call it? A That is the actual ledger sheet.

Q That is the actual ledger sheet of Charles R. Hedden Company in your bank? A That is it.

Q Has it got the record of this check C. 5? A Yes, sir.

Q Whereabouts and under what date? A January 15, 1924, the check was charged.

Q What is that, the date of—the date of the certification or the date of the payment? A Being a certified check it was charged immediately.

Q So it was charged on what date? A January 15, 1924. That is the withdrawal date.

Mr. English: I offer in evidence the book produced by the witness which is headed, "Certified check register," particularly the entry which he read. I also offer in evidence the ledger sheet which the witness has referred to, showing the entry of the check C. 5.

(Book marked Exhibit D. 21.)

(Entry marked Exhibit D. 22.)

Q Now, I again call your attention to this check C. 5. It seems to be punched paid "January 14, 1924." Was it in fact paid on January 14, 1924? A It couldn't have been.

Q Well, can you explain how the punch is that way? A I will say failure of the clerk to change the peg in the machine. That happens sometimes.

Robert K. Seville, cross.

Q Why do you say it could not have been paid on the 14th? A Because the evidence in the certified check-book and the ledger sheet both show it was certified and paid on the 15th, and other items the same date. The date must be correct here.

Q Does it sometimes happen that the clerk fails to change the peg in the punching machine? A It does sometimes happen.

The Court: What is the date of the check?

Mr. English: The check is dated the 14th.

Cross examination by Mr. Lum.

Q I notice on the 16th you certified a check of Walter J. Dozier as drawer and Walter J. Dozier as payee for $50,000; do you recall that? A I do not recall it. I see the record there. I know nothing about it.

Q There were two other checks certified on the 15th before the Hedden check, were there not? A Yes, sir.

The Court: Entered before?

Mr. Lum: They must have been certified before that or they would not have been entered before it.

Witness: Yes, sir; they are entered there in the order they are presented to the teller for certification.

Q Do you know the date of the punch that those checks bear? A I do not. I have not seen the checks.

Q Would it not be usual for the error, if it was an error of a clerk in not properly removing

the peg, for it to be discovered after the first mistake had been made? A No, not necessarily. He might punch a batch that thick (indicating about five inches) and not notice it.

Q Is the entry made in this book of all the checks that are certified at one certain time in the day or are the entries made as soon as the checks are certified? A Immediately as they are presented to the teller, he immediately makes the entry and these would be scattered over the day.

Q Are the stamps marked "paid" all made at one time in the day or is that stamped—when is that stamped? A The cancellation?

Q Yes. A Usually in the morning—first thing in the morning.

Q Stamped not the same day, but the next day, aren't they? A Yes, sir.

Q So that there is not one day's mistake on that punch of paid on the 14th, but two days' mistake, isn't there?

The Court: If the check was, in fact, certified on the 15th, is that what you mean?

Mr. Lum: Yes, sir. The check was, in fact, certified on the 15th. There is two days' mistake in the stamp of payment, isn't there?

Witness: No. I wouldn't say that, because the check was returned— (interrupted).

The Court: If your regular course is to stamp these checks with the payment stamp on the following day, the day following the payment, then there is a discrepancy of two days?

Witness: There would be, yes, sir.

The Court: If this check was, in fact, certified on the 15th?

Witness: It is possible—it is possible that that check—certified checks are held separate and taken out from other checks. It is possible that it may have been cancelled at the end—the close of business on the 15th instead of the following day.

The Court: Is that the only check that you certified on that day?

Witness: No, there are several other checks.

The Court: Was that the first check entered?

Witness: It is the only one of the checks certified on the 15th that came back on the 15th. There were several checks certified on the 15th, but came back other dates. That is the only one certified on the 15th that was returned to the bank the same day, so possibly that was cancelled at the close of business that day. That would account for just one day's discrepancy.

The Court: They do not cancel them as they pay them?

Witness: No, sir; at the end of the day, but they are in a separate package, the certified checks.

Q Were you called up about this check by somebody from the Hedden Company a day or two after this time? A I don't know anything about such a call personally.

Q Do you know an officer of the Hedden Company called as to whether this check had gone through? A I do not recall it.

Robert K. Seville, re-direct.

Q Is the clerk who made the mistake in this check still in your employ? A I could not say. I do not know who cancelled it.

The Court: Anything to indicate in your books who transacted the affair with Mr. Dozier?

Witness: Yes, sir. I can tell who certified the check both by the entry on the book and by the signature in certain cases.

Q Who is it? A Mr. Quail. He is our secretary and also paying teller, certifies the checks.

Q Still with you? A He is still with us, yes, sir.

Re-direct examination by Mr. English.

Q I show you a ledger account of Mr. Walter J. Dozier. This is it that you produced? A Yes, sir.

Q Does it show a deposit of a check of $65,219 January 15th, 1924? A Yes, sir.

Q That was this check C. 5? A I assume it was that check.

Q The amount corresponds exactly? A Yes, sir. It is endorsed pay to the order of Walter J. Dozier.

Q Entered on your ledger under date of January 15, 1924? A Yes, sir.

Q And that corresponds with the entry in the certified check register D. 21 that it was presented and paid on that date? A Certified and came in the bank that day.

Mr. English: I offer that in evidence.

(Paper marked Exhibit D. 23.)

Robert K. Seville, re-cross—re-direct.

Re-cross examination by Mr. Lum.

Q Would it be possible that this check might have been brought up the day before and certified?

The Court: Everything is possible.

Mr. Lum: In the course of your banking?

Witness: On the 14th?

Mr. Lum: Yes.

Witness: No.

Q Now, if this check did not come in at the end of the day on the 15th it would normally not have been stamped until the 16th and then stamped with a stamp marked "16th," wouldn't it? A Yes, sir.

Re-direct examination by Mr. English.

Q Do you know who did punch that check? A No.

The Court: Isn't it likely that the man who certified the check and made the entry of it in your book would have stamped it?

Witness: No. That is done by young clerks, boy or girl, in another room—another part of the office.

The Court: Handed over to someone else?

Witness: Yes, sir.

Mr. Lum: Have you got Dozier's personal record with your bank of that period?

Mr. English: I put it in evidence.

CHARLES L. WHITMAN, sworn for the defendant.

Direct examination by Mr. English.

Q Mr. Whitman, are you connected with the Fidelity Union Trust Company? A I am.

Q Is the Charles R. Hedden Company a depositor in your bank? A Yes, sir.

Q And has been for some years? A Yes, sir.

Q You were subpoenaed to produce a copy of resolution of the Charles R. Hedden Company filed with your bank on or about January 16, 1923. Did you produce such a paper, which I show you? A This is it.

Q And is that a copy of the paper filed with your bank? A Copy of the only paper that I know of filed with our bank on that date.

Q Did you examine the original? A I did.

Q Is it signed by James A. Toothe, secretary? A Yes, sir.

Q Has the seal of Charles R. Hedden on it? A Yes, sir.

Mr. English: I offer the paper in evidence.

(Paper marked in evidence D. 24.)

The Court: What is it?

Mr. English: Certified copy of a resolution passed on the 16th day of January, 1923. The object being to prove that the complainant's witnesses were mistaken when they said they had no meeting on January 16, 1923.

Walter J. Dozier, further direct.

CARL W. SCHUMAKER, sworn for the defendant.

Direct examination by Mr. English.

Q Are you connected with the Springfield Avenue Trust Company? A Yes, sir.

Q What are you? A Secretary.

Q You were subpoenaed to produce a copy of a resolution dated January 16, 1923, filed with your bank by the Charles R. Hedden Company. Is that the copy before you? A That is the copy.

Q Have you seen the original? A Yes, sir.

Q In your custody? A Yes, sir.

Q Is it signed by James A. Toothe, secretary? A Yes, sir.

Q Has it got on it the seal of Charles R. Hedden Company? A Yes, sir.

Q Is that a true copy of it? A That is a true copy.

Mr. English: I offer it in evidence.

(Paper marked Exhibit D. 25.)

Mr. English: I offer those in evidence to corroborate the minute book C. 3, in evidence, and particularly the minutes of the meeting of January 16, 1923.

WALTER J. DOZIER, recalled for

Further direct examination by Mr. English.

Q Mr. Dozier, did you stand by Mr. Hedden when he signed the minutes in the minute book? A I did not.

Walter J. Dozier, further direct.

Q What was the procedure of his signing those minutes? A After the minutes were usually written up by the stenographer they were placed in the minute book and on Mr. Heddon's desk.

Q By whom? A Either Miss Jackson or myself.

Q Now, I want to direct your attention to the numbers of certain checks in blank. Would you indicate to Mr. Hedden where to sign checks in the check-book? A I would not.

Q What was the practice on that? A Occasionally Mr. Hedden would come out to the bookkeeper's desk and sign a few checks in the book on the desk.

Q Was that desk in the room that you and Mr. Aubin sat in? A It is. It is a standing bookkeeper's desk.

Q Now, I want to show you the check stub book on the Montclair Trust Company, Exhibit C. 13, and in connection with that, I want to show you the check stub of the temporary check-book on the Montclair Trust Company, Exhibit D. 18. Are the entries in the check stub book C. 13 in your handwriting? A Yes, sir; that is my handwriting.

Q Now, were you in or around Newark in September, 1922? A I was not.

Q How did these entries in this permanent check-book, C. 13, happen to be in your handwriting? A When I returned I spoke to Mr. Hedden of having made up signed—printed checks on the Montclair Trust and after we received the books why they were transferred by me from the temporary checks into this book.

Q And did you write them in yourself? A I did.

Q And does that explain how the entries are in your handwriting? A That is it.

Q Although they date back to the time when you were out in California? A Yes, sir.

Q Now, I show you a whole bunch of checks on the Montclair Essex Trust Company. Are they the permanent checks? A Appear to be; yes, sir.

Q They are the printed checks that went with this check-book C. 13? A Yes, sir; they look that way.

Q I want to direct your attention to the early part of January, 1924. Did Mr. Whitehouse and you work on the books? A I never did. Mr. Whitehouse did.

Q Mr. Whitehouse did. And did he reconcile the bank-book and the cash-book? A He did.

Q Now I show you the check stub book on the Montclair Trust, Exhibit C. 11, and call your attention to the check stub dated January 14, 1924, of the check for $65,219. A Yes, sir.

Q Are there any other checks of that date, the stubs of which are in your handwriting? A There are.

Q How many have you there of that date that are in your handwriting? A Well, there are several.

Q Just count them, fourteen? A Thirteen.

Q Thirteen. All right. A One minute. Fourteen.

Q What was the practice when checks had been signed in blank with respect to making any notation on the check stub? A Such checks that Mr. Hedden signed were kept by Mr. Aubin in his safe.

Q Was any notation made on the check stub? A Yes, sir. "In safe," written in by Mr. Aubin or myself, when I saw them.

Q Written "in safe"? A Yes, sir; that is in Aubin's safe.

Q When you took up the check-book to draw your check on January 14, 1924, was there any such entry on the check stub book that there were checks in the safe? A Absolutely no.

Q Was the check stub book as it now is, showing check drawn on December 31st, just before the date of your check? A Exactly—just the same as it is in the book. That is the condition of the check-book Monday morning.

Q And January 14 was Monday? A Was Monday.

Q Mr. Hedden testified that the question of the stock purchase was not referred to between January 5th and January 15, 1924. What is the fact about that? A I spoke to Mr. Hedden on several occasions in the fall of—(interrupted).

Q No, no, not in the fall, in January? A Oh, in January.

Q After that conference on that Saturday morning was it mentioned between that date and the date of the meeting on January 15th? A I do not recollect.

Q Let me show you Exhibit D. 8. Is that your paper? A Yes, sir.

Q When did you make that up? A That was made up in the week following our conference.

Q Did you show that to Mr. Hedden? A Yes, sir.

Q When? A On Friday, the 11th.

Q Whereabouts? A Mr. Hedden's office.

Q And what did you say to him? A We spoke over the 1923 conditions and I told him that the statement, as illustrated here, would show a book value of the stock between two hundred and twenty-five and forty dollars a share.

New Jersey State Library

Walter J. Dozier, further direct.

Q And what did he say? A Mr. Hedden said—I asked him, that is, if he wanted any modifications in the closing of the account. He told me to go ahead and close them on that basis.

Q Is there any writing in this Exhibit D. 8 in the handwriting of Mr. Aubin? A Yes; this is Mr. Aubin's figures, yes, sir. (Indicating.)

Q On one page, now this is—

Witness: Yes, sir, that is Mr. Aubin's figure.

Q You marked it with an "X" opposite it? A I have.

Q Any other of his figures— (interrupted.)

The Court: He says, "This is it," "that is it." What is it?

Mr. English: I will let him finish.

Witness: That is the only specific item I see, because it was made up from his record —trial balance.

Q You refer to an entry on the sixth page of this Exhibit D. 8 under the caption "Depreciation." A Depreciation.

Q That is right? A That is right.

Q Those are Mr. Aubin's figures? A That is his figure, yes, sir.

Q There are a number of figures there that are not his handwriting. A They are mine. Those two others is his.

The Court: What is this?

Witness: Made up from the trial balance.

The Court: Can the figures be marked in the record?

Mr. English: Yes, sir.

Walter J. Dozier, further direct.

Q The figures which you refer to are $12,025.92 and $12,633.93? A Right.

Q What do they refer to? A They refer to depreciations on the machinery and equipment carried in the income account.

The Court: How did he come to put them in there?

Witness: Why, he was working with these figures at my desk. I handled—he handled the trial balance book and I handled these sheets and he copied this after he corrected—he modified these figures afterwards in his own handwriting.

Q What was the object of this statement you were working on? A This statement was finished, carried to Mr. Hedden, he and I talked it over and we closed the books on this sheet.

Q To ascertain what?

The Court: What were you working for, the value of the stock?

Witness: Value of the stock at the close of the year's account.

Q Now, what was the practice of signing checks? Who signed the check first? A Mr. Hedden always.

Q No matter who counter-signed it? A Never counter-signed, except by the president first. Only in one instance, to my knowledge.

Q Did you give Mr. Aubin any instructions to give no financial information to anybody including Mr. Hedden? A I never— (interrupted).

Q Did you take the minute book and show it to Mr. Aubin and tap it and say, "George,

this is legal''? A Never made any such remark.

Q Did you—was it your custom to keep signed blank checks in your petty cash—for you to keep signed blank checks in your petty cash? A Never.

Q What was the practice? A Never kept petty cash. It was kept by the bookkeeper.

Q Did you keep blank checks in your possession or control? A Never.

Q Who did? A Aubin, if there were any.

Q How did he keep them or where? A Why, he used them himself. I never had any check come to my desk that was not signed by Mr. Hedden. The practice was that he put the checks, signed, on my desk.

Q Mr. Aubin says that on January 16th, which was the day after the meeting of the board of directors, that you dictated to him an entry to be made in the journal. A I did not, on that day.

Q How did that entry come to be made in the journal? A After the meeting of the directors on the 15th— (interrupted).

Mr. English: Let me have the voucher, Mr. Lum.

Q I show you the voucher, Exhibit D. 10. When did you give that to Mr. Aubin? A That was given to Mr. Aubin about a little after 5 o'clock, after the meeting of the board of directors on the 15th.

Q Did you dictate the contents to him or what he should write? A I did not. I passed the voucher to him and told him to enter it in the journal.

Walter J. Dozier, further direct.

Q Is he a stenographer? A He is not, to my knowledge.

Q Did you ask Mr. Aubin to give you that to take a picture of it? A I did not; no picture, no.

Q What did you ask him for? A On Thursday morning I 'phoned Mr. Aubin that I was on the way to the office and I would like to have a copy of the voucher which he entered into his journal Tuesday afternoon after the directors' meeting.

Q Did he give it to you? A I went on down expecting to go into the Hedden Company's office and Mr. Aubin met me in the vestibule of the Prudential Insurance Company— (interrupted).

Q This building we are in, in the vestibule? A This building downstairs right in front of the bank. He handed me this voucher and asked me to take a copy of it and he would meet me at the Newark Athletic Club at noon and get it back.

Q Did he get it back from you at the Newark Athletic Club? A He sent Mr. Hohenhauser for it.

Q It appears in the deposit account of the Montclair Trust Company that you deposited $10,000 or about that figure in January, I think after you get the $65,000 check. A Yes, sir.

Q What was the idea of that? A That was to close out the debit of my personal account with the company.

Q How did that come about? A The company had made me a temporary loan and the balance that was due amounted to those figures.

Q That cleared up the account between you and the company? A Cleared up the personal account.

Walter J. Dozier, further direct.

Q Now, I show you Exhibit C. 14 which is endorsed supplement to the sixth annual report. Mr. Owen, the accountant, said that that showed, in your handwriting, that the stock was valued at fifty-eight dollars and seventeen cents a share. A It is not all here.

Q What is the explanation of the fifty-eight dollars and seventeen cents item? A Well, but this statement—it isn't all here.

Q I understand that. Mr. Owen said so, but tell me the explanation of the fifty-eight dollars and seventeen cent item. A Fifty-eight dollars and seventeen cents represents the good will value per share on nine hundred shares of stock outstanding December 31, 1923.

Q That is just the good will value and not the whole book value? A That is what that is, just the good will value.

Q You have pulled out of your pocket and referred to another paper. What is that? A Supposed to be a copy of the statement I presented, but it is not.

Q What you say is, you have the complete copy of it, of which Exhibit D. 14 was only partial. A Yes, sir; that is right.

Q Now, was that good will value figured up in the way it is customary to figure the good will value? A According to my understanding.

Q Had you ever figured it before for income tax or other purposes? A No, never figured it for income tax.

Q Why had you figured it up before, for what purpose? A Well, the good will value is always figured usually based on the capitalization of good will by a reasonable allowance of certain percentages for hazardness of your business. In figuring this out it was based on the average net income for a five year period, capital

and surplus employed for five years with the average capital employed, allowing for reasonable deductions on capital employed. It showed an excess actual profit, and the good will value as a rule by the accountants allow a period of three and a half to five years. In this instance I allowed only three and a half period for good will value.

Q And was that just the good will value of the stock to be added to the other value of the stock? A To be added to the book value of the stock.

Q And you took that into consideration in figuring up the book value? A Yes, sir, book value.

Q Now, Mr. Owen, the accountant, testified that the total liabilities of the company on December 31, 1923, were over $389,000, but he said nothing about assets. What were the assets of the company on that date? A He said how much was liabilities?

Q $389,104.68. A My statement shows $329,000.

Q I am giving you what his figures were. A Yes, sir.

Q What were the assets of the company on that date? A The total assets according to the statement that I made up from the books were, cash, accounts receivable, investments, construction work in progress, $436,000. That is outside of the real estate and machinery and supplies and material.

Q What was the total? A $490,000, total assets.

Q Give us the exact figures shown on your statement. A $496,166.51.

Q Now, in making up that statement did you include the value of the unfinished contracts

which the Hedden Company had? A Well, we figured out the profits accrued up to that date that we thought reasonably that year was entitled to.

Q Have you prepared a tabulation showing the names of the concerns and the amount of the contracts and the approximate date the work started? A I have.

Q Is that it which I show you? A That gives it, yes, sir.

Q And what was the total value of those contracts and additions shown on this statement? A I found as of December 31, aggregate of two million four hundred and forty-two thousand one hundred and sixty one on there and in addition to that there was another one figured in 1923, that amounted to a hundred and nineteen thousand—contract.

Q Which made the total for December 31st, how much? A $2,561,161.

Mr. English: I offer that paper in evidence.

(Paper marked Exhibit D. 26.)

The Court: Subject to it being stricken out on motion.

Q Now, Mr. Dozier, pay attention. I want to bring your mind back now to the summer of 1922. It appears already in evidence that in February, 1922, a contract was prepared and presented to Mr. Hedden in which you and Mr. Fisher, Mr. Toothe and Mr. Hedden were all parties, about the sale of stock. You remember that? A I remember that.

Q That was not signed? A No.

Q What reason did Mr. Hedden give at that time for not signing it, do you remember? A

Mr. Hedden did not express any reason for not signing the first contract. I mean the first agreement.

Q Do you remember that another agreement which is in evidence was presented in August 1922? A Yes, sir.

Q That was between you and him? A Between Mr. Hedden and myself.

Q And is in evidence as Exhibit D. 3.

The Court: Not signed.

Mr. English: That was not signed, was it?

Witness: Not signed.

Q What reason did Mr. Hedden give for not signing that? A That it would cause a complication in his estate in case of his death.

Q Now, was that presented to him and discussed before or after the meeting of August 15, 1922? A A few days before that meeting.

Q Who brought up in the meeting of August 15, 1922, the matter of the sale or purchase of the stock? A August, 1922?

Q August 15th meeting, just before you went to California. A I introduced the resolution.

Q In connection with the fact that your health was bad? A Eh?

Q Was that in connection with the fact that your health was then bad? A Yes, sir.

Q Tell us the story about it. A In December, 1921, just before Mr. Doe went out, Mr. Hedden was at my house and after we agreed upon the purchase of Mr. Doe's stock, Mr. Hedden agreed that we could have an agreement between us respecting the sale and purchase of the stock in the event of death. That was followed

down in that summer of 1922. Mr. Hedden finally refused to sign that, or the other agreement. The result was he promised to give me, in the form of a resolution, that the company would purchase my stock in lieu of signing these agreements. At the meeting of the board on August 15, 1922, after the vacation was granted to me, then I made the resolution that the company would buy my stock in case I wanted to retire, at the book value of the preceding or any year ending December 31st.

Q And that was unanimously adopted, was it? A That is how it was adopted.

Q Now, following that it appears you went to California. A Yes, sir. I went the early part of the following week.

Q Before you went, what, if anything, was done about writing up the minutes of that meeting? A The minutes, to my recollection, were written up Thursday, the day after that meeting.

Q And written by what stenographer? A Miss Jackson wrote them.

Q Did you dictate them to her? A I dictated those minutes to her.

Q And after they were written up what was done with them? A They were put on Mr. Hedden's desk for any modification that he saw was necessary and— (interrupted).

Q Did he sign them? A He did.

Q Did you see his signature after that? A Not to my knowledge.

Q No. Did you understand me? Did you see the minutes signed after they were put on his desk? A Yes, sir; I saw them after they were signed. Mr. Hedden brought the minutes out on my desk.

Q Was that before you went to California or after? A Before I went to California.

Walter J. Dozier, further direct.

Q Now, it appears you got back from California in October. A Yes, sir.

Q Was the meeting of October 17, 1922, held? A It was.

Q There is already in evidence this morning, a resolution relating to the deposits in the Montclair Trust Company. A Yes, sir.

Q Do you remember that being adopted? A I remember that.

Q Do you remember whether anything came up about the Kelly Tire contract—in New Haven, that was? A Yes, sir; the secretary had a good many papers pertaining to the Kelly Tire fidelity bond that was given to the Globe Indemnity Company and their communications with the Fidelity Trust, and that that matter come up at our August meeting and I specifically request that Mr. Toothe read over the August meeting before the meeting was ratified.

Q Why? A Wanted to see—have the August meeting of the 15th ratified by the following meeting, which was in October.

Q Why did you want it ratified? A And particularly about the resolution of the company purchasing my stock.

The Court: Why were you so anxious about that?

Witness: Well, for a matter of record—matter of form.

The Court: Well, it was already in the record and you knew it was in the record. Why were you so anxious to have it ratified?

Witness: Well, we usually read the minutes at the following meeting and then ratified and approved those minutes of the previous meeting.

Q Was that the custom? A That was our custom.

The Court: What had that to do with all these other papers that you just referred to that you say were before the meeting?

Witness: I only remember these papers coming through on account of the Fidelity bond being given by the company at the time in connection with the Kelly Tire Rubber Company to the Fidelity Union Trust Company.

The Court: Did that have any bearing upon your anxiety in having the August minutes ratified?

Witness: No.

The Court: Why do you speak of that in that connection?

Witness: They had them all before us at the meeting.

Q You mean that was part of the business that came up at the meeting that you remember? A Yes, sir; that was part of the business at the meeting.

Q Now, did your company have a job for Mr. Rippel here on Bank street? A Yes, sir; we did.

Q Not Bank street, but Clinton street. Did you have any conversation with Mr. Hedden about that in the fall of 1922? A Yes, sir; several.

Q What was it, as bearing on the purchase of stock? A Mr. Hedden had prepared a statement of a claim against Mr. Rippel and there was a question of—the Rippel job was a cost plus job,

and there was a small item in there, demolition of the building amounting to $500, and I had the matter up with the bookkeeper and the bookkeeper said he did not give credit to Mr. Rippel because Mr. Hedden hadn't instructed it. I went in to Mr. Hedden's office and I spoke to Mr. Hedden that Mr. Rippel was entitled to this credit. Mr. Hedden said he wouldn't allow him the credit because he had a large claim against Mr. Rippel and Mr. Hedden got very angry at that conference and the result was that we both kind of lost our heads. I told Mr. Hedden that if he continued to do business that way I would rather get out, because if Mr. Rippel saw fit to have the account audited I would be placed in a very embarrassing position as Mr. Hedden would place the blame on me as treasurer of the company, and I reminded him of the fact that he had done the same thing to the employees of the Hedden Construction Corporation during the investigation by the Prudential Company on cost plus jobs in the years 1911 and 1912.

The Court: What is all this about?

Q When you got through with this little discussion with Mr. Hedden did you go out and afterwards come back? A I did.

Q Now what was the occasion of coming back? A I went back to Mr. Hedden and apologized for speaking a little roughly.

Q And what else did you say, if anything, about the stock? A I asked Mr. Hedden to take my stock and let me out of the company, that he and I could no longer agree, the first of the year, and he says, "I will, Walter; I will go ahead and do it."

Walter J. Dozier, further direct.

Q Now, it already appears that you had a conference on January 5th. A Yes, sir.

Q Yes. And at that time you have already testified that it was agreed that the company would buy your stock. A Yes, sir.

Q Now when did the Harrison Radiator check come in? A Came in around 3 o'clock on Friday.

Q What date—what year? A Of the 11th.

Q January 11th? A 1924.

Q What did you do with the check when it came in? A I passed it to Mr. Aubin and he placed a rubber stamp endorsement on it and I told him I would make the deposit the next morning in the Montclair Trust.

Q And did you? A I did.

Q Did you say anything to Mr. Hedden about the check? A I did at the meeting with that work sheet.

Q You refer to Exhibit D. 8? A Yes, sir.

Q When you showed him this work sheet D. 8 you also told him of the check? A Yes, sir.

Q What did you say about the check? A I told him we had received the Harrison Radiator check and I would deposit it in Mr. Appleton's bank.

Q And what did Mr. Hedden say to you if anything? A Mr. Hedden said, "Very well," as I recollect it.

Q Now, I want to show you this check, C. 5, dated January 14th. When did you first—how was that check written up? A That check was written up on Monday morning.

Q What date? A January 14th.

Q Any of it written— A I had other checks writing them up at the same time, in the morning.

Q All on this check-book, C. 11? A Yes, sir, but the amount was not placed in this check-book until it was ascertained later in the day.

Q Was it placed in the check until it was ascertained later? A The check—but I placed it with a memorandum on yellow memorandum pad to write my name in this check as payee with other checks early Monday morning.

Q I see the name Walter J. Dozier is typed in as payee of the check. A Yes, sir.

Q Who typed that in? A Miss Jackson.

Q On your instructions? A On my instructions.

Q At that time were the figures $65,219 written in? A They was not.

Q Was anything written in? A Nothing at all.

Q At that time was the check signed "Charles R. Hedden, President" as it now appears to be? A It was not.

Q At that time was it signed "Walter J. Dozier, Treasurer" as it now appears to be? A It was not.

Q When was the figures $65,219 which are now written in in full put in? A Later on in the afternoon after this amount had been ascertained from our work sheet.

Q Now after the check was completed by including your name as payee and the amount of the check, what was done with it? A What is that question?

Q After the check had had your name written in and the amount written in— (interrupted). A Yes, sir.

Q Then what was done with the check? A Miss Jackson gave the check back to me on my desk. It laid on my desk until afternoon when

we ascertained the book value of the stock, that is, Mr. Aubin and myself—he helped me fix up the book value of the stock that afternoon.

Q You mean all Miss Jackson did was to write in the name "Walter J. Dozier"? A That is all she did.

Q Then she put it on your desk? A Yes, sir, and it stayed on my desk until afternoon and until we ascertained the amount. Then I handed it back to Miss Jackson and she wrote on the back of the check the information which it contains.

Q Did you dictate that to her or write it out for her? A I wrote it out on a yellow memorandum.

Q That reads "For the purchase of two hundred and seventy-five shares of common stock of the Charles R. Hedden Company in the name of Walter J. Dozier," $65,219.

Mr. Lum: Isn't the check in evidence?

Mr. English: Yes; C. 5. You put it in.

Q At the time she wrote that on the back had the figures $65,219 been put in on the front? A That I cannot recall.

Q Who wrote in in red ink "sixty five thousand"? A I did.

Q Who wrote that in? A I wrote that in.

Q This was all on Monday the 14th? A Yes, sir.

Q Was the check signed by the officers on Monday the 14th? A No, sir.

Q After the check had been prepared in the way you describe, what did you do with it? Do you understand that? A Yes, sir; I understand it.

The Court: Who wrote in the sixty-five and some dollars written in the check—written by machine?

Mr. English: The figures are his handwriting and the red is with the—how do you get that red ink statement in the check, $65,219?

Witness: Machine.

Q Is that put in with typewriting or a machine? A Machine.

Q What kind of a machine is that? A A perforating—check protector.

Q Did you punch that in yourself? A Yes, sir, I put that in myself.

Q Now after the check had your name put in and the red ink punched in by the machine— A Yes, sir.

Q —and the voucher made on the back the way it now reads, what did you do with it? A That afternoon?

Q Yes. A Immediately following that I made up the voucher covering it.

Q All right. I show you Exhibit D. 10 also C. 10, is that the voucher? A It looks like it.

Q Look at it and see. A That is the voucher.

Q Who wrote that out, the typewriting part? A Miss Jackson.

Q Did you give her the information? A I did on a yellow pad—piece of yellow paper.

Q And I see in the same—with the same machine, punched in in red the same figures, $65,-219. Who punched that in? A I did.

Q When? A I can't recollect whether it was done that day or the day following, but I didn't receipt it until after the check had been signed by Mr. Hedden—the voucher was not receipted.

Q It appears now to be receipted. A Yes, sir. I receipted after Mr. Hedden signed the check. That was the next day.

Q This was Monday afternoon the 14th? A This was Monday afternoon, yes, sir.

Q Where did you go that evening? A I went to New York.

Q Why? A I had a business dinner engagement at the Builders Trades. I put the check in my pocket and took it with me.

Q Was Mrs. Dozier in New York that afternoon? A She was.

Q Did you meet her in New York? A At the Martinique Hotel.

Q Did you spend the night there? A Yes, sir.

Q Did you see Mrs. Dozier before you went to dinner? A I did.

Q Had you the check with you then? A I did.

Q Had you told her about your arrangement with Mr. Hedden?

Mr. Lum: I object.

The Court: Objection overruled.

A Yes, sir.

Q And did you show her that check? A I did.

Q Who did you go to the dinner with? A Mr. James M. Ferry.

Q He is a personal friend of yours? A Yes, sir.

Q Did you see Mrs. Dozier first that evening or Mr. Ferry? A Mrs. Dozier.

Q At the Martinique Hotel? A At the Martinique Hotel.

Walter J. Dozier, further direct.

Q And from there you went to the dinner? A I went to the dinner.

Q Where did you meet Mr. Ferry? A At the Builders Trades club room, at the club room of the Builders Trades.

Q New York City? A New York City.

Q Did you have the check with you? A I did.

Q Did you show it to Mr. Ferry? A I did.

Q Had you before that discussed with Mr. Ferry your negotiations with Mr. Hedden? A I had already.

Q And did Mr. Ferry look at the check? A He did.

Q Did you see him look at it? A I did.

Q Front and back? A Both back and front.

Q Now at that time was the check signed as it now is? A It was not.

Q By anybody? A By nobody at all. The check bore no signatures at that time.

Q Now you say you spent that night at the Martinique Hotel? A I did spend the evening at the Martinique Hotel.

Q The next day was Tuesday, the 15th of January? A Tuesday, the 15th.

Q Were you back at the office that morning? A I was.

Q Now after you got back at the office the next morning, which was Tuesday, what did you do with this check? A Took this check with a few others, put them in a blue envelope and went to Mr. Hedden's room.

Q Was he there? A He was not. Mr. Hedden didn't come in until very late.

Q What did you do with the envelope? A I left the envelope with the checks and other

vouchers for other checks on Mr. Hedden's desk.

RECESS.

Q You said that you put this check C. 5 in a blue envelope with other checks? A I did.

Q And put it on Mr. Hedden's desk with the vouchers. Was this voucher D. 10, C. 10, put with the other vouchers on Mr. Hedden's desk? A It was.

Q When did you next see the check and the voucher after you left it on his desk? A About 2 o'clock on the 15th Mr. Hedden came from his office and gave me the vouchers and checks.

Q Handed them to you? A Handed them to me personally at my desk.

Q And then what did you do? A I turned the vouchers over to the bookkeeper and went up to the Montclair Essex Trust Company and had the check certified.

Q On that day? A On the 15th of January.

Q It appears on the face of it it was certified, dated the 15th. A Yes, sir.

Q Then having done that what did you then do? Come back to the office? A I went back to the office.

Q Yes. Was there a meeting of the board of directors that afternoon? A There was.

Q Did you go to it? A Yes, sir.

Q And tell us what happened at the meeting of the board of directors as bearing on this transaction. A At the meeting, which occurred around about half past three o'clock, or during the course of the meeting— (interrupted).

Q Wait a minute. Did you look at the minute book at that meeting, before the meet-

ing began, or at the time it began? A During the meeting.

Q Were the minutes all written up? A No, they were not written up.

Q Now, for how long before that had you pursued the habit of writing the minutes up for Mr. Toothe? A Down from the time he became secretary until the midsummer of 1923.

Q Why did you stop in the middle of the summer of 1923? A Well, I got tired of writing them up for Mr. Toothe and I thought he should be able to write his own minutes. He had sufficient knowledge and experience in that work to write them up at that time.

Q Now you say at the meeting of January 15th in the course of the meeting you looked at the minute book? A Yes, sir.

Q What did you discover with respect to the minutes? A They had the minute book at every meeting.

Q Yes. A And we asked, or Mr. Fisher—I don't know which—to read the previous minutes, and opened the book and found that they were not written, so then I made a complaint to Mr. Hedden that Toothe was not doing his duty as secretary, and all of a sudden, why, Mr. Hedden jumped up, in very defiant manner and says, "Mr. Fisher, take the chair as chairman of this meeting."

Q Did Fisher go on then as chairman of the meeting? A He went on.

Q Now when in the course of the meeting did you offer a resolution, which it appears you did offer, affirming the previous resolution— (interrupted). A Yes, sir, I did.

Q Why did you do that? A I did that in accordance with the agreement that Mr. Hedden and myself had on Saturday, January 5th.

Q What was that agreement? A Mr. Hedden wanted me to present to the board another resolution confirming the previous resolution, after he had declined to take my—after he declined to pay me—or I declined to take his notes in payment of the stock. I told Mr. Hedden I didn't care anything about his notes, the company could take his notes and discount the notes.

Q I don't care so much about the notes. You have told us that. I just want to find out about that resolution. Now had that been written up before by you? A What?

Q Had you the resolution written up and ready to present? A Yes, sir; they were all ready, yes, sir.

Q I show you Exhibit C. 6 which is a draft of the resolution written on yellow paper, did you have that? A That looks so.

Q Yes. And that was prepared in accordane with your understanding with Mr. Hedden? A According—on January 5th, yes, sir, confirmation of it.

Q Now at that meeting that resolution, it appears, was not adopted, 2—2. A Something like that.

Q Did you expect it to be adopted when you introduced it? A I certainly did.

Q Following the ending of that meeting what did you do and what was said between you and Mr. Hedden or anybody about this stock? A Mr. Hedden started out of the room—he left the room in a very hurriedly way. He stopped in the door entering Fisher's office, said to me, "Deliver all your books, papers, stock—your stock—all your stock books and papers of the company to the new treasurer, Mr. Toothe."

Q Mr. Toothe was elected treasurer at that meeting? A Yes, sir.

Q And you retired as vice-president and director? A At that time.

Q That is what I meant. A At that time.

Q Now, what did you say to Mr. Hedden in reply to that? A I said, "Mr. Hedden, it is late, and I will do so the first thing in the morning."

Q Did you stay around the office any longer, or did you go right out? A No; after Mr. Hedden went I went over to the bookkeeper's desk and delivered to Mr. Aubin the voucher.

Q That is, this paper C. 10? A That voucher, and I told him that was an entry for his journal and he took it and entered it from this voucher in his journal that afternoon.

Q Do you know whether he did? A I saw him, in my presence—Mr. Fisher was standing at the desk at the time.

Q Saw him write that in the journal? A Saw him write that in the journal.

Q Then what, if anything, did you do? You said the employees were there? A Why, they all knew that I was leaving and they came over and gathered around my desk and I naturally gave them a little talk of my retirement out from the company.

Q What did you say? A I cannot remember what I said.

Q Well, as near as you can remember. Did you say whether you sold your stock or anything? A I told each one of them I was retiring from the company after long service with Mr. Hedden and I asked them to give their loyal support to Mr. Hedden as I had done. I think I told them that I had served Mr. Hedden for a great number of years and I served him as no son ever served him, with loyalty, fidelity and truth.

Walter J. Dozier, further direct.

Q Did you say anything about having closed your connection with the company? A I did.

Q What did you say? A I said to them I was retiring and had retired from the company.

Q Did you say anything about your stock?

The Court: Who was he saying this to?

Witness: To the employees around my desk.

Mr. Lum: I object unless some of the officers were present.

The Court: How do you expect to connect it?

Q Was Mr. Aubin there? A He was.

Q Mr. Aubin was there? A He was.

Q Who else was there? A Mr. Fisher.

Q He was vice-president? A Yes, sir; Mr. Hohenhauser, Mr. Briden was there and another gentleman, superintendent; I can't recall his name.

Q Was Mr. Toothe there? A And Mr. Toothe.

Q He was there? A He was there.

The Court: Was he within your hearing?

Witness: Yes, sir; where they could hear me, around my desk.

The Court: Mr. Toothe?

Witness: Mr. Toothe; all stood around my desk. I told each one of them to give the best interest that they could to the company.

The Court: Stop him.

Q What did you say to Toothe and Fisher and Hohenhauser and the rest of them about

your retirement from the company, and the stock? A If I can recollect I told them that my services with the company had ceased, Mr. Hedden for the company had purchased my stock and I was retiring that night and I wished them all good wishes and best success.

Q Now I show you the journal which contains the entry of the voucher. Is that the thing you say you saw Toothe write in? A That looks very like it, yes, sir; that looks very much like it.

Q And that was from the voucher which you handed him? A He took the voucher and wrote that.

Q I don't mean Toothe wrote in, but Aubin wrote in. A Aubin wrote in, the bookkeeper, Aubin.

Q Now, did you go back to the office the next day which was January 16th? A Yes, sir.

Q What did you do the next day? A That morning Mr. Toothe and myself sat together and I turned him over all the books and records of the company.

Q Did the company have a box in the Fidelity? A Yes, sir, we did.

Q Did you go there? A We did.

Q What did you do down there? A Why Mr. Toothe—first, I went down to the box myself and took out all the papers and brought up to Mr. Toothe.

Q Up in the office again? A Up in the office, upstairs.

Q Then what? A We made up some kind of a receipt, kind of formal way of relieving one treasurer to another all the books of the company, and such stuff that they had that was ordinary in the course of business, and my stock.

Walter J. Dozier, further direct.

Q Now, did you take receipts or have receipts prepared? A Yes, sir; there was receipts.

Q I show you Exhibit C. 8. Did you and Toothe go over those? A Yes, sir, we did.

Q For example, on the first page of C. 8 which starts "Received from Mr. Dozier two hundred and seventy-five shares of stock"—I see they are all checked. Whose check is that? A That is Mr. Toothe's check. He checked that personally at my desk.

Q The next page relates to the ledger, cash book and so forth, also checked. Whose checks? A He checked those himself.

Mr. Lum: Both of those papers are unsigned.

Q The next page relates to the stock book and ledger. A That is Toothe's check.

Q Your check or Toothe's? A Looks like Toothe's. I presume he checked them. I didn't check any of them at the time.

Q Signed by him? A Yes, sir.

Q The last page relates to certain notes, policies and so forth, whose checks? A Signed by Toothe.

Q Now the first two pages that I directed you—

The Court: Do you say signed by Toothe?

Mr. English: Yes, sir.

Q The first two pages I direct your attention to, for the certificate of stock and for the ledger and cash book, are not signed by Toothe. Do you know why not? A He signed the first two. He said he wouldn't sign any more.

Q Did he give you any reason? A None whatever.

Q Did he take the papers? A He did.

Q Stock certificates? A Stock certificates and the whole business.

Q What did he do with them? A Went down to the box afterwards to the Fidelity Trust Company.

Q Did he have these certificates of stock? A He did.

Q What did he do with them? A Put them in the box.

Q What did Mr. Toothe do with them after you got to the Fidelity box? A After we opened the vault or the safe Mr. Toothe put all he had in the safe box, locked the box, took the key with him.

Q That is the Fidelity vault you are speaking about? A Fidelity vault.

Q Now the bill of complaint states that you conspired to oust Mr. Hedden out of the company, is that true? A Never.

Q Mr. Hedden was the president of the company, wasn't he? A Yes, sir.

Q Who acted as general manager of the company? A Mr. Hedden, as a directing manager of the company.

Q And what did he do to evidence his general managership? A He had control over the direction of the business of the company in all of its lines.

Q Were you the general manager? A No.

Q Did anyone ever refer to you as such? A Not to my knowledge. I never heard the name mentioned.

Q Did you act as such? A No.

Walter J. Dozier, further direct.

The Court: Ask him whether he or anyone else ever made an effort to get control.

Q Just go back in your mind to the days when Doe and Wathey were in the company. Who had the majority control at that time? A Mr. Doe and myself.

Q And Wathey? You mean the three of you? A Three of us.

Q Had more stock than Mr. Hedden? A Yes, sir.

Q Now at the time Mr. Doe wrote the letter to you which is in evidence as Exhibit D. 1, did you have a conference with Mr. Hedden? A Yes, sir, Mr. Hedden read that in my house.

Q Now what, if anything, was said at that time about the stock control of the company? A Why after Mr. Hedden read this and I told him about what Mr. Doe wanted, he says, "Wallie, you are not going to put me out of the company, are you?" I said, "Mr. Hedden, I have been with you a good many years. I have given you my best loyalty as a son could give you" I says, "I won't do anything to hurt you." I said, "If you want to buy Mr. Doe's stock you buy it. We will keep conditions on just the same."

Q Now it does appear that you did buy the stock. A And we eventually bought Mr. Doe's stock.

Q That left Mr. Hedden with the majority control of that stock, did it not? A Yes, sir.

Q And he maintained that right down until the time you got out? A Yes, sir; down to the time I got out.

Q Now, did you make any effort to get that control away from him? A I did not, because I had the control then.

Q Did you after Doe went out? A After that, none whatever.

Q What did you do? Did you invest $65,000 in the Fisher Williams Company? A I did not.

Q How much money did you put into that company? A $7,000.

Q And when was that company formed? A In the latter part of February, 1924.

Q At the time that you sold out your stock in January, 1924, was the Fisher Williams Company in existence? A It hadn't been thought of.

Q When did you first hear about it and when were you invited to go into it? A Sometime in the middle of February.

Q And by whom were you invited to go in? A Why, a Mr. Spencer, New York lawyer first took the matter up with me, before Mr. Fisher did.

Q Was he the attorney of Mr. Fisher? A He was the attorney of Mr. Fisher.

Q That was the first suggestion? A That was the first suggestion he made to me.

Q Do you know how much the other men put into the company? A Equal amounts.

Q Who? A Mr. Fisher, Mr. Williams, Mr. Coonan, put $2,000 in the company.

Q How much did Fisher put in? A Seven.

Q The same as you did? A Yes, sir.

Q And Williams how much? A Seven.

Q And Coonan two, how much was the other man? A Hohenhauser put in two.

Q That made twenty-five. A Yes, sir.

Cross examination by Mr. Lum.

Q Mr. Dozier, do you say that all of the minutes which you have dictated in this minute book

accurately represents the situations that they refer to? A What is that question? I did not hear that.

Q (Question read.) A To the best of my knowledge they do.

Q Do you know when Mr. Toothe was married? A I do, yes, sir.

Q When? A In February, 1922, I think.

Q Did he stay home from his wedding trip to attend the meeting of your company? A He did not.

Q Why did you in the minutes of that February meeting, recite him as being present then? A He is not cited as being present. He signed those minutes. That was done at the solicitation of his grandfather, Mr. Hedden. He wanted him in that meeting. He was made secretary as a wedding present and he wanted him to sign those minutes.

Q I call your attention to the minutes of the 14th of February, 1922, which you say you dictated, and you recite the following being all the stockholders present, James A. Toothe. Is that recitation true or false? A That is the way Mr. Hedden wanted it at the time as appearing at that meeting.

The Court: Answer the question.

Witness: Mr. Toothe was not present at that meeting on February 14, 1922. Nevertheless that is the way Mr. Hedden wanted them at that time.

Q Did Mr. Hedden dictate those minutes to Miss Jackson? A No, he did not.

Q Why did you dictate a false entry in the minutes then? A Well, I cannot explain just how that was at the time except was talked to

Mr. Hedden and he wanted Mr. Toothe present at that meeting and as secretary.

Q And if Mr. Hedden asked you to dictate a false minute you were perfectly willing to do it without a word of objection? A No; no.

Q Then that was not the reason, was it? A I cannot recall except at the time—because the meeting was held at Mr. Hedden's house.

Q I call your attention to the fact that waiver of notice of that meeting is signed by you and you alone. No other stockholder signed it. Have you any explanation of that? A I cannot give any now.

Q At the first meeting there was a form of certificate to be put on the minutes that was drawn at McCarter & English's office, wasn't it? A Yes, sir.

Q And what you did was, on each meeting thereafter, big or little, important or unimportant, adopt that same form of certification and put it on, didn't you? A Yes, sir.

Q And that certificate was put on minutes regardless of whether the minutes showed a true or false condition such as the February minutes? A No, I didn't say that.

Q I call your attention to this certificate which is signed by you, appearing to be dated the 14th of February, 1922, reciting that you as secretary have read the minutes of that meeting and that they are in all respects true and accurate records of the acts and things done thereat. You signed that, didn't you—yes or no. A Yes; I signed it.

Q I call your attention to the fact that this is a loose leaf ledger, is it not? Any page can be inserted.

The Court: Loose leaf minute book.

Q Loose leaf minute book, pages may be inserted at any time in any way, may they not? A Yes.

Q I call your attention to the fact that this certificate has nothing else whatever on it, no minutes, no records, and is attached on a separate sheet after the minutes to which it refers. Have you any explanation of that? A Matter of form.

Q What did you answer? A That is the form in which they were kept.

Q When did Mr. Toothe become a stockholder? A I do not recall.

Q Mr. Toothe did not sign that waiver until after he returned from his wedding trip, did he? A I do not think he did.

Q Certainly did not sign it before he went away and he was away for how long? A I do not remember.

Q Meetings between the people interested in this company were sometimes held quite informally for the discussion of various matters, were they not? A Sometimes.

Q And then later you dictated a minute of what you remembered having happened, to Miss Jackson, would you not? A No.

Q Well, who made the record of these informal meetings? A No record was kept of any informal meetings.

Q You agreed when Mr. Toothe was first elected secretary to continue to keep the minutes, did you not? A He asked me to.

Q And did you ever notify him that you had changed that agreement? A No.

Q So that when you came to this final meeting in January, 1924, and the minutes had not been written up, it was because you had prev-

iously written them up and had not notified Mr. Toothe that you had discontinued, isn't that true? A I did notify Mr. Toothe in the summer of 1923, I wouldn't write them.

Q Why did you just tell me a moment ago you never notified him? A I did not understand your question.

Q I am speaking loudly and trying to speak plainly. If you do not understand me, stop me. Turning now to this minute book, on page 88, it refers to a meeting on the 20th of July in 1920, at which only Mr. Hedden was present, does it not? A I cannot remember.

Q Your signature, isn't it? A That is right, that is my signature, I do not remember.

Q You do not remember the meeting. You certainly were not there or you would have recited your presence, wouldn't you?

Mr. English: What date is that?

Mr. Lum: That is on the 20th of July, 1920.

Q Now you dictated the minutes of that meeting, didn't you? A Very likely, I don't remember.

Q You initial that meeting on the seal. That is your initial, isn't it? A That is my signature.

Q That is your signature; so that whether you dictated it or not you O. K.'ed it, didn't you? A It looks that way.

Q And that meeting recites that present, Charles R. Hedden; there being no quorum the meeting adjourned. That is all of the meeting, isn't it? A That is all; Mr. Hedden signed it.

Q And then you attached this certificate? A This certificate— (interrupted).

Q "That I, Charles R. Hedden, chairman of the foregoing meeting and I, Walter J. Dozier, the secretary thereof, respectively thereat, have read the foregoing minutes" and so forth. You signed that, didn't you? A Yes, sir, and Mr. Hedden did, too.

Q You signed that certificate knowing it was false, didn't you? A No, I did not.

Q It is not true that you were at that meeting, is it? A To the best of my knowledge I was there.

Q If you were at that meeting why did it recite that there was no quorum? A That is the way the forms of the meetings were kept at that time.

Q In other words, what you mean is that that is the form that was adopted regardless of what the facts were, don't you? A No, I don't think so.

Q Now, there is a form adopted which is directly in contradiction of the facts which it covers, is that not true? A That may be an error.

Q It is the same form that was adopted at every meeting, isn't it? A Not necessarily.

Q Now turn to page 126 of this minute book. There is a meeting which recites that you alone were present, and, that there being no quorum the meeting adjourned, doesn't it? A Yes, sir.

Q And you put the seal of the corporation on that minute and initialed it, didn't you? A Yes, sir.

Q And then you have a certificate signed by Mr. Hedden certifying that he was there at that meeting, don't you? A That was the form.

Q That was the form. A At that time.

Q That was the story and you stuck to it through every meeting, didn't you? A No, sir.

Q In other words, that certificate was attached regardless of whether it had any application or not, wasn't it? A No, sir.

Q Then won't you explain to us why you had Mr. Hedden sign that certificate that you prepared, signing to the fact that he was at a meeting when you knew he was not there at all? A It is so far back I cannot remember that, just exactly what it was.

Q Just look at it. It recites that you alone were at the meeting.

Mr. English: What date?

Mr. Lum: Referring to a minute of meeting referred to in the minutes of November 15, 1921.

Q Have you any further explanation to give as to that recitation in the certification being inaccurate and being signed by you? A No explanation on that.

Q Referring now to page 132, there we find a meeting the 17th of January, 1922, at 1 o'clock at which Mr. Hedden is recited as being present and there being no quorum the meeting adjourned. You remember dictating that minute? A No, I do not remember dictating the minute.

Q You remember putting the seal on? A I put the seal there, that was the form at that time.

Q The form at that time. Always was the form, wasn't it, and a mere matter of form and nothing else? A No; I can't say a mere matter of form.

Q Now you were not present at that meeting, were you? A Possibly I was there and Mr. Hedden did not want a meeting. I cannot recall the meeting now.

Q In any event these minutes signed by you recite that Mr. Hedden alone was present and then in the certificate it recites that you were thereat. That is correct, isn't it? That is what the minutes show? That is what they show, doesn't it? "Respectively thereat." It looks so, doesn't it? A It looks that way.

Q And that is your signature all right, isn't it? A That is my signature. Agreed to have no meeting.

Q And if you agreed to have no meeting why did you recite that you were present at the meeting? Answer the question. Never mind looking into the book. A We agreed to not have it.

Q Then why did you recite that you were present at it? A It was a matter of record, where we agreed not to have a meeting.

Q Why didn't you recite in the minutes then that you agreed to have no meeting? A Well, because we may not have been versed in secretarial duties.

Q Coming now to page 133, meeting of February 13, 1922, initialed by you, you alone were present, weren't you, according to the minutes? Now, of course, if Mr. Hedden had been there, there would have been a quorum, wouldn't there? A We thought— (interrupted).

Q Wait a minute. If Mr. Hedden had been there, there would have been a quorum? A If we wanted a meeting.

Q If you wanted a meeting? A If we didn't want it.

Q Now tell me, did Mr. Hedden dictate that minute on 133? A He did not.

Q You did it, didn't you? A Yes, sir.

Q And you affixed that certificate reciting he was present when you knew he was not there,

didn't you? Have you any explanation? A No, I cannot explain why that is that way at that time.

Q Referring to page 149 of April 18, 1922, at which you alone were present, and you and Mr. Hedden have signed, reciting that you were both there; referring to page 168 at which you alone were present, 21st of November, 1922, and reciting that Mr. Hedden was the chairman and James A. Toothe was the secretary and were both thereat, referring also to page 188— (interrupted).

The Court: All these things are self evident, aren't they?

Mr. Lum: I think so.

The Court: Why spend so much time?

Mr. Lum: The last one recites Toothe also, it is a little variation.

Q Have you any explanation to offer? A I have none at all.

Q Now you went to California in August, 1922, did you not? A I did.

Q You also took a vacation and went to California in the summer of 1923, didn't you? A Yes, sir.

Q You were gone several weeks in 1923? A Yes, sir.

Q Straightening out affairs for your nephew out there, weren't you? A Not necessarily.

Q Attempting to, weren't you? A No, not necessarily.

Q At any rate, you were gone for weeks in 1923, weren't you? A Yes, sir.

Q You had no resolution passed by the directors authorizing the California trip of 1923, did you? A Not to my knowledge.

Q Why didn't you have a resolution passed in 1923 if you considered one necessary in the summer of 1922? A Given to me by Mr. Hedden.

Q Given to you by Mr. Hedden, which one? A 1923.

Q Didn't he give you the 1922 one? A Yes, sir; he did.

Q Then there was no difference between the two, was there? A Not that I can see.

Q Not that you can see. Won't you explain to us then why you should have a resolution put in the minute book covering one year and not covering the vacation to California the other year? A 1922 was the time Mr. Hedden refused to sign the agreement and unless that resolution was put through by Mr. Hedden—agreed on—I would have left the company at that time. That is the reason why it was put through in 1922.

Q I am talking about the trip to California. A That is what I am talking about, too.

Q There wasn't any question but that you could take a vacation for any length that you wanted at any time you wanted just as you did in 1923, was there? A Yes, sir; I asked it in 1922.

Q It was granted, wasn't it? A It was, and in lieu of the agreement the resolution was passed that the company would take my stock in the event I would retire from the company which at that time I had contemplated doing. 1923, entirely different matter.

Q You mean in 1923 you did not contemplate disposing of your stock, is that what you want to tell us? A I did at that time, and consistently, asked Mr. Hedden to take my stock.

Q Certainly you had. So that in 1923 that very question was more acute than it had been in 1922, wasn't it? A No.

Q Just as acute? You mean you were more anxious to dispose of your stock in 1922 than you were in 1923? A No. In the meeting of 1922 the resolution gave me the protection of my interest in the company.

Q You were concerned with that resolution, weren't you? A I was what with it?

Q Concerned with it? A No.

Q You didn't consider it a matter of particular importance? A Yes, sir; it was of particular importance to me.

Q To you? A Because Mr. Hedden had promised it.

Q You had been trying to get Mr. Hedden to sign an agreement to do that very thing, hadn't you? A Yes, sir; because he promised to give it to me.

Q And although he promised and you had agreements prepared by lawyers, you could not get his signature to it, could you? A Sure not.

Q Sure not. Then why do you say he agreed in a meeting to that which he would not put his signature to when you requested him to? A It wasn't the agreement—the agreement was to purchase my stock in the event of his death. The resolution in the meeting was the purchase of my stock in the event of my retirement.

Q You had asked him to purchase your stock in the event of retirement, hadn't you? A I had.

Q Before the meeting, hadn't you? A No.

Q Do you mean to say there was never an agreement prepared by a lawyer or you covering the question of his taking your stock, or the com-

pany taking your stock in the event of your desire to resign? A Yes, before the meeting.

Q Before the meeting that agreement had been prepared? A Yes, sir.

Q And he had refused to sign it, hadn't he? A He had, up to that time.

Q He had. Then why was it that when that matter came up before a meeting of the company that he changed his opinion and disagreed? A Mr. Hedden didn't have control of the Charles R. Hedden Company and when I agreed to give him the control of the company by the purchase of Mr. Doe's stock he agreed to execute those agreements with me.

Q And then he refused later to do it, didn't he? A After he had control of the company he did.

Q After he got control of the company he went back on his word, didn't he? A That is my understanding.

Q That is your understanding. And he refused to sign an agreement taking your stock or letting the company take your stock when you wanted to resign, didn't he? A What is that? Repeat that, please.

Q (Question read.) A He refused to sign the agreement. Mr. Hedden said a resolution would be passed—the company would take my stock.

Q Don't you recall, Mr. Dozier, that before this August 22 meeting you had had a contract drawn? A Agreement, not contract.

Q An agreement, whereby the company was to buy the stock and had presented that agreement to Mr. Hedden? A I do not remember about the company buying the stock. I re-

member an agreement that all of us were to buy the stock in the event of one member's death.

Q Don't you remember of having an agreement drawn by your lawyer providing that the company should buy the stock in the event of your death, disability or resigning? A I do not remember that.

Q You wouldn't say it was not done, would you? A No; I do not remember that.

Q You simply do not remember? A Not the company, only the members.

Q What was the discussion at this August meeting when this resolution to buy your stock came up? A I was in kind of bad shape—bad health.

Q I am asking you what the discussion was. A That was the discussion.

Q What was that? A That was part of the discussion.

Q What was said about the purchase of the stock? A Well, this come up before—the question come up of my vacation—came up before the question of the stock. I asked to be relieved from the company. I asked—I contemplated retiring from the company.

Q Asked to be relieved? A Yes, sir. I further went and asked that owing to my ill health that I would like to be relieved entirely from the company. Mr. Fisher at the time talked it over with Mr. Hedden that a couple of months would pull me around all right. If it didn't I would like to get freed from the company for at least a year or entirely so. Then the resolution was passed to give me two months' vacation, and following that discussion I introduced the resolution that the company purchase my stock in the event of my retirement from the company.

Q Had you talked it over with Mr. Hedden before the meeting? A At that time?

Q Yes. A No—yes; three or four days from the time the agreement came up Mr. Hedden said, "I can't sign this agreement, Walter, but you can make an agreement with the company to buy your stock in the event you retire," and I said, "Mr. Hedden, that will suit me just as well."

Q Had you talked to your lawyer about the company buying your stock? A No, sir, not to my knowledge.

Q Never mentioned it? A Not to my knowledge, about the company buying the stock.

Q Didn't know that the company could not legally buy its own stock in that way? You didn't know it?

Mr. English: I object.

A No, I didn't know it.

Q Why didn't you ask Mr. Hedden to present the resolution for the purchase of your stock by the company? A Well, I didn't think that was necessary. Coming from me—I thought inasmuch as it was my resolution, coming from me, that I was the proper person to make that.

Q You knew that Mr. Toothe was a stockholder of the company at that time, didn't you? A I believe he was.

Q And you knew that his small holdings represented most of the property he had in the world at that time, didn't you? A I did not.

Q You knew of his affairs, didn't you? A No, I did not.

Q Did you speak to him about the company buying your stock at that time? A No.

Q Never said a word to him about it? A Not to my knowledge.

Q Did you consider that resolution for the purchase of your stock by the company was good for that year only, or was good for all the directors that should come to the end of the world if the company lasted that long? A I couldn't tell. The resolution was put in force and effect—it was good until it was put into force and effect.

Q You didn't think that it spent its force after the next year had passed, did you? A No.

Q Then no further resolution dealing with that subject was necessary at any time, was it? A Why, I made that resolution in accordance with Mr. Hedden's and my agreement on January 5th, in confirmation of it.

Q Please answer my question. If a valid resolution was passed in August, 1922, and you considered that that resolution was valid until it was acted upon, no further resolution was necessary, was it? A No, it wasn't necessary.

Q And you say it was drawn in 1924 because Mr. Hedden requested it, is that true? A Yes, sir, Mr. Hedden asked me—Mr. Hedden asked that—he and I were discussing the matter.

Q And you say Mr. Hedden asked that that resolution in 1924 be prepared, do you? A I say at our meeting on January 5, 1924, when Mr. Hedden declined—when Mr. Hedden offered the money or notes, rather, for my stock, I says, "Mr. Hedden, ratification by the company to purchase my stock, and go through the company, and all you have to do is to offer another resolution in confirmation of it." Mr. Hedden says, "Walter, go ahead and do it that way."

Q Why did there have to be a confirmation of a perfectly valid continuing resolution, that is what I want you to tell me. A I am only a layman, I am not a lawyer.

Q Mr. Hedden is a layman, too, not a lawyer, isn't he? A Yes, sir.

Q Did you discuss at all what would be the gain by having a further resolution introduced? A Merely a matter of form.

Q Merely a matter of form, just like the false representations in the minutes, merely a matter of form, was it? A I don't say that.

Q Now, then, when the resolution of 1924 came up at the meeting, Mr. Hedden voted against it, didn't he? A The record shows.

Q It is a fact that he did. You were there, weren't you? A Yes, sir.

Q And he voted against it, didn't he? A No, I didn't vote against it.

Q Mr. Hedden voted against it? A I think he did.

Q You think he did, don't you know he did? A The record shows.

Q You are positive, aren't you? I am asking you if you were there? A Sure.

Q Do you know whether he voted against it or not? A I cannot remember.

Q Can't remember. Do you remember whether Toothe voted against it or not? A Probably did.

Q Do you remember that? A Possibly so.

Q Probably you remember? A The record shows.

Q Never mind whether the record shows or not, sir. I am testing your memory as a witness in this case. Do you say you do not remember

Mr. Hedden voting against that resolution? A The record shows.

Q That is the only answer you have got to give? A The record shows.

Q You have no memory of that transaction? A Yes, sir, I have a memory.

Q I am asking you to give your remembrance regardless of the record. A Yes, sir; I think that Mr. Hedden did vote at that meeting against it.

Q You think? A I think he did.

Q You don't know? A The record shows.

Q So I understood. Don't you know whether he voted against it or not? A I just said that I thought he did vote against it. The record shows.

The Court: Don't you know?

Witness: The record—I think he did.

The Court: Don't you know that he did?

Witness: I think it is very possible he did vote against the resolution. The record will show that.

Q And when he voted against the resolution what did you say on that subject? A Why, I was very much amazed and surprised that Mr. Hedden did it.

Q I didn't ask about your amazement. I asked what you said. Please answer my question. A I do not remember.

Q Don't remember what you said? A I don't remember what I said.

Q Do you remember whether you said anything? A No. The meeting was in a ruffled condition.

Q Do you remember whether you said anything? A Yes, sir. I don't remember very much about what followed.

Q You don't remember saying anything to Mr. Hedden nor to Mr. Toothe when that resolution for the company to buy your stock in January, 1924, was not passed? A I do not remember except that I told Mr. Hedden I was rather amazed at the outcome of the meeting. I do remember saying that.

Q And that is all you remember saying? A That is all I remember, yes, sir.

Q You didn't say to him that there was already a valid resolution perfectly good for your purposes, did you? A I do not remember.

Q You didn't tell him that you already had a check for what you figured the value of your stock to be, safe in the bank, did you? A He knew that already.

Q You please answer my questions, Mr. Dozier. Repeat the question. A I don't think anything was said at the meeting about that, because he had already signed the check and we had discussed it before.

Q Then why didn't you tell him that you didn't care whether he voted against the resolution or not? A I didn't make any such remark like that.

Q Why not? A Because Mr. Hedden was in a very ruffled condition.

Q You say at this meeting of January 5th you and Mr. Hedden parted very pleasantly? A We did. We left the room very pleasantly.

Q That was because when you had mentioned his buying your stock or your buying his stock he asked if you would take notes for it as a joke, isn't that a fact? A As a joke?

Q Yes. A No, it isn't a fact.

Q Isn't it a fact you came out of the room with a smile, his saying, "Well, will you take notes for your stock"? A No, he did not.

Q Mr. Hedden you say was very much interested in all the affairs of the company, exercised a close and watchful care about everything that concerned his finances, did he? A He did.

Q And after a resolution had been agreed to fixing the purchase by the company of your stock at the book value, did Mr. Hedden discuss with you what was meant by the term "book value"? A No.

Q Did you ever present to Mr. Hedden a statement showing the figures by which you reached the amount of the book value of the stock? Yes or no, please. A I have the work sheets with Mr. Hedden and I told him at that time the book value of the stock would be approximately $225 or $40 a share.

Q Between two hundred and twenty-five and two hundred and forty? A Forty dollars a share, yes, sir.

Q And that is the only conversation you had with him on that subject? A On that subject, yes, sir.

Q Never again took up any figures with him on the matter of book value? A Let me see. That was on the 11th and I told him that that would be the basis on which the settlement between him and myself would be made.

Q Did you tell him how you made that up? A No; he didn't go into the details of it.

Q He wasn't interested in the slightest on what figure you took or good will, was he? A Made the good will up from the figures.

Q You want us to understand that Mr. Hedden was not interested in what figure you took for good will; is that right? A Oh, no, he was interested in the whole value of the stock.

Q Did he ask you what you fixed for good will or how you reached it? A No.

Q All right. Never did at any time, did he? A Not at that afternoon he didn't.

Q Never did at any time? A Not afterwards.

Q Not after or before asked you how you reached the figure of good will, did he? A I told him the figure of good will was figured in the value of it.

Q My question is this—did he before or after ask you how you reached the figure of good will? A No, he did not.

Q If you will answer my questions we will save a lot of time because I will continue until I get an answer? A All right.

Q Did he ask you how you figured the profit on the various contracts? A Yes, sir; that afternoon he did.

Q What did you tell him? A I told him that we had treated them the same as we did the previous year, we figured out approximately the value of the work completed, and treated that as an arbitrary amount for profit as of December 31st.

Q Now that approximation would make a great deal of difference in the value of the stock, wouldn't it? A That was the profit.

Q And do you mean to tell us that Mr. Hedden was not sufficiently interested in that approximation to ask you to show him the figures which you made? A I wouldn't say that he was not.

Q Well, he never did ask you, did he? A No.

Q And you never showed it to him? A We talked over lots of things. He had the figures at his hand.

Q Did you ever show him the figures? A Yes, sir; he had them in his hand.

Q Where are they? A The work papers will show it.

Q Did you ever discuss with Mr. Hedden what was meant by book value? A Yes, sir.

Q When and where? A At the office. It was at the time Mr. Fisher purchased stock in the company. Mr. Hedden wanted to ascertain the book value of the stock at that time. He took a pad and pencil and figured out the book value himself.

Q I am not asking you about Mr. Fisher's purchase. I am asking you, sir, the only thing I am concerned with, this case. Did you and Mr. Hedden discuss how the book value was to be figured on the purchase by your company of the stock? A Yes, sir, we did, on the 11th—the afternoon of the 11th.

Q Was anyone else present? A Yes, sir.

Q Who? A No, nobody but Mr. Hedden and myself.

Q Did you have the figures before you then? A Mr. Fisher was not there at that meeting.

Q Did you have the figures before you then? A Yes, sir, working sheet.

Q Did you make any distinction between book value with or without the good will? A No. The figures I gave Mr. Hedden I told him included the book value and good will, amounted to between two hundred and twenty-five and forty dollars per share.

Q Did you figure good will separate from the book value? A Yes, sir.

Q Now your resolution was that the company was to purchase your stock at the book value, wasn't it? A Yes, sir.

Q And when you came to take your check you figured book value, didn't you? Yes or no. A Book value consists in part of your good will.

Q You figured two items, one book value and another good will, didn't you? A Good will is part of your book value.

Q All right. Will you just answer my question that I have asked three times? You figured book value and then you figured good will as a separate item, did you or did you not? A Yes, sir; I did.

Q And you knew at the time you made that figure that your resolution called only for book value, didn't you? A I didn't think of it.

Q You didn't think of it? A Because the book value—good will value is part of your book value.

Q And you never told Mr. Hedden how you figured good will value or how much, did you? A Yes, sir, I told Mr. Hedden how the good will value was figured, on five year income basis.

Q When did you tell him that? A On the evening of the 11th—the afternoon when we had those work papers.

Q Did he ask you how much that would be? A No, not individually.

Q Wasn't concerned with that, was he? A Well, that was part of the value of the stock.

Q You knew that the company owed Mr. Hedden considerable money at that time, did you not? A He wanted to—

Q If you will just answer my questions, sir. A Yes, sir.

Q Now please remember that. The answer is yes. You know that Mr. Hedden wanted some of that money if he could get it at that time, didn't you? A Not at that time.

Q Hadn't he been asking for it for some time? A No, he had not.

Q Never asked for it? A No.

Q Never asked whether he could get some of it? A No.

Q All right. You have answered. He did not want that money that the company owed him, is that right? A No.

Q Now, Mr. Dozier, do you recall that Mr. Hedden had spoken to you about the big check expected from the Harrison Radiator Company? A No, he did not.

Q Had never spoken to you about it? A No.

Q Didn't tell you that when that came in he wanted part of his indebtedness paid? A He did not, because I told him.

Q Told him what? A That that check had come in that Friday afternoon.

Q Did you make an entry in the book of that Harrison Radiator check in your own handwriting? A I remember that I did.

Q And you did that in December, 1924, didn't you? A No, I did not. That was written in as of that date.

Q I show you the check-book—the stub of the check-book of the Montclair Trust Company and show you an entry of December 31, 1923. A Yes, sir.

Q That is Harrison Radiator, Lockport job, 171 in your handwriting, an entry under the date

of December 31st, account of above job, eighty-two thousand plus? A Yes, sir.

Q You entered that? A Yes, sir; as of January 11th.

Q But you yourself put this in your handwriting in this book under the date of December 31st, did you not? Did you make that entry? A Yes, sir.

Q So that that showed as of 1924 receipts, doesn't it—'23 receipts? A '23 receipts.

Q The check was not received on December 31st, was it? A No, January 11th.

Q And although the check did not come in until January 11th you entered it in there under the date of December 31st, intending to take for yourself a check based upon that as in 1924, didn't you? A That was the form, the way we did at the beginning of the year.

Q That was the form to you? A At the beginning of the year.

Q That was the form to you? A At the beginning of the year.

Q And if that check had not been due until January 31st or February 11th, would you have put it in there? A It would not have been in there.

Q How long would it have to be in January before you would not put these in on the December before? A After the first ten or twelve days.

Q Then the 11th then would be a mystic period coming half way between the 10th and 12th, is that right? A I don't know about that.

Q What? A For the first ten or twelve days we used to keep open the books in the previous year's business.

Q And that was particularly so when someone was going to be paid book value figure for his

stock, was it? Of course it had nothing to do with that, did it? A That is only incidental.

Q Hardly incidental. Now I show you Exhibit D. 12. This is your handwriting distinctly —your figures. A It looks like part of the work sheet.

Q Work sheet. Looks like part of the work sheet. And in that the last item on the next to the last page is the figure fifty-two thousand put down in your handwriting, value of good will, is it not, and that was something added in addition to what you figured before as book value, was it not? A In addition to the book value, yes, sir.

Q All right. And you drew your $62,000 check figuring an item of $52,000 good will in addition to the book value, didn't you? A That was only $52,000 good will on nine hundred shares of stock.

Q And you took that into consideration adding it to the book value. A Added to the book value, yes, sir.

Q Now won't you tell me whether Mr. Hedden gave you any reason why he wanted a confirmatory resolution passed in January for the company to buy your stock? A Only on the note question. I told him the company could take his notes for my stock—the company could discount his notes; and then at the meeting of the board I said, on the 15th, I said "a further confirming resolution could be passed, Mr. Hedden, of the August 22 meeting."

Q Why didn't you ask him to prepare such a resolution? A Why did I ask him to?

Q Why didn't you? A I never thought—he never did detail work. Merely detail work.

Q Why didn't you ask him to introduce the resolution then if you wanted to relieve him of

that detail? A I didn't—I thought that I would be the proper person to introduce such a resolution.

Q Why, if he wanted it introduced? Why didn't you ask him to introduce it? A I didn't say he wanted it. I said I told him that such a resolution could—I said, "such a resolution could be introduced confirming it."

By the Court.

Q I am wondering why you introduced a resolution at all. A I don't see either now.

Q You having at that time already had your money, why? A Only in the agreement with Mr. Hedden, we had on the 5th of January, I told him at that time that a resolution at that time further confirming that would go through —pass the board at that time.

Q But you had already had your money from Mr. Hedden as you say, based on your August, 1922, agreement. A I only put that— (interrupted).

Q Why a resolution after you had your money confirming the previous resolution and authorizing the sale—the purchase of your stock? A Only to keep my faith with Mr. Hedden as of the meeting of January 5th.

Q Why the faith had already been spent according to your notion by your having the check of the company. Why the resolution I can't understand. A I put that resolution in for Mr. Hedden's benefit at that time.

Further cross examination.

Q Mr. Dozier, you say that the nearest you ever spoke of any figure, final, with Mr. Hed-

den, was telling him the stock would be two hundred and twenty-five to two hundred and forty dollars a share—that is the nearest you ever got in discussing it with him? A Yes sir, on that, because Mr. Hedden wasn't there that Monday.

Q So you never discussed with him the figures to a penny which the company was to pay for this stock, did you? Yes, or no? A Not after the 11th.

Q At any time did you ever figure with him to a penny what that stock was going to cost? A On the 11th—

Q To a penny? A No, not to a penny.

Q That is my question, sir. Now please answer it. Mr. Dozier, you never showed this check filled out for $65,219 to Mr. Hedden, did you? A I put it on his desk. He was not there.

Q Now I am going to ask the question again and I am going to keep on asking until you are pleased to answer it and I am going to do that with everything if we stay here for the rest of life. The question is, did you ever show this check for $65,219 to Mr. Hedden? A I couldn't because he was not in the office.

Q And then you never spoke to him about the amount of this check at any time? A Yes, sir, at that day when he brought the check back.

Q What did you say to him then? A He brought the check back to me at the desk.

Q What did you say to him then? A I asked him if the checks were all in there and signed and he said yes.

Q Was this check shown to him? A That check was in the envelope.

Q That is not my question, whether the check was in the envelope. There were lots of checks

in the envelope. Did you at any time ever in your life show this check to Mr. Hedden either before or after it was signed? A He wasn't there that morning.

Q Then the answer is you never showed this check to Mr. Hedden at any time in your life, did you? A It was on his desk, I put it on his desk.

Q And this most important of all transactions between you two was closed without his ever facing you with this check or you facing him with this check, wasn't it? A No; he had the check.

Q You mean that it went in in a blue envelope with a lot of more checks and came out signed? A There were several checks in this envelope at the time it came out.

Q And when that blue envelope came out it was handed to you by Mr. Hedden, wasn't it? A Yes, sir.

Q He didn't say a word to you about, "I see the check figures out $65,219, and I have just signed it." He didn't say anything like that? A No, sir; didn't say anything about the check.

Q You didn't say anything about it? A No. I said was all the checks signed and he said yes.

Q You didn't say anything about this check to him, did you? A It was on his desk.

Q I say you didn't say anything to him about this check, did you? A I don't remember.

Q You do not remember. You might have had a long discussion with him about it and not remember, is that your testimony? A That is all I thought was necessary for him to do.

Q You thought it was only necessary for you to get the check back with his signature on. It wasn't necessary to speak to him about it, is that right? A He knew about it.

Q He knew about it. You think he knew about it, because it was in the blue envelope, is that right? A I told him I was going to draw a check for it.

Q But you didn't tell him the amount, did you? A I didn't know it at the time.

Q Didn't know it when you drew it, but after you had drawn it and after you had known it, you never spoke to him about it, did you? A He wasn't there.

Q Now you knew that after he had found out that this check was drawn and had been paid out of the company's bank account, he, figuratively speaking had quite an explosion. You knew that, didn't you? A I didn't know it, no.

Q You didn't know that he called up the Montclair Bank when he first found it out? A No.

Q Didn't know anything about that? A No.

Q Didn't hear anything about it in the office? A No.

Q Do you remember the next morning when you were delivering books and papers and so forth to Jimmie Toothe, his saying to you, "When Mr. Hedden finds out about this there will be the dickens to pay" or words to that effect? A Made no such remark.

Q Now your counsel produced four papers here, those receipts for the check-book and so forth, two of which were signed and two of which were not signed. That is correct. Two of these papers were put in evidence with these receipts—there were four receipts—typewritten —and two of them were signed and two not signed, weren't they?

The Court: What do you refer to?

Mr. Lum: The receipts which this witness asked Mr. Toothe to give him when he turned over the books and stock and so forth.

Q Now, Mr. Toothe you say, signed two and then said he wouldn't sign any more, is that the answer? A That was my understanding at the time.

Q Did he tell you why he wouldn't sign any more? A He did not.

Q I call your attention to the fact that of those which you asked him to sign, the first one refers to your two hundred and seventy-five shares of stock? A I do not say that was the first.

Q Well, it is the first here. A He signed the first receipt I gave him, the other two he did not.

Q The receipt I show you, the first one on these papers, is the receipt for your shares of stock, isn't it? A Yes, sir.

Q And that was not receipted for by Mr. Toothe, was it? A Evidently not.

Q Did you tell him then that the company had already bought your stock? A Yes, sir.

Q Did you tell him that you already had the check through the bank for it? A I had been paid for it, yes, sir.

Q You told him that? A Yes, sir.

Q And did he say then any reason why he would not sign that receipt? A Did not.

Q Now he did sign, perfectly freely, the receipts for the company's property which he received? A He had all four receipts on his desk.

Q And he signed the two referring to the company's property which he received from you, didn't he? A The signature is there.

Q And he did not sign that which had reference to your shares of stock, did he? Mr. Dozier, why did you have your name written in on this check in advance by—on the typewriter? A I usually had the payee, the same with other checks—that morning I had other checks drawn —that was around the middle of the month—to put through—I had other bills on my desk. I drew out a memorandum for that check for the stenographer with the other bills, that is how my name was on that check.

Q Why did you have your name written on the check before you knew what the amount was going to be? A That check was written up on the morning of the 14th.

The Court: Why?

Witness: Why what?

Q Why did you have your name written in there before you knew the amount for which the check was to be made out? A Because the other bills with that check follow and that was to be put in there a couple of hours after exactly—I was figuring up the amount.

Q That is the only reason? A That is the only reason at the time.

Q Now the other bills were definite as to amount as well as payee, weren't they? A They only—the name of the payee was written in with the other bills the same time this check was.

Q All the others you gave to the girl were definite as to amount but this one, weren't they? A Yes, sir.

Q And she wrote in on the machine when she made out the others—she wrote in the figures as to the amount, red ink? A No, she didn't write that.

Q I mean on all the other checks you gave her. A No, she didn't.

Q On all the other bills— A Yes, sir.

Q —this part. A I wrote that.

Q And she wrote that on the others? A No, all she wrote was the payee.

Q Who wrote the rest? A Either Mr. Aubin or myself on the checks of that morning.

Q When did you determine what the amount was to be? A Around in the afternoon.

Q Now, during this busy week there in January while this amount was to be determined you were at the office a great many evenings, weren't you? A No, not a great many evenings.

Q Sure of that, sir? A No; I wasn't there a great many evenings.

Q You are sure of that, sir? A Yes, sir; the only evening I was there was the last Saturday and Sunday I was there.

Q How many other evenings—how many nights were you in that office between the 1st of January and the 14th? A I can't remember.

Q Can't remember? A No.

Q Were there any? A There might have been a few nights I did work in the office.

Q How many do you mean by a few? A I can't remember now.

Q Did you speak to Mr. Hedden about being there several nights in January? A No, I do not remember.

Q Didn't speak to him at all about it? A I do not remember.

Q And your nephew, Mr. Whitehouse, is it? A Yes, sir.

Q He was there nights with you also? A He was there temporary.

Q You were very busy figuring with him, weren't you? A The last two or three days there, yes, sir.

Q And you didn't tell Mr. Hedden that he was there with you nights going over the company's books and figures, did you? A Mr. Hedden knew it.

Q I am asking you did you tell Mr. Hedden he was there with you? A Yes, sir; I told Mr. Hedden he was there.

Q When? A Around the last part of December. Mr. Aubin wanted some help. I told Mr. Hedden.

Q The last part of December. You didn't tell him that Mr. Whitehouse was there with you in January, did you? A Couldn't have told him in December that he was there in January.

Q The question is again that you did not tell him that Mr. Whitehouse was there with you most every night in the early part of January, did you? A Early part of January?

Q Who else was there on these night visits to the company's office? A What.

Q Who else was there besides you and Mr. Whitehouse on the company's business in the company's office? A I wasn't there every night.

Q No, not quite. A I was there Saturday night and the next day, Sunday.

Q The question is regardless of what the nights were, who else was there? A I do not remember.

Q You don't remember? A I don't know who was there. Aubin had charge of the books, he was there.

Q Was Mr. Hedden there any night in January? A No, Hedden was never there in January.

Q While the book value of this stock in this company of which he held the controlling interest was being figured he was never present at any of the important figurings, was he? Yes or no will do it. A We made up the figures and give them to him.

Q The question is this. Now listen to it and answer it. At any of these important meetings in January while the book value of this stock in this company in which Mr. Hedden held the controlling interest—while it was being figured he was not present at any of these night visits, was he?

The Court: Why don't you answer the question?

A No, sir. Mr. Hedden was present at the meeting of January 11th, going over the account as to book value at the time.

Q While the figuring was being done he was never present, was he? A He was in his office.

Q Never called in, was he, to be present at the figuring? Was he? A I do not remember that.

Q Do you happen to know the difference between the profit and loss figures as taken by you in figuring the book value of this stock and the amount which was actually realized on the completion of the various jobs? A I do not remember.

Q Don't know that, do you? A I do not remember.

Q On the Harrison job what profit and loss did you figure on taking the book value? A I think we put in on that account something like—(interrupted).

Q $70,000? A $70,000, I think.

Q That job was how much completed when you left? A Around eighty-five or ninety per cent.

Q And Mr. Fisher was largely in charge of that job, was he not? A No.

Q Mr. Hedden almost never went up there to the works, that is right? A Yes, sir.

Q Mr. Kueneley, was also with the company? A Yes, sir.

Q And he stayed there and so did Mr. Fisher until the Harrison Radiator job was finished, didn't he? A I don't know that.

Q How about Mr. Williams, was he there until it was finished? A I don't know how long Mr. Williams was there.

Q Now you know that Mr. Fisher stayed there until what time? A I do not remember. I was in the west.

Q Well, it was some month or two later, wasn't it? A I don't remember when he left.

Q Hadn't Mr. Fisher told you that the Harrison job was finished before he left? A No.

Q Do you know that the completion of the Harrison job went on after you left with the same men who were carrying it forward while you were there? A Not after I left.

Q Was there any change? A I don't know.

Q You don't know of any change. Do you know that instead of there being a profit of $70,000 on the Harrison Radiator job there was but $23,000 profit on that job? A No, I do not.

Q You do not know that your figures on that one contract gave the benefit of practically $50,000 in your favor beyond what was realized? You do not know that? A I do not know that.

Q Do you remember the board of education job of South Orange? A Yes, sir, school.

Q Pretty well along when you left? A Yes, sir, quite well along.

Q Nearly finished? A Yes, sir—I don't know about nearly finished.

Q Well, it was further along than the Harrison Radiator job, wasn't it? A Oh, no.

Q How much did you figure profit on that? It was just three thousand, wasn't it? A I do not remember those details. Yes, three thousand. I do remember.

Q And do you know that that job went on with the same organization, the same men who had it in charge while you were there? A No, I do not.

Q You do not know that. Do you know that instead of being a profit of three thousand that you took for yourself, there was an actual loss of approximately $18,000 on that job? A I do not see how it possibly could be.

Q You do not know that, do you? A I do not.

(Adjourned Until Ten o'Clock Tomorrow Morning.)

IN CHANCERY OF NEW JERSEY.

May 21, 1925.

Continuation of hearing pursuant to adjournment at the place and in the presence of the parties as before.

WALTER J. DOZIER, resumes the stand for further

Cross examination by Mr. Lum.

Q Do I understand you aright that after the 5th of January Mr. Hedden smiled and everything was happy and the company had agreed to take your stock at the book value? A Yes, sir.

Q Then you had spoken to Mr. Hedden about buying or selling at $200 a share, had you not? A Yes, sir; on the 5th of January.

Q On the 5th of January you offered him your stock at $200 a share? A Yes, sir, or to buy.

Q Or to buy? A Yes, sir.

Q Then you had a talk with him on the 11th? A On the 11th.

Q And you think you spoke to him about figures then? A I did.

Q And what did you tell him? A We looked over the work sheet and went through all the possible profits at that time according to the work sheet, and I told Mr. Hedden then that my position with him as of the 5th—meeting of the 5th, would still hold good.

Q What did you tell him the price, according to the books, would be, that the company would have to pay you? A I told him it was ap-

proximately—between two twenty-five and forty dollars a share.

Q Did he tell you any reason why he should prefer to pay you for the company somewheres between two hundred and twenty-five and two hundred and forty rather than to take your stock at $200 a share? A He did not.

Q Did you ask him that question? A I did not.

Q It was not mentioned between you? A Not at that time.

Q Didn't it occur to you as extraordinary that a man would be willing to pay you from twenty-five to forty dollars a share more for your stock than you were asking for it? A Because on the 5th of January he told me to go ahead and arrange it that way.

Q But you said when you saw him again on the 11th you repeated, when you told him that the price according to your work sheet was running between two twenty-five and two forty. A I did.

Q That you would still go to your former agreement for $200, did you? A I did.

Q And did he tell you, or didn't it occur to you as odd that he didn't tell you any reason why he preferred to pay you twenty-five to forty dollars a share more than was necessary? A No; he did not.

Q Won't you explain to us why you understood he was willing to pay twenty-five to forty dollars a share more than you were asking? A Only according to the agreement that he told me as of January 5th he would be willing to sell on this basis.

Q But then after that and after you had told him that according to your work sheet it was

running from between two twenty-five to two forty you still were willing that the company should take it over at two hundred, you say? A I would if he had made the offer.

Q Didn't you say to him, "Why do you give me this twenty-five to forty dollars more than is necessary?" A I did not.

Q Why didn't you ask him that? A It didn't occur to me at the time.

Q Absentmindedness? A Probably.

Q But everyting stayed very pleasant—everything stood very pleasant at the time? A At the time.

Q And there were no blank signed checks with Mr. Hedden's name on alone at that time in your possession or under your control, was there? A There were not.

Q And Mr. Hedden was studying every check and looking them over and only signing when they were filled in at that time, wasn't he? A No, sir, the checks were filled in and signed by Mr. Hedden to my knowledge.

Q But were there any checks in blank out at that time? A Not to my knowledge.

Q On the 10th of January did you take a check for a large amount to Mr. Hedden made to your order? A Put it on his desk, yes, sir.

Q Did you say anything about it? A Yes, sir, exchanged check at that time.

Q What do you mean by "exchanged check"? A I had given my check in exchange for that check.

Q You mean on the 10th of January you gave your check to the company? A Yes, sir.

Q For how much? A I think it was for something like closing the account at that time, about $19,000.

Q That was all understood by Mr. Hedden—all understood by Mr. Hedden? A It was, at that time.

Q And agreed to by him? A Yes, sir.

Q No misunderstanding? A Not to my knowledge.

Q And then you put through that check?

The Court: What all was agreed to?

Q This check for $19,000 to your order on the 10th of January. You understand me. A Yes, sir.

Q And that is the check? A That looks like it.

Q And you mean to repeat now that that was understood and agreed to by Mr. Hedden? A I do.

Q Have you the letter received from me after I was retained by Mr. Hedden, after the 17th of January of that year?

Mr. English: That is in evidence.

Mr. Lum: I ask that the check of January 10, 1924, No. 14142, to the order of Walter J. Dozier for $19,000, countersigned Charles R. Hedden be marked for identification.

(Paper marked Exhibit C. 18 for identification.)

Q You received on the 17th of January that letter, D. 4, did you? A I think so, yes, sir.

Q And immediately thereafter you deposited your check for $10,000 in the Fidelity account of the Hedden Construction Company, didn't you? A In the Fidelity Trust? No, I did not.

Q Well, in some bank.

The Court: Montclair?

Q In some bank? A I deposited a check for $10,000 in Montclair.

Q To the order of the Hedden Construction Company? A To the order of Charles R. Hedden Company.

Q Immediately after receiving that letter. A That was the balance of my account—personal account at that time.

Q Did you explain that to Mr. Hedden? A No. Mr. Hedden wasn't in the office that day.

Q Nor to anyone else at any time, did you? A Why no.

Q Why didn't you say that there was nothing to be paid back by you because Mr. Hedden had signed the check for $19,000 initially and by agreement. A That was a matter of courtesy which Mr. Hedden at that time gave me that check and it was charged to my personal account. The $10,000 which I made out balanced my personal account. That made me clear of the company.

Q You knew that Mr. Hedden was owed considerably money at that time, didn't you? A The company owed Mr. Hedden some money, but Mr. Hedden wanted the company to owe him money.

Q He liked the company to be in debt to him, did he? A He asked to let that money remain because Mr. Hedden had a claim—the government had a claim of $25,000 against Mr. Hedden and he was fighting it for a good many years. He says, "Walter, let this stay in the treasury and when I want to put my hands on it,

I can get it." I said, "Any time, Mr. Hedden, but I would take and draw my money down;" that is what I told Mr. Hedden.

Q And you always agreed with Mr. Hedden that you should draw your account down, did you? A Draw how?

Q Now the question is you always agreed then with Mr. Hedden that you should draw your account down. A And he likewise.

Q Why, sir, you just told me a moment ago that he didn't want his account drawn down, but in order that he might—because of some governmental matter he wanted it to remain there. What do you mean now by this last answer? A I suggested that he should draw his account down.

Q That is what you mean by that last answer is it? Now my question is it was agreed then by Mr. Hedden that you should draw down your account at all times with the company, was it? A Yes, sir.

Q And you always had his signature to the checks for your drawing down presented to him after the checks to your order were filled in. A After the checks were filled in I always give them to Mr. Hedden.

Q Always gave them to him and then you used them forthwith? A Yes, sir.

Q Yes. Now, I show you a check dated January 16, 1922, to the order of W. J. Dozier, countersigned by Charles R. Hedden, original Number 12084, and that number struck out and the number 12227 written in there, and endorsed by W. J. Dozier. Do you recognize that check? A Yes, sir, that looks that way.

Q And that was taken for your personal drawing account? A It was.

Q And the check dated January 16, 1922, was used at that time, do you know? A I do not remember that.

Q Is it not true that that check on which you wrote the number 12227 was not used until—that this check was used on January 16, 1923, although its place in the check book here brought it in for orderly use on the 30th of November, 1921; is that not true? A I do not remember that.

Q You do not remember it? A No.

Q I show you check—

Mr. Lum: I offer this for identification, check marked 12227.

(Paper marked Exhibit C. 19 for identification.)

Q I show you check stamped April 15, 1922, original number 12259, changed to 12455, to the order of Walter J. Dozier, $3,000, countersigned Charles R. Hedden and deposited apparently to your order on April 15, 1922. Do you recognize that check? A Yes, sir, that looks it.

Q I now show you stub book number 23 covering checks running from 12201 to 12500, from January 5, 1922, is it? A It looks that way.

Q June 21, 1922, and refer you to the stub number 12259, matching the check just referred to and which stub is in blank. In whose handwriting are those words "in safe"? A That is my handwriting.

Q And the number of the check above it 12258 is also a stub in blank marked with the words "in safe" in your handwriting? A They were.

Q And the check below it numbered 12260 with the stub in blank is also marked with your handwriting "in safe" is it not? A Yes, sir.

Q Now, in the orderly course—and the next check, 12261, dated January 31, 1922, is filled in the stub with your handwriting is it not? A Yes, sir.

Q So that in the orderly course check number 11259 would have been used before January 31, 1922, would it not? A I do not say so.

Q If the check were used—if they were, in the orderly course, it would have been used before January, wouldn't it; if it had taken its regular turn? A It depends.

Q What does it depend on, sir? A Those checks were given to Aubin and Aubin put them in his safe.

Q My question is this: If those checks referred to, 12259, had been used in the orderly course, that would have been used before January 1922, is that not true? A Might or might not have been.

Q Well now, turning back them to check number 12253, stub, that was used on January 31, 1922, wasn't it? A It looks that way.

Q And then when we turn the other side of this blank sheet we again find the date of January 31 1922, don't we? A Yes, sir.

Q And this blank check, or this blank stub 12259, is stamped in with the date April 15, 1922, isn't it? A It looks that way.

Q And was deposited by you in your account on April 15, 1922. Did you speak to Mr. Hedden about that check? A I did.

Q Did you tell him why you held it out? A I did.

Q What did you tell him? A On his desk when he signed at the time.

Q Oh, you put it on his desk and he signed it at the time. What time? A I don't remember that.

Q You saw him sign it? A Sometimes.

Q Now this check, you know it was put on his desk to sign? A Yes, sir; put on his desk.

Q To your order for that amount? A Yes, sir.

Q Why, if you put that check on his desk and he signed it, filled in to you in that way, did you leave the stub blank? A I do not remember. The bookkeeper held that.

The Court: Why did you mark the stub "in safe"?

Witness: When Mr. Hedden used to sign a few checks at the bookkeeper's desk, Aubin, the bookkeeper had instructions to take them up and put them in his safe.

The Court: Not filled out checks.

Witfness: No, sir, not filled out checks.

Q Now this—When checks were signed in blank the stub was left blank and they were marked "in safe," is that right? Right? A Put in the safe, yes, sir.

Q And the stub was blank because you didn't know who it was going to be used for? A The bookkeeper should have them.

Q And the entries in this stub-book on both sides of this check-book the stubs, in January, are in your handwriting, not the bookkeeper's handwriting? A Well, sometimes.

Q Well, that is your handwriting, isn't it, sir? A Yes, sir.

Q I refer to stub number 12261 dated January 31, 1922, and referring now to the first page preceding the blank page, I call your attention to those checks on that page number 12255 to 12277, check stub entries there. They are also in your handwriting? A They are.

Walter J. Dozier, cross.

Q So that the bookkeeper then did not have anything to do with those entries that I have just referred to, did he? A No, he did not.

Q Now why didn't you write out on that stub number 12259— (interrupted). A Because he told me— (interrupted).

Q —your name and the amount? A He told me he put that in the safe.

The Court: Put what in the safe?

Witness: The checks.

The Court: Blank checks.

Witness: Blank checks in the safe.

The Court: I thought you said the one to which counsel has just referred was filled out and handed to Mr. Hedden.

Witness: Yes, sir; that is different; that is one of the different checks.

The Court: Help the witness out.

Mr. Lum: He will have to do it himself.

Q (Indicating.) That is the check that goes with that stub, isn't it, number 12259? You can read, can't you? A Yes, sir.

Q That is the fact then, isn't it? A Yes, sir; it looks that way.

The Court: Was that check filled out when Mr. Hedden signed it?

Witness: Yes, sir; that was filled out when Mr. Hedden signed it.

Q Then why was it put in the safe?

The Court: Why was the check stub marked put "in safe" when that practice obtained only— (interrupted).

Witness: I cannot recall now.

The Court: When that practice obtained only in cases where he signed checks in blank?

Witness: I cannot recall that now.

Q But you are sure that that check was filled out?

The Court: He says so.

Q To your order before Mr. Hedden signed it.

The Court: He says so.

Q Now, Mr. Dozier, I want to call your attention to check number 12499 dated October, 1922, to the order of Walter J. Dozier, for $4,000, counter-signed Charles R. Hedden, and deposited to your account in the Fidelity. Do you recognize that? A Yes, sir; that looks—

Mr. Lum: The other check I asked to have marked, 12259.

(Paper marked Exhibit C. 20 for identification.)

The Court: How has this any bearing?

Mr. Lum: To show this was the course pursued, that he did with the $65,000 the same as he did with these, and we knew about it. I ask to have the stub book number 23 marked for identification.

(Book marked Exhibit C. 21 for identification.)

Mr. Lum: Check number 12499 I offer for identification.

(Paper marked C. 22 for identification.)

Q This check, Exhibit C. 22, was that also filled out by you before it was signed by Mr. Hedden? A Yes, sir.

Q You are sure of that? A It looks it.

Q And you remember it being filled out and put in for Mr. Hedden to sign? A Yes, sir.

Q Did he say anything to you when he signed it? A Asked what it was for.

Q He asked you what it was for? You are sure of that? And you told him? A All those checks he asked what they were for.

Q And you told him, and he knew that you were drawing every cent that was due you from the company but he was remaining a large creditor? He knew that, didn't he? A Matter of courtesy that Mr. Hedden extended.

Q Matter of courtesy. And—in other words you were very good friends then and you didn't want to sell your stock out of a company of a man who would treat you as nicely as that, did you? A We were always friends.

Q Now, I understand you correctly, do I, that always when a check was signed in blank by Mr. Hedden, the stub was left blank and it was marked by someone "in safe" so you would know where it was. A That was the custom.

Q I now show you stub number 12499 and call your attention that the balance on the last stub—last page of the stub book and is left in blank, with the words "in safe." That was written there by you? A Yes, sir.

Q So that that check was signed in blank by Mr. Hedden, wasn't it? A And changed and put back on Mr. Hedden's desk.

Q You mean he signed it twice? A No.

Q Well, after he signed it in blank how was it changed and put back on his desk?

The Court: Why?

Mr. Lum: Why?

Witness: Those checks to my order usually I took up with Mr. Hedden personally.

The Court: Why put it back on his desk after he signed it?

Witness: Back to him.

The Court: Why?

Witness: Asked him for the accommodation.

The Court: It was already filled out, wasn't it?

Witness: Yes, sir, but I wanted Mr. Hedden to know it.

Q Why didn't you speak to him about it before you filled it out then? A I can't recall just what instance occurred at the time. I had a great many instances with Mr. Hedden. I loaned Mr. Hedden the same way.

Q You mean Mr. Hedden took in checks that were signed in blank and filled them out with amounts payable to his order at any time? A I don't say that.

Q No, you better not.

Mr. English: I object.

Q I call your attention to the fact that this check, Exhibit C. 22, while stamped with the date October 9, comes in the book between checks, just preceding it of June 15, 1922, and immediately after it, of June 21, 1922. I want you to please explain to us why that check was held out from June to October? A I cannot recall that.

Q That is your only explanation. I now call your attention also to the fact that check number 12498, just before that, has a blank stub with the pencil words "in safe." That is your handwriting also, is it? A Yes, sir.

Q I now ask you if you identify check number 12260, October 26, 1922, to the order of Walter J. Dozier for $2,500, counter-signed Charles R. Hedden, and deposited to your account on October 28th in the Chase National Bank. Do you recognize that? A Yes, sir, that looks it.

Mr. Lum: I ask that this check 12260 be marked for identification.

(Paper marked Exhibit C. 23 for identification.)

Q Referring to this check 12768, that number changed in your handwriting? A No, it isn't, not my handwriting.

Q The original number was 12266 and then the bookkeeper has changed it to 12768? A Yes, sir.

Q And is that the check which goes with that stub, $2,500, Walter J. Dozier personal? A Yes, sir.

The Court: Is the changed figure in print?

Mr. Lum: Changed figure is in red pencil.

The Court: I mean the figure that was changed, is that in ink?

Witness: That is the bookkeeper's figure.

Mr. Lum: Red pencil, I should judge.

Mr. English: They all are.

The Court: I mean the original.

Mr. Lum: The original is in red print.

The Court: It does not appear on the record.

Mr. Lum: The original number is in red print in all of the checks.

The Court: And in all of the checks there is a changed number from a printed numeral to a written numeral?

Mr. Lum: Yes.

Q And the original number 12260 was a blank stub, was it not? A Yes, sir.

Q And the lettering on that blank "in safe" is in your handwriting, is it not? A Yes, sir.

Q And the check up above it 12259 is in blank, is it not? A Yes, sir.

Q Marked off though "in safe" in your handwriting, and the one just above that 12258 is in blank marked in your handwriting, "in safe"? A Yes, sir.

Q The check just before that number 12257 is in your handwriting, the stub, is it not? A Yes, sir.

Q And it is marked "Salary account" for your order $333.33, isn't it? A Yes, sir.

Q Why didn't you fill out this blank 12560 back there in January, 1922, instead of holding it and using it on the 26th of October, 1922? A I do not recall how that was.

Q Have you any explanation to give us as to why you drew 12257 to your order for $333.33, but held out another check which came through following it until the following October and then used it to your order for $2,500? A I do not recall it.

Q No recollection of it at all. Now, referring to C. 20 for identification, that new number in black ink, 12455 is filled in by you, is it not? A Yes, sir.

Mr. Lum: I offer the check stub book Number 24 for identification.

(Book marked Exhibit C. 24 for identification.)

Q I show you check number 12560 struck out and 12815 written above it, November 29, 1922, to the order of Walter J. Dozier, $2,000, countersigned, Charles R. Hedden, endorsed by you. You recognize that? A Yes, sir.

Mr. Lum: I offer it for identification.

(Paper marked Exhibit C. 25 for identification.)

Q 12560. There is a blank in the stub marked "in safe" in your handwriting, is it not? A Yes, sir.

Q Also the one above it, 12559? A Yes, sir.

Q Now I notice that 12560 has just preceding it a check for expense, filled out in the stub in your handwriting, dated July 27, 1922, hasn't it? A Yes, sir.

Q Will you explain to us why you held 12560 until the November following and then used it? A I do not recall that.

Q Was this check signed by Mr. Hedden after it was filled in? A I cannot recall.

Q Was this check Exhibit C. 20 signed by Mr. Hedden after it was filled in? A I do not recall that.

Q And you do not recall whether—were they seen by him after they were filled in and before

they went through the bank? A I had the matter all up with him at the time.

Q My question was this, were they seen by him or were they shown to him by you after they were filled in and before they went through the bank? A Sometimes.

Q And sometimes they were not? A And sometimes they were not.

Q I now show you January 10, 1923, check number 12834, to the order of Walter J. Dozier, counter-signed Charles R. Hedden, filled in for $13,500 and endorsed by you. Do you recognize that check? A Yes, sir.

Mr. Lum: I offer it for identification.

(Paper marked Exhibit C. 26 for identification.)

Q Now what was this $13,500 for? A Temporary loan.

Q What is it? A Temporary loan. I paid it back.

Q Temporary loan? A Yes, sir.

Q You put it back. Discussed it with Mr. Hedden before you took it? A I talked with Mr. Hedden before, yes, sir.

The Court: Is that an "in safe" check?

Mr. Lum: Yes, it is. I ask to have book number 25 marked for identification.

(Book marked Exhibit C. 27 for identification.)

The Court: Did he agree to let you have it?

Witness: Yes, sir; I asked Mr. Hedden—talked with Mr. Hedden before. It was a matter of courtesy.

The Court: Why did you resort to an "in safe" check then? Why not take a check in the regular order out of your check-book—a new check?

Witness: Well, I do not recall just how that was at that time.

The Court: Well, there are many checks that have been shown to you marked "in safe," checks that were made out to your order. Why did you resort to those checks instead of one of those in the regular order in your check-book?

Witness: Mr. Hedden was in and out of the office.

The Court: The current checks.

Witness: Mr. Hedden was in and out of the office a great deal, and I always took it up with him, or afterwards.

The Court: Why did you always, or nearly always resort to "in safe" checks instead of a blank check current in your check-book for these loans and these advances and these salaries?

Witness: I do not recall now just exactly how the things were done. I always brought the matter up with Mr. Hedden and he told me to "go ahead, Walter, it is all right."

The Court: The "in safe" checks, were what might be called emergency checks, were they not?

Witness: Yes, sir.

The Court: Checks to be drawn, to be filled in in the absence of Mr. Hedden?

Witness: Yes, sir.

The Court: Now when you talked to Mr. Hedden about these things—about these withdrawals—they were not emergencies. He was there. Why didn't you have him sign a check drawn in the regular order on the current blanks?

Witness: He told me to go ahead, and I used to sometimes tell the bookkeeper "I am going to make a temporary loan" and "Draw a check."

The Court: Mr. Hedden was there. That was not an emergency. He was there. Why did you resort to the "in safe" checks? That is what counsel wants to know. And I want to know.

Witness: There was so much done there at that time I couldn't recall.

Q You say there was so much done there at that time? A Yes, sir, we were in and out of the office all the time.

Q I call your attention to the fact that these transactions which I am taking up with you now covered a period of months and months. Have you any further explanation to make?

The Court: He probably did not hear you.

Q Have you any further explanation to make? A No.

Q I call your attention to the fact that the stub of 12830 is in blank, marked in your handwriting "in safe," yes? A Yes, sir.

Q I call your attention to the fact that the check immediately preceding it is dated—stamped on the stub December 7, 1922; that the

check immediately following it, for pay roll, is December 8, 1922, and I ask you if you have any explanation as to why this check was stamped and used January 10, 1923? A I cannot recollect.

Q When did you return this $13,500 to the company? A I do not exactly remember.

Q I show you one more check, number 12752, stamped September 18, 1923, to the order of Walter J. Dozier, counter-signed, Charles R. Hedden, $6,500, deposited and endorsed by Walter J. Dozier. Do you recognize that—identify it? A Yes, sir, that looks it.

Mr. Lum: I ask to have it marked for identification.

(Paper marked Exhibit C. 28 for identification.)

Q Referring now to the stub of 12752, that is, on the stub blank, marked, "in safe," is it not? A Yes, sir.

Q And immediately before it is check of October 19th for a lot of little items, 1922, is it not? A That is right.

Q And immediately thereafter is October 19, 1922, in your handwriting, is it not? A Yes, sir.

Q Was this check number 12752 shown to Mr. Hedden after it was filled in? A I think it was.

Q Have you any recollection of it? A I have not.

Q No recollection of it at all? A No recollection.

Q And if you did show it to him did you explain it to him why you were on the 18th of September, 1923, using a check which in the

ordinary course would have gone out on the 19th of October, 1922? A I do not recollect it now.

The Court: Was that an "in safe"?

Mr. Lum: Yes; "in safe."

Q Then when you come to this $19,000 check of January 10, 1924, that was handled in exactly the same way as these previous checks which I have referred to? A I spoke to Mr. Hedden about that.

Q You just spoke to him about that the same as you spoke to him about the others?

Mr. Lum: January 10, 1924, after he agreed to sell his stock to the company.

The Court: Was that a loan, that $19,000?

Witness: Yes, sir, that was a loan. Exchange of checks. I gave him an exchange check.

Q And he understood about it? A Yes, sir.

Q And at the time he was buying your stock for twenty-five to forty dollars a share more than you were willing to sell it to him for, he was loaning you $19,000, is that true? A Yes, sir; it was a temporary loan.

The Court: Why didn't you use a current check out of the check-book instead of this "in safe" check, which had been in the safe eleven months?

Witness: I think the $19,000 check was drawn from the book.

The Court: Counsel said it was an "in safe" check.

Mr. Lum: No, not this last one. It was out of the safe.

Mr. English: Regular one.

Q Were you using the company's funds for kiting transactions at this time? A Was I using what?

Q Were you using the company's funds for kiting transactions at that time? A No.

The Court: Kiting checks of the company.

Witness: Kiting?

Q Kiting checks. You know what I mean by kiting checks, don't you? A No, sir.

Q Don't know what kiting checks means? A Kiting checks?

Q Kiting, k-i-t-i-n-g. A I don't know what you mean by that.

The Court: You don't know what it means to kite a check?

Witness: To kite a check, no, sir.

Q This matter of this check, C. 18, of January 10, 1924, you spoke to Mr. Hedden about it at that time, on the 10th or 11th or when the $19,000 check was— A Yes, sir; I spoke to Mr. Hedden about the $19,000 at the time.

Q When? A I was giving an exchange check.

Q When? A Around that date.

Q What do you mean, a day or two away from it or when? A Yes, sir, day or two around there; yes, sir, around that.

Q Within a day or two? A I cannot remember, I do not recall it.

Q Well, the first time you spoke to him about it was how long before the check was actually drawn? A I do not remember that.

Q Well, give us your best recollection. A I do not recall it.

Q Well, would it have been more than a day or two at the utmost, if you had spoken to him about it? A Might have been. Might have been three or four days.

Q Might have been three or four days? A Might have been.

Q You place that the limit, a week, three or four days? A Three or four days, I should say, it may have been a week after.

Q Now, I am going to call your attention to stub book number 29, and call your attention to a date, December 31, 1923, and written in on that side—back side of the stub in your handwriting, Walter J. Dozier, personal account, $19,000. You wrote that there? A Yes, sir.

Q Wrote it there, did you, on the 31st of December? A No, wrote it on the day the check was made.

Q Why, if you wrote it there the day the check was made, did you date it back to the 31st of December?

Mr. English: I object because you will see that it is an unfair question if you just look at the book.

The Court: It is cross examination. You may object.

Mr. English: I object on the ground that it is an unfair question, because it appears on the book.

Walter J. Dozier, cross.

Q (Question read.) A I did not date the check back to the 31st of December. I only entered it as of December 31st.

Q Why did you make that entry there in your handwriting under date of December 31st? A I do not recall now why that was done.

Q Now anything like $19,000 is a large amount to just a lawyer, won't you please refresh your recollection of that? A I do not recall why that was now.

Q I call your attention to the stub filled out on January 10, 1924, to your personal account, $19,000, and show you in the same check-book this account under date of January 10, 1924, entered back in that following year as of December 31, 1923, and ask you to look at those both, if you will, and give us any explanation of them. A I do not recall why it was.

Mr. Lum: I offer the book for identification.

(Book marked Exhibit C. 29 for identification.)

By the Court.

Q When you exchanged checks, what did you do with the checks that you got from the company? What would you do with the checks that you got from the company when you exchanged checks? A I used to deposit my check back to the company. Sometimes—

Q No. I say, when you got a check from the company, an exchange, what did you do with your check? What would you do with your check? A The check that I got from the company?

Q Yes. A I would deposit it.

Q So as to meet your outstanding checks? A Sometimes for purchasing of securities or something I might have and then I would dispose of them.

Q And then immediately upon receiving the company's check you would give your check to the company? A Immediately I would give it to the company.

Q What then would you do with the company's check? Which one would hold the check? A Well, I didn't, all the time. Sometimes I would get some loans from Mr. Hedden—sometimes it would be a month or so.

Q I mean when you exchanged checks. A When I exchanged checks I used to deposit my checks back.

Q What would you do with the company's checks? A I would deposit them to my account.

Q And what would you do with your check, deposit with the company? A Deposit with the company.

Q At or about the same time? A Sometimes there was a little difference, a week or so. Sometimes be probably two days or two weeks before I would get that money back.

Q Sometimes you deposit the two checks on the same day? A May have been a day or so after.

Q Well, sometimes on the same day? A I wouldn't say that, not the same day. Sometimes the checks were held over a couple of days before I would do that.

Further cross examination.

Q Now this $19,000 check had nothing in the world to do with kiting, did it? Nothing to do

with exchange checks between you and the company, did it; this $19,000 check? A No; that was a loan by Mr. Hedden to me, $19,000.

Q By Mr. Hedden or the company? A By the company. He told me to take it.

Q Now you are familiar with this ledger account of your own, Walter J. Dozier; went over it very carefully while you were preparing this statement to fix the book value of the stock, didn't you? A That was a personal account.

Q You went over this account? A That is a personal account. I think all that—

The Court: Won't you answer the question? What was it?

Q Just listen. If you will listen to my questions we will get along better. You, in preparing this book value, went over these books and were familiar with this ledger account of yours, were you not? A Yes, sir.

Q Then you notice that there was a $19,000 item on the right side of this ledger, of cash, $19,000, entered of December 31st, wasn't there? A Yes, sir.

Q And you were familiar with the fact that there was a balancing item on the other side under the date of January 10, 1924, of $19,000; you are familiar with that? A Yes, sir.

Q Now, Mr. Dozier, you are an experienced bookkeeper, are you—have kept accounts? A I understand it, yes, sir.

Q And been confidential man—

The Court: We have had all that.

Q Now it is a fact, is it not, that the effect of this entry to which I have just called your at-

tention was not only to increase your own cash balance at the end of the period, December 31, 1923, but also to convert the debit balance in the personal account of yourself into a credit, leaving a balance due you on the 31st of December, 1924? That was exactly the effect of that entry, was it not? A It might have been.

Q It couldn't have any other possible effect, could it? A Possibly not.

Q And it was done by you deliberately, with just that in mind, was it not? A No, I do not say that.

Q Oh, it was just an accident that it had that effect? A Well, that wasn't my intention.

The Court: Did it have the effect of swelling the assets of the company?

Mr. Lum: Yes, sir.

The Court: Ask him.

Mr. Lum: Of increasing the cash balance.

Q It would swell the assets of the company, of course, would it not, as of that date? A No, I don't see how it could.

The Court: As of December 31st, it would swell the book assets of the company as of December 31st, just by $19,000.

Witness: Well, possibly it would.

Q Well, it is bound to. It couldn't have any other effect, could it? A (No answer.)

Q I want now to call your attention to Exhibit C. 20 and Exhibit C. 23, asking you to observe that those checks are numbered 12259, and 12260 originally, but that they are used,

one of them in April, 1922, and the other on October 28, 1922, and ask you if you will give us any explanation as to why those two checks marked "in safe" blank in the stubs, should have both been made out to your order, one for $3,000 and the other for $2,500 and used, one in April and one in October, 1922? A I do not recall it now.

Q No explanation at all. Mr. Dozier, when you came to the final closing of this matter in January, 1924, you were perfectly familiar with the bank accounts of the Hedden Company, were you not? A Yes, sir.

Q And everything, you say, between you and Mr. Hedden, you say, was then friendly, and he had asked you to present a ratifying and confirming resolution at the January meeting, is that true? A On the 5th of January.

Q And you knew after you deposited the Harrison Radiator check, the amount of money which your company had in the Montclair bank, did you not? A Yes, sir.

Q Why then did you, on the 15th of January, 1924, under those circumstances, have a check which you had signed as treasurer of this company to your own order for the sum of $65,000 certified by the Montclair bank? A The only reason I could say, precaution.

Q What was the precaution? A All I can possibly give you, precaution.

The Court: What was the reason for the precaution?

Mr. Lum: Yes.

The Court: What do you mean by saying "precaution"?

Witness: Well, it was a precautionary measure, that is all I— (interrupted).

The Court: Why?

Witness: Well—

The Court: Why do you hesitate?

Witness: I am trying to think. Precaution. I—I was—after Mr. Hedden had given me the check I thought possibly the best thing for me to do was to have it certified as a precaution.

Q Did you ever have checks made by the Hedden Company to your order certified? A No, not up to that time.

Q Why did you change your course at that time? A As I say, only as a matter of precaution—

Q What do you mean by "a matter of precaution"? Precaution against what? A Well, in the event that—well, I can't say why I had the check certified.

Q Now you started to say "In the event that—" Now what were you going to say, in the event of what?

The Court: Can't you answer?

Witness: Only as precautionary—something may turn up at the time.

The Court: If everything was friendly, as you say, and everything was aboveboard? Mr. Hedden had agreed to it?

Witness: Yes, sir.

The Court: The amount was understood. You knew how much money you had in the bank?

Witness: Yes, sir.

The Court: The check was drawn by Mr. Hedden by his own free will. You took it for your interest in the concern?

Witness: I did.

The Court: Why the precaution of having it certified, eh?

Witness: In the natural—

The Court: Why naturally? You never did it before when the company gave you large checks as loans?

Witness: Yes, sir.

The Court: Well, why this time?

Witness: Well, I don't know why I did, but I did.

The Court: All right.

Q You said yesterday that you never showed this check yourself—never took it in your hand and brought it before the eyes of Mr. Hedden at any time, did you?

The Court: Which check?

Mr. Lum: This $65,000 check.

Witness: Mr. Hedden— (interrupted.)

Q No. Just read the question, please. Now listen to this. (Question read.) A Yes, sir.

Q So that you never showed it to him? A Put it on his desk.

Q That is what you said. You just put it on his desk. A Put it on his desk.

Q You knew that he would be more interested in that check—more interested in the amount—more interested in seeing it and talking of it with you than any other person in the world, didn't you, if it was in fact that he intended the company to buy your stock?

The Court: Why ask it when it is so obvious?

Mr. Lum: This is just preliminary, that is all.

Witness: I don't know.

Q Well, you showed the check before he had signed it, you say, to different friends around the country, over in New York and elsewhere, didn't you? A Only one.

Q You carried it in your pocket, didn't you? A The night before.

Q Took it over to New York? A Yes, sir.

Q Why? A To see that the information on the back of the check was proper.

Q Why did you take it to New York? A Because I had brought up this matter of my severing my relations with the Hedden Company with Mr. Ferry, my friend. That is why I wanted to see if the information on the back of the check was in order.

Q What do you mean to see that it was in order? A Proper.

Q Is he a lawyer? A I think he is.

Q You think he is?

The Court: Who?

Mr. Lum: Mr. Ferry.

Q You had counsel here in New Jersey? A Yes, sir.

Q You relied on them? A Yes, sir.

Q Did you show it to them? A I did not.

Q If your concern was whether the endorsement on the back of that was in order, why didn't you go show it to a New Jersey lawyer, rather than take it to New York? A Because it was

late in the afternoon and I was going over to New York.

Q Did you take more than one check with you to New York? A No.

Q Did you ever take out of the check-book of the Montclair Trust Company any blank checks? A I did not.

Q Do you know whether all of the checks from that Montclair book are back in the office records? A I do not.

Q Do you know whether there are any outstanding? A I do not.

The Court: Blank checks?

Mr. Lum: Blank stubs not accounted for or returned.

Witness: I do not.

Q Not a part of the company's records? A I do not know.

Q Well, now, you made up your statement to reach the book value, didn't you? A Yes, sir.

Q And in doing that you were, of course, interested in the blank checks that might be out, weren't you? A I never paid much attention to them.

Q Well, now, you used the stubs of the check-book in making your figures of book value, didn't you? A No; I took my figures from the trial balance.

Q Didn't you and Mr. Whitehouse go over the check-book? A I didn't; Whitehouse did.

Q I call your attention to check number 5408, stub blank, marked "in safe." Was your attention called to that in going over the records of the company before you left? A I do not recall.

Q I refer to book C. 11. A I do not recall.

Q Did you ask anybody whether that check had been filled in for any amount and was outstanding? A No, I did not open the check-book.

Q Did you ascertain whether that check in blank was in the safe? A No, I did not. I didn't bother with that part.

Q You knew that that check was out, didn't you? A No, I did not.

The Court: What check?

Mr. Lum: Number 5408.

The Court: Blank?

Mr. Lum: Blank in the book.

Q And that was marked in your handwriting at that time, "in safe"? A It looks it.

Q You had not at that time filled it in for any amount to your order, had you? A I do not remember.

Q Do not remember. Weren't you interested in knowing where that check was or what had become of it? A I didn't keep the record of all the check-books. That was done by the book-keeper.

The Court: Weren't you interested in the "in safe" checks as to whether they were in or out?

Witness: Naturally I would be interested. I always asked the bookkeeper. I asked if my checks were cleared and he always said yes.

The Court: Where is the $65,000 now?

Witness: I have part of it in my possession.

The Court: How much?

Witness: Around fifty.

The Court: Where, in your possession?

Witness: In securities.

The Court: Where are the securities?

Witness: Part in New York and part here.

The Court: Invested in securities?

Witness: Yes, sir.

The Court: Seven thousand in the Fisher Company?

Witness: No; no part of that in the Fisher Company.

The Court: No part of the $65,000 in the Fisher Company?

Witness: I didn't take and put part of the $65,000 in the Fisher Company.

Mr. Lum: I ask that the book C. 11, that the stub 5408 be marked for identification.

(Stub marked Exhibit C. 30 for identification.)

The Court: I will at this time entertain a motion for the restraining of the disposition of any part of this $65,000 held in money or securities, and you may draw your injunction. An application of that kind was made on the presentation of the bill, as I recall it.

Mr. English: The application was for receiver.

Mr. Lum: And for a bond also.

The Court: And for an injunction as I recall it.

Mr. English: I do not recall the injunction.

The Court: Well, if the matter had been disclosed then as it has now, especially by this witness, I would have granted it. My present course is not at all indicative as to my final judgment, but I feel I must take that precaution now in view of the prior application and my refusal to grant it at that time. Have your client deposit the securities with you, Mr. English, and you keep them, but he will be entitled to the income. I will make an order to that effect.

Witness: I got about $44,000, I think, in value.

The Court: The injunction will go restraining him from making any disposition of them by assignment or otherwise.

Mr. English: Where are they now, Mr. Dozier?

Witness: Some in New York.

Mr. English: Have you a box here?

Witness: No, not in Newark.

Mr. English: Montclair?

Witness: Yes, Montclair.

Q You have a broker in Newark who has some of your securities, have you not? Haven't you securities here? A Oh, no, I haven't any securities here.

Q Mr. Dozier, the large account—your large operating and your large depositing account was with the Fidelity here in Newark, was it not? A No, not necessarily.

Q I mean of the Hedden Company. A No, not necessarily.

Q You mean to tell me, sir, that that was not very much the largest account that your company ran, the one in the Fidelity? A Oh, yes; Fidelity was the largest account.

Q The largest account? A Yes, sir.

Q And how much did you owe at the Fidelity —the company—how much did the company owe at the Fidelity? A I cannot recall now.

Q It was many thousands of dollars, wasn't it? A Yes, sir.

Q At the time you were leaving? A Yes, sir; it was quite an amount.

The Court: Three or four hundred thousand dollars?

Q How much was it, fifty or a hundred thousand dollars? A I think the whole indebtedness, net indebtedness was around—

Q Around a $100,000? A Yes, sir.

Q With the Fidelity? A No, not with the Fidelity.

Q How much was with the Fidelity? A I don't remember that.

Q Well, the Fidelity was larger than all the others put together, wasn't it? A Yes, naturally, yes.

Q You knew the Fidelity had asked for Mr. Hedden's personal endorsement of the company paper at that time, didn't you? A No, not at that time.

Q They had before? A At the beginning of the company.

Q And it was still continuing? A No, not to my knowledge.

Q Now, was there ever a check of the size of the Harrison Radiator check before deposited

in any bank except the Fidelity? A No, probably not.

Q How did it happen that this check for $85,000 was, for the first time, for so large an amount, deposited in some bank other than the Fidelity? A We did that as a matter of courtesy to Mr. Appleton in respect for what he did on the Mountainside Hospital contract.

Q You mean you deposited the $85,000 in the Montclair bank as a matter of courtesy to Mr. Appleton, do you? A At that time.

Q And did you draw out some money immediately to the extent of $65,000 to your own order as a matter of courtesy? A No.

Q How long was that $20,000 left in there, do you know? A I don't know. I do not remember how long.

Q As a matter of fact that Harrison Radiator check was of no particular use, value or benefit to the Montclair bank, was it, under the use that was made of it? A That I do not say; I cannot.

Q You know that is true, don't you? A I don't know.

Q Why don't you? You had had this account at the Montclair bank all the way from September, 1922, hadn't you? A I do not remember—yes—the date it was opened.

Q Why didn't you, as a matter of courtesy to Mr. Appleton, send these large checks up there before the time when you had decided to sever your relations with the company? A Well, I had spoken to Mr. Hedden once or twice about depositing one of these large checks and he told me to go ahead and do it.

Q You mean you spoke to Mr. Hedden about depositing the Harrison Radiator check in the Montclair bank? A Yes, sir.

Q And he told you to go ahead and do it. A Go ahead and make a deposit in Montclair, the November check. I think the first of it came up in November.

Q I am not speaking of the November check. The fact is that up until January there had never been any check of this size deposited in the Montclair bank at any time? A I do not remember.

Q Don't remember any and did Mr. Hedden speak to you about depositing this January Harrison Radiator check in the Montclair bank? A No, I think the month before that.

Q In November? A Yes, sir, November. That is December 1st, November check.

Q He told you to do it? A Yes, sir.

Q Did he tell you why?

The Court: Was that the final check of the Harrison Company?

Witness: No, sir.

The Court: Had there been previous checks?

Witness: Oh, yes, several.

The Court: Large amounts?

Witness: Yes, sir.

The Court: Where were they deposited?

Witness: I guess the checks ran from twenty—

The Court: Where were they deposited?

Witness: I don't know whether they were all deposited in the Fidelity, sometimes in the North Ward bank.

The Court: None in the Montclair bank?

Witness: No; not to my knowledge.

Q And none of the large ones were deposited in any other bank than the Fidelity, were they? A Well, that I can't say.

Q Do you mean to say that you deposited this large check with the Montclair bank as a matter of accommodation—matter of courtesy?

The Court: He made that statement.

Witness: At that time, to Mr. Appleton, yes, sir.

Q Thought it was of real value and help to the bank to deposit that and then draw $65,000 immediately to your own order and in your own handwriting to draw nearly $12,000 to O'Gorman & Young and distribute it right away on the 14th, page after page of checks of large and small amounts? You think that was a help to the bank?

The Court: Banks think so, Mr. Lum. They delight in showing very heavy balances over night for some reason. I do not know why.

Q You have not yet explained to me why, after having gotten this letter from me, you deposited $10,000 in January to the order of the Hedden Company back in the bank. A That was the balance of my open account on that date.

Q Did that balance up that $19,000 loan? A That balanced my personal account, yes, sir.

Q That included the $19,000 loan? A Yes, sir, that included the $19,000 loan.

Q Mr. Dozier, when did you say you first formed the idea of competing with the Hedden

Company? A I never formed any idea of competing.

Q When did you first form the idea?

The Court: He says he never did.

Witness: I never formed any idea.

Q When did you decide that the Fisher Williams Company should take over Mr. Williams and Mr. Fisher, Mr. Hohenhauser, Miss Jackson and Mr. Coonan, all of whom had been part of the Hedden organization? A I never formed it.

Q It just happened so, did it? A No; I was broached on the subject myself. I didn't know anything about the Fisher proposition at the time.

Q Who broached you? A I didn't know about it.

Q Who broached you? A Mr. Spencer at first.

Q Also Mr. Fisher? A Yes, sir—of New York.

Q Mr. Fisher was at the time and still is a stockholder of the Hedden Company, isn't he? A I think so.

Q And did you know then that these employees of the Hedden Company were to go over there? A At the time Mr. what's his name—yes, sir.

The Court: At the time Mr. what's his name what?

Witness: Mr. Spencer broached me on the subject.

The Court: And you knew then?

Witness: Mr. Spencer— (interrupted).

The Court: And you knew then that they were to go over?

Witness: No, not at that time, no, sir.

The Court: When was it?

Witness: Mr. Spencer that day called me in his office and asked me whether or not I would go in business with—Mr. Fisher, Mr. Williams had planned to go go in business for themselves.

Q That is not what I want to know. When was it that you referred to that you knew that part of your organization was going over? A I didn't know anything about the organization.

Q You didn't know anything about it? A No, sir.

Q Mr. Dozier, did I understand you that it was unusual for checks to be signed in blank by this company, the Hedden Company? A Unusual?

Q Yes. A Yes, sir.

Q There were never more than two or three signed in blank by any officer, do you say, at one time? A Oh, I wouldn't say that.

Q How many were the most that were ever signed by any officer in blank? A I do not recollect now.

Q Have you any idea? A The only time that I remember any amount of checks were signed— (interrupted).

The Court: Mr. Dozier, you are evidently deaf. You have an instrument to aid your hearing. I am wondering whether you have heard all of all the questions—whether you feel in answering these questions that you have heard all that has been asked you. What is your judgment as to that.

Witness: I don't know whether I have heard all. I tried to hear all.

The Court: Did you feel in answering the questions that you had heard the whole question?

Witness: I hope I have.

The Court: I say, do you feel satisfied as to that? I am somewhat disturbed as to whether you were always able to follow the questions.

Witness: Sometimes I am not.

Mr. Lum: I have tried to speak very plainly.

The Court: I know you have.

Q Now, Mr. Dozier—

Mr. English: Mrs. Dozier tells me that if you speak too loud or too low he has difficulty in hearing.

Q Mr. Dozier, tell me if I speak either too loud or two low.

The Court: I am not interested in that at all. I wanted to get the witness' attitude of mind, whether when he was answering he felt that he was answering the entire question and that he understood all that was embodied in the question.

Mr. Lum: I got your Honor's view on that, but I thought in view of what Mrs. Dozier has said that I might be speaking too loud.

Witness: Do not talk too loud.

Mr. Lum: And will you please speak much louder?

(Last answer read as follows: "The only time that I remember any amount of checks were signed—")

Q What was that occasion? A When I went to California, I think in 1923, Mr. Hedden asked me to sign up— (interrupted.)

Q And you did sign up pages—almost a book of checks, didn't you? A Oh, no, not a book of checks.

Q Well, a large bundle like that (indicating), didn't you? A Oh, no.

Q You went in August, 1922? A Yes, sir.

Q And you were gone until when? A 1922?

Q Yes. A October, 1922.

Q Gone about two months, weren't you? A October, 1922.

Q Gone about two months, weren't you? A October, 1922.

Q Well, you were gone certainly from August through September, weren't you? A Yes, sir.

Q Now, I ask you to hurriedly go through this bundle of checks and see if they are not every one of them signed by you? A Yes, sir, signed by me before I went away.

Q About fifty or so? A I should say there were, about.

The Court: Thirty to fifty.

Witness: Must have been about, I should say, ten or twelve pages at a time.

Q Now, when Mr. Hedden went to Nassau he also signed a very large bundle in advance, didn't he? A I do not remember that.

Q Well, do you remember that he went?

Mr. English: What year?

Q He went to Nassau in 1923, didn't he? A I do not remember.

Q Well, it has been testified by Mr. Hedden that he did go in February, 1923.

The Court: Yes, he signed up checks to carry through while he was away on his vacation.

Q And remained for a month, did he? A He signed.

Q Enough to carry you though, didn't he? A I do not remember that.

Q When did you begin to keep a duplicate minute book of the records of this company? A When we first started.

Q And you kept it always? A Yes, sir.

Q Did you ever speak of that interesting fact to Mr. Hedden? A Yes, sir; I told Mr. Hedden I had a copy.

Q You did tell him? A Yes, sir.

Q When? A Oh, about the time Mr. Doe was out.

Q Then you had been keeping it then some time? A I told him I had a duplicate of the minutes in case of a loss, for protection we always had a duplicate minute record.

Q They were both kept in the same place? A No, they were not.

Q In the same safe? A In the same safe?

Q Yes. A Sometimes in my drawer; my copy of the minute book was kept in my drawer.

Q "My copy of the minute book was kept in my drawer." A Yes, sir.

Q And you are sure you told Mr. Hedden about it? A Oh, sure, spoke to Mr. Hedden at the time Mr. Doe went out.

Q Now this conversation with Mr. Hedden about the Rippel job was in November, you are sure? A October or November.

Q You said it was in November yesterday. A It might have been. I do not remember. It was in the fall.

Q Sure it was in the fall? A It was in the fall, yes.

Q 1923? A We had several conversations about it.

Q In 1923? A Yes, sir; latter part of 1923.

Q Did you not in or about that time, after asking Mr. Hedden to have the company take over your stock and his refusing to do that—did you not tell him that he could go to hell? A No, sir; I never told him to go to hell.

Q Isn't it true that a man up—one of the officers of the Radiator Company to whom Mr. Hedden spoke of those words of yours on that occasion, ask you to apologize to Mr. Hedden, and isn't it true that following that conversation with that officer of the Harrison Radiator Company you did apologize to him? A I do not remember any such.

Q Mr. Tyler? Do I refresh your recollection when I speak of Mr. Tyler?

The Court: He says he doesn't remember.

Mr. Lum: I thought that when I refreshed his recollection he might.

Q Didn't you say in the fall of 1923 to Mr. Hedden that unless the company took your stock you would put the company in the hands of the receiver? A I don't remember any such thing, I never said that.

Q You are sure of that? A I never spoke about a receiver.

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Q You know Mr. Tyler? A Yes, sir; I know him.

Q You had a conversation with him in which your words with Mr. Hedden were brought up, didn't you? A I don't remember having any conversation with Mr. Tyler about Mr. Hedden.

Q Don't you remember of Mr. Tyler telling you you had done wrong, speaking as you did, and you should apologize to Mr. Hedden? A No; I don't remember anything.

Q Don't you remember apologizing to Mr. Hedden, you were sorry you told him to go to hell and you were sorry you threatened to put the company in the hands of the receiver? A I never made any such threat; I never made any.

Q Did you at any time apologize to Mr. Hedden for having told him to go to hell? A I never told Mr. Hedden to go to hell.

Q Then you did not apologize to him? A Apologized to him for speaking roughly of Mr. Rippel's account.

Q When did you do that? A Why, it was in the fall.

Q How long after you had spoken about Mr. Rippel's account? A I think about the very same day. Mr. Hedden and I had a talk over the Rippel matter and we both were a little angry at the time, and I referred to Mr. Hedden and I used the words "unscrupulous" and Mr. Hedden was very unsettled about it, and I went back and apologized for using rough words.

Q And you are sure that this was in October or November, 1923? A I think it was.

Q Then will you please explain— (interrupted). A It might have been in the fall of the year, but we had so many conversations I do not remember that.

Q It was surely, this heated conversation about the Rippel job that you say, and which was about your threat of a receiver, as I say, was in the fall in any event? A Yes, sir; I am pretty sure it was in the fall of the year, yes, sir.

Q Do you know that the records of your company show that the Rippel contract was completed entirely and the last payment made on the 6th of August, 1923? A Yes, but this matter that we had was a claim that Mr. Hedden had against Rippel, made up in addition to the contract.

Q Don't you know the Rippel—everything was closed complete on his job in August, 1923? A The building was closed, but this was a claim —additional claim that Mr. Hedden had against Rippel.

Q As a matter of fact the Hedden Company turned back to Mr. Rippel some $6,000 beyond the contract amount as a result of saving on this building, did it not? A I don't know that.

Q You don't know that. Don't you know that the books of the Hedden Company show that as an undisputable fact? A Possibly.

Q Now, after this meeting of January 15th what did Mr. Hedden say to you about what you should deliver? A When he went out of the room he asked me to deliver the books and papers and stocks to Mr. Toothe.

Q Didn't he say stock books and other books of the company? A He said your stock, books, stock books of the company, yes, sir, to Mr. Toothe.

Q Do you know why then no receipt was given you for your stock? A Do I know what?

Q Do you know why no receipt was given to you for your stock, if you were told to deliver it? A No, I do not.

Q Why were you willing to deliver it without a receipt? A Because I had been paid for it.

Q And he didn't have any hesitation in paying you for the stock before he received your certificates, did he? A Yes, sir.

Q Did you give him your stock before you got your check? A No; that was done the next morning.

Q Why didn't you give him the stock before you got the money? A Mr. Hedden didn't sign that check until noontime the next day.

Q Well, when he signed the check? A On Tuesday.

Q Why didn't you give him the stock? A We come back and had the meeting afterwards—after I got in the office, and then I got the stock the very next thing the next morning.

Q My question is why, after you got the check did you not give him the stock? A Because I didn't have the stock at that time in my possession.

Q Where was the stock? A In the safe.

Q In this building we are in now? A Yes, sir.

Q And that was the very building the meeting was held in, wasn't it? A Yes, sir.

Q Why didn't, after you had that check in your pocket, made out, if it was a bona fide sale, why didn't you bring your stock to that meeting to deliver it? A I couldn't get the stock until the next morning.

Q Why? A Because I had it in the vault.

Q You could get in the vault at three o'clock in the afternoon or five o'clock in the afternoon, couldn't you? A I never thought we could get in the vault after four o'clock. We had our meeting at that time.

Q You had your meeting at three o'clock according to your minutes, didn't you? A Didn't get out until five.

Q You had your check at twelve? A No, the check was given to me around two.

Q You had time to get up to Montclair to have the check certified, didn't you? A Yes, sir.

Q In one-twentieth of that time you could have gone to the vault in this building and gotten your stock, couldn't you? A I thought the time of delivering would be all right.

Q You didn't think that the check would be all right without a certification, did you? A I had it certified as a matter of precaution.

Q Why didn't you get your stock and give that to the company as its due, if it had made that purchase, as a matter of precaution? A I did, the next morning.

Q Why didn't you do it before you got your check, or at the same time you got your check? A I was in the meeting and didn't get out of the meeting.

Q Why didn't you wait for your check until the next morning? Tell me, please? A I don't know why.

Q Now there must be some reason in that, Mr. Dozier? A No. I don't know any special specific reason for it.

Q I am asking you again to give me any possible explanation you have for getting that check of the company certified, but not attempting to deliver the stock at that meeting, and, in fact, not until the next day. Have you any explanation at all? A I expected to deliver the stock like Mr. Hedden told me to do. I thought probably Mr. Hedden would be in the

office next morning and deliver the whole, stock and everything.

Q Why wouldn't that have been plenty of time to have gotten your check then? A What is that?

Q (Question repeated.) A The next morning—

Q Eh? A Well, he signed it that day, he turned it over; I thought that ended the transaction.

Q Now, in the month of December, 1923, you wrote Mr. Hedden a letter about your stock and about the company buying your stock, did you not? A Yes, sir.

Q You wrote him that letter although you were at the time partner in business with him in the next office, didn't you? A Yes, sir.

Q And in that letter you did not say one word about any resolution of August 15, 1922, did you? A I think I did.

Q If it was a fact that there was at that time what you considered a valid resolution of the company for the purchase of your stock, and Mr. Hedden knew of that fact, why, when you wrote that letter in December, 1923, did you not tell him you desired to avail yourself of that resolution of the company? A I did, at the meeting.

Q I am asking you why when you were writing a letter to this man in the next room to you, you did not make mention of that fact? A Why, the letter was only a formal request for a meeting between us to discuss the matter.

Q Mr. Dozier, if on December 31, 1923, there was outstanding a valid resolution of this company to purchase this stock, and that fact was known to Mr. Hedden, why, in writing to

him on that date did you ask him to make an appointment for a conference "with us, that we may have an understanding for a final and amicable agreement regarding the disposition of my stock holdings in the Charles R. Hedden Company." Why did you not mention the resolution at that time? A Mr. Hedden and myself had so many conferences about my going out—conferences of my retirement from the company that I asked him for that specific date or specific time that we could agree on the matter.

Q Why, if there was a valid resolution for the company to buy your stock at that time, and that was known to Mr. Hedden did you draw at that time an agreement for him to personally purchase your stock? A I did not draw an agreement.

Q Or have one drawn? A I didn't draw an agreement at that time.

Q Well, about that time? A There was no agreement drawn at that time.

Q Well, you discussed with him the matter of his buying your stock at that time or your buying his? A Yes, sir; on the 5th of January.

Q Well, if there was a resolution for the company to buy it, why did you discuss the matter of his personally buying it? A I considered Mr. Hedden as the company.

Q Well, when it came to the matter of his notes you didn't consider his notes the company notes, did you? A Yes, sir; I considered it all —all the company's, I considered Mr. Hedden as the company.

Re-direct examination.

Q Mr. Dozier, how soon after your conference of January 5th with Mr. Hedden was it that you

began to get to work on figuring out the book value? A That very same day.

Q And why did you do that? A The time was limited, because our meeting was on the 15th, and I asked Mr. Hedden to relieve me on that date.

Q Had there been any discussion between you and him as to figuring up the book value? A He told me to go ahead and figure up the book value and settle the matter accordingly.

Q Now, January 5th was on Saturday, it appears? A Yes, sir.

Q Did you get to work that very afternoon? A We started to work that very afternoon.

Q Who was helping you in the matter? A That afternoon we made the preliminaries to start. I don't know. I can't recall now just who was there to start on that afternoon, but the following week why we all started.

Q You say "we all," who do you refer to? A Well, the bookkeeper— (interrupted).

Q That is Mr.— (interrupted). A Mr. Whitehurst was there.

Q Who is the bookkeeper? A Aubin. Mr. Whitehurst and then Mr. Fisher was called in on the construction.

Q And what was Mr. Fisher's part in the matter?

The Court: Didn't we have all this?

Mr. English: I do not think so, your Honor.

Q Go ahead. What was Mr. Fisher? A Mr. Fisher figured up the accrued percentages of the income on the work as of December 31st.

Q You mean on the contracts which were then outstanding? A Outstanding and in the course of construction.

Q Now, do you know whether Mr. Aubin worked that night any? A Yes, sir.

Q Mr. Aubin worked— (interrupted). A Worked many nights.

Q With you or somebody else? A Mr. Whitehurst.

Q You understood he worked at night with Mr. Whitehurst? A Yes, sir; I understood that.

Q I think you said one Saturday night you and Whitehurst were there. A Yes; Mr. Aubin wouldn't work that Saturday night and I was there that Saturday night.

Q And the next day, Sunday, you say that you and Mr. Whitehurst were also working? A Yes, sir; I was down on Sunday.

Q Was Aubin there that Sunday? A I was there nearly all day Sunday.

Q You and Whitehurst? A Whitehurst and myself all day Sunday.

Q Was Aubin there on Sunday? A No, not to my knowledge.

Q Now it appears that the Harrison Radiator check of eighty-two thousand and odd dollars was deposited and credited as of 1923. Was that a part of the 1923 work? A Yes, sir, it was.

Q Did those Harrison Radiator payments come in on monthly requisitions? A They did.

Q Were those requisitions sent out in advance or after the end of the month? A At the end of the month.

The Court: I understood that the check that came in in January, 1924, was for 1923 work?

Mr. English: If you understood that, all right.

Q Was it customary to forward to the Harrison Radiator Company requisitions for payment monthly? A Not to the Harrison, to the architect.

Q To the architect? A Yes, sir.

The Court: This check that you got in January, 1924, was for 1923 work?

Witness: Yes, sir.

Q I show you a requisition in the Harrison Radiator matter, dated January 2, 1924. Is that the requisition on which that check was paid? A Yes, sir.

Q That was for December, 1923, work? A December, 1923, work.

Q And was it for that reason you put it in the check-book as of December, 1923? A That was our custom.

The Court: Do not spend any time on that. Doesn't it pretty clearly appear that it was their practice to have checks in reserve and that they were used in emergency?

Mr. English: Yes.

The Court: And the emergency in these cases probably did not arise in a year—one in eleven months.

Mr. English: I want to show it all appears on the check stubs.

The Court: Read into the record what you want.

RECESS.

Mr. English: Counsel have produced some checks at my request during the recess. I will make an offer in evidence and save the time of everybody. A number of checks were marked for identification. Will they go into the evidence?

The Court: He is going to offer them on his turn, but he will offer them now on your consent.

Mr. English: All right.

Mr. Lum: I offer in evidence now all the exhibits marked for identification.

Mr. English: Referring to Exhibit C. 19 I offer in evidence blank check original number 12227.

(Paper marked Exhibit D. 27.)

Mr. English: Referring to Exhibit C. 20 I offer blank check original number 12455 showing that it never was used.

(Paper marked Exhibit D. 28.)

Mr. English: Referring to exhibit— (interrupted).

The Court: And so on down the line?

Mr. English: One was switched around. Referring to Exhibit C. 22 I offer check original number 12727, changed to 12744, for $169.17 to the order of Charles R. Hedden Company and endorsed by it.

(Paper marked Exhibit D. 29.)

The Court: It is not claimed that the original checks were misused.

Mr. Lum: Not at all.

Mr. English: I offer that original check number 12744, which is a blank check.

(Paper marked Exhibit D. 30.)

Mr. English: Referring to Exhibit C. 23, I offer blank check original number 12768, not used.

(Paper marked Exhibit D. 31.)

Mr. English: Referring to Exhibit C. 25, I offer blank check original number 12815, not used.

(Paper marked Exhibit D. 32.)

The Court: Mr. English, Mr. Lum says it is not claimed that the original checks of which the "in safe" checks were substituted were either used or missing.

Mr. English: All right. Then I won't pursue the matter further.

The Court: That refers to all the checks heretofore referred to or offered by Mr. Lum.

Mr. English: May I make this statement that the check stub book of the checks which were offered in evidence by the complainant this morning, as "in safe" checks and since offered in evidence, shows in every case the payee and amounts.

The Court: They were properly recorded in the stub book current with their issue.

Mr. Lum: That is not disputed.

Mr. English: Do you admit it to be the fact?

The Court: It will be regarded as the fact upon counsel's statement that it is not disputed, subject, however, to correction.

Mr. Lum: Let me say I expect Mr. Hedden to say on rebuttal that he never saw or heard of the checks at the time Mr. Dozier left the company.

Walter J. Dozier, re-direct.

Q Mr. Dozier, was there anything unusual about your borrowing money from the company? A No.

Q Were you the only member of the corporation that borrowed money from the corporation? A Well, we had advances which were simply charged to our personal accounts.

Q Back and forth? A Yes, sir.

Q Mr. Hedden did? A I think so.

Q Mr. Doe did? A I cannot remember back that far.

Q Did you ever loan money to Mr. Hedden? A Yes, sir.

The Court: The corporation?

Q I am asking him personally now. Did you ever personally loan money to Mr. Hedden? A Yes, sir.

Q Did you ever borrow money from Mr. Hedden personally or from the company? A From the company.

Q With Mr. Hedden's knowledge and consent? A Yes, sir, Mr. Hedden's consent.

Q Now, you have said this morning that you brought Mr. Hedden's attention to all these various loans? A Yes, sir.

Q Which you borrowed from the company. Did you speak to anybody else about it than Mr. Hedden? A Mr. Aubin at the time.

Q What did you say to Mr. Aubin about it? A I would arrange to make a loan, as the case may be, and we would have a check prepared accordingly.

By the Court.

Q Let me ask you, were the transactions involved on these checks entered upon the books of the corporation? A Oh, yes.

Walter J. Dozier, re-direct.

Q Whenever you borrowed money they were charged promptly to your account? A Yes, sir.

Q And when they were repaid entries of credit were made in your account? A Right; yes, sir.

Q Besides the entry on the check stubs? A Besides the entries on the check stubs, in the cash book and ledger.

Q Had Mr. Hedden at all times access to the books? A Yes, sir; at all times.

Q Was he conversant with the books? A He occasionally looked over them and talked over them with the bookkeeper, at all times.

Further direct examination.

Q Who had the custody of the check-book? A Mr. Aubin.

Q Now I notice in the checks that are in evidence this morning where the numbers are changed—whose handwriting are they?

Mr. Lum: He said they were his own and some were the bookkeeper's.

The Court: Let us don't go over it. Let him identify one that is his and one that is Mr. Aubin's and that will be enough.

Q Just pick out one check in here that the number is changed in your handwriting? A My handwriting (indicating). That is mine. That is my handwriting. This is Mr. Aubin's (indicating).

Q You refer to C. 19, is that your handwriting? A Yes, sir, that is my figure.

Q C. 19. A The others are all Mr. Aubin's.

Q All the others are Mr. Aubin's? A Yes, sir; that is Mr. Aubin's. This is mine. All but three are mine.

Walter J. Dozier, re-cross.

Q I show you C. 25, is that your handwriting or Aubin's? A That is mine.

Q I show you C. 20 is that your handwriting or Mr. Aubin's? A That is mine.

Q And the rest are all Mr. Aubin's? A Yes, sir.

Re-cross examination.

Q Do I understand you to say that Mr. Hedden borrowed money from the company? A I don't say that he borrowed money from the company. I said I didn't remember whether he had or not.

Q I understood you to say there just a moment ago that Mr. Hedden as well as you borrowed money from the company. A He asked the other officers.

The Court: No.

Witness: My understanding was the other officer.

The Court: He asked you if Mr. Hedden had borrowed from you and you said he had.

Witness: No; I thought he said the other officer. Didn't you say it?

The Court: He referred to Doe and you said, about Doe it was too far back.

Witness: I understood the question, other officers and Mr. Doe, or Mr. Doe and other officers. That is the fact. I don't know whether Mr. Hedden personally borrowed money from the company.

Q You know that Mr. Hedden never did borrow, but always was extensively lending the company money, don't you? A Well, towards the last.

Q And no one else who borrowed money from the company at any time never used "in safe" checks, did they? A Never used what?

Q "In safe" checks. A "In safe" checks?

Q Yes. A I don't know, "in safe" checks.

Q Do you know of any other person ever borrowing money from this company on an "in safe" check? A No, I don't say I do.

Q Now, referring to Exhibit D. 27, this blank check original number 12227, why didn't you use that check to borrow from the company—why didn't you take that perfectly blank check out of the book and not write that number on a check that had been signed by Mr. Hedden months before? A I do not remember.

The Court: In other words, if you borrowed money on that day, why didn't you fill out this blank and have Mr. Hedden sign it, is that what you mean?

Mr. Lum: Yes.

Witness: Sometimes I would make arrangements with Mr. Hedden to loan me a little money and Mr. Hedden wouldn't be there and I would tell George—Mr. Aubin, and Mr. Aubin would take and have the check prepared for me.

Q Mr. Dozier, I want to call your attention now to the fact that it appears on the record in this case that frequently these blank checks and these stubs in blank marked "in safe," used by you on these dates come chronologically in the check-book on days where both before and after you and Mr. Hedden had signed checks for the transaction of the regular business of the company, and now I ask you, in the light of that,

to give me a further explanation if you can. A I don't remember just how that occurred.

Q Now it occurred according to these books that we have put in many times, didn't it? A Yes, sir.

Q And you can't give me an explanation of a single one? A No, only— (interrupted).

The Court: Do you realize that according to the stubs of your check-book on the days that you drew on "in safe" checks Mr. Hedden signed checks of the company—do you realize that?

Witness: Yes, sir; I realize that.

The Court: Is there any reason why you should not have used a check out of the current check-book?

Witness: No. I can't— (interrupted).

The Court: Instead of using an "in safe" check when on that day Mr. Hedden had signed many other checks.

Witness: I do not know now why.

The Court: You cannot explain that now. It is too far back, is it?

Witness: Yes, sir.

Q Mr. Dozier, did you ever see Mr. Hedden go over the books of this company? A No; I have never seen him go over them.

Q Then when you swore—testified a few moments ago that he went over the books with the bookkeeper you were testifying of something of which you had no knowledge? A I have seen Mr. Hedden look over the ledger and some of the accounts at the standing desk of Mr. Aubin. Now what occasion it was or for what purpose, I don't know.

Q Did you ever call his attention to these checks of these large amounts to your order? A Yes, sir; I have told Mr. Hedden exactly what I had done from time to time, charged to my personal account and I would repay them.

Q Did you explain to him why you were using these "in safe" checks instead of orderly checks? A No, I gave no explanation about that.

Q Why not? A Because it didn't occur to me that it was necessary after he had granted me the loan.

The Court: They were all paid back?

Witness: All paid back, every dollar. Every dollar was paid back.

Q You, at that time, were actively engaged in the business of this company? A Yes, sir.

Q Regarded yourself as one of the owners? A Yes, sir.

Q But you were at that time to cease your ownership and get out of the company, weren't you? A Not until towards the last. I asked to be relieved and get out of the company towards the last.

Q You knew that Mr. Hedden at all times, for a year and a half or two years before you got out, was anxious to have some of his loans to the company repaid to him.

The Court: Do not go into that.

Q After you had ceased your relation with the company and resigned was there what you called an allowance payment of $6,300 for incidental expenses made to Mr. Fisher and Mr. Dozier? A After I had ceased my relations?

Q Yes; after you had resigned, after the 16th of January? A After the 16th?

Q Yes. A No; I do not remember anything about that.

Q Don't remember anything about that? A No; I don't remember anything about that.

Q In my last question I used the date 16th, I meant 15th. So that there can be no misunderstanding, after you had resigned on the 15th and your resignation had been accepted, did you give the bookkeeper instructions about drawing an expense check for you and for Mr. Fisher for several thousands of dollars? A I do not remember.

Q That is all. A I do not remember that.

JOHN M. FERRY, sworn for defendant.

Direct examination by Mr. English.

Q You live in New York? A Yes, sir.

Q You are a personal friend of Mr. Dozier's? A Yes, sir.

Q You and your wife and he and his wife are friends? A Very intimate friends.

Q For a long while. I think you are a member of the New York Bar? A Yes, sir.

Q Connected with any concern or company? A New York Telephone Company and Empire City Subway Company.

Q What are you in the telephone company? A Assistant Secretary. I am one of the attorneys in the Law Department and Assistant Secretary of both those companies.

Q I show you Exhibit C. 5 which is check for $65,000. Did you ever see it? A Yes, sir.

Q Was it in the form it now is when you first saw it? A Yes, sir.

Q Signed by the officers? A No, sir.

Q When did you see it? A The 14th of January, 1924.

Q And where were you when you saw it? A In the reception room of the Builders Trades Club in 33rd street, New York.

Q Was Mr. Dozier there? A Yes, sir.

Q What was the occasion of you and he being there at that time? A He had invited me to attend a dinner of the Builders Trades Club.

Q Was it in the evening when you were there? A Yes, sir.

Q Had you known that he had been in negotiation with Mr. Hedden about the purchase by the company of his stock? A Yes, sir.

Q Was that subject adverted to at the time you were together at the Builders Trades Club? A Yes, sir.

Q How did the check come into the conversation? A Mr. Dozier took this out of his pocket and showed it to me. I said, "Walter, is it signed"? And he just handed it to me. I looked at it, and I said, "Why it is not signed. I am sorry it isn't signed" then I looked on the back to see the endorsement on it, which had been discussed.

Q Except for the signatures was it then as it appears now, except for the certification mark too—I mean it was dated January 14th? A Oh, yes.

Q To the order of Walter J. Dozier? A Oh, yes.

Q And filled in with the amount? A Yes, sir.

John M. Ferry, cross.

Q And the little voucher part on the back was typed in as now? A The memorandum was there.

Q Now, at that time, Mr. Ferry, did you have a chance to look at it? A Yes, sir.

Q Did you take time to look at it or not? A Yes, sir.

Q Was it signed by Charles R. Hedden? A No, sir.

Q Was it signed by Walter J. Dozier? A No, sir.

Cross examination by Mr. Lum.

Q You do not know whether, of course, there were other checks similar to this out at the time? A No.

Q No way in which you could identify one from another, is there? A Except by the name of the payee.

The Court: Do you recognize that piece of paper now, the cancelled check, as having been the piece of paper before you that night?

Witness: No; I can't go quite that far, your Honor. I can simply say that a piece of paper bearing every resemblance to that.

Q You, of course, do not know the number of the check that Mr. Dozier showed you? A No.

Q And if there had been several prepared you couldn't have told one from the other, could you? A No.

John M. Ferry, cross.

By the Court.

Q Did you read the endorsement on the back? A Yes, sir.

Q Do you recall what that endorsement is? A In general terms it was for the purchase of two hundred and seventy-five shares of stock. I rather think I suggested that endorsement.

Q When did you suggest it? A During our various discussions of this proposition.

Q How long before? A Shortly before.

Q How did he come to ask you whether it was signed? A He didn't ask me. He handed it to me, sir, and I said to him, "Has it been signed"?

Q Oh, you said— (interrupted). A And, "I am sorry it has not been signed." That to my mind would have closed the transaction.

Q I misunderstood you. I understood you to say Mr. Dozier asked you if it was signed? A No, sir.

Further cross examination.

Q Had you any interest in this transaction? A None whatever, except as a friend.

Q Had Mr. Dozier discussed it with you before and in advance? A Oh, frequently.

Q What is that? A Frequently.

Q Did he speak to you about how he was going to get this money out of the company? A No.

Q Never referred to that at all? A Except in a general way, his negotiations with Mr. Hedden for the purchase and sale of his stock.

Q Did he tell you why he was carrying in his pocket this unsigned check? A No, sir.

Q Did you ask him? A No, sir.

Q Did you ask why he hadn't yet had it signed? A No, sir.

Q And he didn't volunteer anything in connection with that? A No, sir.

The Court: Can you recall that he gave any reason why he should bring the blank check to your attention?

Witness: He knew I was greatly interested in his success in this negotiation.

Q Was the amount filled in at the time? A To the best of my recollection it was.

Q You have no— (interrupted). A But I am not positive.

Q Not positive whether the amount was filled in with the machine or not? A I couldn't say positively, but I think it was a completed check except for the signature, and I think I would have noticed had it been otherwise.

Q Who first broached the subject, you or Mr. Dozier? A Mr. Dozier.

Q Did he ask you anything about it? A Oh, no, simply handed me the check.

Q Didn't ask your advice? A No; it was another step in progress.

Q What do you mean by that? A In his negotiations toward the settlement of—negotiations for the purchase and sale of the stock.

Q And have you given us all of the conversation you had with him on that subject so far as you can recall it? A I told him I was very glad he had gone that much further.

Q Have you given us all the conversation? A All except what I was about ready to remark.

Q What is that? A That I was glad he was one step further on and was sorry his check was not signed.

Q Did he tell you why it was not signed? A No, sir.

Q Why were you sorry it was not signed? A Because that would have finished it.

Q You thought so, did you? Did he say that he thought so? A No.

Q What date was it? A The 14th of January, 1924.

Q Why do you fix that date? A I associate that with the fact that the dinner was on that day and I have since refreshed my recollection as to that dinner.

Q You are a practicing lawyer? A In a very minor degree, sir. I never do any litigation.

Q Member of the Bar of New York? A Yes, sir.

Q But you haven't a law office? A No.

Q And do no active law work? A No.

Q Receive any fee in connection with this matter? A No.

ALICE DOZIER, sworn for defendant.

Direct examination by Mr. English.

Q Mrs. Dozier, do you remember that your husband and Mr. Ferry went to a dinner in New York in January, 1923? A I do, sir.

Q Did you spend that night in New York? A I did, sir.

Q 1924. I said 1923. Last year. January a year ago. A Yes, sir.

Q Whereabouts in New York did you spend the night? A Martinique Hotel.

Q Did you see Mr. Dozier before he went to the dinner in New York? A I did, sir. He came in to change his clothes.

Q At the hotel? A Yes, sir.

Q Did you precede him into the hotel that day? A We both came in together.

Q While he was there in the room and before he went to the dinner did he have with him a check? A Yes, sir; he did.

Q I show you Exhibit C. 5. Is that the paper you speak of? A To the best of my recollection.

Q Did you look at it? A I did, sir.

Q Did you look at the back of it? A Yes, sir.

Q Does that look like the back of it? A Yes, sir, it does.

Q At that time was the check signed by Charles R. Hedden? A No, sir; it was not.

Q Was it signed by Walter J. Dozier? A No, sir; it was not.

Q You are quite sure of that? A Yes, sir, because I remember— (interrupted).

The Court: You forgot to ask her the date.

Q Do you remember what date it was that you were over there in New York? A It was the 14th of January. The 14th we stayed in town all night because I was going to my lodge the next day and when we go in for that we stay all night. That is how I remember.

Q On what date did your lodge meet? A The next day.

Alice Dozier, cross.

Q What time in the day? A Afternoon.

Q That evening you stayed over? A Yes, sir.

Q That had been your practice? A Yes, sir. Whenever I went to my clubs or anything in New York I always stayed all night, either at the Waldorf or the Martinique, and we went to the Martinique because Mr. Singleton of the Martinique is a dear friend of ours and his wife—are all friends of ours.

Cross examination by Mr. Lum.

Q When did you first see the check? A When Mr. Dozier came upstairs and took off his coat he had the envelope, and he takes and lays it on the dresser and took his things out. I said to him, "Have you finally severed your connection with Mr. Hedden"? I had so much of Mr. Hedden I was almost distracted, and he said "Yes." I said, "Did you get your check"? He said, "Not filled out," and with that he took it out of his trunk and showed it to me.

The Court: Out of his trunk?

Witness: Out of the envelope. I said, "Walter, it isn't signed." He said, "No."

Q Were there other checks in that envelope? Q Yes, sir; I think there were, and papers. I am not sure.

Q Other checks of the Hedden Company? A No, sir, not that I observed.

Q Did you observe any other checks? A No, sir. I paid no attention to anything but that for I was anxious to have him get away from Mr. Hedden.

Q An unsigned check wasn't getting him away from Mr. Hedden? A It was signs of getting him away.

Q There was nothing particular about the check that would enable you to identify this particular paper? A No, sir, no more than anything else.

Q You don't know that this was the piece of paper that he had? A No, sir, I do not, positively.

Q Did you read the back? A Yes, sir; I did.

Q Read the endorsement? A Yes, sir.

Q Why? A Because he had two hundred and some odd—

Q Why did you turn it over? A Naturally looked at the check.

Q You looked at the face of it? A I always turn over a check.

Q The face was of importance to you? A No more so than the back. I always turn a check over.

Q What did you expect to find on the back? A Nothing, only I naturally turned it over and I saw the figure two hundred and something on there.

Q Did you read it? A No, sir, I did not.

Q Was the name on the face of the check filled out? A I don't know what you mean by that, sir.

Q Any name on it at all?

The Court: Was the check made out to anybody?

Witness: Mr. Dozier.

Q You are sure that was on there? A Yes, sir.

Q And with the amount filled in? A That I can't say.

Q Haven't any idea what the amount was? A No, sir.

Q And did you speak to him about the matter further or have you given us all the conversation you had with him at the time? A No, sir; I spoke to him a great deal about it.

Q Not that night? A Yes, sir.

Q Tell us all that was said by you and him and on this subject that night. A On that subject. Well, I said, "I will be so happy when that check is signed and you will get away."

Q That is all the conversation? A No, we talked a great deal about Mr. Hedden.

Q In connection with the check did you say anything else? A No, not at all about the check.

MARSHAL N. WHITEHURST, sworn for defendant.

Direct examination by Mr. English.

The Court: In my efforts to shorten the examination I am afraid I permitted counsel to state a fact that should not have been, by stating on the record what I thought was agreed to. I understood the admission to go so far as to admit an accounting for all the original checks for which the "in safe" checks were substituted. Now counsel informs me that that is not true and I will strike that admission from the record and permit counsel to conduct his own case. Mr. English, you were endeavoring to account

for the original checks for which the "in safe" checks were given in substitution when I cut you off. I will permit you to go into that now.

Mr. English: Referring to Exhibit C. 26 I offer in evidence original check number 12896, which is a blank check, not signed.

(Paper marked Exhibit D. 33.)

Mr. English: Referring to Exhibit C. 28 I offer in evidence check original number 13586, which is a blank check and not used.

(Paper marked Exhibit D. 34.)

The Court: Counsel says there is one blank missing. Can you give counsel the number?

Mr. Lum: Yes, 5408, and I asked Mr. Dozier for the explanation and had the stub marked Exhibit C. 30—and he said he didn't know anything about it.

Q Mr. Whitehurst, you are a bookkeeper by profession? A I am, sir.

Q And I think as a matter of fact you are a nephew of Mr. Dozier, are you not? A Yes, sir.

Q Have you ever done any work for the Charles R. Hedden Company? A I was their bookkeeper for about eight months.

Q How far back was that? A From February 1919 until September.

Q Then after that did you do extra work for them from time to time? A Only on one occasion. That was the close of the year 1923.

Q Close of the year 1923, and when were you there doing work for them? A From a few

days before Christmas up until about the 13th of January, 1924.

Q Whom did you work with when you were working there? A Mr. Aubin.

Q Ever work for Mr. Dozier? A On a few occasions. That was Saturday afternoon and Sunday. I believe the dates were the 12th and 13th.

Q Of January, 1924? A Yes, sir.

Q Now, in connection with your work did you reconcile the check-book and cash-book? A I did.

Q I show you a big book, what is this book? A The cash book.

Q And I show you check stub book from the Montclair bank which is Exhibit C. 11 and call your attention to check stub of January 14, 1924, to the order of Walter J. Dozier for $65,219. In connection with that I show you the check C. 5 which fits that check stub, and I ask you whether at the time you went over the check-book and reconciled it with the cash-book, that check of January 14th, C. 5, had been drawn? A No, it was in there, as far as I can remember.

Q Was there anything on the stub to indicate that that check was "in safe"? A No, nothing at all.

Q And as it was in the check-book do you know whether it was signed or unsigned? A No, I do not.

Q Now, do you need the check-book to emphasize that any further? A Only so far as I can point out to what entry the book was reconciled.

Q And to what entry was it reconciled? A Including check number 5478 amounting to $49.37.

Q That is the check which, in the ordinary course, precedes this check C. 5? A Yes, sir.

Q And there was no entry on the stub of number 5479 "in safe" at all? A No, sir. I would have noted it if there had been.

By the Court.

Q What date is check 5480? A January 14th.

Q And 5481? A 14th.

Q And 5482? A 14th.

Q Those three are on the day succeeding 5479. A Yes, sir.

Q What date is 5478? A December 31, 1923.

Q And 5477?

Mr. Lum: December 31, 1923.

The Court: And those three comprise the three on that leaf?

Mr. Lum: Yes.

Q Being the leaf on which 5479 is recorded, is that right? A Yes, sir.

The Court: You follow those check stubs down and see whether they are of succeeding dates.

Mr. Lum: The continuing checks as of January 14, 1924, with the stubs in the handwriting of Mr. Dozier go through to number 54—some of them in other handwritings—and Mr. Dozier's, to 5492 inclusive, all on January 14, 1924, and continuing, the same date of January 14, 1924, in some other handwriting, they continue through consecutively to number 5507 inclusive.

Witness: Yes, sir.

The Court: All consecutive dates.

Mr. Lum: All the same dates, consecutive numbers.

Cross examination by Mr. Lum.

Q And the next check is number 5508 on January 18th in the bookkeeper's writing, is it not? A Yes, sir.

Q Mr. Whitehurst, you were called in by Mr. Dozier to work on these books? A Yes, sir.

Q And you worked on them there with him on nights in the early part of January? A Not Mr. Dozier, no, sir. Mr. Aubin, not Mr. Dozier.

Q Wasn't Mr. Dozier there? A Only one occasion with me alone.

Q No matter who else. You and Mr. Dozier were there together on several nights in early January? A Not—on one night only, January 13th.

Q You do not understand me. There may have been other people there, but you two, either alone or with others, were there? A Yes, sir.

Q On many nights in January? A Not after, say, 7 o'clock after dinner hour.

Q Well, after the office had been closed for the day? A Yes, sir.

Q And do you remember whether you were there on the 5th of January? A On the 5th—no, I can't say that particular date.

Q Did you know that Mr. Dozier was there on the night of the 5th of January? A No, I don't know that.

Q On the night of the 6th of January? A No, I can't say any date.

Q On the night of the 7th of January? A No, sir.

Q On the night of the 10th of January? A No, sir.

Q On the night of the 12th of January? A The 12th, Friday night, no, sir.

Q On the night of the 13th of January? A He was.

Q On the night of the 16th of January? A That I can't say.

The Court: 16th?

Mr. Lum: Yes, 16th.

Q Did you know that he was there until 9 o'clock that night on the 16th of January? A No, sir.

Q Did you know that on the 12th he did not leave until 12:30 at night?

The Court: In the morning?

Q Midnight? A Friday night, the 12th? No, I do not.

Q Don't remember that? A No.

Q Don't remember being there working with him very late that night? A Not with Mr. Dozier, no.

Q Did you ever work on the figures in connection with this task with Mr. Hedden at this time in January? A With Mr. Hedden?

Q Yes, sir. A No, sir.

Q Did you ever call Mr. Hedden's attention to the work you were doing? A No, sir.

Q Never spoke to him about it? A No, sir.

Q Ever show him any of the books or records or figures that you made? A No, sir.

The Court: Who employed you?

Witness: Mr. Dozier.

Q Paid by him? A Yes, sir, paid by the Hedden Company.

Q You were paid by the Hedden Company, were you, but never made any of your reports or gave any of your figures to the president of the Hedden Company? A No, sir; the treasurer, Mr. Dozier.

Q And you made rather an extensive mistake on one of the voucher ledgers, didn't you? A Extensive mistake? Not to my knowledge.

Q Well, it involves some many thousands of dollars, didn't it? A No, sir, not to my knowledge.

Q Didn't you know that your figures had to be corrected by a voucher which Mr. Dozier signed to correct the duplicate of items on other vouchers which you put on your figures? Didn't you know that? A No, I did not.

Mr. Lum: I offer for identification a voucher signed by Mr. Dozier for $9,388.62 for identification.

(Paper marked Exhibit C. 31 for identification.)

Witness: Was that to correct an error of mine?

Q Were you paid by check or by cash? A I was paid by check.

Q Sure? A No. No, I am not positive now, I do not remember. I was paid by cash. It was on a petty cash voucher.

Q Was it on a voucher, do you know? A On receipt of some kind I gave.

Q Do you know what became of it? A I do not.

Q Sure you signed a voucher? A Yes, sir—no, I am not positive.

Q You have no present recollection of signing a voucher? A No, sir, I do not remember. I don't remember whether I did or not.

Q And was any check showing the payment to you for services signed by Mr. Hedden or any other officer of the company? A No, sir.

The Court: He says petty cash.

Mr. Lum: He said by a petty cash voucher.

Q Any check or voucher—was there any voucher or any paper signed by any officer of the company showing the payment to you? A I don't believe so.

Q And you have no recollection of giving any receipt to the company, have you? A I may have at the time but I do not remember.

Q How much were you paid? A Around about a hundred dollars, I think.

Q And you don't know whether there was any record of that in the company's papers at all? A No, sir, I do not.

Q As bookkeeper you do not think when you were paid by the company you should give a voucher or record to show it? A I was ready to give what they asked me to give.

Q Mr. Dozier didn't ask you for it? A I believe Mr. Aubin paid me.

Q Will you swear that Mr. Aubin paid you?

The Court: He has.

Mr. Lum: He says he believes.

Q Did Mr. Aubin pay you? A I don't remember who paid me.

Q Haven't any recollection of it at all, have you? A Yes, sir; I have a recollection. No, I haven't. I don't know. As near as I remember the money was transferred at the bookkeeper's desk out of the petty cash drawer. It may have been—I do know I got something up at home.

Q Now, as a matter of fact, you didn't know there was going to be any trouble about any check for $65,000 or any sum at the time you were there? A I did not.

Q Didn't have that in mind at all going over the records? A No.

Q So you had no occasion to pay any attention to what checks were marked "in safe" or checks were marked not in safe, did you? A No, I did not, only to spot out any entries which weren't filled out.

Q Did you spy—spot out number 5408 on the Montclair Trust Company? A No, I did not.

Q Didn't know whether that was in your relative's handwriting marked "in safe," did you? A No, I did not.

Q Didn't pay such particular close attention to that then, did you? A No, I did not.

Q You see very plainly that is blank, don't you? A Yes, sir.

Q When was the last date you were there? A Sunday, the 13th—not to work on this record.

Q When did you last work on this Montclair check-book record? A Friday night.

Q Friday, the 11th? A The 11th.

Q And of course you didn't attempt to pay any attention then to the condition of this check-book after that date, did you? A No.

Q So that you had no occasion to notice the date of the stubs or the blanks, how they were filled in, at a later date? A No. They were not filled in at that time.

Q And you didn't pay any attention to it, did you? A No, sir.

The Court: Sunday was the 13th?

Mr. Lum: Sunday was the 13th, yes, sir.

Q Didn't pay any attention to it? A Not after that check, no, sir.

Q Not after the Friday with which your labors ended? A No.

Q I call your attention to a check to H. R. Jackson, number 5499, dated January 14, 1924, and ask you if you can explain to me how that check went through the Federal Reserve bank, according to the bank, on January 12th, or two days before its date? A No, I cannot explain it, sir.

Mr. Lum: I ask to have this check marked for identification.

(Paper marked Exhibit C. 32 for identification.)

Mr. English: The check is punched paid January 14, 1924.

The Court: Bears date the 14th?

Mr. English: Bears date January the 14th.

Q Mr. Whitehurst, you dealt with this check of January 14th in your figures, did you not, Exhibit C. 32, for $500, the Jackson check? A In what way did I deal with it?

Q Didn't you take that into consideration in your figures? A The Jackson check? I will have to see the check stub to find that out.

Re-direct examination by Mr. English.

Q Is this your handwriting, C. 22? A It is not.

Q It is not your handwriting? A No, sir.

Mr. English: I offer in evidence the requisition on the Harrison Radiator Company for $82, 923.83, which was identified.

(Paper marked Exhibit D. 35.)

MARJORY JACKSON, sworn for defendant.

Direct examination by Mr. English.

Q Miss Jackson, are you a stenographer? A Yes, sir.

Q How long have you been? A Eight years.

Q Did you ever work for the Charles R. Hedden Company? A Yes, sir.

Q When their office was in this building? A Yes, sir.

Q And how long did you work for them, do you remember? A Between three and four years.

Q Did you work for them in 1922? A Yes, sir.

Q And in 1923? A Yes, sir.

Q And the first part of 1924? A Until about the middle of March, 1924.

Q You know Mr. Dozier and Mr. Hedden, of course? A Yes, sir.

Q Do you know who was the typewriter or stenographer who wrote up the minutes of the company? A I wrote them up.

Q And who dictated them to you? A Mr. Dozier.

Q Do you know when the company directors held directors' meetings? A Only by writing the minutes, that is the only— (interrupted).

Q Did you know who the directors were? A Yes, sir.

Q Mr. Hedden, Mr. Fisher and Mr. Dozier? A Yes, sir.

Q Where would they meet when they had their meetings? A In Mr. Hedden's office.

Q And how long after those meetings would it be that you would write up the minutes? A Within two or three days after the meeting.

Q Did you know when meetings were going on? A Yes, sir; they usually took the minute book in with them.

Q And who dictated to you the minutes to write up? A Mr. Dozier.

Q Now, I show you the minute book which is Exhibit C. 3. That looks familiar to you, does it, the minute book? A Yes, sir.

Q It seems that there was a new minute book started, new book started which is Exhibit C. 2, beginning with a meeting in April, 1923. Do you remember that fact, too, that you had two books? A Yes, sir.

Q Who was it suggested that you start this second book? A I suggested it.

Q Why? A This book was becoming very bulky, with the number of papers in it, and we couldn't get it very— (interrupted).

Q You mean Exhibit C. 3? A Yes, sir. And I suggested to Mr. Dozier that we get a new book.

Q And that was done? A Yes, sir.

Q It appears in the book, Miss Jackson, that those minutes were signed by the president and secretary. Do you know anything about the practice of having them signed? A Yes, sir.

Q And after they were written up who signed them first? A Mr. Hedden.

Q How do you know that? A When I wrote the minutes up sometimes I put them on Mr. Dozier's desk for him to look them over and if Mr. Dozier was not there I took them in myself and laid them on Mr. Hedden's desk, and he brought the book back to me again and handed it to me.

The Court: Signed?

Witness: I didn't open the book to see if it was signed. I don't know whether it was signed.

Q He put it back on your desk? A Yes, sir.

Q As you had the book in your hands to write up other minutes have you noticed whether other previous minutes were signed? A Yes, sir; I have.

Q Signed by Mr. Hedden? A By Mr. Hedden and by Mr. Toothe.

The Court: The minutes are loose leaf minutes.

Witness: Yes, sir.

The Court: Did you take the loose leaves in to Mr. Hedden or the book?

Witness: The book, and I inserted the minutes of the meeting that I wrote in the book.

Q It was your practice, you say, after you had written the minutes up to bind them in the book? A Yes, sir.

Q And put the whole book on Mr. Hedden's desk? A Yes, sir.

Q Now do you remember Mr. Dozier went to California in the year 1922? A Yes, sir.

Q Do you know whether he gave you any minutes to write up before he went away? A Yes, sir, he did.

Q Do you remember the date of the meeting? A I think it was the 15th of August, 1922.

Q I show you in the minute book C. 3 the minutes of the meeting of August 15, 1922. Can you say whether you wrote those up? Look at them and see. A Yes, sir; I wrote them up.

The Court: Have you any present recollection of writing them?

Witness: No.

The Court: Only by what you see there?

Witness: Yes, sir, and by things in my own handwriting.

The Court: It does not bring back to you any recollection of having written them?

Witness: No, sir, it does not, not now.

Q You referred to something in your own handwriting. You are referring to the third page in the minutes of August 15, 1922? A Yes, sir.

Q Found on page 158 of the minute book. Is that what you refer to? A Yes, sir.

Q And what is there written in your handwriting? A Mr. Dozier not voting.

Q How did it come that you wrote that in? A After I completed the minutes I put them on

Mr. Dozier's desk to have him read them over and he handed the book back and asked me to write that in.

Q It was not typewritten in at the time? A No, sir; it was not.

Q Now, Miss Jackson, you have a recollection then of what occurred then? A I have a recollection of Mr. Dozier handing me the book back and of writing that on, yes, sir.

Q That is your handwriting? A Yes, sir.

Q Was that written in—was the book written up and that handwriting written in before Mr. Dozier left in August? A Yes, sir.

Q Quite sure of that? A Yes, sir.

By the Court.

Q How do you know that? Have you any recollection of having done that? A Yes, sir; I have.

Q What is it? A Immediately after Mr. Dozier read the minutes over he handed me the book back again.

Q That was his common practice? A To write this in?

Q Yes. But what is there in the circumstances that enables you to say that you did that writing—typewriting of that meeting before Mr. Dozier left? A The incident of my writing it.

Q What is there about that that brings it back to you now that you wrote it in before he left? Is there anything at all? A No; only that I recall it.

Q How do you recall it was before he left or that you wrote it in after he came back? A Well, it was before the minutes were signed, and the minutes were signed before he went away.

Marjory Jackson, direct.

Q How do you know that? A Because the book was back in the safe again before Mr. Dozier—when Mr. Dozier was going away everything was left—and the minutes were brought up to date before Mr. — the minutes and all the records of the company were brought up to date as far as Mr. Dozier knew and I remember writing that in.

Q Before he left? A Yes, sir.

Further direct examination by Mr. English.

Q Now after the minute book was written up you say it was signed by Mr. Hedden and Mr. Toothe? A Yes, sir.

Q And where was the minute book kept after it was signed? A In the safe in the accounting department.

Q I show you Exhibit D. 12. Is that a picture of this safe you speak of? A Looks to be.

Q It looks pretty full of books. Was it always full of books? A No, sir.

Q Rather filled up for the picture? A No, there were never that many books in the safe. Right here (indicating).

Q You are pointing to the shelf immediately under the pigeon holes? A Yes, sir.

Q Where was the minute book kept? A Sometimes on the first shelf and sometimes on the second.

Q By the first shelf you mean the highest shelf from the floor? A Yes, sir.

Q And sometimes on the shelf below? A Yes, sir.

Q Have you seen it there? A Yes, sir.

Q Have you seen anybody get it and take it to look at it? A Yes, sir; I have.

Q Who? A Mr. Fisher.

Q Have seen Mr. Fisher take it? A Yes, sir; I have seen Mr. Dozier having it.

Q It was right there where anybody could get it if they wanted to look at it? A Yes, sir.

Q Now I show you the check Exhibit C. 5. Is any part of that in typewriting which was typed by you? A Yes, sir.

Q What? A The name Walter J. Dozier.

Q On the front? A Yes, sir.

Q Anything on the back? A This looks to be the same as I typed.

Q The typewritten part on the back is your typewriting? A It looks to be.

The Court: Can you tell your own typewriting?

Witness: No, I cannot; I didn't mean to say that—from having it cross my mind, the things that I type.

The Court: Is there any individuality about your work of typewriting to enable you to identify that as your typewriting?

Witness: No, sir, not now.

The Court: Eh?

Witness: No, sir.

The Court: Have you no individuality of your work that you can recognize?

Witness: No, sir.

Q Can you tell your own typewriting from anybody else's? A I have done.

Q Does that look like your typewriting? A Yes, sir, it does.

Q What machine do you use? A Underwood.

Q Is that Underwood type? A Yes, sir.

Q Does the Hedden Company have an Underwood? A Yes, sir, very small type, too.

Q Small type machine? A Yes, sir.

Q Now I show you a voucher which has been marked D. 10—C. 10. Any part of that typewritten by you? A Yes, sir.

Q The typewriting part is your work? A Yes, sir.

Q Look back once more to the check C. 5, when you typed in the name Walter J. Dozier, was the words now in red punch in, $65,219, punched in? A No, sir.

Q Was the name Charles R. Hedden on it? A No, sir.

Q Was the name Walter J. Dozier on it? A No, sir.

Q Was the rubber stamp January 14, 1924, on it? A No, sir.

Q Nothing at all, just the blank check? A No, sir.

The Court: Have you a recollection of drawing that check?

Witness: Yes, sir; I have.

The Court: Present recollection?

Witness: Yes, sir.

The Court: In making the endorsement on it?

Witness: Yes, sir; I recall the check very well.

Q Did you type what is on the back the same time that you typed the name Walter J. Dozier on the front? A No, sir.

Q Were they both typed on the same day? A Yes, sir.

Q At what time of day as near as you now can remember was the name Walter J. Dozier typed on it? A In the morning.

Q When was the endorsement on the back typed on it? A Later in the day.

Q Did Mr. Dozier give you any explanation as to why he, or what did—how did you come to draw up the check? A I had a number of other checks to draw—they were on the Harrison Radiator Corporation—and Mr. Dozier handed them to me with the bills, and along with them the check and the memorandum with his name on it.

Q You drew up a number of checks that day.

The Court: Memorandum with his name on?

Witness: Yellow piece of paper.

The Court: What was on that memorandum?

Witness: Just his name, Walter J. Dozier.

The Court: Was that a sort of voucher for you to go ahead with your work?

Witness: Yes, sir, the same as the bills for the other checks.

The Court: Is that a voucher for you to draw a check for all of the bills, is that what you mean?

Witness: No, sir, I had bills for the other checks.

The Court: Oh, you did?

Witness: With the names on them.

The Court: Walter J. Dozier was simply an indication to you to draw the check to the order of Walter J. Dozier?

Witness: Yes, sir.

Q You say you drew a number of checks that day on the same bank? A I think the checks were on the Harrison Radiator job; I am not sure.

Q What do you mean the money came in from the Harrison Radiator? A Yes, sir.

The Court: On the Harrison Radiator job, that is what she said.

Mr. English: I know what she said.

Q Do you mean by that they were paid after the money on that job was deposited, is that what you mean? A I don't know about deposits.

Q You mean they related to the Harrison Radiator job? A Yes, sir.

The Court: They were bills on the Harrison Radiator job, that is what she said.

Q I show you a bunch of checks dated January 14, 1924. Are they the checks that were typed out by you, name of payee? A Yes, sir; they were on the Harrison Radiator job.

Q I see they are all endorsed on the back, those I have showed you, are, I guess, Harrison Radiator job.

The Court: At the time you drew Mr. Dozier's check you drew all the rest?

Witness: I made out—wrote out the names on the checks.

The Court: On all the rest?

Witness: Yes, sir.

The Court: Not the amounts?

Witness: The amounts were in in ink on the other checks, but not on this Dozier. That is how I noticed the Mr. Dozier. It was the custom to have the amount in in ink.

The Court: Pick me out one check of January 14th of the group that you signed—of the group that you drew. Pick me out one check, please.

Witness: Here is one. They had this (indicating) amount in in ink.

Q Pointing to the figure $8.00 in that particular check.

The Court: Were the figures in all these checks before they were delivered to you?

Witness: Yes, sir, in ink, all but Mr. Dozier's.

The Court: All these checks were handed to you out of the check-book then, were they?

Witness: Along with the bills, yes, sir.

The Court: Out of the check-book?

Witness: They were loose.

The Court: Taken out of the check-book when they were delivered to you.

Witness: This (indicating) was the bill and this (indicating check) was handed on top like that (indicating).

The Court: And the amount?

Witness: The amount was in here in ink.

The Court: The figures amount.

Witness: Yes, sir, this (indicating) was not in.

The Court: And then you on the typewriter wrote in the name of the payee?

Witness: Yes, sir.

The Court: Now, who filled in the amount in print letters?

Witness: I don't know who did that.

The Court: That is done on a separate machine?

Witness: Yes, sir.

Mr. English: A red ink punch.

Witness: A check writer.

The Court: A check writer. You did not do that?

Witness: No, sir.

The Court: Were the endorsements on all of the checks you drew that day indicating what they were for?

Witness: I had the bill with them.

The Court: I say, was some indication endorsed on all the checks of what they were for?

Witness: No, sir—oh, on the back; yes, they were.

The Court: On all of them indicating what they were for—on which job they were for?

Witness: I had the bills. I knew what job they were for.

The Court: Was it indicated on the back what they were for?

Witness: Oh, that. It indicates now but I don't know whether it did at the time.

The Court: It is in typewriting, isn't it?

Witness: No, sir. It is stamped in with a rubber stamp.

The Court: Did you put the rubber stamp on?

Witness: No, sir. I did not.

The Court: Put the figures on?

Witness: No, sir.

The Court: I mean endorsed on.

Witness: No, sir; I didn't do any writing on the checks at all.

Q I show you a number of checks all dated January 14, 1924, all drawn on the Montclair Essex Trust Company, and in every case the name of the payee written in on the typewriter, and in every case the check endorsed on the back, or stamped on the back with a rubber stamp, Harrison Radiator, Lockport job. Are those the checks which you say you typed the same day as you typed out C. 5? A Yes, sir, they are.

Q And you have the vouchers for all of them? A Yes, sir.

Q And just a memorandum slip to write out the check for Mr. Dozier? A Yes, sir.

The Court: Who put the dates on the check?

Witness: I don't know who put the dates on.

The Court: Were the dates on the checks when they came to you?

Witness: I do not recall whether they were or not.

Q Now referring to these same checks that I have just showed you, the amount of the check in figures is written in with a pen. Were they

written in when they came to you to be typed out? A Yes, sir; they were.

Q Was the amount of the check C. 5 written in when it came to you to be typed? A No, sir.

Mr. English: I would like to offer as one exhibit the checks identified by the witness, which consists of nine checks, number 5480 to 5484 inclusive and 5488 to 5491 inclusive.

(Checks marked Exhibit C. 35.)

The Court: How did you come to put the endorsement on the $65,000 check—it was not written at the time you wrote the name of Mr. Dozier in.

Witness: No, sir; it was not written in.

The Court: Put it in later that same day.

Witness: Yes, sir.

The Court: How do you recall that?

Witness: Mr. Dozier was figuring up the value at the time and he remarked that he intended to fix it up later.

The Court: Then how did you come to put that endorsement on?

Witness: Later in the afternoon—in the day—I don't know what time—he gave me the check back again with a memorandum —with another memorandum and I copied the same information that was on the memorandum on the back of the check.

The Court: Memorandum in his handwriting?

Witness: Yes, sir; it was in his handwriting.

Q I want to refer you once more to the minute book, the minutes of October 17, 1922. I

observe that those minutes contain an authorization for the opening of a deposit in the Montclair Trust Company. Do you see that? A Yes, sir.

Q Have you a recollection now as to whether you wrote those in the minutes at the time? A I recall writing in about opening of the account.

Q You do? A Yes, sir; Montclair Trust.

Q Now, I want to show you Exhibit C. 9, was that typewritten by you? A Yes, sir.

Q Who dictated it to you? A Mr. Hedden.

Q Do you remember the circumstances? A Yes, sir.

Q What were the circumstances? A Mr. Hedden called me in to— (interrupted).

Q Just tell us the circumstances. A Mr. Hedden called me into his office and Mr. Fisher was in there, and Mr. Hedden dictated this memorandum and saying that Mr. Fisher made that statement and I didn't hear Mr. Fisher making any statement, but I took the dictation from Mr. Hedden; and he also called Mr. Aubin in, and Mr. Aubin stood behind me as a witness that Mr. Fisher made the statement.

Q Did Mr. Fisher make the statement? A No, sir; not to my knowledge.

Q Then did you go out and write that out? A Yes, sir.

Q Then what did you do with it? A I brought it back and give it to Mr. Hedden.

Q Anything happen after that? A I put the copy in my filing desk and Mr. Fisher came out and asked me if he could have the copy and I gave him the copy. He called my attention at the time that he hadn't said anything, and also Mr. Aubin.

Q Called Aubin's attention to the same thing? A Yes, sir.

The Court: What is all this?

Mr. English: It is a statement which Mr. Hedden dictated.

The Court: Already in evidence?

Mr. English: Oh, yes.

The Court: I am asking you what it is.

Mr. English: It is a statement Mr. Hedden dictated to this young lady which Mr. Fisher repudiates.

Q After it was written up what else happened? A After Mr. Fisher was not there Mr. Hedden came out and he told me to write a new memorandum up and insert the date of August instead of February.

Q As now in C. 9. Is it exactly written as it was dictated to you? A Yes, sir.

Q And then he afterwards wanted you to change the date from February to August? A Yes, sir.

Q Did you show that to Mr. Fisher? A No, sir; I did not. Mr. Fisher was not there.

Q Was Mr. Hedden going anywhere at the time he asked you that? A Yes, sir; he had his hat and coat on; he was standing at Mr. Aubin's desk and he said he was going over to Mr. Lum's office.

Q And he wanted to take this with him? A Yes, sir.

Cross examination by Mr. Lum.

Q And the date that Mr. Fisher had that conversation with you, or Mr. Hedden had that con-

versation with you, was the same date that you wrote up the paper? A Not the first paper, no.

Q How many days difference was there between them? A I do not recall how many days.

Q Were there any? A Yes, sir; there were.

Q Sure it wasn't the same day? A I am positive.

Q Miss Jackson, you remember when Mr. Hedden first discovered when Mr. Dozier had drawn this $65,000 out of the Montclair bank, don't you? A No, sir; I do not.

Q Well, you were there in the office when he first discovered it, weren't you? A I was in the accounting department. Mr. Hedden carried on his own business inside.

Q I know, but don't you recall—you recall his asking you what you knew about this check, don't you? A No, sir, Mr. Hedden never asked me what I knew about the check.

Q You are sure he never at any time? A Yes, sir.

Q Did Mr. Toothe ever ask you? A Yes, sir; he did.

Q When did he ask you? A I do not recall the date.

Q What did you say to him?

The Court: What date was it?

Witness: I don't know just when.

The Court: How soon after Mr. Dozier quit?

Witness: Quite a while after.

Q Two or three days? A No, more than that.

Q A week? A It was about a month after, if I recall correctly.

Q Did anybody ever ask you about this transaction? A Yes, sir.

Q Miss Jackson, are you sure of that? A Yes, sir; I am.

Q Don't you recall that on the 17th of January you were called into Mr. Hedden's private office, that Mr. Aubin was also called in at the same time, and Mr. Hedden asked you both if you had any knowledge of this $65,000 check? A No, sir.

Q Don't you remember saying— (interrupted).

The Court: Did that not occur?

Witness: I do not recall Mr. Hedden calling me in his office and asking me about the check.

The Court: You say it did not occur?

Witness: Not to my knowledge, no, sir.

The Court: You do not recollect it?

Witness: No, sir.

Q Didn't you in the presence of Mr. Aubin on the 17th of January, 1924, in Mr. Hedden's private office, say to Mr. Hedden that you had no knowledge of this check whatsoever? A No, sir; I did not.

Q When Mr. Toothe asked you—no matter when the time was—what you knew about it, what did you tell him? A Mr. Toothe did not ask me. He told me—he says "Mr. Dozier is trying to say this check was not signed" and I said, "It was not signed," and he says, "We are going to prove that it is." That is the only conversation I remember having about the check.

Q You mean that Mr. Hedden never asked you whether you filled in that check? A No, sir, he did not.

Q Never asked you anything about it at all? A No, sir.

Q You knew that there was considerable excitement over in that office when this check was discovered, don't you? A I didn't know about that check being discovered or anything about it. I knew there was some excitement, I didn't know what it was.

Q About two or three days after Mr. Dozier had left you remember there was a very great deal of excitement around that office, don't you? Don't you remember? A Yes, sir; I remember Mr. Aubin was running in and out of Mr. Hedden's office.

Q And didn't you go in Mr. Hedden's office? A No, I did not.

Q You knew what the excitement was about? A No, I did not.

Q Did you tell Mr. Hedden that you had filled in this check in blank? A Mr. Hedden didn't ask me.

Q And you never told him? A No, sir.

Q Did you tell Mr. Toothe? A When he asked me, yes, sir.

Q That was a month later? A Some time later.

Q That is the first you ever told anybody that remained there in the office? A Yes, sir.

Q When did you decide to go with the Fisher Williams Company? A In the latter part of March.

Q What determined you to do that? A Mr. Fisher asked me if I wanted to go with the Fisher Williams Company.

Q Is that the first time he asked you? A Yes, sir.

Q You were paid more money than you were paid by the Hedden people? A No, sir.

Q Same amount? A Yes, sir.

The Court: Less work?

Witness: Not less work, but better circumstances.

The Court: What were the better circumstances?

Witness: Well, I didn't get along very well with Mr. Hedden.

Q You had trouble with Mr. Hedden? A Yes, sir; I think he had trouble with me.

Q Do you remember the date on which this paper regarding the February resolution, this D. 9, was dictated to you? A I recall the day I do not remember the date.

Q What was the day? A I recall writing the memorandum. I do not know the date.

Q Nor the day? A No, I do not.

Q Who dictated that to you? A Mr. Hedden.

Q You think it was the day on which it bears date, the 12th of March? A Yes, sir.

The Court: How does that come into the case? Who produced it?

Mr. Lum: I never knew of this thing until I saw it right there.

Mr. English: I brought it in on the cross examination of Mr. Hedden.

Q May I make sure, Miss Jackson, that I understand that Mr. Hedden had no conversa-

tion with you in his office, or at any other place in January about this check for $65,000? A No, sir; I do not remember Mr. Hedden talking to me at all about the check.

Q Didn't ask you a question about it anywhere? A No, sir.

Q Was there more than one Underwood typewriter in the office? A Yes, sir.

Q Now, you say there was more than one machine there? A Yes, sir.

Q Both Underwoods? A Yes, sir.

Q The ribbons on them, of course, were not put on at the same time? A No, they were not.

Q And the typing shown on them was a little different, weren't they? A I don't know about that.

Q You did with these minutes whatever Mr. Dozier instructed you to do, didn't you? A I took them down as he dictated them.

Q Have you your stenographic notes? A I took them down on a machine as he dictated them.

Q You usually took stenographic notes, did you not? A Not in the minutes.

Q In everything else? A Yes, sir.

Q Why did you vary the office custom with reference to the minutes? A Mr. Dozier sat at his desk and I had the paper in the machine and took them right down.

Q Right on this paper direct? A Yes, sir.

Q Why did you not write it on your machine, this reference to Mr. Dozier not voting in the August meeting? A Because the minutes were all inserted in the book.

Q Loose leaf book? A I was instructed to write it. I wrote it.

Marjory Jackson, cross.

Q After you wrote what you were told to you didn't pay any attention to this book or the minutes again, did you? Had no duty in connection with them, did you? A No, sir.

The Court: Of what importance is the interpolation in handwriting?

Mr. English: Fixes the recollection.

Q Is it true that pages were inserted at different times in these minutes? A No, sir.

Q Resolutions regarding bank deposits and so forth were sometimes dictated to you especially as though they were minutes and not put in the minute book, is that not true? A No, sir.

Q You say that all of the minutes as in this book, went along practically without any insertion? A To the best of my knowledge, yes, sir.

Q I ask you as an experienced stenographer to look at page 147 of this minute book and note particularly the darkness of the type and note that record, and then I ask you to look at the next page, 148, and tell me whether the number of the page at the bottom has apparently been changed from some other number? A It looks as if it had.

Q It looks as if it had. I ask you if you note that, without question, the typewriting on page 148 is with an entirely different ribbon than that on page 147. A I don't know about the difference in ribbon. It is lighter.

Q In other words, as a typist, you know that those were not done conscecutively, were they, those two pages, 147 and 148? A No; I don't know.

Q You know that the ribbon which did 148 was not the ribbon which did 147, don't you? A No, sir; I do not know.

Q Well, will you say that they were done by you at the same time as a continuous transaction, looking at the typing of those two pages? A I couldn't say whether they were or not.

Q They look very different to you, don't they? A The ribbon is much lighter.

Q Much lighter?

Mr. Lum: I call the Court's attention to the typing on page 147, to the fact that the witness says that the paging at the bottom of 148 in typing is apparently changed —the figures at the bottom are apparently changed, according to the testimony of the witness, and the ribbons of the two pages are quite different, and that the book is a loose-leaf book.

The Court: Any bearing?

Mr. Lum: Except as it discredits the minutes as a whole.

The Court: It is not the August or January meeting?

Mr. Lum: No, sir. Also the credibility of the witness. She says she did all the minutes chronologically. She now admits there is a difference in the typing here.

Q There was no other typist in the office but you, was there? A Yes, sir.

Q Who else? A Miss Ferry.

Q Did she do any typing of the minutes? A No, sir; she did not to my knowledge.

Q Is she related to Mr. Ferry who was here? A No, sir.

Q No relation? A Not that I know of.

Q Now, Miss Jackson, when did you first hear of the fact that Mr. Dozier was to leave the Hedden Company, before he left? A Well, the day that he drew out his check for the amount he said at the time that he intended to leave, first I knew that he was going.

Q What time in the day of Monday, the 14th, did you type the financial statement of the business? A There were several statements. I was copying them all day long.

Q When did you complete the first one? A I do not recall that.

Q Did you take a copy of them at any time to Mr. Hedden? A I do not recall taking a copy of them, no.

Q You didn't show him any copy of any of these statements that you made?

The Court: This girl was a worker there. She wasn't an executive—simply a machine to take down and do the work.

Re-direct examination by Mr. English.

Q When Mr. Dozier dictated those minutes did he have any memorandum in hand? A Yes, sir; he dictated it from memorandum.

Q What color was it? A Yellow paper.

Q Where had he made those notes, do you know?

The Court: Is that all?

Q You say there was another typist in the office, Alice Ferry? A Yes, sir.

Q Did she ever help you out with the work? A Miss Ferry helped me with the work.

Q Not the minutes, the other work? A Yes, sir.

(Adjourned until the 11th day of June, 1925.)

June 11, 1925.

Continuation of hearing pursuant to adjournment at the place and in the presence of the parties as before.

MARY ALICE FERRY, sworn in behalf of defendant.

Direct examination by Mr. English.

Q Where are you employed at the present time? A The Foley Chevrolet Motor Sales Company.

Q Here in Newark? A Yes, sir.

Q Did you ever work for the Charles R. Hedden Company? A Yes, sir.

Q When was that? A Why a year ago.

Q You mean you left about a year ago? A Yes, sir, about a year ago.

Q How long did you work for them before you left? A Four years.

Q We had a Mr. Ferry on the stand the other day, are you any relation of his? A No, sir.

Q Just happen to have the same names. Now when you worked for the Charles R. Hedden Company what did you do? A I took care of the switchboard, did typing and clerical work.

Q Switchboard of the telephone? A Yes, sir.

Q You did some extra typing, too? A Yes, sir.

Q Do you know Miss Marjorie Jackson? A Yes, sir.

Q What does she do? A She was the stenographer.

Q Did you ever help her out? A Yes, sir, I did.

Q Doing what? A Typing and different things.

Q Now what would be the occasions on which you helped out Miss Jackson with the typing? A When she was real busy, any time—most of the time when she was taking care of the minutes she would turn over her work of typing to me.

Q What do you mean by taking care of the minutes? A She would be writing up the minutes.

Q And about how often would it be she would be busy writing the minutes and you would have to help out? A I guess about every month.

Q Do you know who gave her the minutes to write up? A Who gave them to her?

Q Yes. A I believe Mr. Dozier did.

Q Did you ever see the minute book? A Yes, sir.

Q And do you know where it was kept? A Kept in the steel safe in the accounting room.

Q These are the minute books? A It looks like them, yes, sir.

Q Yes. Now, have you ever seen Mr. Toothe look at the minute book? A Well, I can't exactly say I saw him looking at them; I know he had something to do with them.

Q Know he had something to do with them? A Yes, sir.

Q What did he have to do with them? A Sign them.

Q Did you ever see him sign them? A I often noticed the books inside on his desk—see him working on it.

Q And when it was on that shelf in the accounting room was it where anybody could get it? A Yes, sir.

Q Were those doors open during the day? A Yes, sir.

Q And you have seen the book there? A I have seen it there, yes, sir.

Cross examination by Mr. Lum.

Q By whom are you employed now? A Foley Chevrolet Motor Sales Company.

Q When did you leave the Hedden Company? A The 11th of June, 1924.

Q Your duties kept you entirely at the operating of the telephone?

The Court: Has the witness testified to anything that justified cross examination?

Mr. Lum: Practically nothing, just a question or two.

Q You were not in the accounting room at all? A I was at times, yes, sir; I went in there.

Q You never saw—you don't know how many minute books there were there, do you? A I don't know how many there was. I know there was one there, that is all.

Q You didn't know whether there were duplicates? A No; I don't know that.

Q And you never saw Mr. Toothe actually with the minute book, did you? A Yes, he had

it in his room on his desk, going through the book. I have often seen him do that.

Q Often see him when he was in your room? A No, not that room; he was in the estimating department.

Q You were telephone operator, weren't you? A Yes, sir.

Q The telephone is outside? A Yes, sir.

The Court: How did you see that he was going through the minute book and distinguish the minute book?

Witness: I had different work to do that took me into the estimating department.

The Court: You had nothing to do with the minutes?

Witness: No; I didn't have anything to do with it, no.

The Court: How did you know at all that it was the minute book that he was looking at?

Witness: I often saw Miss Jackson with it and she used to take care of it.

Q How many times did Miss Jackson write up the minutes? A How many times? I can't exactly say.

Q You haven't any idea at all, have you? A No.

WALTER HOHENHAUSEN, sworn in behalf of defendant.

Direct examination by Mr. English.

Q Mr. Hohenhausen, were you formerly employed by the Charles R. Hedden Company? A I was.

Q In what capacity? A General superintendent and estimater.

Q How long did that continue? A From about November, 1922, to March, 1924.

The Court: General superintendent of estimaters?

Witness: And estimater.

Q Of course, you know Mr. Hedden. He was president of the company? A He was.

Q Who was the general manager of the company's affairs? A Mr. Hedden.

Q Who dictated the policy of the company? A Mr. Hedden.

Q What did Mr. Hedden do as evidence that he was not only president but general manager? A Why on several occasions he gave me directions to report directly to him and no one else.

Q Did he give similar instructions to anybody else, do you know? A I have known Mr. Hedden to give instructions to Mr. Pettit, who was formerly employed there.

Q What was he? A Also estimater and inside superintendent.

Q Anybody else that he gave similar instructions to to your knowledge? A Not to my knowledge, no.

Q You and Mr. Pettit, you know that? A Yes, sir.

Q Was Mr. Dozier the general manager of the company in any sense? A Not to my knowledge.

Q What did Mr. Dozier do? A Why he had charge of the finances.

Q Now, what room were you in? A In the estimating department.

Q Anybody else in that room besides you? A Mr. Pettit and Mr. Toothe.

Q Mr. Pettit and Mr. Toothe. Have you ever seen the minute book of the company at the company's office? A I have.

Q Where was it kept? A In the steel cabinet in the accounting department.

Q And where was that with reference to your room where you and Toothe were? A The adjoining room.

Q Was the steel cabinet open so that the book was accessible? A It was.

Q You have seen it there on the shelf? A Yes, sir.

Q Do you know whether Mr. Toothe ever used the minute book? A Why, I have seen him on several occasions—his desk joined mine—and on several occasions I saw him using the stamp and signing the minute book.

Q Now, do you know whether the minute book was ever locked up in Mr. Dozier's private apartment? A Why, I never saw it in there.

The Court: You wouldn't know, would you?

Witness: I had occasion to go in there.

The Court: I say, would you know if it was locked up?

Witness: Not on the occasions that I was there it wasn't locked up.

The Court: I say you wouldn't know; it wasn't any of your affairs?

Witness: No.

Q Was that so-called private apartment of Dozier's kept locked? A Not to the best of my knowledge.

Q Did you ever personally open it or see it opened? A I opened it on several occasions.

Q When Mr. Dozier was in California in 1922—he was in California some time in 1922? A I know he was away from the office.

Q Do you know whether during his absence in that summer of 1922 this so-called private apartment was opened? A It was.

Q Opened by you? A It was.

Q More than once? A More than once.

Q By other people? A That I can't say.

Q But other people were there when you opened it? A Other people were there and saw me open it.

The Court: What did you open it for?

Mr. English: To get some of the contents.

Witness: To get some of the contents that was in there.

Q Did you have any difficulty in opening that private—so-called private apartment and getting out the contents? A Never.

Q And when you opened it for that purpose was the minute book of the company found in there? A I didn't see it in there.

Q Now, did you happen to be at the office on the Saturday morning of January 5, 1924, when it appears Mr. Dozier and Mr. Hedden had a long conference? A I was.

Q Were you in at the conference? A I was not.

Q Have you any idea how long that lasted, roughly? A Roughly about two and a half or three hours.

Q Were you in the office when they came out of the conference room? A I was.

Q What seemed to be their attitude and state of mind as you could observe? A Why they seemed to be very friendly when they came out.

Q What did Mr. Hedden do or say? A Why he was smiling and smoking cigars.

The Court: What day was that?

Mr. English: January 5th.

Witness: The 5th of January.

The Court: How do you remember that date so well?

Witness : Why one reason for it was that Mr. Hedden gave me a cigar.

Q Was that rather unusual? A Yes, sir.

The Court: Is that the only one he ever gave you?

Witness: I think it was.

The Court: That fixes that date in your mind?

Witness : Kind of.

The Court: What?

Witness: Kind of, yes, sir.

Q And do you know whether following that conference anything was done by any of the accountants or bookkeepers of the office with

respect to a statement of the financial affairs of the company? A Yes, sir; immediately thereafter Mr. Aubin and Mr. Whitehead were working on the books, and Mr. Fischer participated and I also participated in making up some records with reference to the completion of the job.

Q Was any reason given to you why that work should be undertaken at that time? A Why I was given to understand—it was the general knowledge of the office that Mr. Dozier—(interrupted).

Mr. Lum: I object to the general knowledge of the office.

Q What your knowledge was as to why you were working on that job? A Mr. Dozier was leaving on the 15th of January.

Q Now, were you at the office on the afternoon of the 15th of January? A I was.

Q That was the day the directors' meeting was held? A Yes, sir.

Q Did you see either Mr. Hedden or Mr. Dozier after the meeting was over that afternoon? A Mr. Dozier.

Q You saw Mr. Dozier? A Yes, sir.

Q Who else was there at the time? A Why this was quite late in the afternoon, and Mr. Fischer, Mr. Aubin, Mr. Toothe, Mr. Michaels.

Q They were all there? A And myself—yes, sir.

Q What, if anything did Mr. Dozier say to them after, including Mr. Toothe? A Why Mr. Dozier said that he was leaving that day and all his financial arrangements were made, he would like to give us a little talk, which he did, advising us all— (interrupted).

Q The talk was on what general line? A Devoting our best efforts to the company.

Q Do you know whether Mr. Dozier was at the office the next day? A He was.

Q Do you know what he was doing? A Why, I had occasion to walk into Mr. Dozier's room and I saw him giving papers, and so forth to Mr. Toothe.

Q Did you notice what the papers were? A No, I didn't pay any particular attention to that.

Q Did you see Mr. Dozier several days after that at the Newark Athletc Club? A I did.

Q What was the occasion of that? A Mr. Dozier gave me a voucher to return to Mr. Aubin.

Q And was that the voucher (showing witness paper)?

The Court: I think that is in the case.

Mr. Lum: It is all established.

Cross examination by Mr. Lum.

Q Who are you employed by now? A Fischer-Williams Corporation.

Q When did you go with them? A About the end of March or the beginning of April, 1924.

Q When did you first know that Mr. Dozier was going to leave on the 15th of January? A After the 5th.

Q How did you know? A Why I have forgotten exactly who told me but I know somebody had told me, whether Mr. Dozier himself or who, I cannot recollect.

Q Cannot recollect? A No, I cannot, fix anybody particularly.

Q Whoever it was did they say anything to you about also going? A No.

Q You are superintendent you say? A Yes, sir.

Q And as such you were out of the office much of the day, weren't you? A Well, towards the latter part of my being with the Charles R. Hedden Company I was mostly inside. Mr. Michaels then was general superintendent. My duties kept me in the office most of the time.

Q When did you first begin to go in the office? A Oh, about the latter part of 1922.

Q The latter part of 1922? A The latter part of 1923, at least.

Q Just shortly before Mr. Dozier left? A That is right.

Q And when did you come with this company? A The latter part of 1922.

Q Do you remember when? A I think it was in November.

Q As a matter of fact it was not until the week of the 20th of December, was it? A No, it was not.

Q What is that? A It couldn't have been.

Q As a matter of fact, you served three days in the week of December 20th—the first time you were paid anyway, wasn't it? A Well, it might possibly be.

Q You certainly didn't serve there at any time without pay, did you? A Hardly.

Q And you were from that time in December, 20th, out as superintendent until the end of the following year? A Yes, sir.

Q Do you know how many minute books there were in that office? A How many minute books?

Q Yes. A Only one to my knowledge.

Q You never saw but one at any time or at any place? A No.

Q On the shelf there was never more than one minute book? A No.

Q And all you knew of of your own knowledge was one? A That is all.

Q You didn't know whether when one was completed another was used, did you? A No.

Q And when you went in the inner compartment of this safe who did you get the key from? A Didn't get any key when I went there.

Q How did you get in? A Sometimes I used a penknife, sometimes I could pull it open.

Q Can you do it now? A I don't know.

Q If it is in the same condition as the safe was then can you? A Possibly could.

Q On this January 5th what time was the meeting in the office? A In the morning.

Q What time in the morning? A Oh, I should say it started about 9:30, or about. I used to get in about that time. It just about started after I got in.

HAROLD F. FISCHER, sworn in behalf of defendant.

Direct examination by Mr. English.

Q Mr. Fischer, your name has been mentioned in this case. I think you were a director and vice-president of Charles R. Hedden Company, were you not? A I was.

Q And when did you first come into the company? A In January, 1922, first part of January.

Q How did you come in by purchasing stock? A I purchased some stock after being invited in by Mr. Hedden.

Q How much did you pay for the stock when you bought? A I paid approximately around $128 a share, something like that.

Q At the time you came in and prior to buying that stock did you have any conversation with Mr. Hedden? A Yes, sir; I had several conferences with Mr. Hedden.

Q I think you are still a stockholder? A I still am a stockholder.

Q But no longer a director? A No longer a director.

Q And where did you have these conferences with Mr. Hedden? A Mostly all in New York; several times in conferences in the Union League Club, Grand Central Terminal.

Q And was anything discussed between you and him with respect to the purchase or the sale of the stock in case of the retirement or death or anything of that kind? A Yes, sir, there was.

Q And what was the gist of that conversation between you and Mr. Hedden? A Why, I was given to understand by Mr. Hedden that he would make an agreement with the stockholders of the company giving us an opportunity to purchase his stock in the event of his retirement or death.

Q When was it you say you came into the company? A January—right after the 1st of January, 1922.

Q Now, did this discussion between you and Mr. Hedden for the purchase or sale of the stock extend to the—extend to making a written agreement or rather drawing up a written agreement? A After I came in the company I had

no further conversations with Mr. Hedden about the agreement until Mr. Dozier came to me and —with an agreement already drawn up.

Q I show you Exhibit D. 2, is that a copy of the agreement that you mentioned? A Yes, sir, it is.

Q That names yourself, Mr. Hedden, Toothe and Dozier? A That is right.

Q It appears that agreement was not signed. Do you know why? A Mr. Hedden refused to sign it.

Q Did he give any reason? A Yes, sir, he said that his estate would be complicated if he would sign any agreement like that.

Q (By the Court.) Were you actively engaged in the business? A I was, sir, yes, sir.

Q What did you do in the affairs of the company, Mr. Fischer? A Well, in the beginning I had charge of the operations and construction of all the work.

The Court: What?

Witness: Of the work of the Hedden Company, and a great deal to do with the making of the estimates and quite a few duties in an executive capacity.

The Court: Are you a practical man?

Witness: Yes, sir.

The Court: Builder.

Witness: Yes, sir.

Q You are an engineer by training, I believe? A I am.

Q Mr. Hedden was president of the company? A Yes, sir.

Q Did he also act as general manager of the company? A Yes, sir; he did.

Q What did he do evidencing his conduct as general manager? A He gave us all directions as to how to conduct the business.

The Court: The dominant spirit?

Witness: Yes, sir; he was the dominant spirit. We all looked up to Mr. Hedden as the head of the company.

Q Now what care, if any, have you observed Mr. Hedden to take in looking over papers, minutes, and things of that sort? A I know Mr. Hedden was very careful to look over minutes; he would look over estimates, look over bills, expense account checks. Seen him do that on numerous occasions.

Q Do you know whether he ever consulted either Mr. Dozier or Mr. Aubin before he signed any checks? A Very often.

Q And do you know whether he ever examined the minutes? A Yes, sir; I have seen him looking through and reading the minute book on the desk many times.

Q Where was your room with reference to his? A Right next to his.

Q Was the door open between you frequently or was it kept closed? A Very frequently, yes, sir.

The Court: Glass partition?

Witness: Yes, sir, but we kept the door open.

Q What was the custom in the company, Mr. Fischer, with respect to signing checks. It appears the checks have two names. Who signed first? A Mr. Hedden always signed checks first,

if he was there. If he wasn't there I signed checks.

Q When he was there he always signed first? A Yes, sir.

The Court: Did it make any difference who signed first?

Witness: I don't know. That was the custom I know. I did the same thing.

The Court: I do not see that it made any difference.

Mr. English: I do not suppose that it made any difference as to the validity of the check.

The Court: I was not asking that at all; I meant the question.

Mr. English: Whether a difference or not that was the practice, for Mr. Hedden to sign first?

Witness: Yes, sir.

The Court: That is what he said.

Q Have you any knowledge of checks being signed in blank and left around? A Only on one or two occasions that I remember.

Q And what were those occasions?

The Court: Isn't that established in the case by both sides?

Mr. English: I think so, but if you remember back at the beginning you will remember the proof was to the contrary.

The Court: The other side, as I recall, fixed that as well as you did.

Q Now, during the time that you were vice-president who was the secretary of the company? A Mr. Toothe was secretary.

Q Did he perform the duties of secretary to any extent? A Not to my knowledge he didn't.

Q Who did? A Mr. Dozier did.

Q Who, if anybody kept notes of the meetings of the directors? A Why, Mr. Dozier used to take notes during the progress of the meeting —or during the course of the meeting.

Q Do you know who dictated the minutes to be written out after? A Yes, sir; I have seen Mr. Dozier dictate minutes several times.

Q To Miss Jackson? A To Miss Jackson, yes, sir.

Q To your knowledge were the minutes written up after the meetings were held? A Yes, sir; they were.

Q Any long intervals elapse between? A Not to my knowledge.

The Court: You wouldn't know, would you?

Witness: I was perfectly familiar— (interrupted).

The Court: You wouldn't know, in your end of the business, would you?

Witness: Yes, sir, I would know.

Q Why would you know? A From being in the office and seeing what they were doing there.

Q Was it customary at a meeting of the directors to read the minutes of the previous meeting? A Always.

Q Were they always read? A Always read.

Q Now I show you minute book Exhibit C. 3 and direct your attention particularly to the minutes of August 15, 1922, in which it appears that you were present. Do you remember that meeting? A Yes, sir.

Q There is in the minutes of that meeting a resolution with respect to a vacation for Mr. Dozier, also with respect to the purchase of his stock in case of his retirement. Do you remember that? A Yes, sir.

Q How did it come about that the resolution giving him a two months' vacation was introduced and passed? A To the best of my recollection Mr. Dozier was in very bad health at that time, had considerable ear trouble and was rather broken down and wanted to take a vacation. The subject of his leaving the company was brought up at the meeting and the subject of his taking a vacation was brought up. We all felt if he took a vacation he would be much better so I introduced the resolution giving him two months' vacation.

Q That resolution is in the book? A Yes, sir, that resolution is in the book.

Q What happened after that? A Then Mr. Dozier introduced a resolution about his stock.

The Court: The one that is now set up on the minutes?

Witness: The one that is now in the minute book.

The Court: Have you read the one that is in the minute book?

Witness: Yes, sir.

The Court: Do you identify that as the one that was offered?

Witness: Yes, sir, that appears to be the same book.

The Court: I mean the resolution.

Witness: The resolution was the same, yes, sir.

The Court: What were the circumstances under which it was introduced?

Witness: Well, Mr. Dozier— (interrupted).

The Court: As your memory serves you.

Witness: Mr. Dozier at that time was talking about leaving the company altogether.

The Court: Tell us what happened.

Witness: And as I stated before he was in bad health and wanted to get away.

The Court: Please tell us what happened with reference to this resolution as you recall it, if you have any recollection.

Witness: The only recollection that I have then was after discussion of his retirement from the company, along the line of getting out, not as to the purchase of stock, this resolution was put in by Mr. Dozier.

Q The first thing that came up was the question of his health and his vacation, is that it? A Yes, sir.

Q And then from that you moved to the question of retirement—I mean the discussion proceeded to the question of his retirement? A The only discussion was along that line and the vacation. We simply thought the vacation would do him good and he would not want to retire.

Q Then the way it came up was the retirement matter came up first then you suggested the vacation as a possible cure for that? A That is it; to the best of my recollection I think that— (interrupted).

Q And then the resolutions were introduced and adopted you say as now expressed in the minutes? A Yes, sir.

Q After he offered the resolution what happened? A Simply voted on and passed.

Q No discussion? A No; we had been discussing it up to that time.

Q The discussion was preceding the motion as I understand it? A Yes, sir; preceding the introducing of the resolution there was general — (interrupted).

The Court: Preceded the introduction of the resolution?

Witness: Oh, yes.

Q Now, do you remember roughly when he left and when he got back from California? A Well, he left three or four days after that, to my knowledge.

Q He was gone about two months? A About two months.

Q Do you know where the minute book was during his absence? A The minute book was in the safe.

Q Locked up or accessable? A No, it was laying on the shelf there.

Q Did you have any occasion to examine it during his absence? A I did.

Q For what purpose? A For the purpose of investigating the salary that was paid to the other officers before I came in the company.

Q You got a little curious? A Yes, sir.

Q Do you know when you had the minute book in your hands for the purpose of that examination whether or not these minutes of August 15, 1922 were in the book? A I didn't notice those, but I noticed the book was full, and it was such a large book.

Q You were looking back earlier in the history of the company? A I was looking back right in the beginning.

The Court: That was while Mr. Dozier was away?

Witness: Yes, sir.

Q Now, was there any meeting of the board held in September during his absence, 1922? A The only meeting I recollect at that time was Mr. Hedden and I—I was in his office and nobody was there we said we would wait until Mr. Dozier got back.

Q Now he was back about the middle of October? A Yes, sir.

Q It appears from the minute book that there was a meeting held on the 17th of October. Did you attend that meeting? A I did.

Q It says in the minutes of October 17th that the minutes of the August 15th meeting were read. Is that true? A Yes, sir.

Q You were there and heard them? A Yes, sir. They were always read after every meeting.

The Court: Do you remember this?

Witness: Yes, sir.

Q Why do you remember this one as distinguished from the others?

Witness: It was right after Mr. Dozier's return.

The Court: I mean do you have a present recollection of it—a mental picture of what occurred?

Witness: A fair mental picture, yes, sir.

Q Now, do you remember whether your company had any contract or business up in New Haven for the Kelly Tire Rubber Company? A They had had a job up there before I came in the company which had been completed, but the accounting still remained over into the period where I was.

Q Did that come up during the summer of 1922? A Yes, sir.

Q Come up at that October meeting? A Yes, sir.

Q I see it is referred to here in the minutes. I wondered if you remembered that in addition —the company had to give a bond? A Yes, sir.

Q Had some litigation up there? A Yes, sir; I remember that.

Q Now you were—were you at the office on the morning of January 15th? A Yes, I was.

Q 1923. How did you happen to be there? A I was asked to come there by Mr. Dozier.

Q Did he tell you why he wanted you there? A Yes, sir, he said he was going to have a discussion with Mr. Hedden relative to getting out of the company.

Q And where did you come from to attend that meeting? A I came from Lockport, New York.

Q When you got there did you attend the meeting? A No, sir.

Q Why not? A Mr. Hedden refused to let me.

Q What reason did he give you? A He said he did not want me in there, it was a personal discussion between him and Mr. Dozier.

Q So where were you? A I stayed outside.

Q In your room that adjoined? A Yes, sir; I was in and out of my room all day.

Q Have you any general idea how long that conference lasted between those two men? A Several hours—two or three hours.

Q Were you there when they came out of the conference? A I was.

Q What seemed to be their attitude towards one another? A They seemed to be in perfect harmony.

Q What happened, if anything? A Well, they were both smiling.

The Court: At each other?

Witness: They were simply acting good natured.

Q With reference to the cigars, did you get in on the cigars? A Yes, sir, I got a cigar.

Q That was an unusual occurrence? A No; Mr. Hedden used to give me cigars occasionally.

Q Used to give you cigars occasionally. Did Mr. Dozier say anything to you following that conference? A Yes, sir; he told me that everything was settled and asked me if I wouldn't cooperate with him in getting up the book value of the stock as soon as I can.

Q Did you do that? A I did.

Q When did they get to work on that? A That same day. I think I stayed there that night, my recollection.

Q Who worked on that besides Mr. Dozier? A Mr. Dozier, Whitehurst and Hohenhausen.

Q And Mr. Aubin? A Oh, yes, Mr. Aubin.

Q How long did they keep up that work on that book value?

The Court: Haven't we had all that in? I do not believe it can be controverted, can it, Mr. Lum.

Mr. Lum: It cannot be— (interrupted).

The Court: That they worked on these books.

Mr. Lum: We proved they did and proved they were there nights without any knowledge to us.

The Court: Get right down to the real things necessary for determination.

Q Did you attend the meeting of the board held on January 15, 1924? A I did.

Q And what occurred in that meeting with respect to the sale or purchase of Mr. Dozier's stock? A Resolution introduced by Mr. Dozier at that meeting.

Q Who was presiding at that time? A I was.

Q How did that come about? A Why when the meeting first opened Mr. Dozier came in with his papers, audits and books and I think he criticised Mr. Toothe for not writing up the minutes and Mr. Hedden seemed to get very angry and jumped out of the chair and told me to take his place.

The Court: He already had his check?

Mr. English: Yes; this is more or less cumulative.

The Court: I think all this was established by the other side.

Mr. English: No; this was brought out by us. I am corroborating our own testimony.

The Court: I am not criticising you.

Q Go ahead, sir.

The Court: "Jumped out of his chair."

Witness: Jumped out of his chair and I took his place.

Q Then what happened? A Just Mr. Dozier submitted the audit, financial statement of the company and motion was passed then and there to accept that subject to audit.

Q And then what about this resolution to purchase the stock, was that introduced then or before? A Then Mr. Dozier introduced a resolution about purchase of stock.

Q And the vote on that was two to two? A Yes, sir.

Q You voted with Mr. Dozier? A Yes, sir.

Q Had Mr. Dozier said anything to you before about that proposed resolution? A Well, in a way he did, yes. He asked me— (interrupted).

Mr. Lum: Was Mr. Hedden present?

Witness: No, Mr. Hedden was not present.

Mr. Lum: I object.

Q Prior to the meeting of January 15th had you any knowledge of the proposed introduction of that resolution? A Yes, sir.

Q How did you get it? A From Mr. Dozier.

Q And did you learn why it was he proposed to introduce that resolution? A Yes, sir.

Q What did you learn?

Mr. Lum: I object.

Q Did he show you the resolution in advance? A No, sir.

Q Did he come in with it in his hand when he came in the meeting? A Written memorandum of it, yes, sir.

The Court: What do you mean, a draft of it?

Witness: A rough draft in pencil on a piece of yellow paper.

Q Were you present at the office after the meeting was over? A I was.

Q Did Mr. Hedden say anything to Mr. Dozier with respect to this stock? A As they were going out the door after the meeting was over Mr. Hedden—I heard Mr. Hedden tell Mr. Dozier to turn over his stock, bonds, papers, books and everything to Mr. Toothe.

Q That was the evening of January 15th? A That was the evening of January 15th.

Q Were you at the office at the time Mr. Dozier made this little speech that has been talked about? A I was.

Q Did he then say anything about this transaction? A He told everybody there that he had now retired from the company, was getting out or had got out rather.

Q Now, I show you Exhibit D. 9, which is a yellow paper memorandum with a supposed statement. Tell me how that paper came to be written out.

The Court: What is it?

Q Tell me how that D. 9 came to be written out, Mr. Fischer? A Why, I was in Mr. Hedden's office discussing various subjects and he suddenly called in Mr. Aubin and Miss Jackson.

Q When was that? Was it after the meeting? A I had then submitted my resignation as director.

The Court: When?

Witness: March 12, 1924. Mr. Hedden called them in and Miss Jackson brought her pad. He dictated this statement.

Q That is on Exhibit D. 9? A That is on D. 9.

The Court: What did you do?

Witness: I didn't have a chance to say anything. Then Miss Jackson and Mr. Aubin both went out of the office and Mr. Hedden asked me to sign it.

Q Was it brought in again written out by Miss Jackson? A Yes, sir. I told him I wouldn't sign it. It wasn't true. I saw afterwards that the date on this was for a meeting of February, 1922.

The Court: What do you mean by that?

Mr. English: That is what it says.

Mr. Lum: It said February instead of August.

Q Go ahead, Mr. Fischer. A I knew that Mr. Hedden had in mind the other meeting.

The Court: What other meeting?

Witness: The meeting of August 15th. So—

Q So what? A I took my copy of this with me and that was all that was said about it until

afterwards Miss Jackson told me that Mr. Hedden came out and asked her to write a new memorandum changing the date.

Q Now, did you ever have any other discussion about the meeting of August 15th with Mr. Hedden? A Yes, sir, Mr. Hedden and I had several talks.

Q And what was the general gist of that conversation? A Well, the general gist was that Mr. Hedden tried to find out from me what I knew about the meeting. I never answered him —never told him.

The Court: That is the August meeting?

Witness: The August meeting.

Q And these conversations were while you were still with the company as the vice-president? A They were.

Q Now, you say you resigned in March. That was to go into a new business? A Yes, sir.

Q The Fischer-Williams Company? A Yes, sir.

Q Had you had that under contemplation before or not? A I had.

Q When did the idea of the Fischer-Williams first come up? A Oh, around practically, the first of the year, 1924, just simply between Mr. Williams and myself. We had talked it over.

Q Williams had also been with the Hedden Company? A He had.

Q When did the idea come to the front of having Mr. Dozier enter the Fischer-Williams Company? A I think it was the latter part of February, 1924.

Q At the time of Mr. Dozier's retirement from the Hedden Company had there been any proposition that he should enter the Fischer-Williams Company? A No, there had not, because my own plans were rather indefinite. I had several offers from Rochester, New York, to form a business up there and all our talk up to that time had been—well, there was nothing to them, really, no plans had actually been made.

Q And how did it come about that Mr. Dozier did go in that Fischer-Williams Company? A We had a meeting at our attorney's office, Mr. Spencer, and Mr. Spencer asked Mr. Dozier to come in.

Q Your New York attorney? A My New York attorney.

Q That was when? A The latter part of February, 1924.

Q Do you know how much money Mr. Dozier put into the Fischer-Williams Company? A Yes, sir; $7,000.

Q You put in an equal amount? A Yes, sir.

Q Williams an equal amount? A Yes, sir.

Q That made $21,000? A Yes, sir.

Q What was the total capital made up? A $25,000.

The Court: Did the other associates put in the balance of $4,000?

Witness: Yes, sir. I would like to correct that. When we first started we kept out $4,000 for sale by other employees of the company. Naturally Mr. Hohenhausen took $2,000 and Mr. Kuhnle took $2,000.

Harold F. Fischer, cross.

Cross examination by Mr. Lum.

Q Mr. Fischer, from whom did you purchase your stock? A I purchased my stock from the Charles R. Hedden Company.

Q In connection with that did you come in touch at all with Mr. Toothe, Sr., Jimmy's father? A Mr. Edward F. Toothe I came in touch with, yes, sir.

Q That is the father of James, isn't it? A I think he is his step-father.

Q Step-father. Do you recall being at the office of Lum, Tamblyn & Colyer in January, of last year? A Yes, sir.

Q Do you remember the date? A Yes, sir.

Q What was the date? A Around January 17th.

Q Whom did you come with? A I came with Mr. Hedden—no, I came by myself.

Q How did you come to come? A I was 'phoned to come over there.

Q And did you come again? A I did not.

Q Were never there with Mr. Hedden? A I was not, except that January 17th.

Q Mr. Hedden was there on the 17th? A Yes, sir.

Q And you were not there with Mr. Hedden on the 19th of January? A I was not.

Q Sure of that? A I am.

Q Do you remember, regardless of the date, the conversation that took place? A I remember the conversation that took place on January 17th.

Q It was with reference to this check, was it not? A It was.

Q Was the subject of the resolution of August, 1922, referred to? A It was.

Q Do you recall that you stated at that time that you had no knowledge whatever of that resolution? A No, those were not my words.

Q What were your words? A My words were that I had no recollection of any meeting of the board of directors at that time.

Q So, when you were talking in my office with me there in January with the president of the company, or when the matter of this stock and the matter of this check was the subject of discussion you said you had no knowledge of the August resolution, didn't you? A I said I had no knowledge of any resolutions of any board of directors at that time.

Q How did you come to make that statement in the light of your present testimony? A Why, you asked me if I had any knowledge at that time.

Q And you knew that Mr. Hedden said that he had no knowledge of any such resolution, didn't he? A Why he always said that.

Q And he was intensely surprised and a very angry man at that hearing, wasn't he? A He seemed to be.

Q Do you recall that his face and his neck were extremely red that day when he was discussing that check? A They often got that way.

Q Yes. He had just learned that Dozier—Mr. Dozier had taken $65,000 of the company's money, hadn't he?

Mr. English: I object.

Q You were present there when he had just learned of that check being taken? A I was in the office, yes, sir.

Harold F. Fischer, cross.

Q You were in the office?

The Court: What office?

Witness: Charles R. Hedden Company.

Q And there was great indignation, wasn't there? A Mr. Hedden seemed very much surprised.

Q And very angry, didn't he? A Not any more than usual on other occurrences.

Q Never mind comparing with other occurrences. He was at that time very angry on the discovering of that check? A Yes, sir; he was very angry.

Q You didn't say anything to him then about that all being all right because there was a resolution of the August of the year before, did you? A I was not consulted about it except in your office.

Q You did not say when you were consulted at my office—you were consulted for the purpose of the preparation of this case, weren't you; you understood then? A No, I did not.

Q Well, you knew you were over there for a certain reason, didn't you? A Yes, sir.

Q What did you think was the reason of your being there? A To find out from me all that I knew.

Q And you told all that you knew at the time, didn't you? A No, sir.

Q You did not? A No.

Q When you were asked by me—you then being an officer and director of the corporation—when you were asked by me what you knew about this matter you didn't tell me all? A No, I didn't tell you all.

Q You deliberately withheld it? A Why, certainly.

Q Why? A I didn't care to tell it.

The Court: Why?

Witness: Because I was anxious to get out of the company myself. I had lost interest in the company.

Q You didn't state that at the time, did you? A Yes, sir; I told you that after you told me that a minority stockholder was only an object of charity.

The Court: What?

Witness: Object of charity.

Q Before you heard of the position of the minority stockholder you were interested in the company?

The Court: Is that your doctrine?

Mr. Lum: No; I made no such statement.

Q You recall my statement was that the minority stockholder could not compel the majority stockholder to buy his stock? A You said nothing of the kind to my knowledge.

Q The subject of the discussion with reference to the minority and majority stockholders was as to the power of the minority stockholder to compel his stock to be purchased, wasn't that it? A I heard no discussion of that kind.

Q Very good. In any event you say that at that time you did not give at that hearing the information that you had on the subject? A No, I had no other information except as to the knowledge of this resolution.

Q And you had at that time when you were in my office no knowledge of this August resolution, did you? A I had no recollection of any meeting at that time. I would have to refresh my memory, as I told you.

Q And you knew Mr. Hedden had no knowledge of any such thing at the time, didn't you? A No, sir, I did not.

Q Didn't he say so in your presence? A He didn't say so.

Q You stated to me, didn't you, both you and Mr. Hedden, at that meeting, in response to the categorical question as to any previous resolutions—both say you had no knowledge of any such resolutions? A No, sir; I made no such statement.

Q What was your statement? A My statement was I had no knowledge of any resolution or any minutes of the board of directors at that time.

The Court: Of what?

Witness: At that time that I was in Mr. Lum's office.

The Court: Resolutions of what?

Witness: I had no recollection of any of these meetings at that time.

The Court: Was that true?

Witness: Yes, sir. I hadn't seen these meetings. I couldn't pick out any part of those meetings.

The Court: No. Go on.

Q So that you at that time, when you were at my office honestly—when you told me that you had no recollection of any resolution of Au-

gust—you had no recollection? A No, I wouldn't say that.

Q Were you lying to me? A No, I wasn't lying to you.

Q You said to me you had no recollection of any resolution of August, 1922, didn't you? A That is correct. Those are my exact words.

Q Now, you say that Mr. Hedden was the dominant factor of the company and very active in connection with all of its affairs? A He was.

Q He was very much interested in every check, every document and every paper, wasn't he? A To the best of my knowledge he was.

Q You were active after the 5th of June in fixing the book value of Dozier's stock, were you not—January? A I was, yes, sir.

Q You went over the documents and papers? A Yes, sir.

Q Contracts and other things in connection with it? A Yes, sir.

Q Did you at any time in connection with that work ever come in touch with Mr. Hedden in connection with the fixing of the book value? A Not to my knowledge.

Q You never saw the matter of the book value put to him, did you, from January 5th until the final meeting? A All that I was interested in was in making up the data that went into that statement.

Q My question is this, from the 5th of January, while all these people were working on this matter of the book value for Mr. Dozier, you never saw that subject brought to the attention of Mr. Hedden by anyone, did you? A I never did, no, sir.

Q When did Mr. Hedden first learn of that $65,000 check? A I think it was on the 17th of January.

Q You were present at this last annual meeting in January, weren't you?

The Court: What makes you think that?

Q Why do you say that, Mr. Fischer, that the $65,000 check was not known— (interrupted).

The Court: It was drawn two or three days before and on Mr. Hedden's desk so he must have known of the check.

Mr. Lum: He had no more knowledge of it than what is on the side of the North Pole. He has said so.

The Court: I do not mean that. You distinguish between knowledge of the check and the signature.

Mr. Lum: There is a check of that amount with his signature on. How it came there he don't know. He never knowingly and intentionally signed it.

Q Now, this resolution at this annual meeting was presented by whom, the last resolution? A By Mr. Dozier.

Q And you knew already that he intended to resign? A Yes, sir.

Q He had not resigned when he presented that resolution? A No, he had not, to the best of my knowledge he had not.

Q At that time was the August resolution in any way discussed? A No, sir.

Q The subject of an August resolution was not mentioned? A No, sir.

Q Why did you not say—did you know then of the August resolution? A No, I wasn't specially concerned about it. I had no— (interrupted).

The Court: The question is whether you knew.

Witness: No, I had no recollection at that time.

Q Had no recollection of it, and Mr. Dozier referred to the August resolution? A No, sir.

The Court: Nobody did

Q When the vote was a tie did Mr. Dozier say, "Well, I don't care you have already"—(interrupted).

The Court: Nothing was said.

Q Nothing was said, was there, Mr. Fischer, not a thing? A Not to my knowledge.

Q Did Mr. Dozier at that meeting say, "I have already got my check"? A No, sir.

Q Did he say, "My stock has been paid for"? A No, sir.

Q And that subject was not mentioned in any way by any one? A Not to my knowledge.

Q Did you know that he had the check at that time in his pocket? A I did not.

Q He did not tell you of that? A No.

Q You knew that that August resolution was something he had been keeping up his sleeve, didn't you? A I did not.

Q Did not know that? A No, sir.

Q Never knew that until this time? A No, sir.

Q Did you know of anything that he had up his sleeve? A Not to my knowledge.

Q Did you ever tell anybody that Mr. Dozier had this resolution up his sleeve to spring? A I did not.

Q Did you ever say to anyone that Mr. Hedden was wild when he learned of it? A Not to to my knowledge.

Q Got a good memory, have you, Mr. Fischer? A Fairly good.

Q Do you recognize that handwriting (showing witness paper)—the handwriting? Do you recognize it? A It is my handwriting.

Q And that date is January 21, 1923? A Yes, sir.

Mr. Lum: I ask to have this letter marked for identification.

(Paper marked Exhibit C. 1 of this date.)

Q This is a letter written by you to "My dear Ed." A Edward Toothe.

Q Do you recall that in that letter you say that "At our meeting last week of the directors called to review the past year's business a complete statement was rendered by Mr. Dozier, together with balance sheet. This statement showed a book value of $237 per share. Mr. Dozier made a motion that the C. R. H. Co. buy his stock at the book value, which, of course, was lost. Mr. Dozier then resigned as treasurer and as a director. What followed is the card he had up his sleeve. A year ago last August a resolution was passed which Mr. Hedden signed and Jimmie initialed providing that if 'at any time Mr. Dozier wished to leave the Charles R. Hedden Company would purchase his stock at the book value as shown by the preceding year's business. Mr. Dozier had the proper check drawn up and got his money.' Mr. H. was wild when he heard it. Claimed he knew nothing of any such meeting or of signing any such

check. That is simply a question of veracity. Mr. H's attorneys have started after D and I imagine it will be some scrap." Now, having had your recollection refreshed with that letter you do recall of saying to somebody that Mr. Dozier had a card up his sleeve in the way of that resolution—don't you? A No doubt about it. It shows there.

Q And you do recall that you did say to somebody that Mr. Hedden was wild when he heard about it? A Yes, sir.

The Court: Who is that letter to?

Mr. Lum: To Mr. Edward Toothe, stepfather of Jimmie.

The Court: How did you come to write that?

A He was a very personal friend of mine and he was interested with me in the stock.

Q And he was the man that furnished the money to you to buy that stock, wasn't he? A Yes, sir, he was.

Q Now, when did you first know that the Harrison Radiator check had come into your company? A Why the day it came in.

Q You did know it then? A Yes, sir.

Q You knew what bank it was deposited in? A No.

Q Do you know how many minute books were kept? A I knew positively that there was one, but I was told there was a copy made.

Q When were you told? A Mr. Dozier told me.

Q When? A I can't recall the exact occasion.

Q After he left? A No, before.

Harold F. Fischer, re-direct.

Q Before he left? A Yes, sir.

Q When did he first tell you? A I can't recall the date.

Q Did he tell you why he was keeping duplicate minute books? A No, sir.

Q Did he tell you why he was writing up Jimmy's minutes? A Yes, sir.

Q Did he say whether that had anything to do with his keeping a duplicate minute book? A No.

Re-direct examination.

Q Mr. Fischer, I show you Exhibit D. 3, which is the form of agreement dated August blank, 1922, between Mr. Hedden and Mr. Dozier relating to the purchase and sale of stock. Did you see that at the time? A About the time, yes, sir, I did.

Q You saw that draft of agreement? A Yes, sir.

Q It was not signed as it appears. Now, was that shown to you before the meeting of August 15, 1922? A Yes, sir.

Q Now, was there any relation between that paper and this discussion which you say took place at the August meeting about the retirement of Mr. Dozier and the purchase of his stock and all that? A Yes, sir, this and the previous agreement.

Q Did that all come into the discussion at this meeting which preceded this resolution? A To the best of my recollection these were brought to Mr. Hedden's attention and the fact that they hadn't been signed. We discussed that. Mr. Hedden again stated about his estate.

Q You were asked on your cross examination about when Mr. Hedden first learned of the

$65,000 check. Have you any personal knowledge when he first heard of it? A The only time I knew he knew of it was on the morning of the 17th of January.

Q That is what he was talking about? A Yes, sir.

Q On the 17th of January was when you first heard him talking about it?

The Court: When he first knew—when he first realized that Mr. Hedden first knew.

Q That is when you first heard him talking about it? A That is when I first heard him talking about it.

Further cross examination.

Q Why, Mr. Fischer, you quite frequently signed checks for Mr. Dozier when Mr. Hedden was there, didn't you? A Yes, sir.

Q And they were frequently checks of your own account, weren't they? A They might have been.

Q When Mr. Hedden was signing other checks the same day why did you not have him sign your checks? A I wouldn't recall that. Mr. Aubin just bring me any checks to sign and I used to sign them.

Q There were a great many checks to your own order or considerable sums signed during the two or three years—couple of years there, 1922, '23, weren't there? A I guess there were.

Q Now, can't you give us any explanation why those particular checks to your order were signed by you and Mr. Dozier when checks both before and after it on the same day were signed

by Mr. Hedden? A I am sure I don't know. They were brought into my desk and I signed them.

Q Didn't you ask anybody why they brought to you checks for your order and took the other checks for the regular business to Mr. Hedden on the same day? A Why, no; I never had any occasion to do that.

Q It didn't strike you as odd at all? A Why, no, why should it be?

Q And you cannot give any reason in the world why you should have been signing checks for three and five hundred dollars, and so forth, yourself on those dates—can't you give us any explanation? A Why, I cannot, no.

Q All right. That is all.

By the Court.

Q I do not understand you—the attitude of your testimony. You say when the August resolution was passed you voted for it? A Yes, sir.

Q And knew all about it? A Yes, sir.

Q In January, at Mr. Lum's office, you now say that you then did not know about it? A I said I had no recollection at that time of any meeting of the board of directors. Mr. Lum was cross examining me and I did not— (interrupted).

Q I am asking you now as a fact whether at the time he was examining you—whether then you knew of the resolution which is the subject of this litigation, passed in August, 1922? A I was not quite familiar with it.

Q But you knew fully what happened in the August meeting, did you not? A After I refreshed my memory I did.

Q Had it passed away from you? A It had, yes, sir.

Q Well, Mr. Hedden was very much excited that Mr. Dozier should have a $65,000 check, the value—the book value of his stock. Didn't you know at the time of this excitement that that check was passed upon a resolution which you had voted for in August, 1922? A Well, they all met in the office there— (interrupted).

Q Didn't you know at that time, at the time Mr. Lum was examining you, didn't you realize it was based on that resolution? A Yes, sir; I knew there was a resolution—based on some resolution. I hadn't looked over the resolution. I couldn't quite recall to my mind what it was then.

Re-cross examination by Mr. Lum.

Q You mean you had not looked over the minute book for some time? A No, I hadn't looked over the minute book, I wasn't interested.

Q You were very much interested, were you not, when Mr. Hedden was wild, as you said? A What I meant by that— (interrupted).

Q He was wild that $65,000 was taken out of the treasury of the company? A Yes, sir.

Q Didn't you make any explanation to Mr. Hedden "Why that is based on the August resolution?" "Or on a resolution that we passed?" A Not to my knowledge. After they found this out evidently they went right over to Mr. Lum's office and I was called right over there afterwards.

Q When there and you saw this excitement do you mean to say that at that time you had forgotten that you had voted for a resolution au-

thorizing this very transaction? A I had no definite recollection of it.

Q Did you have an indefinite one? A Yes, sir, I did.

Q Did you give expression to it? A No, I did not.

The Court: Why?

Witness: Because I was entirely in sympathy with Mr. Dozier.

The Court: Oh, all right. That is all.

Re-direct examination.

Q You said something about being cross examined by Mr. Lum over there.

The Court: Sure he was.

Mr. English: That is all except some documentary evidence.

Referring to Exhibit C. 3 and particularly the board of directors' minutes of March 9, 1922, I offer in evidence pass book on the Springfield Avenue Trust Company, the first entry of which is March 10, 1922.

(Book marked Exhibit D. 2 of this date.)

Mr. English: Referring to the same minutes of March 9, 1922, I offer in evidence lease between the Charles R. Hedden Company as tenant and Madison Avenue Offices Inc., of which Cushman & Wakefield, Inc., are agents, dated March 13, 1922.

(Paper marked Exhibit D. 3 of this date.)

Mr. English: Referring to the minutes of the meeting of May 16, 1922, I offer in evidence duplicate of the contract between

Charles R. Hedden & Company and J. S. Ripple, dated May 23, 1922.

(Paper marked Exhibit D. 4 of this date.)

Mr. English: Referring to the minutes of the same meeting, of May 16, 1922, I offer in evidence, contract between Charles R. Hedden Company and the Montclair Essex Trust Company dated May 27, 1922.

(Paper marked D. 5 of this date.)

Mr. English: Referring to the minutes of the meeting of August 15, 1922, I offer in evidence copy of the bond for $198,866 between Charles R. Hedden Company and the New York Edison Company dated August 4, 1922.

(Paper marked Exhibit D. 6 of this date.)

Mr. English: Referring to the minutes of August 15, 1922, I offer in evidence report of E. H. Page, Internal Revenue agent, referring to an examination of the company's books for the years 1918, 1919 and 1920.

(Paper marked Exhibit D. 7 of this date.)

Mr. English: Referring to the minutes of October 17, 1922, I offer in evidence passbook on the North Ward National Bank, the first entry being October 24, 1922.

(Paper marked Exhibit D. 8 of this date.)

Mr. English: Referring to the minutes of the same meeting of October, 1922, I offer in evidence copy of bond for $25,000 entitled in the suit of Martin Tire & Rubber Company against Kelly Tire & Rubber Company, Superior Court, New Haven County, September, blank, 1922, which bond is set out in full on page 155 of the minutes.

(Paper marked Exhibit D. 9 of this date.)

Mr. English: Referring to the minutes of the same meeting of October 17, 1922, I offer in evidence copy of the letter of Charles R. Hedden Company by Charles R. Hedden, president to Fidelity Union Trust Company, dated September 22, 1922, which also appears on page 165 of the minutes.

(Paper marked Exhibit D. 10 of this date.)

Mr. English: Referring to the minutes of the meeting of December 19, 1922, I offer in evidence duplicate of original contract between Charles R. Hedden and First National Bank of Madison, N. J., dated December 1, 1922.

(Paper marked Exhibit D. 11 of this date.)

Mr. English: Referring further to the minutes of the meeting of December 19, 1922, I offer in evidence contract between Charles R. Hedden Company and New York Telephone Realty Corporation dated December 9, 1922.

(Paper marked Exhibit D. 12 of this date.)

Mr. English: I also offer in evidence voucher signed by George A. Aubin dated December 21, 1923, of adjustments of allowance in salary for the year ending December 31, 1923, fifty-two weeks at $10 per week, $520 less allowance $160, total amount of voucher $360.

(Paper marked Exhibit D. 13 of this date.)

Mr. English: All of the exhibits which I have offered this morning in evidence were produced by the Charles R. Hedden Company on subpoena.

DEFENDANT RESTS.

PAUL J. OWEN, recalled in behalf of complainant.

Direct examination by Mr. Lum.

Q Has the government dealt with the statement of the Hedden Company for 1922? A It has.

Q And was there any change made in the figures as prepared originally by Mr. Dozier for that year? A Yes, sir.

Mr. English: I object.

Q Was the matter of the profit on incompleted contracts dealt with in the 1922 return? A Yes, sir.

Q Did the government make any change in that respect? A Yes, sir.

Q What change?

Mr. English: I object. Suppose they did.

Q Have you yourself checked up the completed contract of 1922? A Yes, sir.

Q What figure of profits were taken by Mr. Dozier for that year? A He estimated incompleted contracts profit as— (interrupted).

The Court: 1922 or 1923?

Witness: 1922, at $40,000.

Q What were they actually? A About $23,000, between twenty and twenty-three thousand.

Cross examination by Mr. English.

Q You mean that was your estimate? A No; that is what I got from the books.

Q You say Mr. Dozier took it at forty and you figured it at about twenty-three, is that right? A Yes, sir.

Q Difference in estimates?

The Court: That shows he followed out the same system the following year. It doesn't affect you.

Mr. English: I just wanted to find out what he did.

CHARLES R. HEDDEN, recalled.

Direct examination by Mr. Lum.

Q Mr. Hedden, Mr. Dozier has said that at this November meeting when he told you to go to hell his remark had reference to the Ripple contract?

Mr. English: I object, because Dozier did not say he told Mr. Hedden to go to hell. He said, "Mr. Ripple said you can go—"

Q When the words "Go to hell" were used in the November meeting, no matter by whom, was the Ripple contract discussed? A It was not discussed.

Q Was the Ripple contract completed at that time? A Three months before that.

Q Now the meeting of January 15th— A 5th.

Q First, January 5th, how long was that? A Not over a half an hour.

The Court: That is the conference between the two?

Witness: Not over half an hour.

Q Was there any agreement at that time on your behalf or as to the company to purchase that stock? A Nothing whatever, nothing said about it.

Mr. English: I object. This is not rebuttal.

The Court: This is not rebuttal.

Q Did you at any time up until the meeting of January 15th ever see the check for $65,000?

Mr. English: I object.

The Court: That is in your case.

Q Did you ask Mr. Dozier to prepare a resolution for the company to buy his stock at this January 15th meeting? A I did not.

Mr. English: I had that all out on cross examination.

Mr. Lum: That is not so.

The Court: I will let it in for fear it is not in. I am very well convinced that it is.

Q The question was did you ask Mr. Dozier to present or prepare a resolution at the January meeting?

The Court: He said no.

Q When did you first know that the Harrison Radiator check had been received by the Hedden Company? A The 17th of January, 1924.

Q Did you know up until that time that it had been deposited in the Montclair Bank? A I did not.

The Court: I am letting it in for fear it is not in.

Q Mr. Hedden, did you ever know of the company making any personal loans to Mr. Dozier? A I did not, no, sir.

Q Did you ever agree to the company making him any personal loans? A I never have—never did.

Q Was the value of the good will of the stock of the company discussed with you at any time up until Mr. Dozier's resignation? A No, sir.

Q Neither directly nor indirectly? A Neither directly nor indirectly.

Q Did you ever tell Mr. Dozier to leave his stock when he was going? A I did not.

Cross examination waived.

Testimony closed.

Exhibit C. 4.

EXHIBITS

Exhibit C. 4.

CHARLES R. HEDDEN COMPANY
(A Corporation)

Hedden Construction Corporation
Contracting Engineers and Builders
Prudential Building
Newark, N. J.

December 31, 1923.

Re: Personal

My dear Mr. Hedden:

My connection with the Company is drawing rapidly to a close, and reluctantly I am forced to ask if you will, at your early convenience, make an appointment for a conference between us, that we may have an understanding for a final and amicable agreement regarding the disposition of my stock holdings in the Charles R. Hedden Company.

May I ask for the courtesy of such appointment on or before January 5th, 1924, as I am leaving for California the latter part of that month, and am desirous of closing my affairs before that time.

I cannot impress upon you too strongly the necessity of our getting together for the purpose as indicated above, thus relieving both of us from the high tension under which we are now suffering.

Very sincerely and cordially,
Walter J. Dozier.

Mr. Charles R. Hedden,
Prudential Building,
Newark, N. J.

(Reverse side of check)

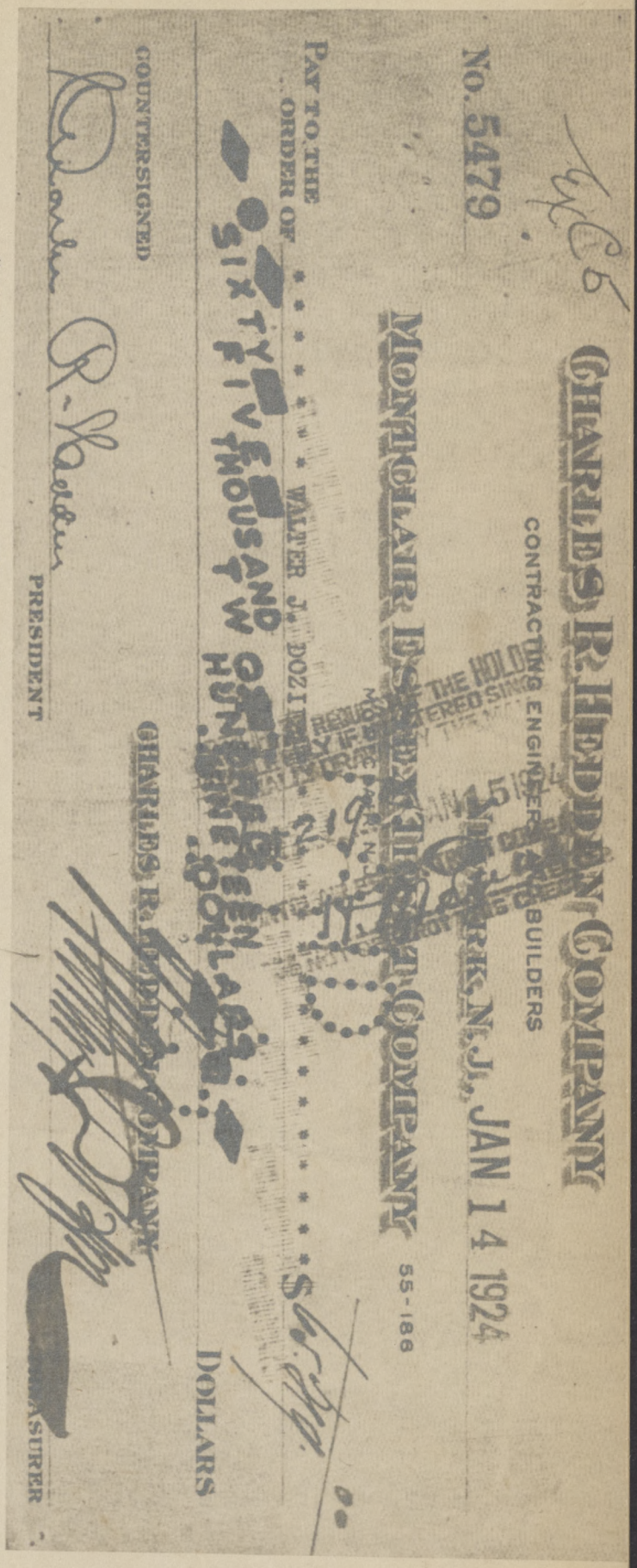
THIS CHECK IN SETTLEMENT OF THE FOLLOWING ITEMS:

Date	Amount
Jan 14 1924	
For the purchase of 275 shares of Common Stock of the Charles R. Hedden Company in name of Walter J. Dozier.	
Total	65,219.00
Discount	
Allowance	
Amount of Ck.	65,219.00

Voucher No.

(Rubber stamped)

Pay to the Order of
MONTCLAIR ESSEX TRUST CO.
Montclair, N. J.
WALTER J. DOZIER



Exhibits C. 6, C. 7.

Exhibit C. 6.

MINUTE RECORD

RESOLVED, that

Charles R. Hedden Company purchase shares of stock in the Charles R. Hedden Company now standing in the name of Walter J. Dozier on the books of the said Company, at the book value thereof, as shown on Treasurer's report submitted to this meeting and accepted and approved.

Exhibit C. 7.

MEETING OF BOARD

Motion to proceed
Elect Temporary Secretary
Present Annual Statement
Motion for Kuhnle & Allen
Annual Statement to spread upon minutes
Vote upon if necessary
After the above
New Business
Present resignation as V. P. & Tr.
Hand to Secretary
After the above
Motion to appoint temporary Treasurer
After this
Present resignation as Director
After presenting resignations
Hand to Secretary. Stock—C. R. H. Co.

Exhibit C. 8.

Exhibit C. 8.

CHARLES R. HEDDEN COMPANY

Sheet No.

Dated January 15, 1924.

RECEIVED from MR. WALTER J. DOZIER, two hundred and seventy-five (275) shares of the Common Stock of the CHARLES R. HEDDEN COMPANY standing in his name as follows:

Certificate No.	3.....	96	shares
" "	7.....	20	"
" "	8.....	4	"
" "	11.....	100	"
" "	12.....	5	"
" "	18.....	50	"
TOTAL	.....	275	shares

CHARLES R. HEDDEN COMPANY

By

.....

Secty-Treas.

CHARLES R. HEDDEN COMPANY

Sheet No.

Dated January 15, 1924.

HEDDEN CONSTRUCTION CORPORATION

Received from Walter J. Dozier

Secretary-Treasurer,

Ledger
Cash Book
Stock Book
Stock Ledger

of the Hedden Construction Corporation.

.....

Temporary Secretary

Exhibit C. 8.

CHARLES R. HEDDEN COMPANY

Sheet No.

Dated January 15, 1924.

CHARLES R. HEDDEN COMPANY

Received from Walter J. Dozier,
Vice President & Treasurer

Stock Book
Stock Ledger

of the Charles R. Hedden Company.

James H. Toothe
Secretary-Treasurer.

CHARLES R. HEDDEN COMPANY

Sheet No. Dated

RECEIVED from MR. WALTER J. DOZIER the following:

Demand note due Hedden Construction Company dated July 25.....$2,500.00

Deed, title policy, Bond & Mortgage to South Seventh Street Property.

Four (4) shares of capital stock, Hedden Construction Corp. No. 1

Twenty-five (25) shares Hedden Construction Corporation No. 9

One (1) key to Safe Deposit Box #4706.

CHARLES R. HEDDEN COMPANY
By

J. H. Toothe,
Secty-Treas.

Exhibit C. 10.

Exhibit C. 10.

CHARLES R. HEDDEN COMPANY
Hedden Construction Corporation
Contracting Engineers and Builders
To WALTER J. DOZIER Dr.
Newark, N. J.

Date	For What	Items
Jan. 14 1924		
	FOR the purchase of two hundred and seventy-five (275) shares of the common stock of the CHARLES R. HEDDEN COMPANY, standing in name of WALTER J. DOZIER, at the Book Value, period ending December 31, 1923, in accordance with resolution of Board of Directors passed August 15, 1922, and recorded in minute book, page 158.	
	As Per Statement Appended..65,219.00	

(Rubber Stamped)
Entered
G. A. Aubin Bk.
Jp3½

Voucher No V

Please sign and return this voucher promptly

I certify the above to be correct

.....

Approved
WALTER J. DOZIER
Vice Pres. & Treasurer

Exhibit C. 1., June 11, 1925.

Received of Charles R. Hedden Company Sixty Five Thousand Two Hundred Nineteen Dollars .....Dollars
$.....in full settlement of the above account.
Jan 14 1924

Signature WALTER J. DOZIER

.....

(Title of Person, Signature)

Make no alterations; if incorrect, return.

Exhibit C. 1, June 11, 1925.

Jan 21st 23.

My dear Ed:

There have been some developments since you left and undoubtedly you will hear Mr. Hedden's side of it when he comes down next month. Mr. H. and Mr. D. had several meetings relative to the purchase of stock. Mr. D. offered to buy or sell at 200.00 per share. Mr. H. refused to do either. At our meeting last week of directors called to review the past year's business, a complete statement was rendered by Mr. Dozier, together with balance sheet. This statement showed a book value of 237.00 per share. Mr. Dozier made a motion that the C. R. H. Co. buy his stock at the book value which of course was lost. Mr. D. then resigned as Treas. and as a director. What followed is the card he had up his sleeve. A year ago last Aug. a resolution was passed which Mr. Hedden signed and Jim initialed, providing that "if at any time Mr. Dozier wished to leave, the Chas. R. Hedden Co. would purchase his stock at the book value as shown by preceding year's business." Mr. D.

Exhibit C. 1., June 11, 1925.

had the proper checks brought up and got his money. Mr. H. was wild when he heard it, claimed he knew nothing of any such meeting or of signing any such checks. That is simply a question of veracity. Mr. H. attys. have started after D. and I imagine it will be some scrap.

Today I asked Mr. H. to take my stock and he absolutely refused. I told him I wished to leave and that he should make some arrangements accordingly. He stated that you would probably have something to say about that or that you would take the stock over, also that he could do nothing until he had seen you. I told him that our arrangement was between you and me solely and no one else and as a matter of fact I had nearly paid you up. There is no need of your getting mixed up in it at all. So if I were you I would follow what you said in our last meeting.

Mr. Hedden's attorney told me the other day that a minority stockholder was an object of charity anyway. That is exactly how C. R. feels about it. I feel that you will agree with me that some strong arm methods are necessary if I am to receive anything at all. If not, then I will give the Company just about a year with every one a loser, under the present management. My attorney advises me that I should bring proceedings to liquidate as the best possible way to force a settlement and I will do this, every other peaceful means failing. If you think this course unwise cable me.

There are a great many details left unexplained here but when I see you and when you have the opportunity of talking with Mr. Dozier, you will readily understand the whole situation. At the present time there are a great many

Exhibit D. 1.

accusations being made some of them rather hasty. You will hear them but I know you will reserve judgment until you hear all sides.

In the meantime rest assured that I am protecting and will fight for our mutual interest to the best of my ability. If I should lose I will make arrangements to see that you don't.

I am terribly sorry if this should cause you embarrassment in any way but what can you do when fair play is eliminated.

Wishing you much success and happiness, I am

As ever,

Harold.

Exhibit D. 1.

Glen Ridge, N. J., December 6th, 1921.

Mr. Walter J. Dozier,
Montclair, N. J.

Dear Walter:

As spoken words are sometimes misunderstood or forgotten and as I am very desirous that you should get the full meaning of my position I am putting my thoughts on paper.

I feel that, in justice to you and Wathey as my very much esteemed business associates, to my wife and family and to myself, I will be obliged to discontinue my activities in the Charles R. Hedden Co., at least under the present conditions. I can not do my work properly and be continually criticised for minor and trivial things and therefore it is not fair to you and Wathey or myself. I can not help becoming irritable in an atmosphere of criticism during

Exhibit D. 1.

the day, without showing it at home and therefore it is not fair to my wife and family or myself.

I can not refrain from saying that Mr. Hedden has never shown a full spirit of cooperation with the Charles R. Hedden Co. He has from the very first tried to get more than his legitimate share of the profits and has during the last year or so especially, seemed to be absorbed with a desire to be supreme both in stock control and administration. I have always realized that Mr. Hedden was of a very arrogant nature, as displayed on numerous occasions; but this has never been turned in my direction to the extent it has recently. I am therefore convinced that no compromise, short of actual separation or a distinct understanding that he was to act in an advisory capacity only, would put me in a position where I can do justice to those I have previously mentioned. I might go on at considerable length but I am writing this in an attempt to give you only the facts, as I see them, and not in any spirit of vituperation.

I want to assure you Walter that I am sincerely trying to do the right thing and if I could persuade myself that the right thing to do is to continue, even at the loss of *some* self respect, I would do so; but as I just stated I can not see that it is fair to anyone, even Mr. Hedden. I really feel that he is his own worst enemy.

Now, as I have told you and Wathey before, I will do as you two say, except that I cannot continue under present conditions, and I will sell my stock at what is a fair price to whomever you say or I will vote for liquidation or I will continue with the understanding that I can

Exhibit D. 1.

do my work without continual criticism, which I am frank to say I do not see can be done unless Mr. Hedden is placed in an advisory position only. That is what he did during the camp work and during Lehn & Fink and in fact until the last six or eight months.

I am mentioning the above merely as the thoughts come and not to influence you at all, as I wish to put myself entirely in the hands of you and Wathey to decide what is to the best interests of all of us.

To sum up, I am at the end of the rope and would not try to continue another year as I have the last few months for many times the probable returns.

There is one thing more I want to say and that is that estimates are now in course of preparation on two quite large operations and if we were successful in either or both the situation would become very much more complicated and therefore I urge you and Wathey to come to a decision in the next day or so.

I hope it is needless to assure you of my high regard for you and to say that whatever decision you come to will in no way lessen that regard.

Sincerely yours,

C. D.

Exhibit D. 2.

Exhibit D. 2.

THIS AGREEMENT made this 23rd day of February, Nineteen Hundred and Twenty Two.

BETWEEN Charles R. Hedden, of Glen Ridge, New Jersey; Walter J. Dozier, of Montclair, New Jersey; Harold F. Fisher, of New York and James H. Toothe, of Nutley, New Jersey.

WITNESSETH, Whereas each of the parties hereto is a stockholder in CHARLES R. HEDDEN COMPANY, a corporation, existing under the laws of the State of New Jersey; and

WHEREAS the parties hereto constitute all of the stockholders of said corporation and the Directors and officers thereof, and are all actively engaged in the business of the said corporation; and

WHEREAS it is the desire of each of the parties hereto that in case of the death of any one of them, or in case any of them retires from active connection with, or participation in, the business of said corporation, that the remaining stockholders shall have the first opportunity of purchasing the stock of the one so dying or retiring.

NOW THEREFORE, in consideration of the premises and the sum of One Dollar each to the others in hand paid, by each of the parties hereto, each of said parties hereto for himself, his executors, administrators and assigns, does hereby covenant and agree with each of the other parties hereto, their respective executors, administrators and assigns as follows:

1. In case of the death of any of the parties hereto, the remaining parties hereto shall have

Exhibit D. 2.

the option of purchasing the stock of the party so dying, within three (3) months from the date of his death, at the book value of said stock as of the date of said death, the purchase of stock by each of the surviving parties to be pro rata to the amount of stockholdings of the remaining parties hereto at the time of the death of the party so dying.

2. In case of any one of the parties hereto retires from active connection with, or participation in, the business of said corporation, the said party so retiring will first offer all of the stock of said corporation belonging to him for sale to the remaining parties hereto, said offer to remain open for sixty days, at the value thereof as shown in the Annual Statement for the fiscal year of the corporation last preceding the withdrawal of the party so retiring. The purchase of stock by each of the parties remaining to be pro rata to the amount of stockholdings of the remaining parties at the time of the retirement of the party so retiring.

IN WITNESS WHEREOF, the parties hereto each for himself, has hereunto affixed his hand and seal the day and year first above written.

Signed, Sealed and Delivered
in the presence of

.....

.....

.....

.....

Exhibit D. 3.

AGREEMENT

Between:

Charles R. Hedden
Walter J. Dozier
Harold F. Fisher
James H. Toothe

Dated February 23, 1922.

Exhibit D. 3.

THIS AGREEMENT made this day of August, 1922, between CHARLES R. HEDDEN of Glen Ridge, New Jersey, party of the first part and WALTER J. DOZIER, of Montclair, New Jersey, party of the second part,

WITNESSETH:

WHEREAS the said Charles R. Hedden and the said Walter J. Dozier are officers of and the principal stockholders in the Charles R. Hedden Company, a New Jersey Corporation, with its principal office in the City of Newark, New Jersey, the former being its President and the owner of 455 shares of its capital stock and the latter being its Vice President and Treasurer and the owner of 275 shares of its capital stock, and

WHEREAS, considering the uncertainties of the future, it is the mutual desire of the parties hereto that their respective interests in the said Charles R. Hedden Company shall be provided for against the contingencies of their death, retirement from the said business, or the physical or mental disability of either of them to such an extent that he cannot continue to perform his duties in the said company:

Exhibit D. 3.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements herein contained, and the sum of One Dollar ($1.00) lawful money of the United States each to the other in hand paid, receipt whereof is hereby acknowledged, it is hereby stipulated and agreed by and between the parties hereto as follows:

1. If, at any time hereafter, either party shall desire to sell any or all of his shares of capital stock of the said Charles R. Hedden Company then owned by him, or shall retire from the said business or shall become either mentally or physically disabled to such an extent that he cannot continue to perform his duties in the said company, then the other party shall have a first right or option to purchase such shares of stock, or so many of them as he desires, at a price representing the book value thereof at the date of exercising the said right or option to purchase, and the seller agrees to make and execute all assignments, transfers and conveyances necessary to assure the buyer a full and complete title thereto.

2. Upon his death, the said Charles R. Hedden agrees that the said Walter J. Dozier shall have the right or option to purchase so many shares of his stock as will, together with those then held by the said Walter J. Dozier constitute a majority of the total shares of stock of the said Charles R. Hedden Company then outstanding, and the said Walter J. Dozier agrees, upon death, that the said Charles R. Hedden shall have the right or option to purchase any or all of his holdings provided, in either case, the surviving party shall, within six months after such death give notice in writing to the personal rep-

Exhibit D. 3.

resentatives of the deceased, advising of his desire to exercise his said option to purchase under the terms and conditions herein provided.

3. In the event that either party shall exercise the option herein granted to him, payment for the stock so purchased shall be made as follows: Within fifteen days after written notice of his desire to exercise his said option by the buyer to the other party or to his personal representatives, in case of his death, 10% of the purchase price shall be paid in cash or certified check and the balance within six months thereafter. It is further agreed that during such period of six months neither the seller nor his personal representatives shall vote the said stock sought to be bought adversely to the expressed desires of the buyer, and further, if requested by him so to do, he or they shall execute a proxy in favor of the buyer to vote the same at any meeting of the said corporation which may be held during the said period.

4. The right or option hereby granted to the said Walter J. Dozier in case of a sale of his stock by the said Charles R. Hedden under any of the contingencies herein mentioned, shall be for the purchase of at least so many shares of the said Charles R. Hedden's stock as will, together with those then owned by the said Walter J. Dozier constitute a majority of the total shares of stock of the said Charles R. Hedden Company then outstanding, and it is further agreed by the said Charles R. Hedden that at no time hereafter will he give away any of his holdings or otherwise dispose of them in such a manner that he will not have enough so that, when added to those then held by the said Walter J. Dozier they would, if acquired by him

Exhibit D. 3.

constitute a majority of the total shares of stock of the said Charles R. Hedden Company then outstanding.

This agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators and assigns.

IN WITNESS WHEREOF the said parties have hereunto set their hands and affixed their seals the day and year first above written.

.....

.....

Witnesses:

.....

.....

.....

CHARLES R. HEDDEN
and
WALTER J. DOZIER.

AGREEMENT

Dated, August 1922.

Exhibit D. 4.

Exhibit D. 4.

LUM, TAMBLYN & COLYER
Counselors at Law
Newark, New Jersey,

January 17th, 1924.

Walter J. Dozier, Esq.,
90 N. Mountain Av.,
Montclair, N. J.

Dear Sir:

On behalf of Charles R. Hedden Co., we forthwith demand that you immediately turn over to the company the check for $65,219.00 misappropriated by you from said company without authority, right or permission.

Unless this request is complied with forthwith, it will be necessary for us to take proceedings without further notice. We ask that you communicate with us immediately upon receipt of this or at once 'phone your lawyer, asking him to take the matter up with our Mr. Ralph E. Lum or Egbert J. Tamblyn.

Very truly yours,

LUM, TAMBLYN & COLYER.

REL:L

Exhibits D. 9, D. 13.

Exhibit D. 9.

File Harold Fisher

Inter-Office Memo.

CHARLES R. HEDDEN COMPANY
Hedden Construction Corporation

Subject:

Date Mar. 12, 1924. at

Mr. Fisher stated to me, Charles R. Hedden, that he has no recollection of any resolution, permitting Mr. Dozier to sell his stock to the Company, having been passed at a meeting in February, 1922, at which Mr. Fisher, Mr. Dozier and myself were present.

Exhibit D. 13.

CHARLES R. HEDDEN COMPANY
(A Corporation)
Hedden Construction Corporation
Contracting Engineers and Builders
Prudential Building
Newark, N. J.

September 8, 1922.

RE: Montclair Trust
Montclair Essex Trust Company
Montclair, New Jersey.

Gentlemen:

We are enclosing herewith certificate No. 7297, covering second payment in connection with the addition to your building at Montclair, N. J., to the amount of $8,069.79, for which we would appreciate your check.

Exhibit D. 14.

Thanking you in advance, we are
Yours very truly,
CHARLES R. HEDDEN COMPANY
By Geo. A. Aubin,
Accounting Dept.

1 Encl.
9/11/22

a/c opened with this amt. & check book & Sig. cards sent C G A

Exhibit D. 14.

September 11th, 1922.

Chas. R. Hedden Company,
Prudential Building,
Newark, N. J.

Gentlemen:

Agreeable with instructions received over the telephone from Mr. Charles R. Hedden, we have opened an account with this Company in the name of Charles R. Hedden Company and have deposited to credit of said Company $8,069.79 representing the second payment due on account of the addition to the Montclair Essex Trust Company building, and we are enclosing herewith duplicate signature cards which kindly fill out and return, and are forwarding under separate cover check book for temporary use in drawing against this account.

Kindly receipt enclosed architect's certificate and return in enclosed stamped envelope.

Very truly yours,
Vice President.

CGA:EMC
Enclos.

Exhibit D. 15.

Exhibit D. 15.

CHARLES R. HEDDEN COMPANY
(A Corporation)
Hedden Construction Corporation
Contracting Engineers and Builders
Prudential Building
Newark, N. J.

September 12, 1922.

Montclair Essex Trust Co.,
Montclair, N. J.

Gentlemen:

We are returning herewith signature cards of the Charles R. Hedden Company, containing the signature of the President and Vice President and upon the return of our Treasurer, Mr. Dozier, we will forward you his signature so that these cards may be complete.

Yours very truly,

CHARLES R. HEDDEN COMPANY,

By Charles R. Hedden,
President.

(Stamped) Received Sep 18 1922 Montclair Trust Company

Exhibits D. 16., D. 17.

Exhibit D. 16.

(Signature card.)

Montclair Trust Company

Charles R. Hedden Company
Sig. Charles R. Hedden, President
Sig. Harold F. Fisher, Vice President
W. J. Dozier, Vice Pres.-Treas.
Address Prudential Building, Newark, N. J.
Business Contracting Engineers and Builders
Introduced by Mr. C. G. Appleton
Date 9/11/22

(over)

I HEREBY authorize the Montclair Trust Company to charge my account fifty cents for each month my average balance is less than one hundred dollars.

.....

Exhibit D. 17.

(Deposit Slip.)

Deposited to the credit of
Charles R. Hedden Co.
Prudential Bldg., Newark
in the
Montclair Trust Company
Montclair, N. J. 9/11 1922

Please list each check separately

	Dollars	Cents
Bills	——	—
Coin	——	—
Checks	8069	79

New a/c Monthly statement First of month.
Checks and drafts on other banks credited subject to final payment

Exhibit D. 20.

Exhibit D. 20.

CHARLES R. HEDDEN COMPANY

Sheet No. 1 Dated

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS OF CHARLES R. HEDDEN COMPANY

A SPECIAL MEETING OF THE BOARD OF DIRECTORS of Charles R. Hedden Company was held at the Company's office, 765 Broad Street, Newark, N. J., on the 17th day of October 1922, at 3:00 o'clock in the afternoon, all of the Directors being present and waiving notice of time, place and purpose of meeting.

UPON MOTION, duly made, seconded and carried, it was

RESOLVED, that the Treasurer be authorized and instructed to open a deposit account for and in the name of this Corporation with the MONTCLAIR ESSEX TRUST COMPANY, Montclair, N. J., to deposit therein funds of this Corporation and that said account be drawn on only by check signed in the name of this Corporation, by WALTER J. DOZIER, Treasurer, and countersigned by:

CHARLES R. HEDDEN President

Or:

HAROLD F. FISHER Vice President

until further notice in writing to said Company.

Sheet No. 2 Dated

UPON MOTION, duly made, seconded and carried, it was

FURTHER RESOLVED, that the Officers of this Corporation be and they are hereby authorized, empowered and directed to execute

Exhibit D. 20.

notes or any renewal thereof, in behalf of this Corporation until further notice in writing to the said MONTCLAIR ESSEX TRUST COMPANY.

There being no further business before the board, the meeting adjourned.

The above resolution is in accord with the By-Laws of this Corporation.

THIS IS TO CERTIFY, that I, Charles R. Hedden, Chairman of the foregoing meeting, and I, James H. Toothe, the Secretary thereof, respectively thereat, have read the foregoing minutes of said meeting, and that the same are in all respects a full, true and accurate record of the acts and things done thereat.

Charles R. Hedden,
Chairman.

James H. Toothe,
Secretary.

(SEAL)

Dated Newark, N. J.
October 17th, 1922.

Exhibit D. 24.

Exhibit D. 24.

Copy

CHARLES R. HEDDEN COMPANY

Sheet No. Dated

I, James H. Toothe, the undersigned, Secretary of CHARLES R. HEDDEN COMPANY, do hereby certify that the following is a true copy of a resolution duly adopted at a regular meeting of the Board of Directors of the said Corporation duly held at its offices, Prudential Building, Newark, New Jersey, on the 16th date of January, 1923, a quorum being present, and that the said resolution is in full force and effect at this date.

"RESOLVED, that the Treasurer be directed to negotiate at such time and when necessary a loan of Twenty Five Thousand ($25,000.00) Dollars from the FIDELITY UNION TRUST COMPANY of Newark, N. J., and that the Officers of this Company be, and they are hereby authorized, empowered and directed to execute and deliver to the FIDELITY UNION TRUST COMPANY of Newark, N. J., a note for the above amount and any renewals thereof, hereby ratifying and approving all that the said Bank may do or cause to be done by virtue thereof."

The above resolution is in accordance with the By-Laws of this Corporation.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and the seal of the said CHARLES R. HEDDEN COMPANY, this 7th day of February 1923.

(Signed) JAMES H. TOOTHE,

(SEAL) Secretary.

Exhibit D. 25.

Exhibit D. 25.

CHARLES R. HEDDEN COMPANY

Sheet No. Dated

I, James H. Toothe, the undersigned, Secretary of CHARLES R. HEDDEN COMPANY, do hereby certify that the following is a true copy of a resolution duly adopted at a regular meeting of the Board of Directors of the said Corporation duly held at its offices, Prudential Building, Newark, New Jersey, on the 16th day of January, 1923, a quorum being present, and that the said resolution is in full force and effect at this date.

"RESOLVED, that the Treasurer be au-
"thorized to borrow from time to time, on
"behalf of this Company from the
"SPRINGFIELD AVENUE TRUST COM-
"PANY, Newark, N. J., such sums of money
"for such items and upon such terms as
"may be advisable, and the Officers of this
"Company be, and they are hereby author-
"ized, empowered and directed to execute
"and deliver notes or agreements in the
"name of the Company or any renewals
"thereof, for the repayment of any sum so
"borrowed. This resolution to be in full
"force until further notice in writing to
"said the SPRINGFIELD AVENUE
"TRUST COMPANY."

The above resolution is in accordance with the By-Laws of this Corporatoin.

IN WITNESS WHEREOF I have hereunto affixed my official signature and the seal of the said CHARLES R. HEDDEN COMPANY, this 7th day of February 1923.

JAMES H. TOOTHE,

(SEAL) Secretary.

Stipulation.

STIPULATION.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between	
CHARLES R. HEDDEN COMPANY, *Complainant-Respondent,*	*On Bill.*
and	*On Appeal.*
WALTER J. DOZIER, *Defendant-Appellant.*	*Stipulation.*

WHEREAS the minute books of the complainant Company, which were offered and received in evidence as Exhibits C. 2 and C. 3 on the final hearing of this case, are voluminous, covering some 229 pages in all,

Therefore, IT IS STIPULATED AND AGREED that the said minute books of the complainant Company need not be printed as a part of the printed record on appeal, but that in lieu thereof the original minute books shall be submitted to the Court on the argument and lodged with the Sergeant-at-Arms of the Court so that they may be available for the Court's inspection, and that either party may cite and quote from the said minute books in their briefs and on the argument in the same manner as though they had been included in the printed record.

Dated: August 27, 1926.

LUM, TAMBLYN & COLYER,
Solicitors of Complainant-Respondent.

McCARTER & ENGLISH,
Solicitors of Defendant-Appellant.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between CHARLES R. HEDDEN COMPANY, a corporation, *Complainant-Respondent,* *and* WALTER J. DOZIER, *Defendant-Appellant.*	*On Bill, &c.* *On Appeal from Final Decree in Chancery.*

SUPPLEMENTAL BRIEF FOR DEFENDANT-APPELLANT.

The main brief of the complainant-respondent is made up largely of inferences from, and speculation upon, the facts, but in most cases the inferences are not well-founded, and much of the argument is highly speculative.

The complainant must stand or fall with the resolution of August 15, 1922.

Mr. Lum in his argument admitted this in response to a question from Mr. Justice Katzenbach.

I submit that the facts overwhelmingly establish the integrity of this resolution. Furthermore, it is significant that the Vice-Chancellor did not find that it had not been adopted. He ignored it, and, as a result, decreed a purely money judgment without respect to any equitable relief.

It may be in order, however, to answer some of the contentions which the complainant makes against the resolution.

(a) Counsel argues (complainant's brief, pp. 9 and 10) that Hedden learned on January 17, 1924, for the first time that the August 15, 1922, resolution was in the minute book. The signature of Hedden and the signature and initials of Toothe to these very minutes, as well as all the other documentary and oral evidence, would seem to be sufficient answer to this.

To support his contention counsel advances a highly speculative argument, growing out of the character of Toothe's handwriting in the minute book (Complainant's Brief, pp. 23 and 24).

Toothe had no fixed handwriting, and sometimes made the T to his name with a straight line and sometimes with a loop, as the minute book shows. It is claimed for Toothe that he signed the minutes from April 18, 1922, up to and including October 17, 1922, at one sitting (p. 162, ll. 35-40).

Is it likely that at one sitting, signing his name seriatum, he would change the character of his handwriting so as to make a looped T on some signatures and a straight T on others?

Such a change is most unlikely.

Now it appears from the minute book that all of the signatures of Toothe to the minutes from April to October inclusive are signed with a straight T except that of August 15, 1922. Annexed hereto is a photostat of an enlargement of the signatures, which shows the difference.

Counsel, recognizing the unlikelihood of Toothe changing the character of his signature at one sitting, in order to support his argument, is driven to contend that the certificate to the August 15, 1922, minutes was substituted afterwards because it is on a single page in the minute book.

Such a contention is pure speculation, for there is no proof to support it. Furthermore, there is nothing significant about the fact that the certificate to the minutes is on a single page. An examination of the minute book shows that that occurs frequently, and in connection with minutes which are undisputed by the complainant. For example: See Minute Book C. 3, April 16, 1918, p. 32; May 10, 1918, p. 36; July 9, 1918, p. 40; July 29, 1918, p. 43; August 15, 1918, p. 47; October 22, 1918, p. 50; February 10, 1919, p. 54; April 22, 1919, p. 58; October 21, 1919, p. 68; February 10, 1920, p. 77; February 17, 1920, p. 82; November 16, 1920, p. 96; January 18, 1921, p. 101; February 8, 1921, p. 105; July 19, 1921, p. 119; October 18, 1921, p. 125; December 27, 1921, p. 131B.

There is no question raised by the complainant of the validity of the minutes up through the year 1921. He begins his attack on the minutes with the year 1922.

The certificate to the minutes of February 14, 1922, is also on a single page (p. 138).

Hedden admits that that meeting was held. He says that he had slipped on the ice before that and it was held at his house (p. 54, ll. 20 to 30), and he claimed that there was no meeting held thereafter from February 14, 1922, until April 20, 1923 (p. 84, l. 17).

Yet this meeting of February 14, 1922, which complainant concedes was held, and the minutes of which are conceded to be genuine, had a single page certificate attached.

The same is true of the meeting of April 9, 1924 (Minute Book C. 2, p. 211), which was held three months after Dozier had retired from the company, and with which he had nothing to do.

There is no significance, therefore, to the fact that the certificate to the August 15, 1922, minutes is on a single page, and the difference in the character of Toothe's handwriting completely disproves his testimony that he signed those minutes together with a series of other minutes at one sitting.

(b) Counsel argues that recitals in the minutes, where less than a majority were present, shows that the minutes were false (his brief, p. 27), and this contention seems to have influenced the Vice-Chancellor (p. 38, l. 35 to p. 39, l. 15).

Counsel seems to overlook that if this fact reflects on Dozier it reflects equally on Hedden, for he signed the same minutes, but the fact is this practice prevailed all through the history of the Company, including the years previous to 1922, concerning which there is no dispute.

In Minute Book C. 3 see the minutes of January 20, 1920, p. 73. Although it recites that Dozier alone was present, Hedden signs that he was chairman of the meeting.

The same is true of June 15, 1920, p. 87.

July 20, 1920, p. 88, Hedden alone is recited as present.

November 15, 1921, p. 127, Dozier alone is present, although Hedden signed that he was chairman of the meeting.

January 17, 1922, p. 132, Hedden alone was present.

February 13, 1922, p. 133, Dozier alone was present.

Minute Book C. 2, July 17, 1923, p. 188, Hedden alone was present but Toothe signed as secre-

tary of the meeting that Hedden signed as chairman.

The same is true of October 16, 1923, p. 194.

The fact is this stereotyped form of certificate was used indiscriminately and has no significance whatever with respect to those formal records of meetings where less than a majority was present and no business was transacted.

(c) Counsel contends (his brief, p. 28) that the record clearly indicates that Hedden paid no attention to the minutes.

On the contrary, the record clearly indicates that Hedden paid great attention to the minutes. He says he exercised his prerogative as president to sign them first. Fisher says he saw him many times looking over the minute book, and Hedden himself testified that he sent for the minute book on three different occasions (he could not remember just when), (p. 106, l. 39 to 107, l. 10). Why did he send for the minute book if, as counsel contends, he paid no attention to the minutes?

(d) Counsel contends (his brief, p. 35) that Dozier's course of conduct is uniformly inconsistent with the resolution of August 15, 1922, being properly in the minute book.

I ask in what respect his conduct is inconsistent.

Counsel says that he did not speak to Hedden about it, but the record shows that he did. At the conference of January 5, 1924, Dozier spoke to him about this resolution (p. 283, ll. 3 to 12), and says that Hedden did not say very much about it.

The Vice-Chancellor seemed to think that there was some great significance in the fact that Hedden did not say very much about it (p. 33, l. 18).

But why should Hedden say very much about it? The resolution had been adopted; Hedden himself had attended the meeting and voted for it; he knew all about it; it spoke for itself; there was not very much that could be said about it; and he and Dozier were negotiating at that moment with respect to the purchase of his stock pursuant to that resolution. Remember that at that time, as Dozier's letter shows (Exhibit C. 4, p. 520), they were both suffering from "high tension" and were trying to avoid a break.

(e). Counsel argues (Brief, p. 37) that the minutes of September 19, 1922, Minute Book C. 3, p. 160, are evidence of Dozier's attempt to bolster up the record.

It has no such bearing. Fisher says that in September during Dozier's absence he and Hedden met in Hedden's office "and nobody was there and we said we would wait until Mr. Dozier got back" (p. 490, l. 15). When Dozier returned and learned of this he drew the minutes to meet that situation and they are signed by Hedden and Toothe. The certificate simply repeats the stereotyped form which, as above pointed out, was always used, with the knowledge and acquiescence of Hedden and the others.

(f) Counsel in his brief (p. 67), and in his oral argument, referred to the resolution of August 15, 1922, as "the card he had up his sleeve." In using that expression he is quoting from the letter of Fisher to Edward S. Toothe (p. 526, l. 34), and the language is Fisher's and not Dozier's. If Fisher saw fit to characterize that resolution that way it neither adds to nor

takes away from the validity or effectiveness of the resolution, nor does it in any way reflect upon Dozier.

As already pointed out, Hedden's knowledge of that resolution was complete. He sat in the meeting that adopted it; he signed the minutes of that meeting; he discussed it with Dozier at their conference on January 5, 1924, and it was specifically mentioned, and the page in the minute book given, in the voucher which accompanied the check which Hedden signed.

The check for $65,219 was given pursuant to the resolution of August 15, 1922.

If there were nothing else in the case than the voucher (C. 10, p. 525) that would be sufficient to apprise Hedden of the purpose of the check which he signed, but there is in addition all the other circumstances detailed in the evidence, including the conferences between Hedden and Dozier and the activity of the office force in figuring up the book value.

Remember that the endorsement on the back of the check "For the purchase of 275 shares of Common Stock of the Charles R. Hedden Company in the name of Walter J. Dozier" and the voucher were prepared by Dozier himself, and that the voucher was handed to Aubin, the bookkeeper, and entered by him in the books.

If, as the Vice-Chancellor said, Dozier was endeavoring to slide the check through and was taking a gambler's chance on it being signed (p. 35, l. 35) why should he have set up in typewritten form, voluntarily, all of the data which would have made it inevitable that Hedden would have discovered his scheme? Of course, if he had been pursuing any such scheme as

the Vice-Chancellor credits him with he would have slipped in as innocuous a looking check as possible and would never have endorsed the purpose of it on the back of the check or have accompanied it with a voucher telling the whole story.

For the convenience of the Court we attach a photostat copy of this voucher.

It is not conceivable that a man of Hedden's business acumen would have signed a check of that size, accompanied by a voucher, without knowing what he was doing.

Counsel argues (Brief, pp. 47 to 51) that various loan transactions between Dozier and the Company now have a bearing on the check in question.

Those transactions have no bearing whatever, and, furthermore, they were with the knowledge of Hedden. The record shows that Dozier discussed them with him (p. 376, ll. 15 to 25; p. 382, l. 33, and p. 386, l. 35).

Furthermore, it was this very line of examination which proved so fruitless for the complainant that its counsel abandoned it in open court. (See our Main Brief, p. 45; Record, p. 419, l. 25, and p. 420, l. 13.)

There was nothing unusual for Hedden and Dozier to borrow and lend money back and forth, and one was loaning the other, and both were loaning to and borrowing from the Company as occasion required.

When Dozier retired from the Company he closed up all these outstanding transactions and paid back whatever he owed. Had he not done so it is certain that the complainant would have

made claim, and brought suit for, any unpaid moneys. No such suits were brought, nor is any such claim made.

Counsel argues (his brief, p. 57), and the Vice-Chancellor thought (p. 36, l. 35), that there was some significance to the fact that when Hedden handed Dozier the blue envelope containing the signed checks he didn't say anything about it and Dozier merely asked whether the checks were all signed.

Again, what was there to talk about? These two men were suffering from "high tension" (p. 520, l. 35); they had concluded their arrangements; Hedden had had every opportunity to, and undoubtedly did, examine the check and voucher before he signed it, and there was no occasion for further discussion. The meeting of the Directors was to be held that afternoon, at which Dozier's resignation would be presented, and that would end the whole matter.

Since the complainant seeks equity it must do equity, and the decree which orders the repayment of the money from the defendant without ordering the return of the stock by the complainant cannot stand.

Mr. Lum at the argument attempted a metaphysical answer to the question of the Chief Justice as to whether the complainant had Dozier's stock. His answer seemed to proceed on the theory that one could have his cake and eat it, too.

The fact is that the day following the directors' meeting, which was January 16, 1924, Dozier turned over to Toothe, the new treasurer, all of his books and records as treasurer, together with his stock. Together they went to the box of the

Company in the Fidelity Union Trust Company's vaults, and Toothe put them in the box. Dozier's testimony on that is as follows (p. 327, l. 3):

> "Q Did he take the papers? A He did.
> Q Stock certificates? A Stock certificates and the whole business.
> Q What did he do with them? A Went down to the box afterwards to the Fidelity Trust Company.
> Q Did he have these certificates of stock? A He did.
> Q What did he do with them? A Put them in the box.
> Q What did Mr. Toothe do with them after you got to the Fidelity box? A After we opened the vault or the safe Mr. Toothe put all he had in the safe box, locked the box, took the key with him.
> Q That is the Fidelity vault you are speaking about? A Fidelity vault."

From that time on Dozier had no right of access to the box, and the stock has remained in the possession of the complainant Company ever since.

Furthermore, nowhere in the bill of complaint, nor in the letter of the complainant's counsel first making demand on Dozier (Defendant's Main Brief, p. 31; Record, p. 537), is there any tender or offer to return the stock to the defendant, nor was any such offer made either by complainant's witnesses or its counsel during the course of the hearing before the Court below.

The cases cited in Complainant's Brief (pp. 78 to 85) aid the complainant nothing.

The doctrine of *Eggers* v. *Anderson,* 63 N. J. Eq. 264, and the other cases cited, goes on the theory that where equitable relief is prayed for and awarded the court of equity will, in cases of fraud, not withhold the awarding of such further

relief as, standing by itself, could ordinarily be secured only in the courts of law.

An examination of the cases cited shows how consistently the courts have clung to the requirement that the awarding of some form of equitable relief is first necessary to the awarding of further relief in cases of fraud remediable at law. In *Krueger* v. *Armitage,* 58 N. J. Eq. 357, Vice-Chancellor Emery dismissed the bill as setting forth no grounds for equitable relief. He said (p. 361):

> "But where no remedy under a bill in equity is sought or is proper other than the return of money paid or damages on the purchase of stock or other personal property, and the payment of the money was induced by fraud or false representations which are actionable at law, and the assessment of damages may be made as well by a jury as by a court of equity, the jurisdiction in such cases should not be exercised if the objections to the jurisdiction are taken in time."

In *Polhemus* v. *Holland Trust Company,* 61 N. J. Eq. 654 (Below 59 N. J. Eq. 93), this Court agreed with the Court below (p. 655):

> "in holding that the defendant had no trust for the sale of bonds, and that mere recovery of damages, sustained through alleged fraudulent misrepresentation, cannot be effected in the court of chancery. The annulment of a contract induced by such misrepresentation may be decreed, but for the recovery of damages the exclusive remedy in this state lies with the law courts. We approve, on this subject, the doctrine declared by Vice-Chancellor Emery in Krueger *v.* Armitage, 13 Dick. Ch. Rep. 357, followed in this case."

This Court found a further and different ground of equity in the case, and on that ground

reversed the decree of the Chancellor dismissing the bill.

In *Eggers* v. *Anderson, supra,* the Court awarded equitable relief in enforcing the rights of the complainants against the testator's estate and in ascertaining the amount due them (p. 269). Furthermore, the jurisdiction of the Court was not questioned (p. 272). In the case at bar the defendant sets up in his answer that the complainant has an adequate remedy at law (p. 30, l. 39). Complainant's counsel argues that the defendant should have moved to strike out the bill (Complainant's Brief, p. 85), but this obviously could not have been done as a reading of the bill will show. The bill, on its face, lays a foundation for and prays equitable relief, namely, that the resolution of August 15, 1922, be set aside, that a receiver be appointed, and that if the resolution be not set aside the Court determine and fix the book value of the stock and decree the payment back of so much of the $65,-219 as should be found to be in excess of the book value.

But, as pointed out in our main brief, when it came to the hearing, the facts varied materially from the allegations in the bill.

In *Schoenfeld* v. *Winter,* 76 N. J. Eq. 511, Affirmed on Opinion, 79 N. J. Eq. 219, the Court cited and discussed the three cases last above referred to and overruled a demurrer to the bill because a ground for equitable relief was set up in the bill. The Court said (p. 513):

> "the complainant appeals to the court to declare that the contract induced by fraudulent representations should be rescinded and canceled, and this upon the ground that the contract being void by reason of fraud, the complainant should not continue to rest

> under the obligation of any portion of it, but that he should be discharged from its performance in whole and in part. This is an equity to which the complainant is entitled *if at the final hearing he is able to substantiate his allegations.*''

In the case at bar the complainant was not able to substantiate its allegations, for the Vice-Chancellor failed to find as a fact, or decree, that the resolution of August 15 was fraudulent or void (and indeed under the facts no such finding can be made); and failed to find or decree any ground for equitable relief.

In *Gnichtel* v. *First National Bank,* 66 N. J. Eq. 88., the case involved the recovery of property of insolvent debtors, and the Court said (p. 89): ''In matters involving a recovery of the property of insolvent debtors equity has always asserted its authority,'' and the Court found a further ground of equity, namely (p. 89):

> ''the property sought to be recovered is in its nature trust property, held by the bank for the benefit of the creditors of the bankrupt. The trustee has the right to follow it in a court of equity.''

In *Erdmann* v. *Gregg,* 90 N. J. Eq. 363, the defendant filed no answering affidavits and claimed that the complainant's bill and affidavits were insufficient, but the Court sustained the bill because it prayed for and laid a foundation for equitable relief, namely, that the Court cancel a contract alleged to have been procured by fraud, and also that it enjoin a suit at law.

The proofs in the case readily distinguished the case at bar from those cases where under the doctrine of the Eggers case a court of equity will take jurisdiction in cases of fraud remediable at law.

Prudential Building
Newark, N. J.

CHARLES R. HEDDEN COMPANY

HEDDEN CONSTRUCTION CORPORATION

CONTRACTING ENGINEERS AND BUILDERS

Canadian Pacific Building
New York

To ..... WALTER J. DOZIER ..... Dr.

Newark, N. J.

DATE	FOR WHAT	ITEMS
Jan. 14 1924	FOR the purchase of two hundred and seventy-five (275) shares of the common stock of the CHARLES R. HEDDEN COMPANY, standing in name of WALTER J. DOZIER, at the Book Value, period ending December 31, 1923, in accordance with resolution of Board of Directors passed August 15, 1922, and recorded in minute book, page 158.	
	As Per Statement Appended	65,219 00

ENTERED
G. A. Subv. Dr.
No 572

VOUCHER
NO ✓

PLEASE SIGN AND RETURN THIS VOUCHER PROMPTLY

CERTIFY THE ABOVE TO BE CORRECT

APPROVED Walter J. Dozier

VICE PRES. & TREASURER

RECEIVED OF CHARLES R. HEDDEN COMPANY
SIXTY FIVE THOUSAND TWO HUNDRED NINETEEN DOLLARS ..... DOLLARS

JAN 14 1924 IN FULL SETTLEMENT OF THE ABOVE ACCOUNT.

SIGNATURE Walter J. Dozier

(TITLE OF PERSON, SIGNATURE)

NO ALTERATIONS; IF INCORRECT, RETURN.

Chairman

Secretary

Dated, Newark, N. J.

the 15th day of August, 1922.

SECRETARY.

Chairman

Secretary

Dated, Newark, N. J.

the 17th day of October, 1922.

SECRETARY

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between CHARLES R. HEDDEN COMPANY, a corporation, *Complainant-Respondent,* *and* WALTER J. DOZIER, *Defendant-Appellant.*	*On Bill, &c.* *On Appeal from Final Decree in Chancery.*

SUPPLEMENTAL BRIEF FOR DEFENDANT-APPELLANT.

The main brief of the complainant-respondent is made up largely of inferences from, and speculation upon, the facts, but in most cases the inferences are not well-founded, and much of the argument is highly speculative.

The complainant must stand or fall with the resolution of August 15, 1922.

Mr. Lum in his argument admitted this in response to a question from Mr. Justice Katzenbach.

I submit that the facts overwhelmingly establish the integrity of this resolution. Furthermore, it is significant that the Vice-Chancellor did not find that it had not been adopted. He ignored it, and, as a result, decreed a purely money judgment without respect to any equitable relief.

It may be in order, however, to answer some of the contentions which the complainant makes against the resolution.

(a) Counsel argues (complainant's brief, pp. 9 and 10) that Hedden learned on January 17, 1924, for the first time that the August 15, 1922, resolution was in the minute book. The signature of Hedden and the signature and initials of Toothe to these very minutes, as well as all the other documentary and oral evidence, would seem to be sufficient answer to this.

To support his contention counsel advances a highly speculative argument, growing out of the character of Toothe's handwriting in the minute book (Complainant's Brief, pp. 23 and 24).

Toothe had no fixed handwriting, and sometimes made the T to his name with a straight line and sometimes with a loop, as the minute book shows. It is claimed for Toothe that he signed the minutes from April 18, 1922, up to and including October 17, 1922, at one sitting (p. 162, ll. 35-40).

Is it likely that at one sitting, signing his name seriatum, he would change the character of his handwriting so as to make a looped T on some signatures and a straight T on others?

Such a change is most unlikely.

Now it appears from the minute book that all of the signatures of Toothe to the minutes from April to October inclusive are signed with a straight T except that of August 15, 1922. Annexed hereto is a photostat of an enlargement of the signatures, which shows the difference.

Counsel, recognizing the unlikelihood of Toothe changing the character of his signature at one sitting, in order to support his argument, is driven to contend that the certificate to the August 15, 1922, minutes was substituted afterwards because it is on a single page in the minute book.

Such a contention is pure speculation, for there is no proof to support it. Furthermore, there is nothing significant about the fact that the certificate to the minutes is on a single page. An examination of the minute book shows that that occurs frequently, and in connection with minutes which are undisputed by the complainant. For example: See Minute Book C. 3, April 16, 1918, p. 32; May 10, 1918, p. 36; July 9, 1918, p. 40; July 29, 1918, p. 43; August 15, 1918, p. 47; October 22, 1918, p. 50; February 10, 1919, p. 54; April 22, 1919, p. 58; October 21, 1919, p. 68; February 10, 1920, p. 77; February 17, 1920, p. 82; November 16, 1920, p. 96; January 18, 1921, p. 101; February 8, 1921, p. 105; July 19, 1921, p. 119; October 18, 1921, p. 125; December 27, 1921, p. 131B.

There is no question raised by the complainant of the validity of the minutes up through the year 1921. He begins his attack on the minutes with the year 1922.

The certificate to the minutes of February 14, 1922, is also on a single page (p. 138).

Hedden admits that that meeting was held. He says that he had slipped on the ice before that and it was held at his house (p. 54, ll. 20 to 30), and he claimed that there was no meeting held thereafter from February 14, 1922, until April 20, 1923 (p. 84, l. 17).

Yet this meeting of February 14, 1922, which complainant concedes was held, and the minutes of which are conceded to be genuine, had a single page certificate attached.

The same is true of the meeting of April 9, 1924 (Minute Book C. 2, p. 211), which was held three months after Dozier had retired from the company, and with which he had nothing to do.

There is no significance, therefore, to the fact that the certificate to the August 15, 1922, minutes is on a single page, and the difference in the character of Toothe's handwriting completely disproves his testimony that he signed those minutes together with a series of other minutes at one sitting.

(b) Counsel argues that recitals in the minutes, where less than a majority were present, shows that the minutes were false (his brief, p. 27), and this contention seems to have influenced the Vice-Chancellor (p. 38, l. 35 to p. 39, l. 15).

Counsel seems to overlook that if this fact reflects on Dozier it reflects equally on Hedden, for he signed the same minutes, but the fact is this practice prevailed all through the history of the Company, including the years previous to 1922, concerning which there is no dispute.

In Minute Book C. 3 see the minutes of January 20, 1920, p. 73. Although it recites that Dozier alone was present, Hedden signs that he was chairman of the meeting.

The same is true of June 15, 1920, p. 87.

July 20, 1920, p. 88, Hedden alone is recited as present.

November 15, 1921, p. 127, Dozier alone is present, although Hedden signed that he was chairman of the meeting.

January 17, 1922, p. 132, Hedden alone was present.

February 13, 1922, p. 133, Dozier alone was present.

Minute Book C. 2, July 17, 1923, p. 188, Hedden alone was present but Toothe signed as secre-

tary of the meeting that Hedden signed as chairman.

The same is true of October 16, 1923, p. 194.

The fact is this stereotyped form of certificate was used indiscriminately and has no significance whatever with respect to those formal records of meetings where less than a majority was present and no business was transacted.

(c) Counsel contends (his brief, p. 28) that the record clearly indicates that Hedden paid no attention to the minutes.

On the contrary, the record clearly indicates that Hedden paid great attention to the minutes. He says he exercised his prerogative as president to sign them first. Fisher says he saw him many times looking over the minute book, and Hedden himself testified that he sent for the minute book on three different occasions (he could not remember just when), (p. 106, l. 39 to 107, l. 10). Why did he send for the minute book if, as counsel contends, he paid no attention to the minutes?

(d) Counsel contends (his brief, p. 35) that Dozier's course of conduct is uniformly inconsistent with the resolution of August 15, 1922, being properly in the minute book.

I ask in what respect his conduct is inconsistent.

Counsel says that he did not speak to Hedden about it, but the record shows that he did. At the conference of January 5, 1924, Dozier spoke to him about this resolution (p. 283, ll. 3 to 12), and says that Hedden did not say very much about it.

New Jersey State Library

The Vice-Chancellor seemed to think that there was some great significance in the fact that Hedden did not say very much about it (p. 33, l. 18).

But why should Hedden say very much about it? The resolution had been adopted; Hedden himself had attended the meeting and voted for it; he knew all about it; it spoke for itself; there was not very much that could be said about it; and he and Dozier were negotiating at that moment with respect to the purchase of his stock pursuant to that resolution. Remember that at that time, as Dozier's letter shows (Exhibit C. 4, p. 520), they were both suffering from "high tension" and were trying to avoid a break.

(e) Counsel argues (Brief, p. 37) that the minutes of September 19, 1922, Minute Book C. 3, p. 160, are evidence of Dozier's attempt to bolster up the record.

It has no such bearing. Fisher says that in September during Dozier's absence he and Hedden met in Hedden's office "and nobody was there and we said we would wait until Mr. Dozier got back" (p. 490, l. 15). When Dozier returned and learned of this he drew the minutes to meet that situation and they are signed by Hedden and Toothe. The certificate simply repeats the stereotyped form which, as above pointed out, was always used, with the knowledge and acquiescence of Hedden and the others.

(f) Counsel in his brief (p. 67), and in his oral argument, referred to the resolution of August 15, 1922, as "the card he had up his sleeve." In using that expression he is quoting from the letter of Fisher to Edward S. Toothe (p. 526, l. 34), and the language is Fisher's and not Dozier's. If Fisher saw fit to characterize that resolution that way it neither adds to nor

takes away from the validity or effectiveness of the resolution, nor does it in any way reflect upon Dozier.

As already pointed out, Hedden's knowledge of that resolution was complete. He sat in the meeting that adopted it; he signed the minutes of that meeting; he discussed it with Dozier at their conference on January 5, 1924, and it was specifically mentioned, and the page in the minute book given, in the voucher which accompanied the check which Hedden signed.

The check for $65,219 was given pursuant to the resolution of August 15, 1922.

If there were nothing else in the case than the voucher (C. 10, p. 525) that would be sufficient to apprise Hedden of the purpose of the check which he signed, but there is in addition all the other circumstances detailed in the evidence, including the conferences between Hedden and Dozier and the activity of the office force in figuring up the book value.

Remember that the endorsement on the back of the check "For the purchase of 275 shares of Common Stock of the Charles R. Hedden Company in the name of Walter J. Dozier" and the voucher were prepared by Dozier himself, and that the voucher was handed to Aubin, the bookkeeper, and entered by him in the books.

If, as the Vice-Chancellor said, Dozier was endeavoring to slide the check through and was taking a gambler's chance on it being signed (p. 35, l. 35) why should he have set up in typewritten form, voluntarily, all of the data which would have made it inevitable that Hedden would have discovered his scheme? Of course, if he had been pursuing any such scheme as

the Vice-Chancellor credits him with he would have slipped in as innocuous a looking check as possible and would never have endorsed the purpose of it on the back of the check or have accompanied it with a voucher telling the whole story.

For the convenience of the Court we attach a photostat copy of this voucher.

It is not conceivable that a man of Hedden's business acumen would have signed a check of that size, accompanied by a voucher, without knowing what he was doing.

Counsel argues (Brief, pp. 47 to 51) that various loan transactions between Dozier and the Company now have a bearing on the check in question.

Those transactions have no bearing whatever, and, furthermore, they were with the knowledge of Hedden. The record shows that Dozier discussed them with him (p. 376, ll. 15 to 25; p. 382, l. 33, and p. 386, l. 35).

Furthermore, it was this very line of examination which proved so fruitless for the complainant that its counsel abandoned it in open court. (See our Main Brief, p. 45; Record, p. 419, l. 25, and p. 420, l. 13.)

There was nothing unusual for Hedden and Dozier to borrow and lend money back and forth, and one was loaning the other, and both were loaning to and borrowing from the Company as occasion required.

When Dozier retired from the Company he closed up all these outstanding transactions and paid back whatever he owed. Had he not done so it is certain that the complainant would have

made claim, and brought suit for, any unpaid moneys. No such suits were brought, nor is any such claim made.

Counsel argues (his brief, p. 57), and the Vice-Chancellor thought (p. 36, l. 35), that there was some significance to the fact that when Hedden handed Dozier the blue envelope containing the signed checks he didn't say anything about it and Dozier merely asked whether the checks were all signed.

Again, what was there to talk about? These two men were suffering from "high tension" (p. 520, l. 35); they had concluded their arrangements; Hedden had had every opportunity to, and undoubtedly did, examine the check and voucher before he signed it, and there was no occasion for further discussion. The meeting of the Directors was to be held that afternoon, at which Dozier's resignation would be presented, and that would end the whole matter.

Since the complainant seeks equity it must do equity, and the decree which orders the repayment of the money from the defendant without ordering the return of the stock by the complainant cannot stand.

Mr. Lum at the argument attempted a metaphysical answer to the question of the Chief Justice as to whether the complainant had Dozier's stock. His answer seemed to proceed on the theory that one could have his cake and eat it, too.

The fact is that the day following the directors' meeting, which was January 16, 1924, Dozier turned over to Toothe, the new treasurer, all of his books and records as treasurer, together with his stock. Together they went to the box of the

Company in the Fidelity Union Trust Company's vaults, and Toothe put them in the box. Dozier's testimony on that is as follows (p. 327, l. 3):

"Q Did he take the papers? A He did.
Q Stock certificates? A Stock certificates and the whole business.
Q What did he do with them? A Went down to the box afterwards to the Fidelity Trust Company.
Q Did he have these certificates of stock? A He did.
Q What did he do with them? A Put them in the box.
Q What did Mr. Toothe do with them after you got to the Fidelity box? A After we opened the vault or the safe Mr. Toothe put all he had in the safe box, locked the box, took the key with him.
Q That is the Fidelity vault you are speaking about? A Fidelity vault."

From that time on Dozier had no right of access to the box, and the stock has remained in the possession of the complainant Company ever since.

Furthermore, nowhere in the bill of complaint, nor in the letter of the complainant's counsel first making demand on Dozier (Defendant's Main Brief, p. 31; Record, p. 537), is there any tender or offer to return the stock to the defendant, nor was any such offer made either by complainant's witnesses or its counsel during the course of the hearing before the Court below.

The cases cited in Complainant's Brief (pp. 78 to 85) aid the complainant nothing.

The doctrine of *Eggers* v. *Anderson*, 63 N. J. Eq. 264, and the other cases cited, goes on the theory that where equitable relief is prayed for and awarded the court of equity will, in cases of fraud, not withhold the awarding of such further

relief as, standing by itself, could ordinarily be secured only in the courts of law.

An examination of the cases cited shows how consistently the courts have clung to the requirement that the awarding of some form of equitable relief is first necessary to the awarding of further relief in cases of fraud remediable at law. In *Krueger* v. *Armitage,* 58 N. J. Eq. 357, Vice-Chancellor Emery dismissed the bill as setting forth no grounds for equitable relief. He said (p. 361):

> "But where no remedy under a bill in equity is sought or is proper other than the return of money paid or damages on the purchase of stock or other personal property, and the payment of the money was induced by fraud or false representations which are actionable at law, and the assessment of damages may be made as well by a jury as by a court of equity, the jurisdiction in such cases should not be exercised if the objections to the jurisdiction are taken in time."

In *Polhemus* v. *Holland Trust Company,* 61 N. J. Eq. 654 (Below 59 N. J. Eq. 93), this Court agreed with the Court below (p. 655):

> "in holding that the defendant had no trust for the sale of bonds, and that mere recovery of damages, sustained through alleged fraudulent misrepresentation, cannot be effected in the court of chancery. The annulment of a contract induced by such misrepresentation may be decreed, but for the recovery of damages the exclusive remedy in this state lies with the law courts. We approve, on this subject, the doctrine declared by Vice-Chancellor Emery in Krueger *v.* Armitage, 13 Dick. Ch. Rep. 357, followed in this case."

This Court found a further and different ground of equity in the case, and on that ground

reversed the decree of the Chancellor dismissing the bill.

In *Eggers* v. *Anderson, supra,* the Court awarded equitable relief in enforcing the rights of the complainants against the testator's estate and in ascertaining the amount due them (p. 269). Furthermore, the jurisdiction of the Court was not questioned (p. 272). In the case at bar the defendant sets up in his answer that the complainant has an adequate remedy at law (p. 30, l. 39). Complainant's counsel argues that the defendant should have moved to strike out the bill (Complainant's Brief, p. 85), but this obviously could not have been done as a reading of the bill will show. The bill, on its face, lays a foundation for and prays equitable relief, namely, that the resolution of August 15, 1922, be set aside, that a receiver be appointed, and that if the resolution be not set aside the Court determine and fix the book value of the stock and decree the payment back of so much of the $65,-219 as should be found to be in excess of the book value.

But, as pointed out in our main brief, when it came to the hearing, the facts varied materially from the allegations in the bill.

In *Schoenfeld* v. *Winter,* 76 N. J. Eq. 511, Affirmed on Opinion, 79 N. J. Eq. 219, the Court cited and discussed the three cases last above referred to and overruled a demurrer to the bill because a ground for equitable relief was set up in the bill. The Court said (p. 513):

> "the complainant appeals to the court to declare that the contract induced by fraudulent representations should be rescinded and canceled, and this upon the ground that the contract being void by reason of fraud, the complainant should not continue to rest

> under the obligation of any portion of it, but that he should be discharged from its performance in whole and in part. This is an equity to which the complainant is entitled *if at the final hearing he is able to substantiate his allegations.*"

In the case at bar the complainant was not able to substantiate its allegations, for the Vice-Chancellor failed to find as a fact, or decree, that the resolution of August 15 was fraudulent or void (and indeed under the facts no such finding can be made); and failed to find or decree any ground for equitable relief.

In *Gnichtel* v. *First National Bank,* 66 N. J. Eq. 88., the case involved the recovery of property of insolvent debtors, and the Court said (p. 89): "In matters involving a recovery of the property of insolvent debtors equity has always asserted its authority," and the Court found a further ground of equity, namely (p. 89):

> "the property sought to be recovered is in its nature trust property, held by the bank for the benefit of the creditors of the bankrupt. The trustee has the right to follow it in a court of equity."

In *Erdmann* v. *Gregg,* 90 N. J. Eq. 363, the defendant filed no answering affidavits and claimed that the complainant's bill and affidavits were insufficient, but the Court sustained the bill because it prayed for and laid a foundation for equitable relief, namely, that the Court cancel a contract alleged to have been procured by fraud, and also that it enjoin a suit at law.

The proofs in the case readily distinguished the case at bar from those cases where under the doctrine of the Eggers case a court of equity will take jurisdiction in cases of fraud remediable at law.

The view which the Vice-Chancellor took of the case, and the finding of fact which he made, takes it entirely out of the jurisdiction of a court of equity. He found no ground for equitable relief as a fact and he decreed no equitable relief. His decree leaves the defendant obligated to return the money without requiring the complainant, who will then have both the money and the stock, to return the stock.

This is not equity.

Under the determination of the Vice-Chancellor the resolution of August 15, 1922, must stand because he did not find against it; and it must stand intrinsically, because of the facts.

Since the resolution must stand, and since, as the overwhelming weight of the evidence shows, the check was given by the complainant in payment of the stock, the only question which could possibly remain is whether the price paid for the stock represents the book value as of December 31, 1923. Our main brief, pp. 49 to 53, sets forth our argument, to which we now refer without repeating, that the price paid does represent the book value as that term was understood by the parties.

The decree should be reversed.

Respectfully submitted,

CONOVER ENGLISH,
ROBERT H. McCARTER,
Of Counsel with Defendant.

McCarter & English,
Solicitors of Defendant.

72-9-23—1M.

CHARLES R. HEDDEN COMPANY

HEDDEN CONSTRUCTION CORPORATION

CONTRACTING ENGINEERS AND BUILDERS

Prudential Building
Newark, N. J.

Canadian Pacific Building
New York

To ********** WALTER J. DOZIER ********** Dr.

Newark, N. J.

DATE	FOR WHAT	ITEMS
Jan. 14 1924	FOR the purchase of two hundred and seventy-five (275) shares of the common stock of the CHARLES R. HEDDEN COMPANY, standing in name of WALTER J. DOZIER, at the Book Value, period ending December 31, 1923, in accordance with resolution of Board of Directors passed August 15, 1922, and recorded in minute book, page 158.	
	As Per Statement Appended	65,219 00

ENTERED
[illegible]
[illegible]37

VOUCHER
NO ✓

PLEASE SIGN AND RETURN THIS VOUCHER PROMPTLY

CERTIFY THE ABOVE TO BE CORRECT

APPROVED

VICE PRES. & TREASURER

RECEIVED OF CHARLES R. HEDDEN COMPANY SIXTY FIVE THOUSAND TWO HUNDRED NINETEEN DOLLARS

DOLLARS

JAN 14 1924

IN FULL SETTLEMENT OF THE ABOVE ACCOUNT

SIGNATURE

(TITLE OF PERSON, SIGNATURE)

NO ALTERATIONS; IF INCORRECT, RETURN.

Chairman

Secretary

Dated, Newark, N. J.

the 15th day of August, 1922.

SECRETARY

Chairman

Secretary

Dated, Newark, N. J.

the 17th day of October, 1922.

SECRETARY

79 OCT.T.1926

Filed after the Oral Argument by leave of Court.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between CHARLES R. HEDDEN COMPANY, a corporation, *Complainant-Respondent,* *and* WALTER J. DOZIER, *Defendant-Appellant.*	*On Bill, &c.* *On Appeal from Final Decree in Chancery.*

SUPPLEMENTAL BRIEF FOR COMPLAINANT-RESPONDENT.

The circumstances of this case are such that on the oral argument it was possible for counsel for the defendant-appellant to sketch before the Court a striking picture in a few bold strokes—the resolution of August 15, 1922, signed, sealed, initialed and certified; Dozier and Fisher, two of the three directors alleged to have voted for it, united against Mr. Hedden, the third director, who denies it; the check for $65,219 signed, endorsed, vouchered and paid—the same picture that confronted counsel for complainant when the matter was first presented to us. But that sketch, striking as it may be and with all the outward appearance of truth which it possesses, outlines only the form. The substance back of the form is fraud.

The falsity of the resolution of August 15, 1922, is overwhelmingly established.

It is not true, as stated in the supplemental brief for defendant-appellant that the complainant must stand or fall with the resolution of August 15, 1922. If the defendant, while vice-

president, treasurer and director of complainant corporation, abstracted the $65,219 from the treasury of the corporation by the fraud of which the Court below found him guilty, or otherwise than by open and above-board negotiations and dealings with all the stockholders of the company, the decree which directs him to refund that sum to the treasury of which he was the custodian must be affirmed. The disputed resolution, although chronologically it is primary in defendant's scheme, then becomes, as the Vice-Chancellor states in his opinion, of secondary importance.

The further the defendant argues as in his supplemental brief, the more clearly the falsity of the resolution appears. If Mr. Hedden had not for the first time learned of that resolution on January 17, 1924, the defendant would have had no difficulty in so proving. We repeat that Fisher was Dozier's right bower. He openly declares his sympathy for the defendant (Bk., p. 513, l. 12), and was anxious to do everything he possibly could to help him, even to lying or suppressing the truth where he dared. He draws the picture of Mr. Hedden's great excitement when he learned for the first time of the resolution (pp. 499-500):

> "Q And you knew that Mr. Hedden said that he had no knowledge of any such resolution, didn't he? A Why he always said that.
>
> Q And he was intensely surprised and a very angry man at that hearing, wasn't he? A He seemed to be.
>
> Q You were present there when he had just learned of that check being taken? A I was in the office, yes, sir.
>
> Q And there was great indignation, wasn't there? A Mr. Hedden seemed very much surprised.

Q And very angry, didn't he? A Not any more than usual on other occurrences.

Q Never mind comparing with other occurrences. He was at that time very angry on the discovery of that check? A Yes, sir, he was very angry."

This all relates to January 17, 1924 (p. 499, l. 28).

This is absolutely fatal to any such argument as the defendant attempts for it is proof conclusive that Mr. Hedden learned of the resolution for the first time on January 17, 1924. Moreover, Fisher, the man who early in January planned to leave the Hedden Company, the man now associated with Mr. Dozier in the Fisher-Williams Co., as a competitor of the Hedden Company, testified with reference to the August 15, 1922, meeting that the only recollection which he had was with reference to Mr. Dozier's retirement from the company and "not as to the purchase of stock" (p. 488, l. 20).

"the only discussion was along that line and the vacation" (p. 480, l. 30).

As to the minute book, the defendant's brief is a mere apology and not a defense. He says that the signatures of Mr. Hedden and the initials of Toothe to the minutes, are proof that Mr. Hedden knew of the August resolution before January, 1924. Such a statement is nonsense. It is merely perfect proof of the extent of Mr. Hedden's reliance on Mr. Dozier, and also perfect proof of the way in which Mr. Dozier had accomplished his fraudulent scheme. If Mr. Hedden had read those minutes; if any real validity as between the parties had been given to the certificate as to its truth and accuracy, Mr. Hedden and Mr. Toothe would never have signed and initialed the statement that they were

present at a meeting, the face of which recited that they were not there. The fact is that Dozier, as is so often the case with fraud-doers, greatly over-reached himself.

The minute book, as was mentioned on argument, shows that the many signatures in February, 1922 and at about that period were all signed by Mr. Hedden with the same pen with the same break in it and at the same moment. The defendant now says that the February 14, 1922, meeting was held at Mr. Hedden's house. The minutes recited that it was held at the office. Admittedly, Mr. Hedden was confined to his home at Glen Ridge by a seriously injured knee. Those same minutes recite a signature by all of the stockholders, yet signed by Mr. Dozier alone.

The book conclusively shows that the meetings of December 27, 1921, 131B; January 17, 1922 (p. 132); February 14, 1922 (p. 133), were all signed at the same time, by the same pen with the same eccentric and erratic break, which nowhere ever appears again in Mr. Hedden's writing. The meeting of February 14, 1922 (p. 139), refers to the signing by all of the stockholders. Mr. Fisher, on the face of it did not sign. Mr. Hedden on February 14, 1922, was at his home in Glen Ridge (p. 54, l. 20). Mr. Dozier was alone at the meeting (p. 149). The certificate must be admitted to be false.

Mr. Toothe had been a timekeeper, and was elected secretary but never kept minutes. This is established by all the testimony, including that of Mr. Fisher (p. 486, l. 1). Mr. Dozier kept a duplicate minute book, the reason for doing which neither he nor his counsel seeks to explain or account for. Certainly he never desired Toothe to act as secretary. No monthly meetings were ever held (p. 135, l. 10).

The company obtained a job out of town and to have a bank account there, the minutes were written up outside and put in the book (p. 135, l. 12, etc.). The book was always brought to Mr. Toothe by Dozier; Toothe was directed to put his initials on each page of the book (p. 135, l. 30). Toothe would no more have assumed to read the minutes than he would have assumed to read a letter which he was given by Mr. Dozier for delivery across the street.

Mr. Hedden signed as directed by Mr. Dozier without the slightest hesitation or question. He was dealing with his own former secretary and confidential man, the man who had charge of the finances of his company.

Counsel for the defendant says that no question was raised by the complainant as to the validity of the minutes up to the year 1922. The question is not in the case and never was considered. The fact is that the same situation always existed from the time Dozier was secretary. He wrote up the minutes; they were signed. None but annual meetings of a formal nature were ever held.

Dozier used the single page certificate when and as he pleased. Its constant appearance as set out in the defendant's own brief shows that there could be no mere matter of coincidence in connection with its use.

Defendant's counsel in his supplemental brief says that the falsity of the minutes reflects on Hedden as well as on Dozier. This is nonsense. Mr. Hedden can only be blamed, if blame there be, for having put faith, trust and confidence in his confidential secretary and long-time associate. In order to charge him equally with fraud, knowl-

edge must be brought home to him and if he had had any knowledge of the resolution of August 15, 1922 before january 17, 1924, his whole course of conduct would have been entirely different from that which it was. In the light of the facts that Mr. Hedden had nothing to do with the minutes, that he trusted and relied absolutely on Mr. Dozier, that Mr. Dozier acted as secretary after he had ceased to hold the office, that he kept duplicate minutes, that he prepared the minutes as he saw fit and simply indicated to Mr. Hedden where to sign, we are amazed at the suggestion in defendant's brief that Mr. Hedden was equally charged with fraud in having signed a false certificate. Admitting in his brief that the stereotyped form of certificate was used indiscriminately, defendant's counsel destroys any value whatever that he could hope to get from the certificate.

The defendant argues that Mr. Hedden paid attention to the minutes because he sent for the minute book. He knows the fact to be that Mr. Hedden testified that he sent for the minute book because he wanted to see something with reference to the by-laws, which happened to appear in the same book in which the minutes were kept (p. 107, l. 10). It would almost seem as though the supplemental brief were not prepared by one familiar with the testimony in the case.

Dozier's conduct was utterly inconsistent with the resolution.

The defendant's counsel, asks in what respect.

We ask, if one who had a valid, bona fide resolution, fully effective, well known and understood, whereby he disposed of his stock for book value, would ever have written the letter of

December 31, 1923, to his long-time business associate in the very next room, asking him to discuss with him the plan for getting out of the company and disposing of his stock? Would such an one have gone to the expense of having lawyers prepare the series of agreements set forth in D. 3 and elsewhere? After the meeting of August 15th, would there have been prepared and submitted to Mr. Hedden on August 16th, that agreement D. 3? The date conclusively appears as August 16th, the day after the alleged meeting, from the memoranda book of Mr. Hedden. The integrity and credibility of that memoranda book, which was thoroughly examined by counsel for the defendant, was never in the slightest impeached. Would a man who had a good resolution of August, 1922, have drafted another resolution on January 15, 1924? Would a man who had a valid resolution for the purchase of his stock have presented the check for the purchase of that stock in an envelope with many others? Would he, while keeping possession of his stock certificates and before the meeting at which he was to present the resolution of January 15, 1924, have had his check certified? Would he have been secretive about the arrival of the Harrison Radiator check for $82,000, and have deposited that check in a bank usually used only for small items? Would he have given the bookkeeper instructions to sign no checks on the Montclair Bank after the 1st of January? Would he have dated back in the book the Harrison Radiator check which arrived on January 11th for an entry in December of the preceding year? Would he have failed to discuss with the president of the company, with his own friend and co-conspirator Fisher, with the secretary of the company, or with any other

person or persons whatsoever, the amount of his check, the fact that he had sold his stock, if in fact the transaction was in good faith and was fully understood and all agreed upon?

Be it noted that even his own wife and legal friend, Mr. Ferry, did not attempt to say that the check which he took with him to New York on the night of January 14, 1924, was filled out. Mrs. Dozier testifying (p. 434, l. 23):

> "A Yes. I said 'did you get your check.' He said 'not filled out' and with that he took it out of his trunk (meaning 'out of the envelope') and showed it to me."

Mrs. Dozier further (p. 436, ll. 1-15):

> "Q And with the amount filled in? A That I can't say.
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> Q Haven't you any idea what the amount was? A No, sir.
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> Q Tell us all what was said by him on this subject that night. A On that subject. Well, I said 'I will be so happy when that check is signed and you will get away.' "

If this man had had a good resolution of August, 1922, his wife would have known it; it would have been fully discussed; she would have had no eagerness or anxiety at all because his rights were clear, complete, settled and determined.

Mr. Dozier's life-long friend, John M. Ferry, said that Mr. Dozier knew that he was greatly interested in the success of his "negotiations" (p. 431, l. 12). If he had had a valid resolution, there need have been no concern about "success of negotiations," nor would there have been any need for Mr. Ferry to have said that Mr. Dozier was one step further on and was sorry that the check was not signed (p. 430, l. 20). Such testimony is, however, utterly consistent with a

fraudulent scheme to get from the company a check it never intended to give, for stock it never thought of buying.

There was no respect whatever in which Mr. Dozier's conduct was not completely inconsistent with a valid resolution in August, 1922. If he had made a valid agreement that the purchase was a thing understood and agreed upon, he would have presented the check for this very large amount to Mr. Hedden; there would of course, have been conversation and discussion about the matter; there would have been conversation as to how the book value was made up, what profits were charged on contracts, why the entry of the Harrison Radiator check of January 11, 1924, was dated back to December 1, 1923, why an arbitrary figure of $50,000 was thrown in for good will; the deposit of the Harrison Radiator check in an out-of-the-ordinary place, instead of in the Fidelity Union Trust Co., would have been mentioned; the new resolution for the January 15, 1924, meeting would never have been drawn or introduced; Mr. Dozier would not have had his check certified in the bank, and nothing whatever in the whole transaction would have happened as it did happen.

On the other hand, if Mr. Hedden agreed to this transaction, what possible suggestion can be made to account for his course of conduct? Nothing is alleged to have happened in any way so far as the company's finances and the condition of business was concerned between the 14th and 17th of January; no reason possibly could have occurred for any change of mind on his part. Yet Mr. Fisher, Mr. Dozier's right hand man and business associate, at the time of the trial testifies positively that Mr. Hedden first knew of the check on the 17th of January,

and that he was tremendously enraged and upset about it (p. 501, ll. 1 to 20; p. 500, l. 21), and all of the testimony throughout—that of Mr. Toothe, Mr. Aubin and Mr. Hedden, goes to show that the knowledge of the check and of the resolution came to him for the first time on January 17, 1924 with a profound shock. He realized not only that the company's treasury had been very greatly depleted at a time when a great deal of money was owed to him by the company, but he realized also with tremendous regret, that the man in whom he had long put perfect faith and on whose integrity he had long relied, had proved false. Immediately Mr. Hedden learned of the check, his first action was to call the Montclair Bank to stop payment.

If there had been a valid resolution, Mr. Dozier would certainly have discussed the matter with his friend and associate, Mr. Fisher, who he knew was entirely in sympathy with him, yet when Mr. Dozier arranged for him to come down from Lockport for the annual meeting on January 15, 1924, he said he was asked to come there by Mr. Dozier.

> "Q Did he tell you why he wanted you there? A Yes, sir. He said he was going to have a discussion with Mr. Hedden relative to getting out of the company" (p. 491, l. 21).

It is inconceivable that if he had been then relying upon the resolution of August, 1922, he would not have mentioned that subject to his friend, Mr. Fisher at that time. Bear in mind that Mr. Fisher had no recollection of that resolution on January 17, 1924 (p. 500, l. 5, etc.).

The defendant's brief refers to Exhibit C. 4, page 520, referring to high tension as between Dozier and Mr. Hedden. If Mr. Dozier had a good

resolution of the company on August 15, 1922, there was never any possible occasion or reason for high tension regarding his getting out and getting paid for his stock, and it is inconceivable that in that letter (p. 520), he should have failed to have mentioned the resolution, if he had had one that was not fraudulent throughout.

With reference to Mr. Fisher's use of the words "the card he had up his sleeve" (p. 526, l. 34), the importance of this is not only that it is a letter from Mr. Fisher, Mr. Dozier's great friend and sympathizer, ten days after the check affair, but it is the word also of the third of the four stockholders necessarily familiar with the August 15, 1922, resolution, if it is to be held valid. His characterization of it then does most effectively take away from the validity and effectiveness of the resolution and it most assuredly does reflect upon Dozier. The defendant is surely hard pressed to make an assertion to the contrary in his brief. Note furthermore that this Exhibit C. 1, the letter of Mr. Fisher on January 21, 1923, uses the words "Mr. Dozier made a motion that the C. R. H. Co. buy his stock at the book value, which of course was lost." This is inconsistent with the view of a man who as a stockholder and director participated in a valid resolution on August 15, 1922.

We affirm with confidence that the cross examination of Mr. Dozier and Mr. Fisher cannot be made to square with a valid resolution and an honest sale of Mr. Dozier's stock.

In reply to defendant's further argument in respect to the $65,219 check.

No possible reason is suggested for any changed mind of Mr. Hedden between the 15th

of January and the 17th. The stock was worth exactly as much on one day as on the other. He had not been in touch with Mr. Dozier in the meantime, for admittedly he was not at the office on the 16th. No reason is suggested as to why Mr. Hedden should not have been called in at some of the night sessions while the book value was being prepared. There was no reason why a secret should have been kept of the payment of Mr. Whitehurst for his night work on the books. Apparently he was paid by the company's check. Whitehurst never worked on the figures in connection with Mr. Hedden; Mr. Hedden was never there at night with him or knew of his being there (pp. 440, 441). He never called Mr. Hedden's attention to the work he was doing nor spoke to him about it, nor showed him any of the books or records or anything relating to the figures he had made (p. 441, ll. 30 to 40).

By the Court:

"Q Who employed you? A Mr. Dozier."

(p. 442, l. 1). He was paid by the Hedden Company; he made no report of his figures to the president of the company. He was paid on a petty cash voucher (p. 442, l. 38). He was not even positive that he signed a voucher (p. 443, l. 2), although he was paid around $100, no record of which appears in the company's papers (p. 443, l. 25). He finally said he didn't know who paid him (p. 444, l. 1). It is absurd then to argue as the defendant has done, that Mr. Hedden had knowledge of the resolution, agreed to the check and was familiar with the transaction.

No argument could be made whatever from the voucher attached to the $65,000 check. Neither the defendant's wife nor his friend, Mr.

Ferry, knew whether the check was filled in when he had it in New York, which meant that it of course was not filled in. Mr. Hedden signed blank checks by the score for Mr. Dozier. The probability is that the voucher was filled in after it was signed. In any possible event, Mr. Hedden, who was signing a batch of checks, would never have seen what was on the vouchers or what was on the back of the checks unless he had doubt or suspicion, and the whole case, including the evidence of the defendant's witness, Fisher, shows that he hadn't a trace of suspicion until the 17th of January, after the check had been cashed and cleared.

The office force figuring the book value would be no notice to him of anything out of the ordinary and it is an absurd argument for the defendant to suggest the contrary. The annual statement was always due at that time. The president had told the treasurer to have it made up.

The defendant also argues that it is not conceivable that a man of Mr. Hedden's business acumen would have signed a check of that size accompanied by a voucher, without knowing what he was doing. The evidence shows conclusively that he had signed scores of checks in blank for Mr. Dozier. The evidence shows conclusively that Mr. Dozier at the time that that check was given, misappropriated some $10,000 of the company's money on another $19,000 check which he got surreptitiously and $10,000 of which he returned immediately on receipt of a letter from the complainant's counsel. The evidence shows Mr. Dozier, without Mr. Hedden's knowledge, to be using the company's money for investment and speculation at the very time that Mr. Hedden

was loaning money to the company to meet the payroll. Mr. Hedden's business acumen and sagacity is not the matter in issue because it is conclusively shown by the whole case that the trust and confidence he had in Mr. Dozier, even to the end, was complete.

The loan transactions between Dozier and the company do have a great bearing on the check in question. There is no word of evidence in the case, either direct or indirect, to show that Mr. Hedden ever borrowed from the company. On the other hand, the defendant's counsel well knows that he was for a long time before Mr. Dozier left, financing the company to the extent of thousands of dollars. When Mr. Dozier retired from the company, he did not close up all outstanding transactions. After he had retired and demand was made, he put back $10,000. He is still indebted for a considerable sum. Defendant's counsel suggests that Mr. Dozier did not speak to Mr. Hedden about the check because they were on high tension. But if this was a good, valid resolution, the stock had been honestly purchased by the company and everything was satisfactory and pleasant, the cause for the high tension had entirely disappeared and good friendship and some conversation about the important transaction must inevitably and positively have resulted.

But beyond that, what possible excuse could there have been for high tension regarding Mr. Dozier getting out and selling his stock if at all times he had a good resolution that he dared to stand upon?

As to defendant's point that the decree does not direct return of the certificates.

It is said in the defendant's supplemental brief, that if the complainant seeks equity, it must do equity.

The complainant contends that it bought nothing from the defendant; that no question of recission can arise. It contends that the defendant's leaving his stock in its strong box is absolutely unauthorized and unjustified. Defendant is entitled to it at any time he may request. He filed no counter-claim; asked for no relief and the decree could not accordingly possibly have dealt with that subject. Mr. Toothe refused to give him a receipt for it; it was left in the box of the company subject to Mr. Dozier's orders and instructions. The question simply does not enter into the case in any way. If this Court should possibly think that it did, a modification of this decree in that respect would be most gladly acceded to. There has been no tender or offer of return of Mr. Dozier's stock because the company never recognized that it had any connection with his stock in any way; that there was any relationship between them bearing on the sale or purchase of Mr. Dozier's stock, and that his leaving it with the company, as all his former transactions in connection with it, was unjustified and unauthorized, so far as the company was concerned. If defendant had demanded possession of the certificates which he left in the company's safe deposit box and the company had refused to give him possession of them, the situation might be quite different, but there is no suggestion that he ever requested possession of them or that he would accept them if the formality of sending them to him were gone through.

As to defendant's point that the Court below "failed to find or decree any ground for equitable relief."

In his supplemental brief the appellant says, at the top of page 14 thereof:

> "The view which the Vice-Chancellor took of the case and the finding of fact which he made takes it entirely out of the jurisdiction of a court of equity. He found no ground for equitable relief as a fact and he decreed no equitable relief."

By reference to the fourteenth paragraph of the bill of complaint (Case, p. 13) the complainant alleges that its Board of Directors were not authorized or empowered to enter into such a contract to purchase from the defendant his share of the stock, as set forth in the alleged resolution of October 15, 1922, and further that "said alleged resolution and alleged contract contained therein were *ultra vires,* illegal, fraudulent, void and utterly without consideration and that if it was adopted by said directors constitutes a breach of their fiduciary obligations to complainant."

The second prayer of the bill of complaint (Case, p. 21) is: "That the said resolution alleged to have been adopted by the Board of Directors of complainant on October 15, 1922, as above set forth, may be decreed to be fraudulent, of no effect, illegal, *ultra vires* and void."

At this point we would refer to the opinion of the Vice-Chancellor, and particularly to the next to the last paragraph thereof (Case, p. 40), which is as follows:

> "The fraud has been so clearly established that little need be said of the inefficacy of the resolution as a binding obligation, assuming that it was adopted. There was no consid-

> eration. It was not the unanimous act of the stockholders. Toothe did not assent to it and its consummation would have impaired the capital of the company. The statute forbids the paying of any part of its capital stock to a stockholder. (C. S. 1617); *Siegman* v. *Electric Vehicle Co.*, 72 N. J. Eq. 403."

Section 30 of the General Corporation Act of this State, provides, among other things, as follows:

> "The directors of a corporation shall not make dividends, except from its surplus or from the net profits arising from the business of such corporation, nor shall it divide, withdraw or in any way pay to the stockholders or any of them, any part of the capital stock of such corporation or reduce its capital stock, except as authorized by law."

Section 29 of the General Corporation Act provides the method for effecting a decrease of capital stock.

We have already discussed the illegality of the resolution on page 76 of our original brief.

On this point we might observe, however, that the book value of the stock of this corporation as subsequently determined was less than $40 per share. There were 900 shares outstanding, consequently the total capital stock of the company on the last day of the year 1924, was $36,000.

By the withdrawal of more than $65,000, the entire capital stock of the company, which was already impaired, was entirely wiped out, and the rights of the creditors very seriously affected.

Again referring to the supplemental brief for the appellant, we would quote therefrom the fol-

lowing found on page 12 thereof. Referring to the bill of complaint herein he says:

> "The bill, on its face, lays a foundation for and prays equitable relief, namely, that the resolution of August 15, 1922, be set aside, that a receiver be appointed, and that if the resolution be not set aside, the court determine and fix the book value of the stock and decree the payment back of so much of the $65,219 as shall be found to be in excess of the book value."

It will be seen, then, that the appellant admits that the bill lays a foundation for equitable relief and prays for equitable relief; but his insistment now is that "when it came to the hearing the facts varied materially from the allegations in the bill."

Referring to the opinion of the Vice-Chancellor, however, it would appear that he found that the facts conformed to the allegations of the bill both with respect to the fraud alleged and with respect to the illegality of the resolution in the form that it was claimed to have been passed. It thus appears, then, that the Court did find ground for equitable relief as a fact, and the contention apparently is that the Court decreed no equitable relief.

However, by reference to the recitals in the decree (Case, p. 41) it appears that the Court there recites that the moneys secured by the defendant from the complainant by means of the check mentioned in the bill of complaint, were fraudulently and unlawfully abstracted from the complainant corporation. It thus appears that the Court found that the money was taken under the circumstances without any legal right. Thereupon it was decreed that the specific sum should be returned, and this the Court clearly had power

to do, even if the disputed resolution had actually been adopted.

Finally, then, it would appear that the particular objection made by appellant is rather to the form of the decree, in that there was not a specific adjudication that the resolution was null and void and set aside. However, this is merely a matter of form, rather than of substance, and cannot now affect in any way the determination of the Court of Chancery on the merits of the case.

Respectfully submitted,

RALPH E. LUM,
Of Counsel with Complainant-Respondent.

LUM, TAMBLYN & COLYER,
Solicitors of Complainant.

79 OCT.T.1926

Filed after the Oral Argument by leave of Court.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

CHARLES R. HEDDEN COMPANY, a corporation,
Complainant-Respondent,

and

WALTER J. DOZIER,
Defendant-Appellant.

On Bill, &c.

On Appeal from Final Decree in Chancery.

SUPPLEMENTAL BRIEF FOR COMPLAINANT-RESPONDENT.

The circumstances of this case are such that on the oral argument it was possible for counsel for the defendant-appellant to sketch before the Court a striking picture in a few bold strokes—the resolution of August 15, 1922, signed, sealed, initialed and certified; Dozier and Fisher, two of the three directors alleged to have voted for it, united against Mr. Hedden, the third director, who denies it; the check for $65,219 signed, endorsed, vouchered and paid—the same picture that confronted counsel for complainant when the matter was first presented to us. But that sketch, striking as it may be and with all the outward appearance of truth which it possesses, outlines only the form. The substance back of the form is fraud.

The falsity of the resolution of August 15, 1922, is overwhelmingly established.

It is not true, as stated in the supplemental brief for defendant-appellant that the complainant must stand or fall with the resolution of August 15, 1922. If the defendant, while vice-

president, treasurer and director of complainant corporation, abstracted the $65,219 from the treasury of the corporation by the fraud of which the Court below found him guilty, or otherwise than by open and above-board negotiations and dealings with all the stockholders of the company, the decree which directs him to refund that sum to the treasury of which he was the custodian must be affirmed. The disputed resolution, although chronologically it is primary in defendant's scheme, then becomes, as the Vice-Chancellor states in his opinion, of secondary importance.

The further the defendant argues as in his supplemental brief, the more clearly the falsity of the resolution appears. If Mr. Hedden had not for the first time learned of that resolution on January 17, 1924, the defendant would have had no difficulty in so proving. We repeat that Fisher was Dozier's right bower. He openly declares his sympathy for the defendant (Bk., p. 513, l. 12), and was anxious to do everything he possibly could to help him, even to lying or suppressing the truth where he dared. He draws the picture of Mr. Hedden's great excitement when he learned for the first time of the resolution (pp. 499-500):

> "Q And you knew that Mr. Hedden said that he had no knowledge of any such resolution, didn't he? A Why he always said that.
>
> Q And he was intensely surprised and a very angry man at that hearing, wasn't he? A He seemed to be.
>
> Q You were present there when he had just learned of that check being taken? A I was in the office, yes, sir.
>
> Q And there was great indignation, wasn't there? A Mr. Hedden seemed very much surprised.

Q And very angry, didn't he? A Not any more than usual on other occurrences.

Q Never mind comparing with other occurrences. He was at that time very angry on the discovery of that check? A Yes, sir, he was very angry."

This all relates to January 17, 1924 (p. 499, l. 28).

This is absolutely fatal to any such argument as the defendant attempts for it is proof conclusive that Mr. Hedden learned of the resolution for the first time on January 17, 1924. Moreover, Fisher, the man who early in January planned to leave the Hedden Company, the man now associated with Mr. Dozier in the Fisher-Williams Co., as a competitor of the Hedden Company, testified with reference to the August 15, 1922, meeting that the only recollection which he had was with reference to Mr. Dozier's retirement from the company and "not as to the purchase of stock" (p. 488, l. 20).

"the only discussion was along that line and the vacation" (p. 480, l. 30).

As to the minute book, the defendant's brief is a mere apology and not a defense. He says that the signatures of Mr. Hedden and the initials of Toothe to the minutes, are proof that Mr. Hedden knew of the August resolution before January, 1924. Such a statement is nonsense. It is merely perfect proof of the extent of Mr. Hedden's reliance on Mr. Dozier, and also perfect proof of the way in which Mr. Dozier had accomplished his fraudulent scheme. If Mr. Hedden had read those minutes; if any real validity as between the parties had been given to the certificate as to its truth and accuracy, Mr. Hedden and Mr. Toothe would never have signed and initialed the statement that they were

present at a meeting, the face of which recited that they were not there. The fact is that Dozier, as is so often the case with fraud-doers, greatly over-reached himself.

The minute book, as was mentioned on argument, shows that the many signatures in February, 1922 and at about that period were all signed by Mr. Hedden with the same pen with the same break in it and at the same moment. The defendant now says that the February 14, 1922, meeting was held at Mr. Hedden's house. The minutes recited that it was held at the office. Admittedly, Mr. Hedden was confined to his home at Glen Ridge by a seriously injured knee. Those same minutes recite a signature by all of the stockholders, yet signed by Mr. Dozier alone.

The book conclusively shows that the meetings of December 27, 1921, 131B; January 17, 1922 (p. 132); February 14, 1922 (p. 133), were all signed at the same time, by the same pen with the same eccentric and erratic break, which nowhere ever appears again in Mr. Hedden's writing. The meeting of February 14, 1922 (p. 139), refers to the signing by all of the stockholders. Mr. Fisher, on the face of it did not sign. Mr. Hedden on February 14, 1922, was at his home in Glen Ridge (p. 54, l. 20). Mr. Dozier was alone at the meeting (p. 149). The certificate must be admitted to be false.

Mr. Toothe had been a timekeeper, and was elected secretary but never kept minutes. This is established by all the testimony, including that of Mr. Fisher (p. 486, l. 1). Mr. Dozier kept a duplicate minute book, the reason for doing which neither he nor his counsel seeks to explain or account for. Certainly he never desired Toothe to act as secretary. No monthly meetings were ever held (p. 135, l. 10).

The company obtained a job out of town and to have a bank account there, the minutes were written up outside and put in the book (p. 135, l. 12, etc.). The book was always brought to Mr. Toothe by Dozier; Toothe was directed to put his initials on each page of the book (p. 135, l. 30). Toothe would no more have assumed to read the minutes than he would have assumed to read a letter which he was given by Mr. Dozier for delivery across the street.

Mr. Hedden signed as directed by Mr. Dozier without the slightest hesitation or question. He was dealing with his own former secretary and confidential man, the man who had charge of the finances of his company.

Counsel for the defendant says that no question was raised by the complainant as to the validity of the minutes up to the year 1922. The question is not in the case and never was considered. The fact is that the same situation always existed from the time Dozier was secretary. He wrote up the minutes; they were signed. None but annual meetings of a formal nature were ever held.

Dozier used the single page certificate when and as he pleased. Its constant appearance as set out in the defendant's own brief shows that there could be no mere matter of coincidence in connection with its use.

Defendant's counsel in his supplemental brief says that the falsity of the minutes reflects on Hedden as well as on Dozier. This is nonsense. Mr. Hedden can only be blamed, if blame there be, for having put faith, trust and confidence in his confidential secretary and long-time associate. In order to charge him equally with fraud, knowl-

edge must be brought home to him and if he had had any knowledge of the resolution of August 15, 1922 before january 17, 1924, his whole course of conduct would have been entirely different from that which it was. In the light of the facts that Mr. Hedden had nothing to do with the minutes, that he trusted and relied absolutely on Mr. Dozier, that Mr. Dozier acted as secretary after he had ceased to hold the office, that he kept duplicate minutes, that he prepared the minutes as he saw fit and simply indicated to Mr. Hedden where to sign, we are amazed at the suggestion in defendant's brief that Mr. Hedden was equally charged with fraud in having signed a false certificate. Admitting in his brief that the stereotyped form of certificate was used indiscriminately, defendant's counsel destroys any value whatever that he could hope to get from the certificate.

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December 31, 1923, to his long-time business associate in the very next room, asking him to discuss with him the plan for getting out of the company and disposing of his stock? Would such an one have gone to the expense of having lawyers prepare the series of agreements set forth in D. 3 and elsewhere? After the meeting of August 15th, would there have been prepared and submitted to Mr. Hedden on August 16th, that agreement D. 3? The date conclusively appears as August 16th, the day after the alleged meeting, from the memoranda book of Mr. Hedden. The integrity and credibility of that memoranda book, which was thoroughly examined by counsel for the defendant, was never in the slightest impeached. Would a man who had a good resolution of August, 1922, have drafted another resolution on January 15, 1924? Would a man who had a valid resolution for the purchase of his stock have presented the check for the purchase of that stock in an envelope with many others? Would he, while keeping possession of his stock certificates and before the meeting at which he was to present the resolution of January 15, 1924, have had his check certified? Would he have been secretive about the arrival of the Harrison Radiator check for $82,000, and have deposited that check in a bank usually used only for small items? Would he have given the bookkeeper instructions to sign no checks on the Montclair Bank after the 1st of January? Would he have dated back in the book the Harrison Radiator check which arrived on January 11th for an entry in December of the preceding year? Would he have failed to discuss with the president of the company, with his own friend and co-conspirator Fisher, with the secretary of the company, or with any other

person or persons whatsoever, the amount of his check, the fact that he had sold his stock, if in fact the transaction was in good faith and was fully understood and all agreed upon?

Be it noted that even his own wife and legal friend, Mr. Ferry, did not attempt to say that the check which he took with him to New York on the night of January 14, 1924, was filled out. Mrs. Dozier testifying (p. 434, l. 23):

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Mrs. Dozier further (p. 436, ll. 1-15):

> "Q And with the amount filled in? A That I can't say.
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Mr. Dozier's life-long friend, John M. Ferry, said that Mr. Dozier knew that he was greatly interested in the success of his "negotiations" (p. 431, l. 12). If he had had a valid resolution, there need have been no concern about "success of negotiations," nor would there have been any need for Mr. Ferry to have said that Mr. Dozier was one step further on and was sorry that the check was not signed (p. 430, l. 20). Such testimony is, however, utterly consistent with a

fraudulent scheme to get from the company a check it never intended to give, for stock it never thought of buying.

There was no respect whatever in which Mr. Dozier's conduct was not completely inconsistent with a valid resolution in August, 1922. If he had made a valid agreement that the purchase was a thing understood and agreed upon, he would have presented the check for this very large amount to Mr. Hedden; there would of course, have been conversation and discussion about the matter; there would have been conversation as to how the book value was made up, what profits were charged on contracts, why the entry of the Harrison Radiator check of January 11, 1924, was dated back to December 1, 1923, why an arbitrary figure of $50,000 was thrown in for good will; the deposit of the Harrison Radiator check in an out-of-the-ordinary place, instead of in the Fidelity Union Trust Co., would have been mentioned; the new resolution for the January 15, 1924, meeting would never have been drawn or introduced; Mr. Dozier would not have had his check certified in the bank, and nothing whatever in the whole transaction would have happened as it did happen.

On the other hand, if Mr. Hedden agreed to this transaction, what possible suggestion can be made to account for his course of conduct? Nothing is alleged to have happened in any way so far as the company's finances and the condition of business was concerned between the 14th and 17th of January; no reason possibly could have occurred for any change of mind on his part. Yet Mr. Fisher, Mr. Dozier's right hand man and business associate, at the time of the trial testifies positively that Mr. Hedden first knew of the check on the 17th of January,

and that he was tremendously enraged and upset about it (p. 501, ll. 1 to 20; p. 500, l. 21), and all of the testimony throughout—that of Mr. Toothe, Mr. Aubin and Mr. Hedden, goes to show that the knowledge of the check and of the resolution came to him for the first time on January 17, 1924 with a profound shock. He realized not only that the company's treasury had been very greatly depleted at a time when a great deal of money was owed to him by the company, but he realized also with tremendous regret, that the man in whom he had long put perfect faith and on whose integrity he had long relied, had proved false. Immediately Mr. Hedden learned of the check, his first action was to call the Montclair Bank to stop payment.

If there had been a valid resolution, Mr. Dozier would certainly have discussed the matter with his friend and associate, Mr. Fisher, who he knew was entirely in sympathy with him, yet when Mr. Dozier arranged for him to come down from Lockport for the annual meeting on January 15, 1924, he said he was asked to come there by Mr. Dozier.

> "Q Did he tell you why he wanted you there? A Yes, sir. He said he was going to have a discussion with Mr. Hedden relative to getting out of the company" (p. 491, l. 21).

It is inconceivable that if he had been then relying upon the resolution of August, 1922, he would not have mentioned that subject to his friend, Mr. Fisher at that time. Bear in mind that Mr. Fisher had no recollection of that resolution on January 17, 1924 (p. 500, l. 5, etc.).

The defendant's brief refers to Exhibit C. 4, page 520, referring to high tension as between Dozier and Mr. Hedden. If Mr. Dozier had a good

resolution of the company on August 15, 1922, there was never any possible occasion or reason for high tension regarding his getting out and getting paid for his stock, and it is inconceivable that in that letter (p. 520), he should have failed to have mentioned the resolution, if he had had one that was not fraudulent throughout.

With reference to Mr. Fisher's use of the words "the card he had up his sleeve" (p. 526, l. 34), the importance of this is not only that it is a letter from Mr. Fisher, Mr. Dozier's great friend and sympathizer, ten days after the check affair, but it is the word also of the third of the four stockholders necessarily familiar with the August 15, 1922, resolution, if it is to be held valid. His characterization of it then does most effectively take away from the validity and effectiveness of the resolution and it most assuredly does reflect upon Dozier. The defendant is surely hard pressed to make an assertion to the contrary in his brief. Note furthermore that this Exhibit C. 1, the letter of Mr. Fisher on January 21, 1923, uses the words "Mr. Dozier made a motion that the C. R. H. Co. buy his stock at the book value, which of course was lost." This is inconsistent with the view of a man who as a stockholder and director participated in a valid resolution on August 15, 1922.

We affirm with confidence that the cross examination of Mr. Dozier and Mr. Fisher cannot be made to square with a valid resolution and an honest sale of Mr. Dozier's stock.

In reply to defendant's further argument in respect to the $65,219 check.

No possible reason is suggested for any changed mind of Mr. Hedden between the 15th

of January and the 17th. The stock was worth exactly as much on one day as on the other. He had not been in touch with Mr. Dozier in the meantime, for admittedly he was not at the office on the 16th. No reason is suggested as to why Mr. Hedden should not have been called in at some of the night sessions while the book value was being prepared. There was no reason why a secret should have been kept of the payment of Mr. Whitehurst for his night work on the books. Apparently he was paid by the company's check. Whitehurst never worked on the figures in connection with Mr. Hedden; Mr. Hedden was never there at night with him or knew of his being there (pp. 440, 441). He never called Mr. Hedden's attention to the work he was doing nor spoke to him about it, nor showed him any of the books or records or anything relating to the figures he had made (p. 441, ll. 30 to 40).

By the Court:

"Q Who employed you? A Mr. Dozier."

(p. 442, l. 1). He was paid by the Hedden Company; he made no report of his figures to the president of the company. He was paid on a petty cash voucher (p. 442, l. 38). He was not even positive that he signed a voucher (p. 443, l. 2), although he was paid around $100, no record of which appears in the company's papers (p. 443, l. 25). He finally said he didn't know who paid him (p. 444, l. 1). It is absurd then to argue as the defendant has done, that Mr. Hedden had knowledge of the resolution, agreed to the check and was familiar with the transaction.

No argument could be made whatever from the voucher attached to the $65,000 check. Neither the defendant's wife nor his friend, Mr.

Ferry, knew whether the check was filled in when he had it in New York, which meant that it of course was not filled in. Mr. Hedden signed blank checks by the score for Mr. Dozier. The probability is that the voucher was filled in after it was signed. In any possible event, Mr. Hedden, who was signing a batch of checks, would never have seen what was on the vouchers or what was on the back of the checks unless he had doubt or suspicion, and the whole case, including the evidence of the defendant's witness, Fisher, shows that he hadn't a trace of suspicion until the 17th of January, after the check had been cashed and cleared.

The office force figuring the book value would be no notice to him of anything out of the ordinary and it is an absurd argument for the defendant to suggest the contrary. The annual statement was always due at that time. The president had told the treasurer to have it made up.

The defendant also argues that it is not conceivable that a man of Mr. Hedden's business acumen would have signed a check of that size accompanied by a voucher, without knowing what he was doing. The evidence shows conclusively that he had signed scores of checks in blank for Mr. Dozier. The evidence shows conclusively that Mr. Dozier at the time that that check was given, misappropriated some $10,000 of the company's money on another $19,000 check which he got surreptitiously and $10,000 of which he returned immediately on receipt of a letter from the complainant's counsel. The evidence shows Mr. Dozier, without Mr. Hedden's knowledge, to be using the company's money for investment and speculation at the very time that Mr. Hedden

was loaning money to the company to meet the payroll. Mr. Hedden's business acumen and sagacity is not the matter in issue because it is conclusively shown by the whole case that the trust and confidence he had in Mr. Dozier, even to the end, was complete.

The loan transactions between Dozier and the company do have a great bearing on the check in question. There is no word of evidence in the case, either direct or indirect, to show that Mr. Hedden ever borrowed from the company. On the other hand, the defendant's counsel well knows that he was for a long time before Mr. Dozier left, financing the company to the extent of thousands of dollars. When Mr. Dozier retired from the company, he did not close up all outstanding transactions. After he had retired and demand was made, he put back $10,000. He is still indebted for a considerable sum. Defendant's counsel suggests that Mr. Dozier did not speak to Mr. Hedden about the check because they were on high tension. But if this was a good, valid resolution, the stock had been honestly purchased by the company and everything was satisfactory and pleasant, the cause for the high tension had entirely disappeared and good friendship and some conversation about the important transaction must inevitably and positively have resulted.

But beyond that, what possible excuse could there have been for high tension regarding Mr. Dozier getting out and selling his stock if at all times he had a good resolution that he dared to stand upon?

As to defendant's point that the decree does not direct return of the certificates.

It is said in the defendant's supplemental brief, that if the complainant seeks equity, it must do equity.

The complainant contends that it bought nothing from the defendant; that no question of recission can arise. It contends that the defendant's leaving his stock in its strong box is absolutely unauthorized and unjustified. Defendant is entitled to it at any time he may request. He filed no counter-claim; asked for no relief and the decree could not accordingly possibly have dealt with that subject. Mr. Toothe refused to give him a receipt for it; it was left in the box of the company subject to Mr. Dozier's orders and instructions. The question simply does not enter into the case in any way. If this Court should possibly think that it did, a modification of this decree in that respect would be most gladly acceded to. There has been no tender or offer of return of Mr. Dozier's stock because the company never recognized that it had any connection with his stock in any way; that there was any relationship between them bearing on the sale or purchase of Mr. Dozier's stock, and that his leaving it with the company, as all his former transactions in connection with it, was unjustified and unauthorized, so far as the company was concerned. If defendant had demanded possession of the certificates which he left in the company's safe deposit box and the company had refused to give him possession of them, the situation might be quite different, but there is no suggestion that he ever requested possession of them or that he would accept them if the formality of sending them to him were gone through.

As to defendant's point that the Court below "failed to find or decree any ground for equitable relief."

In his supplemental brief the appellant says, at the top of page 14 thereof:

> "The view which the Vice-Chancellor took of the case and the finding of fact which he made takes it entirely out of the jurisdiction of a court of equity. He found no ground for equitable relief as a fact and he decreed no equitable relief."

By reference to the fourteenth paragraph of the bill of complaint (Case, p. 13) the complainant alleges that its Board of Directors were not authorized or empowered to enter into such a contract to purchase from the defendant his share of the stock, as set forth in the alleged resolution of October 15, 1922, and further that "said alleged resolution and alleged contract contained therein were *ultra vires,* illegal, fraudulent, void and utterly without consideration and that if it was adopted by said directors constitutes a breach of their fiduciary obligations to complainant."

The second prayer of the bill of complaint (Case, p. 21) is: "That the said resolution alleged to have been adopted by the Board of Directors of complainant on October 15, 1922, as above set forth, may be decreed to be fraudulent, of no effect, illegal, *ultra vires* and void."

At this point we would refer to the opinion of the Vice-Chancellor, and particularly to the next to the last paragraph thereof (Case, p. 40), which is as follows:

> "The fraud has been so clearly established that little need be said of the inefficacy of the resolution as a binding obligation, assuming that it was adopted. There was no consid-

> eration. It was not the unanimous act of the stockholders. Toothe did not assent to it and its consummation would have impaired the capital of the company. The statute forbids the paying of any part of its capital stock to a stockholder. (C. S. 1617); *Siegman* v. *Electric Vehicle Co.*, 72 N. J. Eq. 403."

Section 30 of the General Corporation Act of this State, provides, among other things, as follows:

> "The directors of a corporation shall not make dividends, except from its surplus or from the net profits arising from the business of such corporation, nor shall it divide, withdraw or in any way pay to the stockholders or any of them, any part of the capital stock of such corporation or reduce its capital stock, except as authorized by law."

Section 29 of the General Corporation Act provides the method for effecting a decrease of capital stock.

We have already discussed the illegality of the resolution on page 76 of our original brief.

On this point we might observe, however, that the book value of the stock of this corporation as subsequently determined was less than $40 per share. There were 900 shares outstanding, consequently the total capital stock of the company on the last day of the year 1924, was $36,000.

By the withdrawal of more than $65,000, the entire capital stock of the company, which was already impaired, was entirely wiped out, and the rights of the creditors very seriously affected.

Again referring to the supplemental brief for the appellant, we would quote therefrom the fol-

lowing found on page 12 thereof. Referring to the bill of complaint herein he says:

> "The bill, on its face, lays a foundation for and prays equitable relief, namely, that the resolution of August 15, 1922, be set aside, that a receiver be appointed, and that if the resolution be not set aside, the court determine and fix the book value of the stock and decree the payment back of so much of the $65,219 as shall be found to be in excess of the book value."

It will be seen, then, that the appellant admits that the bill lays a foundation for equitable relief and prays for equitable relief; but his insistment now is that "when it came to the hearing the facts varied materially from the allegations in the bill."

Referring to the opinion of the Vice-Chancellor, however, it would appear that he found that the facts conformed to the allegations of the bill both with respect to the fraud alleged and with respect to the illegality of the resolution in the form that it was claimed to have been passed. It thus appears, then, that the Court did find ground for equitable relief as a fact, and the contention apparently is that the Court decreed no equitable relief.

However, by reference to the recitals in the decree (Case, p. 41) it appears that the Court there recites that the moneys secured by the defendant from the complainant by means of the check mentioned in the bill of complaint, were fraudulently and unlawfully abstracted from the complainant corporation. It thus appears that the Court found that the money was taken under the circumstances without any legal right. Thereupon it was decreed that the specific sum should be returned, and this the Court clearly had power

to do, even if the disputed resolution had actually been adopted.

Finally, then, it would appear that the particular objection made by appellant is rather to the form of the decree, in that there was not a specific adjudication that the resolution was null and void and set aside. However, this is merely a matter of form, rather than of substance, and cannot now affect in any way the determination of the Court of Chancery on the merits of the case.

Respectfully submitted,

RALPH E. LUM,
Of Counsel with Complainant-Respondent.

LUM, TAMBLYN & COLYER,
Solicitors of Complainant.

New Jersey Court of Errors and Appeals.

Between

CHARLES R. HEDDEN COMPANY,
a corporation,
Complainant-Respondent,

and

WALTER J. DOZIER,
Defendant-Appellant.

On Bill, &c.

On Appeal from Final Decree in Chancery.

BRIEF FOR DEFENDANT-APPELLANT.

This case comes up on appeal from a final decree of the Chancellor (p. 41), advised by Vice-Chancellor Backes.

The Bill alleges that Dozier, who was a stockholder and director, and also the Treasurer of the Complainant Company, desired to obtain control of the Company by acquiring a majority control of the stock (p. 9, line 30), and that failing in that he conceived a fraudulent scheme by which he hoped to surrender his own shares of stock for an excessive price (p. 10, line 6), and so obtain a large sum of money which he could use in the Fisher Williams Corporation, a competing concern (p. 18, line 20).

It is further alleged in the Bill that in pursuance of his conspiracy Dozier caused a false entry to be made in the minutes of the Directors' Meeting held

on August 15, 1922, to the effect that if at any future time the Treasurer (Dozier) should withdraw from the active management of the Company's affairs, the Company would purchase his stock at the book value as of the close of business for the year ending December 31st preceding his resignation (p. 13, line 10); that he did resign at the meeting of the Directors held January 15, 1924, and that he misused a (blank) check which had previously been signed by the President and entrusted to him (p. 16, line 30), and so obtained from the Company $65,219.

The prayer of the Bill is:

(*a*) That the resolution be decreed to be fraudulent, of no effect and void (p. 21, line 10);

(*b*) That the defendant be decreed to pay back to the complainant the $65,219 (p. 21, line 15); and

(*c*) If the resolution shall be held to be valid and binding on the complainant that the value of the defendant's shares of stock as of December 31, 1923, may be determined and fixed, and the defendant decreed to pay over to the complainant so much of the $65,219 as is in excess of the value of the shares as so fixed and determined (p. 21, line 30).

The sole defendant is Dozier.

The answer denies the material parts in the Bill and sets up that the stock was purchased pursuant to a resolution of the Board of Directors of August 15, 1922, which was not only unanimously adopted on that date, but thereafter ratified and approved at the Directors' Meeting of October 17, 1922 (p. 28, line 15, and p. 29, line 12); that Dozier resigned in January of 1924, and that the

$65,219 represented the book value of his 275 shares of stock as of December 31, 1923.

The check by which the $65,219 was paid Dozier was a voucher check, payable to the order of Walter J. Dozier. It was first signed by Charles R. Hedden, as President, and later by Walter J. Dozier, Treasurer.

The check had endorsed thereon the following:

"Jan 14 1924

For the purchase of 275 shares of Common Stock of the Charles R. Hedden Company in the name of Walter J. Dozier.

Total ..... 65,219.00"

When presented for signature to Mr. Hedden it was accompanied by a voucher, reading as follows:

"Jan 14 1924

FOR the purchase of two hundred and seventy-five (275) shares of the common stock of the CHARLES R. HEDDEN COMPANY, standing in name of WALTER J. DOZIER, at the Book Value, period ending December 31, 1923, in accordance with resolution of Board of Directors passed August 15, 1922, and recorded in minute book, page 158.

As Per Statement Appended.. 65,219.00"

The complainant's proof varied considerably from the allegations of its Bill.

The alleged effort of Dozier to gain control of the Company failed of proof entirely, and the evidence showed that there had been a long series of negotiations between Hedden and Dozier looking toward the purchase or sale, either way, of the stock-holdings of the other in the Company.

The allegation that Dozier had misused a check signed by the President, which had been entrusted

to him, also completely failed of proof, and the fact was demonstrated to be that the check by which payment of the $65,219 was made was a check made out in voucher form the day it was signed, and was signed first by Hedden under circumstances showing that he had full knowledge of the transaction.

The allegation that the resolution of August 15, 1922, was improperly inserted in the minutes of the meeting of that date was equally disproved.

The resolution under which Dozier claims to have sold his stock is as follows (Minute Book, C-3, p. 157; Record, p. 28, line 16; p. 29, line 22):

> "The Treasurer relunctantly stated to the Board, that owing to his continued ill health and nervous mental condition, due from strain and overwork incident to the construction of camps at Lakehurst, N. J., during the war time, that he felt it would be unwise for him to continue active in the management of the Company's affairs and asked to be relieved from further duties involving active participation in the Company's management, or that he would hand in his resignation as an officer of the Company. After a cursory and general discussion of the matter,
>
> "UPON MOTION, duly made, seconded and carried, it was
>
> "UNANIMOUSLY RESOLVED, to grant a two months leave of absence to the Treasurer, Mr. Dozier not voting.
>
> "UPON MOTION, duly made, seconded and carried, it was
>
> "FURTHER RESOLVED, that should the Treasurer at any future time, and at his pleasure, withdraw from active management of the Company's affairs, his stockholdings in the Company shall be purchased by the Charles R. Hedden Company at the book value per share at the closing of business for the fiscal year ending December 31st, preceding his intention to withdraw and date of resignation."

The Vice-Chancellor, although he discusses the resolution, made no finding of fact with respect to it (Opinion, pp. 31-40).

The Bill prays that this resolution be decreed to be void (p. 21, lines 10-15), but the decree makes no mention of it whatever (Decree pp. 41-42).

The final decree appealed from adjudicates no equitable relief whatever. It recites that the defendant fraudulently obtained from the complainant a check for $65,219 (p. 41, line 30), and orders that the defendant pay to the complainant the said $65,219 with interest (p. 42, line 20).

This is purely a money judgment, by decree of a court of equity, for which the complainant had an adequate remedy at law (See Answer, p. 30, line 38).

I.

The stock was sold by the defendant and purchased by the complainant pursuant to the valid resolution of the Board of Directors of the complainant passed August 15, 1922.

To understand the resolution it is necessary to go back some months into the history of the complainant company.

In January of 1922 the Company was owned by four men, Mr. Hedden, who had a 45% interest, and Messrs. Dozier, Doe and Wathey, who had a 55% interest (p. 73, line 20).

Doe became dissatisfied with Hedden's management of the Company, as appears from a letter which he wrote Dozier, dated December 6, 1921 (Exhibit D-1, p. 75, and p. 528). In that letter he complained that Hedden "seemed to be absorbed with a desire to be supreme both in stock

control and administration" (p. 75, line 35). The result was, after some negotiation, Doe and Wathey sold out, for $150 per share, their total holdings of 210 shares (Hedden, p. 78, line 28), and that stock was divided between Hedden and Dozier (p. 264, line 28).

In this transaction Hedden says he paid $10,500 and the complainant company put up the balance (Hedden, p. 78, line 33).

That, in itself, created a precedent for the purchase of stock with the funds of the Company.

Following the purchase of the Doe and Wathey stock Fisher came into the Company.

His coming in was preceded by negotiations which resulted in his purchasing certain shares of stock. This was new stock which was issued for him (Dozier, p. 265, line 40).

Hedden admits that he conferred with Fisher at the Union League Club, New York (p. 80, line 10).

The purchase of the Doe and Wathey stock gave Hedden control of the Company (Dozier, p. 266, line 35). Previous to that the control had been with Messrs. Dozier, Doe and Wathey (Dozier, p. 340, line 15).

If at that time Dozier had wanted to obtain control of the Company, which the Bill charges that he did, he could easily have accomplished his purpose by acquiring the Doe and Wathey stock, since, as the letter of Doe to Dozier shows (Exhibit D-1, p. 528), Doe had none too friendly a feeling for Hedden.

Hedden evidently appreciated this, for he asked Dozier: "Wallie, you are not going to put me out of the Company, are you?" (Dozier, p. 328, line 20).

At the time Hedden was given control of the Company, through the purchase of the Doe and Wathey stock, he promised Dozier "we would have some paper to protect us, in case one of the partners

would withdraw" (p. 266, line 35). He never gave him such a paper, however, but in lieu thereof agreed to the resolution of August 15, 1922 (pp. 340, lines 12-35).

The fact that Hedden had control, through the purchase of the Doe and Wathey stock, naturally gave his associates, Messrs. Dozier and Fisher, some concern as to their future in case of the death or retirement of Hedden. This is evidenced by the drafting of two different agreements designed to meet such a situation (Exhibits D-2, p. 531, and D-3, p. 533), neither of which, however, was signed by Hedden.

Exhibit D-2 was dated February 23, 1922, and was between Hedden, Dozier, Fisher and Toothe, and recites that it is the desire of each of the parties that in case of the death or retirement of any of them the remaining stockholders shall have the first opportunity of purchasing the stock of the one so dying or retiring.

Fisher says that he had several conferences with Hedden at the Union League Club, New York, and (p. 482, line 20) "I was given to understand by Mr. Hedden that he would make an agreement with the stockholders of the Company giving us an opportunity to purchase his stock in the event of his retirement or death" (p. 482, line 27).

Fisher came into the Company in January, 1922, and the next development was the presentation of the draft of agreement, Exhibit D-2, dated February 23, 1922 (Fisher, p. 483, line 3). Dozier says that at the time Doe went out and Hedden was given control of the Company, "Mr. Hedden promised me, at my house, at the time that we would have some paper to protect us in case one of the partners should withdraw" (p. 266, line 35).

Hedden identified D-2 as the draft of the contract (p. 81, line 25).

Hedden declined to sign the agreement, and con-

ferences and conversations about the matter, between Hedden and Dozier, dragged on until the Summer of 1922 (Dozier, p. 267, line 15).

In the Summer of 1922 Dozier was in bad health, due to excessive work on the Lakehurst Camp (Dozier, p. 268, line 10). Because of his poor health he wanted to retire from the Company. His associates, Hedden and Fisher, thought that a good vacation would fix him up. The matter came up at the meeting of the Board on August 15, 1922. Fisher says (p. 487, line 12):

> "Mr. Dozier was in very bad health at that time, had considerable ear trouble and was rather broken down and wanted to take a vacation. The subject of his leaving the company was brought up at the meeting and the subject of his taking a vacation was brought up. We all felt if he took a vacation he would be much better so I introduced the resolution giving him two months vacation."

This corroborates Dozier where he said on cross-examination: "I asked to be relieved from the Company. I contemplated retiring from the Company" (p. 341, line 26).

He said further, on cross-examination (p. 341, line 30):

> "I further went and asked that owing to my ill health that I would like to be relieved entirely from the company. Mr. Fisher at the time talked it over with Mr. Hedden that a couple of months would pull me around all right. If it didn't I would like to get freed from the company for at least a year or entirely so. Then the resolution was passed to give me two months vacation, and following that discussion I introduced the resolution that the company purchase my stock in the event of my retirement from the company."

He said further, on cross-examination, that he had previously talked it over with Mr. Hedden, re-

ferring to the agreement, Exhibit D-3, and testified (p. 342, line 3):

> "three or four days from the time the agreement came up Mr. Hedden said, 'I can't sign this agreement, Walter, but you can make an agreement with the company to buy your stock in the event you retire,' and I said, 'Mr. Hedden, that will suit me just as well.' "

Remember that the resolution recites the fact of Dozier's ill health; that he felt it unwise to continue active in the Company's affairs, and asked to be relieved or that he would hand in his resignation; and the motion was that he be granted a two months' leave of absence.

The book value, as of a given date, was always agreed upon between Hedden and Dozier as the purchase price of the stock.

Now it appears that prior to that meeting the conversations between Hedden and Dozier had progressed to the point where the other draft of agreement had been drawn up (Exhibit D-3, p. 533). This agreement was between Hedden and Dozier only, and recited that Hedden was the owner of 455 shares and Dozier of 275 shares, and that it was the mutual desire of the parties that their respective interests in the Company should be provided for against the contingencies of their death, retirement or disability, and the agreement provided (Paragraph 1), (p. 534, line 12) in the event that either party should retire or be disabled the other party should have the first right or option to purchase as many shares as he desired "at a price representing the book value thereof at the date of exercising the said right or option to purchase" (p. 534, line 22).

Paragraph 2 provided that, upon the death of Hedden, Dozier should have the right to purchase

so many shares as, together with those which he held, would constitute a majority, and Hedden had the right, upon the death of Dozier, to purchase all of his holdings (p. 534, line 35).

Both this agreement, D-3, and the previous draft of agreement, D-2, fixed the book value as the price to be paid. Under D-2 it was to be the book value as of the date of death. Under D-3 it was to be the book value as of the date of exercising the option.

The important fact is that, beginning with February, 1922, on down through August, 1922, the minds of the parties evidently met on the book value as of some given date as determining the price which should govern the sale of the stock. There is some dispute in the testimony as to whether this agreement, D-3, was presented and discussed prior to the meeting of Augut 15, 1922. It is dated the blank day of August, 1922.

The agreement D-3 was discussed prior to the resolution of August 15, 1926.

The Vice-Chancellor took the view that the agreement D-3 was discussed after August 15, 1922. In so finding, we say, the Vice-Chancellor misapprehended the facts.

Both the weight of the evidence and the logic of the events indicate that it was presented and discussed prior to the meeting of August 15, 1922.

Dozier said it was presented to Hedden a few days before August 15th (p. 267, line 30); that Hedden refused to sign it because it would cause a complication in his estate in case of his death (p. 309, line 20); and that, as a result, he promised to give Dozier in the form of a resolution that the Company would purchase his stock in lieu of signing the agreement.

Dozier testified (p. 309, line 35):

> "In December, 1921, just before Mr. Doe went out, Mr. Hedden was at my house and after

> we agreed upon the purchase of Mr. Doe's stock, Mr. Hedden agreed that we could have an agreement between us respecting the sale and purchase of the stock in the event of death. That was followed down in that summer of 1922. Mr. Hedden finally refused to sign that, or the other agreement. The result was he promised to give me, in the form of a resolution, that the company would purchase my stock in lieu of signing these agreements. At the meeting of the board on August 15, 1922, after the vacation was granted to me, then I made the resolution that the company would buy my stock in case I wanted to retire, at the book value of the preceding or any year ending December 31st.
>
> "Q. And that was unanimously adopted, was it? A. That is how it was adopted."

Hedden says that Dozier submitted the agreement, D-3, on August 16, 1922 (p. 82, lines 15-27), and claims to have made an entry in his so-called diary, which the Vice-Chancellor alludes to (p. 38, line 18).

This so-called diary was a little memorandum book in which he occasionally jotted down things. He says that he only made notes in it of "important matters" (p. 52, line 30). A fair idea of the importance of the matters which he entered appears from this entry, under date of August 15, 1922 (p. 53, line 1), where he says: "To Newark by trolley" (p. 53, line 8).

Furthermore Hedden, notwithstanding his so-called diary, had some doubts about the date. When finally asked if this agreement, D-3, was submitted to him on August 16, 1922, all he would say was—"possibly so" (p. 82, line 27).

There would be no logical reason why Dozier would submit to him the agreement after the meeting and resolution of August 15th, and the common sense of the situation is that which Dozier testifies to, namely, that the resolution was given him by

Hedden as a substitute for his insistence that Hedden sign an agreement, coupled with the reluctance of Hedden to sign the agreement because it would complicate his estate. There would, of course, be no complication arising out of a resolution of the Company.

The resolution of August 15, 1922, was passed to the knowledge of Hedden and he voted for it.

The claim is now made by the complainant that the resolution of August 15, 1922, appearing in the minute book (Exhibit C-3, pp. 157 and 158) not only was never passed, but that the meeting never was held, and that other meetings, minutes of which appear in the minute book, were not held. The Bill does not go as far as that. It alleges that the resolution of August 15, 1922, was not passed at the meeting of that date. The Bill expressly implies the various meetings were in fact held (p. 14, line 12; p. 14, line 39). The overwhelming weight of the evidence is that the meetings were held and that the minutes correctly record the business transacted.

The Vice-Chancellor did not find that the meetings had not been held, or that the minutes were not truthful records; he ignored that phase of the case entirely and decreed a money judgment based solely on fraud, and in so doing seems to have completely overlooked the fact that, on the theory of the case as expressed in his opinion, the complainant has an adequate remedy at law.

Complainant claims that the meetings were not held, and that the records of them are false. The claims cannot stand, and the complaint in so claiming and seeking to prove at the trial has "o'er leaped itself". Mr. Hedden "protests too much".

The evidence to contradict complainant's claim of false records in the minute book, and particu-

larly the resolution of August 15, 1922, includes the following:

(1) The minutes are signed by both Hedden and Toothe;

(2) The resolution is set up in the Bill of Complaint in the suit of *Toothe* v. *Doozier* in the Court of Chancery as having been passed by the Board; and also in an Action at Law on Conspiracy;

(3) The resolution is sworn to by Toothe as having been passed, in an affidavit which was submitted to the Prosecutor of Essex County.

(1) The minutes are all signed by Hedden and Toothe.

The minute books (there are two) cover some 229 pages (p. 546, line 23) and a period of seven years. It is incredible that these voluminous minutes could practically have all been manufactured to the extent in volume and during all that time, and the fraud never detected, particularly since the minutes are signed by Hedden and Toothe.

The minute book contains minutes of a meeting held March 9, 1922, which Hedden admits are signed by him and Toothe (p. 87, line 1), in which the opening of an account is authorized with the Springfield Avenue Trust Company, and a contract is authorized with Cushman & Wakefield, Inc. for the rental of offices at 342 Madison Avenue, New York. Although the holding of this meeting is denied by Hedden and Toothe, it is corroborated by the pass book of the Springfield Avenue Trust Company containing the first entry March 10, 1922 (Exhibit D-2, June 11, 1925, p. 513, line 30), and is also corroborated by the lease with Cushman & Wakefield, Inc., dated March 13, 1922 (Exhibit C-3, June 11, 1925, p. 513, line 36).

The meeting of May 16, 1922 (C-3, pp. 150-151), is likewise denied, although the minutes are signed by Hedden and Toothe. These minutes authorize the execution of contracts with J. S. Rippel and Montclair Essex Trust Company.

The minutes are corroborated by the Rippel contract (Exhibit C-4, June 11, 1925) dated May 23, 1922 (p. 514, line 3), and the contract with the Montclair Essex Trust Company, dated May 27, 1922 (Exhibit C (D)-5, June 11, 1925, p. 514, line 13).

The meeting of June 20, 1922, is likewise denied, although the minutes are signed by Hedden and Toothe (Minute Book, C-3, pp. 152 and 153), and bear internal evidence of being genuine from the fact that they refer to negotiations in the Kelly Tire & Rubber Company matter and approve an alteration in the Rippel contract.

The same claim is made for the meeting of July 5, 1922, although the minutes are admittedly signed by Hedden and Toothe, and refer further to the Kelly Tire & Rubber Company matter.

The meeting of August 15, 1922—which contains the important resolution—is likewise denied, although the minutes are admittedly signed by Hedden and Toothe and corroborated by other documents.

The minutes of this meeting state that a bond had been given to the New York Edison Company in connection with its contract (Minute Book, Exhibit C-3, p. 156). This is corroborated by the bond (Exhibit C-6, June 11, 1925, p. 514, line 19).

The minutes of this August 15th meeting (C-3, p. 158), recite a report of E. H. Hayes, Internal Revenue Inspector. This is corroborated by the production of the report (Exhibit D-7, June 11, 1925, p. 514, line 26). The minutes also show the approval of the New York Edison Company

contract for the same amount as that fixed in the bond.

Toothe's denial of the resolution for the purchase of Dozier's stock is the more astonishing when one examines the minute book. There, on the margin of page 158 of the minute book (C-3), right opposite this very resolution, are the initials of Toothe, in his own handwriting—"J H T" over the word "Secretary".

Again, the signature of Toothe to the minutes of the August meeting is greatly at variance with his signature of the minutes of the October meeting.

Toothe claims that he signed those minutes at one sitting in the Fall (p. 162, lines 20-40), but the character of his two signatures is so vastly different as to make it impossible that they could have been written at one sitting.

The fact is these two sets of minutes were not signed at one sitting and the character of his handwriting disproves his claim that they were.

What more is needed, either to impeach Toothe's testimony, or to uphold the integrity of the resolution?

The meeting of October 17, 1922, at which the minutes of the meeting of August 15, 1922 were read and approved, is also denied, although the minutes are signed by Hedden and Toothe and a large amount of business was transacted, much of which is corroborated by other documentary evidence.

The decision of the Connecticut Court in the Connecticut Court in the Kelly Tire & Rubber Company matter is set forth at length, and also the bond to be given in connection therewith.

The bond, a copy of which appears in the minute book (C-3, p. 163), was produced as Exhibit D-9, June 11, 1925, (p. 514, line 40).

The letter to the Fidelity Trust Company, which is set forth in full in the minute book (C-3, p. 165),

is corroborated by the same letter (Exhibit C-10, June 11, 1925, p. 515, line 10).

At this same meeting of October 17th the opening of an account with the North Ward National Bank was authorized (C-3, p. 161), and this is corroborated by the pass book of the North Ward National Bank (Exhibit D-8, June 11, 1925), the first entry being October 24, 1922 (p. 514, line 30).

So also the meeting of December 19, 1922, is denied, although the minutes are admittedly signed by Hedden and Toothe, and the business there set forth is corroborated by other documentary evidence.

The minutes show the ratifying of a contract with the First National Bank of Madison (Exhibit C-3, p. 169). This is corroborated by the contract (Exhibit D-11, p. 515, line 17).

The minutes also show the ratifying of a contract with the New York Telephone Company. This is corroborated by the contract (Exhibit C-12, June 11, 1925, p. 515, line 25).

The meeting of January 16, 1923, is denied, although the minutes show that the President (Hedden), presented a financial statement which is set forth in full on page 173*a* of the Minute Book (Exhibit C-3), and the minutes are signed by Hedden and Toothe. In addition to that, Toothe, as Secretary of the Company signed and sealed a certificate for the Fidelity Union Trust Company, certifying to a resolution passed by the Board of Directors on January 16, 1923, authorizing the officers of the Company to negotiate a loan for $25,000, and signed and sealed a similar certificate for the Springfield Trust Company, passed on the same day (See Exhibits D-24 and D-25, pp. 544-545).

At first Hedden testified that none of the meetings had been held, and that the minutes thereof, although signed by him and Toothe, were false.

He said he so testified because he had no minute in his so-called diary of these meetings (p. 84, line 34). He testified that he depended upon the minutes in his diary, and that he had no independent recollection. This in answer to questions by the Court (p. 94, line 16). The diary was not offered in evidence, or even marked for identification.

As already shown, the so-called diary was a most fragmentary affair, and it is absurd to set if off against the complete records in the minute book, supplemented as they already are by the other documentary evidence in the case, and attested, in addition, by the signatures of Hedden and Toothe.

When pressed, on cross-examination, to say that his grandson Toothe had certified and sealed a certificate that the minutes were correct, contrary to fact, Hedden weakened and said: "To the best of my knowledge and belief they were not held" (p. 95, line 12).

He finally shifted his position entirely. He was asked and answered, on cross-examination, as follows (p. 95, line 36):

> "My question is, after going through all these minutes which bear your signature and that of Mr. Tooth and the seal of the company, you now say that Mr. Tooth, your grandson, certified to a series of minutes of meetings which never were held, do you say that? A. No; I wouldn't say that at the present time."

In connection with that see the testimony of Fisher: "I have seen him (Hedden) looking through and reading the minute book on the desk many times" (p. 484, line 25).

(2) Hedden's testimony that the meetings were never held and the minutes were false, particularly the meeting and minutes of August 15, 1922, was further and completely discredited by his own admissions with respect to the allegations in the Bill

of Complaint in the suit of *Toothe* v. *Dozier,* 96 N. J. Eq. 46 and p. 601, and in the suit at law in the Supreme Court of *Charles R. Hedden Company* v. *Dozier, et al.,* and also by the complete collapse of the testimony of Toothe on cross-examination.

Paragraph 4 of the Bill of Complaint in the suit of *Toothe* v. *Dozier* on file in the Court of Chancery (Exhibit D-5, p. 100, line 32), is as follows:

> "4. That at a meeting of said Board of Directors held on said last mentioned day a resolution in the form following was adopted:
>
> " 'Further resolved that should the Treasurer at any future time and at his pleasure withdraw from active management of the company's affairs, his stockholdings in the company shall be purchased by the Charles R. Hedden Company at the book value per share at the closing of business for the fiscal year ending December 31st preceding his intention to withdraw and date of resignation.'
>
> "All of which will appear by reference to the minutes of the said company."

Hedden admitted that he had retained Mr. Lum on behalf of Charles R. Hedden Company to bring this suit (p. 98, line 25); that he was consulted when the Bill was drawn; that he sat there when Mr. Lum dictated it; that he knew what went in it, and that he knew that paragraph 4 was in the Complaint and never told Mr. Lum to change or correct it (p. 100, lines 1-28).

The whole theory of that *Toothe* case was that the resolution of August 15, 1922 had been passed by the Directors but that it was *ultra vires* and void and should be set aside.

See the Opinion of the Chief Justice, *Toothe* v. *Dozier,* 96 N. J. Eq. 601.

Equally damaging to complainant's claim is the allegation in the suit at law of *Charles R. Hedden Company* v. *Dozier et als.*, Summons dated July 1, 1924 (Exhibit D-6).

Paragraph 6 of the Complaint in that action says:

> "6. That in August, 1922, when the Board of Directors consisted of Charles R. Hedden and the defendant Walter J. Dozier and the defendant Harold F. Fisher, the said Board of Directors adopted a resolution, of which the following is a true copy",

and then follows the language of the resolution as set forth in paragraph 4 of the Bill of Complaint in the *Toothe* case, and as appears in the minute book (C-3, p. 158).

Again Hedden admits that he had conferred with Mr. Lum about bringing this action at law in the name of the Charles R. Hedden Company; that he knew all about it (p. 101, line 5); that he saw the Complaint after it was drawn and he remembered that in the sixth paragraph of that Complaint it recited as above quoted, and that it was true, and that he had never instructed Mr. Lum to change it (p. 101, lines 1-40).

In view of this mass of testimony how can the uncertain original statement of Hedden, that the meeting of August 15th had not been held because he had no record of it in his so-called diary, be believed?

(3) Toothe also undertook to deny the holding of the meetings and the genuineness of the minutes, but he was completely discredited on cross-examination.

He swore that he was not present at the meeting of August 15, 1922, and never heard of it until January 17, 1924 (p. 136, lines 8-18). He also testified that he had never read the minutes (p. 136, line 5),

although he admitted that he had signed and sealed them in every case.

On cross-examination he was confronted with an affidavit which he had made for the purpose of being submitted to the County Prosecutor with the view of having Dozier proceeded against criminally.

He said that he was twenty-eight years old and knew what it was to take an oath (p. 146, lines 30-36).

He admitted signing and swearing to the affidavit to be presented to the Prosecutor, and that the affidavit contained the following (p. 150, line 15):

> "That he is a stockholder of Charles R. Hedden Co., a corporation of New Jersey; that on August 15th, 1922, he was not a member of the board of directors and at that time a resolution, on which he had no power of voting, was submitted to the then board of directors consisting of Charles R. Hedden, Harold F. Fisher and Walter J. Dozier. Said resolution was as follows:
>
> " 'Further resolved that should the treasurer at any future time and at his pleasure withdraw from active management of the company's affairs, his stockholdings in the company shall be purchased by the Charles R. Hedden Co. at the book value per share at the closing of business for the fiscal year ending December 31st preceding his intention to withdraw and date of resignation.' "

Against that, contrast his testimony that he was not even at the meeting.

He testified (p. 136, line 7):

> "Q. And were you present at a meeting in August, 1922, when a resolution was passed, touching the purchase of Mr. Dozier's stock by the company? A. I was not.
>
> "Q. Are you quite sure? A. Absolutely."

He admitted that he would swear to anything that was put before him (p. 148, line 1). On being pressed on that statement he tried to besmirch his attorneys by saying: "If my attorneys advise me,

what they say". This aroused the Court to say: "Do you understand what you are saying?", and he said: "I think so" (p. 148, lines 5-20).

His attention was called, on cross-examination, to the fact that his grandfather, Hedden, had signed the minute book and that he had signed and sealed it, and he was asked if it was all false, and he said "No" (p. 151, line 35). Then he intimated that some of them were false, but that he had "signed on somebody's orders" (p. 151, line 40). He was then asked, and answered, as follows (p. 152, line 14):

> "Q. You signed on somebody's orders. Who gave you orders?
>
> "A. I say, I don't know whose orders. Counsel's orders.
>
> "Q. Counsel told you to swear to this although it was not true? A. (No answer)".

Here was another attempt to besmirch his counsel, and, in addition to its being outrageous in itself, was completely absurd for the reason that there is no suggestion or pretense in the case that the complainant's counsel had anything to do with the holding of Directors' meetings or the making of minutes, and, of course, he could not have signed the minutes on "counsel's orders".

Not only is the claim of the complainant that the resolution of August 15th was not validly passed totally disproved by the documentary evidence, as well as the breakdown of Messrs. Hedden and Toothe on cross-examination, but the positive testimony of defendant's witnesses operates to further disprove complainant's claim in this respect.

Toothe was elected Secretary in February, 1922, but assumed no responsibility as such until the Summer of 1923. Meanwhile Dozier, although

Treasurer of the Company, continued to write up the minutes of the Directors' meetings.

Toothe says that Dozier volunteered to do this. Dozier says that Toothe asked him to continue to write up the minutes.

It is immaterial which is the fact, except that a sinister inference was sought to be adduced from the fact that Dozier continued to write up the minutes. This inference is not justified by any of the facts in the case. It was common knowledge around the office that Dozier continued to write up the minutes after Toothe became Secretary. Moreover, the minute book was customarily kept on the shelf of the steel safe cabinet, where it was visible to and accessible by anybody desiring to consult it.

Complainant's claim was that Dozier did not write up the minutes until long after the meetings had been held, and that he concealed the minute book, particularly while he was away in California in the Summer of 1922.

Neither of these allegations was true.

Dozier says that he was accustomed to take notes of the minutes in the meetings on an office yellow memorandum pad, and within a few days after the meeting dictate the minutes to Miss Jackson. The dictation was not written out by her in shorthand, but was transscribed direct on the machine, (Jackson, p. 466, lines 20-28), and that explains the testimony of some of the witnesses that they had seen Dozier, from time to time, standing near Miss Jackson with a yellow memorandum pad, for long periods at a time, dictating minutes.

Toothe said that he has seen Dozier make notes on a yellow memorandum pad in the meetings, and has also seen him dictate to Miss Jackson from this yellow memorandum (Toothe, p. 164, line 10). Aubin also admits that he has seen Dozier dictating minutes to Miss Jackson after a meeting

(p. 200, line 5). Miss Jackson says he dictated to her from a yellow memorandum (p. 469, line 28), and Dozier says the same thing (p. 268, lines 27-36).

Fisher also says that he has seen Dozier dictating minutes to Miss Jackson; that there were no long intervals between the date of the meeting and the writing of the minutes, and that he knew this from being in the office and seeing what they were doing (p. 486, lines 5-30).

The query naturally arises—how could Toothe and the others have seen Dozier taking notes in the meetings on the yellow memorandum pad, and subsequently dictating to Miss Jackson, if, as Toothe and Hedden claim, no meetings were held and no minutes prepared?

The Bill alleges (Par. 11, p. 12) that the defendant kept the minute book locked up in his private compartment in the safe. The proof was entirely to the contrary.

Hedden claimed that Dozier had not only concealed the minute book while he was in California in the Summer of 1922, but had also concealed it on other occasions. He said that Dozier kept the minute book in his private safe (p. 56, line 5).

On cross-examination it developed that his basis for that statement was that he had sent for the book and it could not be located. He said he sent for it three times; once when Dozier was in California and the other two times he could not say when. He said that when Dozier was in California Aubin reported that he could not find it. Then, finally, he admitted that he could not say whether it was in 1922 or 1923, or when it was, that he wanted the book (p. 106, line 25; p. 107, line 40).

The testimony is positive that the minute book was kept on the shelf in the steel safe cabinet. Toothe admits that he saw the minute book on the shelf (p. 164, line 23).

Dozier says it was kept on the shelf in the safe, "wherever Miss Jackson used to put it" (p. 274, line 18). Miss Jackson says it was kept on the first or second shelf of the cabinet (p. 451, line 33). Miss Ferry says the same thing (p. 472, lines 10-16).

Hohenhausen, who had been connected with the complainant company, said the steel cabinet was in the room adjoining his, and that the cabinet was open and accessible and he saw the minute book on the shelf (p. 475, lines 12-24).

The specific claim that Dozier locked the minute book in his private safe while away in California in 1922 is equally disproved.

Aubin says he would not swear that it was always kept in that locked box (p. 195, line 40). Dozier says that he wrote up the minutes of the August 15, 1922 meeting before he left for California; that after they were written up he saw them signed by Hedden and signed and sealed by Toothe (p. 273, lines 15-40), and that the book was then put on the middle shelf of the cabinet (p. 275, line 25).

As to his private box, it contained a duplicate copy of the minutes, which, from the beginning of the Company, he had had written up as a protection in case the original book should become lost (p. 275, line 5, and p. 408, line 30) some private papers and some bottles of whisky. While he was away in the Summer of 1922 and also 1923, this compartment was left unlocked, and Hohenhausen says that he personally opened it so as to get at the contents (p. 476, lines 10-20), and that he did not see the minute book in there. On the contrary, he says the minute book was kept in the steel cabinet, where it was accessible, and that he had seen it on the shelf there (p. 475, lines 12-24). He said further that Toothe's desk adjoined his and that he had seen him sign and stamp the minutes (p. 475, line 28).

Fisher says that while Dozier was away in California in the Summer of 1922 he became curious to see what salaries had been paid the officers before he came into the Company and took the minute book from the shelf in the safe cabinet for the purpose of examining it (p. 489, line 30).

The August 15, 1926, minutes were written up and signed by Hedden and Toothe before Dozier left for California on August 22nd.

The fact that the minutes of the August 15, 1922 meeting, containing the resolution for the purchase of the stock, were written up by Dozier prior to his leaving for California is conclusively proved by Miss Jackson.

August 15, 1922, as the calendar shows, was a Tuesday. Dozier says that he wrote the minutes up by the following Thursday (p. 273, line 13), and left for California on August 22nd; that before he left he saw them signed by both Hedden and Toothe (p. 273, lines 20-30).

Miss Jackson specifically identified the minutes of August 15, 1922 from the fact that the record on page 158 contains a notation in her handwriting. The resolution granting Dozier a two months' leave of absence reads (Minute Book, Exhibit C-3, p. 158):

> "UNANIMOUSLY RESOLVED to grant a two months leave of absence to the Treasurer, Mr. Dozier not voting".

The words, "Mr. Dozier not voting", as the minute book shows, are written in with a pen. Miss Jackson says that is her handwriting (p. 449, line 32; p. 450, line 8); that after she had written the minutes up she put them on Dozier's desk, and that he brought them back and told her to add those words, "Mr. Dozier not voting"; that she did write

those words in, and that they were written in the minutes before Dozier left for California (p. 450, lines 10-40).

The Court carefully examined Miss Jackson on this, and her testimony under her cross questions was as follows (p. 450, line 20):

> "Q. How do you know that? Have you any recollection of having done that? A. Yes, sir; I have.
>
> "Q. What is it? A. Immediately after Mr. Dozier read the minutes over he handed me the book back again.
>
> "Q. That was his common practice? A. To write this in.
>
> "Q. Yes. But what is there in the circumstances that enables you to say that you did that writing—typewriting of that meeting before Mr. Dozier left? A. The incident of my writing it.
>
> "Q. What is there about that that brings it back to you now that you wrote it in before he left? Is there anything at all? A. No; only that I recall it.
>
> 'Q. How do you recall it was before he left or that you wrote it in after he came back? A. Well, it was before the minutes were signed, and the minutes were signed before he went away.
>
> "Q. How do you know that? A. Because the book was back in the safe again before Mr. Dozier—when Mr. Dozier was going away everything was left—and the minutes were brought up to date before Mr.—the minutes and all the records of the company were brought up to date as far as Mr. Dozier knew and I remember writing that in.
>
> "Q. Before he left? A. Yes, sir."

Miss Jackson further said that it was the practice for Hedden to sign first (p. 448, line 10); that she usually put the book on Dozier's desk, but if he was not there she put it on Hedden's desk and that Hedden brought it back to her (p. 448, lines 20-30), and that she bound the loose leaves of the minutes

in the book after typing them and put the whole book, properly fastened up, on Hedden's desk (p. 449, lines 1-8).

The minutes of the meeting of August 15, 1922, were read and approved at the meeting of the Board, at which all were present, held on October 17, 1922 (Minute Book, Exhibit C-3, pp. 161 to 171), and the business referred to in those minutes as having been then transacted is corroborated by other documentary proof in the case.

It appears from an examination of the minute book that it was customary to read and approve the minutes of the previous meeting. The minutes in every case so state.

Fisher testified it was always customary to read the minutes of the previous meeting (p. 486, line 34).

In addition to that, the proof is positive that at the October meeting the minutes of the August meeting were read and approved—there had been no September meeting because of the absence of Dozier in California. Dozier says he remembers the reading of the previous minutes at the October meeting because the discussion came up about the bond in connection with the Kelly Tire & Rubber Company matter, and he asked that the minutes of the previous meeting be read (p. 276, lines 7-20). He says that Toothe read the minutes of the August meeting (p. 276, line 23).

Fisher says that the minutes of the August meeting were read at the October meeting. He remembers it because it was right after Mr. Dozier's return (p. 490, lines 20-40). The Court asked him if he had a mental picture of what occurred and he said: "A fair mental picture; yes, sir". He also remembered the Kelly Tire & Rubber Company matter which came up at that meeting (p. 491, lines 1-14).

An effort was made to discredit Fisher's testi-

mony on cross-examination by referring to an occasion in January, 1924, when he and Hedden were at Mr. Lum's office. Fisher admits that he said on that occasion that he had "no recollection of any resolution of August, 1922" (p. 504, lines 3-10). It appeared that on that occasion when he was questioned by Mr. Lum that he was not telling all that he knew because, as he said toward the close of his testimony, "I was entirely in sympathy with Mr. Dozier" (p. 513, line 13). Very evidently the effort of Hedden and his counsel to secure an admission from Fisher that the resolution of August 15, 1922, had not been passed failed.

The resolution of August 15, 1922, settled the matter. No further corporate action was necessary. Nevertheless, Hedden wanted a further resolution introduced at the meeting on January 15, 1924. Dozier testified (p. 321, line 35):

> "Q. Now when in the course of the meeting did you offer a resolution, which it appears you did offer, affirming the previous resolution—(interrupted). A. Yes sir, I did.
>
> "Q. Why did you do that? A. I did that in accordance with the agreement that Mr. Hedden and myself had on Saturday, January 5th.
>
> "Q. What was that agreement? A. Mr. Hedden wanted me to present to the board another resolution confirming the previous resolution, after he had declined to take my—after he declined to pay me—or I declined to take his notes in payment of the stock. I told Mr. Hedden I didn't care anything about his notes, the company could take his notes and discount the notes."

And he said that Exhibit C-6 (p. 522), which was the yellow memorandum copy of this resolution, was prepared by him in accordance with his understanding with Hedden on January 5th, and in confirmation of it (Dozier, p. 322, lines 18-25).

It is plain to be seen from the testimony, that

the nerves of Hedden were on edge at this meeting of January 15, 1924. He was presiding, as usual, but the moment Dozier registered some complaint against Toothe for having failed to write up the previous minutes, Hedden, in anger, jumped from the chair and called on Fisher to take it (Dozier, p. 321, line 30), (Fisher, p. 493, line 22 to p. 494, line 18). Unfortunately, Dozier selected that particular moment to introduce the resolution which had previously been requested by Hedden, and Hedden, by that time mad and upset at the prospect of losing his valuable associate, Dozier, to the amazement of Dozier, voted against it. Of course, Toothe voted with Hedden, and the motion was lost.

But, as already pointed out, the motion was entirely superfluous, as a matter of law, and was only introduced by Dozier to keep faith with Hedden, in accordance with the arrangements made at the January 5th conference (p. 354, line 30). What followed after the meeting indicates the true situation. As Hedden left the room he "stopped in the door entering Fisher's office, said to me, 'Deliver all your books, papers, stock—your stock—all your stock books and papers of the company to the new treasurer, Mr. Toothe'" (p. 322, lines 30-40). Fisher heard Hedden tell Dozier the same thing. Fisher says (p. 495, line 15):

> "As they were going out the door after the meeting was over Mr. Hedden—I heard Mr. Hedden tell Mr. Dozier to turn over his stock, bonds, papers, books and everything to Mr. Toothe.
>
> "Q. That was the evening of January 15th.
>
> "A. That was the evening of January 15th."

It was late that night, so Dozier contented himself with handing the voucher, C-10 (p. 525) to Aubin to enter in the Journal (p. 323, lines 1-20), and with making a short speech to the office staff in which he told them he "was retiring from the com-

pany after long service with Mr. Hedden and I asked them to give their loyal support to Mr. Hedden as I had done" (p. 323, lines 30-40). Fisher says he told everybody there he had got out (p. 495, line 25).

Hohenhausen says Dozier said "he was leaving that day and all his financial arrangements were made" (p. 478, line 38).

Complainant accepted Dozier's stock, and has never offered to return it.

The next day Dozier was at the office and turned over and delivered to Toothe, the Treasurer of the Company, his certificates of stock and all his books and papers. Toothe took them all. Dozier had prepared receipts therefor, all of which Toothe checked, and some of which he signed (p. 325, line 20 to p. 327, line 5). See Exhibit C-8 (p. 523).

The valuable papers, those turned over to and accepted by Toothe, were put by him in the Company's lock box in the Fidelity vault, including the Dozier stock (p. 327, line 15).

The complainant company has not tendered back this stock to Dozier. Neither in the original demand on Dozier (Exhibit D-4, p. 537), nor in its Bill of Complaint, does the Company elect to rescind the purchase. On the contrary, the Company claimed a misappropriation of funds—an obviously irrelevant claim in view of the resolution of August 15, 1922, and all the other facts in the case. To be sure, paragraph 22 of the Bill says that "complainant demanded of defendant that he take back in his possession the aforesaid certificates for his 275 shares of stock and that he refund and repay said sum of $65,219, with interest, to complainant", but that is not true in fact.

The demand which complainant made on Dozier is set forth in the letter of its counsel to him (Ex-

hibit D-4), dated January 17, 1924, which reads as follows (p. 537):

"WALTER J. DOZIER, Esq.,
90 N. Mountain Ave.,
Montclair, N. J.

DEAR SIR:

On behalf of Charles R. Hedden Co., we forthwith demand that you immediately turn over to the company the check for $65,219.00 misappropriated by you from said company without authority, right or permission.

Unless this request is complied with forthwith, it will be necessary for us to take proceedings without further notice. We ask that you communicate with us immediately upon receipt of this or at once 'phone your lawyer, asking him to take the matter up with our Mr. Ralph E. Lum or Egbert J. Tamblyn.

Very truly yours,

LUM, TAMBLYN & COLYER."

This form of demand lays the foundation for a suit at law. It contains no suggestion of a rescission, or a restoration of the status quo by a return of stock upon repayment of the money.

Following the determination of this Court, striking out the Bill in *Toothe* v. *Dozier,* 96 N. J. Eq. 601, the complainant company commenced an action at law in the Supreme Court against Dozier and others, alleging conspiracy and demanding damages in the amount of $150,000 (p. 100, line 40 to p. 102, line 10).

After the commencement of that action complainant completely shifted its position, by filing the Bill in the suit at bar. In the present Bill the complainant has stated the facts and attempted (unsuccessfully, we believe) to prove them, exactly opposite from the allegations made in the Conspiracy case and the suit of *Toothe* v. *Dozier.* The Vice-Chancellor passed all these over by say-

ing "they were matters of pleading, dictated by counsel, who assumes responsibility", &c. (p. 40, line 13), but they are more than matters of pleading.

Toothe's affidavit (pp. 148-150) was not a matter of pleading, but a sworn statement of fact.

Nor were the statements set forth in the Bill in *Toothe* v. *Dozier* and in the complaint in the Conspiracy case merely matters of pleading.

Hedden admitted on cross-examination that he was consulted when the Bill of Complaint in the Toothe case was drawn; that he sat there when Mr. Lum dictated it; that he knew what went into it; and that he knew that paragraph 4, which stated that the resolution had been adopted at a meeting of the Directors held on August 15, 1922, was in that complaint; and that he never told Mr. Lum to change or correct it (p. 100).

He also admitted, on cross-examination, that he had conferred with Mr. Lum about bringing the action at law in the Conspiracy case; that he knew all about it; that he saw the complaint after it was drawn; that the sixth paragraph of that complaint, which stated the adoption of the resolution, was true; and that he had never instructed Mr. Lum to change it (p. 101).

The complaint in the Conspiracy suit was filed July 21, 1924. Owen, complainant's accountant, testified that he submitted his report on June 9, 1924, and, further, that he was consulted about the bringing of the Conspiracy case; that it was after he had finished his audit, and that he went to the office of counsel and conferred with them about it (p. 239, line 30 to p. 242).

It would be a dangerous practice for the Court to ignore the plain statements of documentary evidence on the argument that some other meaning was intended or that counsel had some theory in

their mind giving a different interpretation to the plain language of the statement.

The equitable relief prayed for in the Bill is that (1) the resolution of August 15, 1922, be decreed to be void (the repayment of the money would follow necessarily from that); and (2) determination of the book value, in case the resolution should stand. The Vice-Chancellor, although he discusses the resolution of August 15, 1922, makes no finding of fact with respect to it, nor does he decree anything with respect to it.

He cut the Gordian knot by ignoring all the equitable features of the case and finding, in effect, a verdict of fraud and awarding damages in the amount of the check given in payment of the stock—$65,219 with interest.

The Answer sets up as a defense that the complainant has an adequate remedy at law (p. 30, line 38).

The relief given by the decree is no more nor less than could have been given in an action at law; in the Conspiracy case, for example, if the plaintiff company was successful.

The passage of the resolution of August 15, 1922, by the Board, to the knowledge of Hedden, as well as the other members of the Company, is overwhelmingly proved by a mass of evidence, documentary, as well as oral; against which is opposed only the unsupported word of Hedden, which is shaken on cross-examination and completely contradicted by the great weight of the evidence, and which is supported only by the completely discredited testimony of Toothe.

Even the minutes of meetings which Toothe swears were never held, are initialed and sealed by Toothe himself, as the minute book shows.

The Vice-Chancellor seems to have been unduly influenced by a number of petty little inaccuracies in the minute book, which grew out of the use made

by both Dozier and Toothe, as Secretaries, of a stereotyped form at the conclusion of their written minutes, which recited that the Chairman and Secretary were respectively present and had read the minutes, and that they were in all respects true and accurate.

That certificate was attached to the minutes of all the meetings as a matter of form.

The Vice-Chancellor comments on the record of the meeting of September 19, 1922, containing this recital (p. 39, line 1), although only Fisher and Hedden were there at the time and no meeting was held, and also on the record of the meeting of February 14, 1922, reciting Toothe's presence (p. 38, line 39), although Toothe was then on his wedding trip.

The explanation of that recital was that Hedden wanted it that way (p. 330, line 27).

The Vice-Chancellor also comments on the minutes of the meeting of October 17, 1922, which recites that the minutes of the August 15, 1922, meeting were ratified, approved and confirmed as the first entry in the minutes "when, according to Dozier, the reading was had in connection with another subject before the meeting (Kelly Tire Co.)" (p. 39, line 10).

The order in which the draftsman of the minutes stated the proceedings can hardly be taken as affecting their credibility, and the big thing in the case is that the minutes of the important meetings, particularly those of August 15, 1922 and October 17, 1922, are corroborated not only by the testimony of witnesses but by the proof which comes from the production of the instruments and papers referred to in those various minutes. Furthermore, opposite to the very entry in the minutes of October 17, of the reading of the minutes of the August 15 meeting, will be found the initials of Toothe (Ex. C-3, p. 161) on the margin of the page.

II.

The payment of $65,219 for Dozier's 275 shares of stock was in accordance with the agreement and understanding of the parties, and the Vice-Chancellor erroneously held it to be the product of fraud.

The resolution of August 15, 1922, provided for the purchase by the complainant company at the book value per share at the closing of business for the fiscal year ending December 31st preceding his date of resignation.

The earlier agreements of 1922, which were drawn up but not signed (Exhibits D-2 and D-3), both provided for a purchase at book value.

There was nothing unusual, therefore, in the language of the resolution which fixed the purchase price at the book value.

Nor was there anything unusual in the resolution which provided for the purchase of the stock by the complainant company. There was already a precedent for that in connection with the purchase of the Doe and Wathey stock (Hedden, p. 79, line 10).

During the year 1923 the retirement of Dozier and the disposal of his stock frequently came to the front. Hedden admits that Dozier was not happy and wanted to get out, and that he brought up the matter of the sale of his stock several times; that he brought up the subject frequently (p. 108, line 13 and p. 109, line 15).

Dozier says that they conferred on the matter "pretty near once every two or three weeks" (p. 279, line 17), and that it came up in connection with other matters, as, for example, the time Hedden told him to keep off of construction work (p. 279, line 35 to p. 15) also in connection with some words

they had over the Rippel job (p. 313, lines 35-40) and, as both Hedden and Dozier admit, at a conference which they had on January 5, 1924, in Hedden's office.

Toothe says that he heard Hedden at home discussing the question of the purchase of the stock "a little bit before Christmas and a little after", and he says further that Hedden and he discussed the matter at home and the price to be put on the stock (p. 154, line 35 to p. 155, line 15).

These preliminary discussions all culminated in the conference of January 5, 1924, between Hedden and Dozier.

Hedden admits that the conference was held (p. 109, line 36) and that they discussed the sale of the stock (p. 111, line 5). Hedden also admits that Dozier exhibited to him a comparative statement of the Hedden Construction Company and the Charles R. Hedden Company (Exhibit D-7, p. 111, lines 10-13), and says he may have put a copy in his desk (Book 1, p. 83). Hedden says that nothing was said about buying Dozier's stock, but that Dozier did discuss with him buying his (Hedden's) stock (p. 111, line 35 and p. 112, line 8). He practically contradicted that statement, however, in the next sentence, when he testified that he said: "Walter, if we agree on a price would you take notes for it?" (p. 112, line 12), and he admits that Dozier declined to take his notes.

In these respects Hedden and Dozier agree.

Dozier says that at the time Hedden told him to keep off the construction work he said to him (p. 279, line 40):

> "I don't like your management and you don't like me, and the best thing for us to do is to quit. Inasmuch as the company has agreed to take my stock, let's you and I get together. I am willing to sell or I am willing to buy—it is one thing or the other."

Dozier says that the conference on January 5th lasted practically all the morning (p. 281, lines 12-15); that he renewed his offer to buy or sell and fixed the price at $200. per share (p. 281, line 33); that he declined Hedden's suggestion that he take his notes; that in the course of the conversation he referred to the resolution of August 15, 1922 (p. 283, lines 3-12), and that finally Hedden said (p. 282, line 32):

> "'Walter, I don't want to buy your stock.' He says: 'The company will take your stock, and the company will give you the check, and you can go out and make up the statement in accordance with the book value of the stock as of December 31st, and he said——
>
> "Q. He said what? Try to remember his exact words as near as you can? A. He gave me to understand that I was to go ahead and make up the book value of this stock, and settle it on the basis as I proposed to him."

Corroboration of this is found in the subsequent facts. Immediately after the conference ended Hedden and Dozier emerged from the conference room smiling, and apparently in accord, Hedden, in particular, being in so happy a frame of mind as to hand out cigars to the men of the office—an unusual thing for him to do (see Dozier, p. 283, line 30; Hohenhausen, p. 477, lines 10-30; Fisher, p. 492, line 19).

The conference was held on Saturday morning. That very afternoon Dozier and Aubin, and also Fisher, got to work on the books to figure out the book value of the stock.

The Vice-Chancellor thought there was no significance to this because it was the time for the annual statement (p. 36, line 19), but this time the circumstances were different. At the conclusion of the January 5th conference, Dozier says, "He (Hedden) gave me to understand that I was to go ahead and make up the book value of this stock, and settle

it on the basis as I proposed to him" (p. 283, line 39).

Aubin admits that prior to this the purchase of Dozier's stock was "in the air" (p. 198, line 28), and that around the first of the year he "was working day and night on the books" (p. 206, line 40). He also admits that Whitehurst, an extra bookkeeper, who was a nephew of Dozier, was called in to help (p. 207, lines 10-16).

Fisher says that he was asked to co-operate on the book value and that they got to work that same day of the conference, Saturday, January 5th (p. 492, line 26).

By Friday, January 11, 1924, such progress had been made that Dozier was able to make a rough estimate that the book value would be between $225 and $240 per share. On that day he showed Mr. Hedden a yellow paper work sheet (Exhibit D-8, p. 301, lines 27-40) and told him the book value would be between "$225 and $240 per share", although Hedden denies it. At the same time he told Hedden that they had figured the profit on the various contracts as in the previous year (p. 348, lines 25-30) and that the good will was figured on a five-year income basis (p. 350, line 30). At the same time he told Hedden that the Harrison Radiator check had come in that Friday afternoon (p. 351, line 27) and that he would deposit it in Appleton's bank (p. 314, lines 10-30)—meaning the Montclair Essex Trust Company. He says he deposited the Harrison Radiator check in the Montclair bank as a matter of courtesy to Mr. Appleton.

At the same January 11th conference Dozier told Hedden that his offer, made at the conference on January 5th, to buy or sell for $200 a share would still hold good, but that Hedden preferred to carry out the purchase on the book value basis.

The Vice-Chancellor held that this made Dozier's story unbelievable (p. 37, line 2).

Dozier's explanation is that Hedden had agreed on January 5th to sell on that basis (p. 366, line 37). But there may have been deeper reasons. It may be that Hedden was hoping that the preliminary estimate was high, and that he would get the stock cheaper in the end if he stood pat on the book value.

Or it may be, knowing that "book value" is a rather elastic term, he hoped a re-audit of the books would put the book value under $200 a share.

The final figuring of the book value was not completed until the afternoon of January 14, 1924. Meanwhile and on January 11th, the Harrison Radiator check had come in and had been deposited in the Montclair bank. On the morning of January 14th, Dozier gave Miss Jackson a series of vouchers and, as was customary, instructed her to write the names of the payees in a series of checks on the Montclair bank account. He also gave her his own name to be included in one check. She typed the names in (see Miss Jackson, p. 455, line 25 to p. 456, line 40). A number of checks on the Montclair bank account were made out that day for the payment of bills. The check book (Exhibit C-11), shows that the check stubs are some in the handwriting of Dozier and some in the handwriting of Aubin (p. 187, line 30 to p. 188, line 20).

At the time Miss Jackson typed the name of Dozier on the check, on the morning of January 14th, the figuring of the book value had not been completed. Later in the day it was completed and Dozier gave her a yellow paper memorandum to be written on the back of the check as a voucher. He also gave her a separate voucher to be receipted by him and filed (Ex. C-10, p. 525).

The Vice-Chancellor says Dozier "slid" this check into the envelope with the rest and took a gambler's chance it would be signed with the rest (p. 35, line 33). With all deference to the learned Vice-

Chancellor, we think he misconstrued the facts. The inference from the language of the opinion (p. 35, line 35) is that a large number of checks were handed in by Dozier at that time, but Dozier says he put only a few checks in that blue envelope, which contained his own check, and which he placed on Hedden's desk (p. 319, line 30).

The whole transaction was set forth in plain type, both on the back of the check and in the voucher. If any concealment was intended it is inconceivable that the check and voucher should have been worded in the way that they were, and, furthermore, the check laid on Dozier's desk all the afternoon visible to any one (p. 315, line 10 and line 40).

The check (Exhibit C-5) has typed on the back of it:

> "For the purchase of 275 shares of Common stock of the Charles R. Hedden Company in the name of Walter J. Dozier."

The voucher (Exhibit D-10), reads as follows:

> "For the purchase of 275 shares of Common Stock of the Charles R. Hedden Company standing in name of Walter J. Dozier at the book value period ending December 31, 1923, in accordance with resolution of Board of Directors passed August 15, 1922, and recorded in the minute book, page 158".

How was it possible to make a more frank disclosure of the proceeding than in the language set up in both the check and the voucher?

The check for $65,219 was filled up and complete when presented to Hedden, and he signed it first.

The check at the time it was written up was a check, signed neither by Hedden nor Dozier. This is positively testified to by Dozier (p. 315, lines 15-30 and pp. 316-317).

It seems that on the evening of January 14th, Dozier had attended a dinner of the Builders Trade in New York, with his friend, John M. Ferry and had spent that night in New York with his wife at the Martinique Hotel. The check had been written up by Miss Jackson during the day and Dozier had it in his pocket and while in New York on that occasion, he showed it, unsigned, to both Ferry and his wife.

Mrs. Dozier says she saw the check filled out, but unsigned, at the Martinique Hotel on the evening of January 14th (p. 433); John M. Ferry says he saw the check filled out, but unsigned, at the Builders' Trades Club Rooms, New York, on the evening of January 14th (pp. 428-429); Miss Jackson, who typed out the check, says it was then unsigned (p. 453, lines 16-20).

She was examined closely on that subject by the Court, and said that she had a present recollection of the check and of making the endorsement on it, and that she recalled the check very well; that she had typed the name Walter J. Dozier in the morning and later in the day had typed the endorsement on the back from a memorandum which he gave her (p. 453, line 25 to p. 454, line 40). She says further that she noticed that the other checks had the amounts written in in ink except Dozier's, and "that is how I noticed Dozier's" (p. 456, line 6).

It was customary to have the amount written in in ink, and they were so written in "all but Mr. Dozier's" (p. 456, line 20).

It was proved that it was customary for Hedden to sign all checks first. Hedden says that he exercised his prerogative as President (p. 74, line 20; that he was the responsible head of the Company (p. 77, line 6).

Hedden testified that it was the usual practice

for checks and bills to be put on his desk to be signed first (p. 120, line 30 and p. 121, lines 15-20).

Fisher says Hedden always signed checks first (p. 484, line 36 to p. 455, line 25). Dozier says the same thing.

Pursuant to this practice of having Hedden sign all checks first, the checks which were written up by Miss Jackson on January 14, 1924, were put in a blue envelope and placed on Hedden's desk the next day for his signature. Hedden admitted that it was the practice to bring the checks to him in a blue envelope, which he returned in the blue envelope (p. 121, lines 10-25).

Dozier says that he personally took the blue envelope and went to Hedden's room on the morning of Tuesday, January 15th, but that Hedden was not there and did not come in until late, and that he left the envelope with the checks and vouchers on Hedden's desk.

Dozier testified (p. 319, line 32):

> "Q. Now after you got back at the office the next morning, which was Tuesday, what did you do with this check? A. Took this check with a few others, put them in a blue envelope and went to Mr. Hedden's room.
>
> "Q. Was he there? A. He was not. Mr. Hedden didn't come in until very late.
>
> "Q. What did you do with the envelope? A. I left the envelope with the checks and other vouchers for other checks on Mr. Hedden's desk.
>
> "Q. You said that you put this check C-5 in a blue envelope with other checks? A. I did.
>
> "Q. And put it on Mr. Hedden's desk with the vouchers. Was this voucher D-10, C-10, put with the other vouchers on Mr. Hedden's desk? A. It was.
>
> "Q. When did you next see the check and the voucher after you left it on his desk? A. About 2 o'clock on the 15th Mr. Hedden came from his office and gave me the vouchers and checks.

"Q. Handed them to you? A. Handed them to me personally at my desk.

"Q. And then what did you do? I turned the vouchers over to the bookkeeper and went up to the Montclair Essex Trust Company and had the check certified.

"Q. On that day? A. On the 15th of January."

The Vice-Chancellor comments adversely on this (p. 36, lines 20-28) as if there was something underhanded about it. But what more could Dozier have done than he did do to inform Hedden? They had made their bargain. The book value had been figured in the usual manner and the voucher accompanying the check, as well as the endorsement on the check itself, told the whole story.

It is inconceivable that Hedden did not know what he was doing when he signed the Dozier check. The check itself gave him ample notice of what it was. The name Walter J. Dozier is plainly typed in. The figures $65,219 are conspicuously written in in red ink. The voucher on the back of the check states in clear typewriting that it was for the purchase of 275 shares of Common Stock of the Charles R. Hedden Company in the name of Walter J. Dozier. In addition to that the voucher C-10 was also put in the blue envelope and placed on Hedden's desk.

The statement in the voucher elaborates that set up on the back of the check and states in addition that the check was for the purchase of the 275 shares at the book value for the period ending December 31, 1923, in accordance with the resolution of August 15, 1922 (p. 525).

It is impossible that a man of Hedden's acumen should not have observed this check and voucher. Hedden's counsel brought out his great business capacity and experience in the construction of great buildings in Newark and other places. The proof

was that he was careful to look over checks, vouchers, contracts, etc., particularly before signing papers. He says that he assumed the general management of the Company as its responsible head. Dozier says that Hedden carefully examined all papers which were brought to his attention, sometimes taking them home, and frequently calling in either him or Aubin to explain (p. 277, line 30 to p. 278, line 16). Fisher says that he was careful to look over minutes, bills, checks, etc., and often consulted Dozier or Aubin before signing checks (p. 484, lines 15-25). At the time he signed the Dozier check, he was alone and undisturbed in his office, and had every opportunity in the world, to read both the check and the voucher which accompanied it.

Furthermore, it appears that of the checks which were written up on the Montclair bank book on the morning of January 14th the stubs of some are in Dozier's handwriting and the stubs of others are in Aubin's handwriting. Those in Dozier's handwriting appear first, including the check to his own order. Then the book was turned over to Aubin, which gave him every opportunity to see what checks had previously been drawn on that account (see Aubin, p. 186, lines 25-40).

Is it conceivable if Dozier had intended to draw his check in a clandestine, underhand way, that he would, after drawing it and setting up in full on the check what it was for, turn the check book over to Aubin for him to go through and examine as he pleased?

Furthermore, after the check had been signed and deposited he turned the voucher, which had previously been submitted to Hedden, over to Aubin to enter in the books of the Company, which he did.

Conduct of that kind is not consonant with the fraudulent intent attributed to Dozier by the Vice-Chancellor.

The Bill alleged that Dozier, to obtain payment of his stock, had used a check previously signed in blank by the President of the Company and entrusted to him as Treasurer (p. 16, line 30).

This was utterly untrue and this claim was finally abandoned by complainant's counsel. Checks signed in blank were referred to in the evidence as "in safe" checks, because they were kept in the safe and it was so noted on the check stub.

Whitehurst, who had been employed as an extra bookkeeper to assist in making up the financial statement designed to ascertain the book value, testified that he had reconciled the check book and cash book, and that there was no entry "in safe" on the check stub corresponding to the check "Exhibit C-5" for $65,219 (p. 438, lines 17-30).

In the course of the hearing the following took place between the Court and Mr. Lum, referring to the "in safe" checks (p. 419, line 35):

> "The Court: It is not claimed that the original checks were misused.
>
> "Mr. Lum: Not at all."

And, again, the following took place between the Court and counsel for the defendant (p. 420, line 13):

> "The Court: Mr. English, Mr. Lum says it is not claimed that the original checks of which the 'in safe' checks were substituted were either used or missing.
>
> "Mr. English: All right. Then I won't pursue the matter further."

These admissions were afterwards corrected, to this extent, that it appeared that one "in safe" check, No. 5408, was missing and that Dozier knew nothing about it (p. 436, line 30 to p. 437, line 22).

There is no claim, however, that the loss or disappearance of this check in any way reflects on Dozier, and the claim that the $65,219 check (Ex-

hibit C-5) was an "in safe" check was completely abandoned.

The Vice-Chancellor comments on the fact that a few days before he received payment for his stock, Dozier had deposited a check for $82,000 in the Montclair Bank, which ordinarily would have been deposited in the Fidelity Union (p. 35, lines 20-25). The check thus deposited was known as the Harrison Radiator check.

There was no reason, however, why the check should not have been deposited in the Montclair Bank, and the evidence warrants no improper inference from that fact. This account was originally opened by Hedden in September, 1922, when Dozier was in California (see Appleton, pp. 285 and 286).

This account carried very substantial monthly balances and substantial deposits were made in it (see p. 191, line 30; p. 192, line 30). Moreover Dozier says he told Hedden when the Harrison Radiator check came in and told him he was depositing it in Appleton's (Montclair) Bank.

Dozier is criticised for having had his check certified. Why should he not have had it certified in a transaction of that magnitude? He was about to retire from the Company, not only as stockholder, but also as Treasurer and director. He was selling all his stock, which was valuable. He would have no further influence in the Company after his retirement. It was a very proper precaution, and one which he had a right to take. Moreover the subsequent events fully justified him in having the check certified. No sooner was the transaction closed than Hedden began to repent of his bargain, and, with a fine contempt for his agreement and that of his Company, and in face of the fact that he had, with full knowledge, signed the check for the very money he demanded back, immediately retained counsel to help him undo his executed agreement.

Complainant alleged in its Bill a conspiracy by Dozier to ruin it by forming the Fisher-Williams Company and using the $65,219 in that Company in competition with the complainant.

The complainant utterly failed to prove any such thing. On the contrary, it was established without contradiction that the Fisher-Williams Company was not only not incorporated until some months later, but the idea of forming such a company did not come up until the latter part of February, 1924 (p. 497, lines 30-40).

Even at that Dozier was not in on the incorporation, but was later invited to come into the Company by Mr. Spencer, Fisher's attorney (Fisher, p. 498, lines 15-20).

And then all that Dozier put into the Fisher-Williams Company was $7,000 (Fisher, p. 498, line 25).

The testimony of Owen was of no value.

Nevertheless it greatly influenced the Vice-Chancellor. He quotes the figures of the "later accounting" (p. 34, line 8), as he calls it.

The Court allowed the testimony by Owen, an accountant, offered by the complainant, to show exaggeration in value as bearing on the alleged fraud.

The testimony of Owen, however, was such as to make his evidence of little or no value, and merely served to emphasize the desperate measures which the complainant took to establish its case.

He says he was instructed to make an audit of the book value, but it is quite apparent he was also instructed to reduce the book value, over that set up in Dozier's statement, regardless of the books.

Thus he says Toothe and Aubin told him to leave out the value of the good will (p. 247, lines 28-35), and to throw out all proportionate profits on unfinished contracts (p. 248, lines 15-20).

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He carried out those instructions. He increased expenses and decreased income. He cut out all accrued profit, no matter how long it had been running (p. 242, line 35 to p. 243, line 20).

He had to admit he did not confine himself to the facts. He went outside the books (an astonishing thing for an accountant to do), and was influenced by what people told him (p. 254, lines 14-20).

In stating average cost, profits and good will, he went back only two years (p. 250, lines 1-3), although Dozier in preparing his statement had gone back five years (p. 248, line 35).

The result was he arrived at two different figures for the book value. And then, to crown it all, he ordered Aubin to make an entry in red ink in the Journal, which Aubin said made the stock look very much less valuable (p. 215, lines 30-40 and p. 216, lines 10-20).

In spite of Owen's efforts to reduce the book value, the fact still persists that the stock was of great value as of December 31, 1923.

Owen admitted the Company had averaged 8% on its stock for the past five years, in addition to having paid salaries aggregating $48,000 in 1921 and $40,500 in 1923; of which Hedden received $18,000 annually, besides commission on the Lakehurst job in addition (p. 250, lines 20-35, and p. 251, line 39).

Again, as in the case of the minutes of August 15, 1922, we have a fatal admission to complainant's contention, in pleadings drawn by the same counsel for the same complainant, in an earlier litigation.

Owen says he submitted his report June 9, 1924 (p. 239, line 24). On July 21, 1924, the complainant filed a suit at law on conspiracy (Ex. D-6) and in Paragraph 5 of the Complaint stated that in December, 1923, the Company was 'carrying on its business with great profit" (p. 240, line 5).

Owen says he was consulted about this case; that it was after he had finished his audit, and that he went to the office of counsel and conferred with them about it (p. 241, line 25 to p. 242, line 30).

The complainant should not now be allowed to repudiate its bargain.

The bargain was made, it was acted on by both parties, and the incident is now closed. Hedden had been consulted in the matter, he had discussed it at home with Toothe, and he had signed the check (Ex. C-5), which fully informed him of its purpose, in addition to the voucher (Ex. C-10), which accompanied the check.

He ought not now be allowed to repudiate the transaction. He has claimed in the face of an overwhelming mass of evidence that the resolution of August 15, 1922, was not passed. He also claimed that the check (Exhibit C-5) was an "in safe" check, wrongfully taken and used. Defeated in that claim, he now pretends he did not know what he was doing when he signed the check. Such a claim does not become Mr. Hedden. He is too able and experienced a business man for such a claim to be believable. The evidence is too strong against him for him to now say he did not know what he was doing, and at the same time have to admit he signed the check, unhurried and in the quiet of his private office.

The purchase of the Dozier stock by the complainant company was a completed corporate transaction, pursuant to the resolution of the Board of Directors and carried out by proper officers of the Company. The purchase price agreed on was the book value as of December 31, 1923, and the evidence is that the financial statement showing the book value was made up on the same basis,

and in the customary way, employed in previous years, in the preparation of which Aubin assisted.

The situation is not one where Mr. Dozier is seeking to compel performance of an unperformed contract to purchase his stock.

On the contrary, the situation is one where the agreement expressed in the resolution of August 15, 1922, has been fully carried out by both parties, and Mr. Hedden is now seeking to undo that completed transaction.

He has two possible grounds in equity on which to seek to undo the transaction, namely, fraud or mistake.

(1) He cannot successfully claim mistake because the price which he paid for the stock, as set up in the check for $65,219, represents the book value of the stock calculated according to the understanding of the parties and the practice which was in use in the Company.

Dozier says that he figured the good will "in the way it is customary to figure the good will value" (p. 306, line 30).

He says that Hedden understood the term "book value" as that term was used and understood in the Hedden Company. On cross-examination he testified that he had discussed what was meant by book value with Mr. Hedden at the office at the time Fisher purchased stock in the Company; that Mr. Hedden wanted to ascertain the book value of the stock at that time and took a pad and pencil and figured out the book value himself (p. 349, lines 14-20).

The testimony further is that Dozier and Hedden discussed how the book value was to be figured on the purchase by the Company of Dozier's stock on the afternoon of January 11th; that Dozier had the working sheet (Exhibit D-8) with him at that time, and that Hedden had the figures in his hand (p. 349, lines 20-35). Dozier told Hedden he had fig-

ured the good will on the five year income basis (p. 350, line 30), which was the customary method in the Company.

That being the situation, it was the intention of the parties, as expressed in the resolution of August 15, 1922, that the stock should be purchased at the book value as they understood the meaning of the words "book value" from their practice in making up statements in connection with their Company's business.

Now the proof is that the statement which was the basis of the purchase was made up exactly that way; that Aubin, the bookkeeper, participated in it, and himself figured the depreciation (p. 302); and that Hedden was consulted and went over the figures with Dozier set up on the sheet Exhibit D-8 (p. 301, lines 30-40).

This being the situation, the relation of the parties—Hedden and Dozier—has no bearing on the question one way or the other, because the transaction was carried out exactly as both intended.

Not only was there a basis laid for the purchase of the stock by the Company in the passage of the resolution, but the purchase price, namely, the book value, had to the minds of both of them a definite meaning, namely, book value figured according to their customary practice in figuring book value for their annual statements in connection with the business of their Company. The evidence is that the book value in connection with the purchase of this stock was figured in exactly that way, and there is no denial of this by Aubin or anybody else. Both the testimony and the documents in evidence demonstrate that there was no suppression of any facts; that at least five men in the office participated in the making up of the statement, and that the book value arrived at was the result of their combined efforts and judgment in accordance with

the established practice of the Company and according to the true intent of the contract.

This calculation of the book value was according to what we might term the Hedden practice of determining book value, since it was the method constantly employed in connection with the Company's affairs.

Assume, for the sake of the argument, that book value arrived at in this way would not square with the common interpretation of the words "book value" as used by business men and adopted by the courts, nevertheless that is not the question in this case. The question here is—what was the intention of the parties as expressed in the resolution of August 15, 1922,—and the evidence indicates that their intention was to use the words "book value" as they were commonly used and understood in the accounting practice of the Hedden Company.

If Hedden had claimed otherwise, Dozier might have filed his bill to reform the agreement on the ground that the term "book value" as commonly interpreted did not express the intention of the parties, but that the term "book value" as used in the resolution meant book value according to the Hedden practice.

Dozier stands on the performance of the contract as carrying out the intention of the parties. He does not have to reform it, because Hedden also has elected to perform the contract, as expressed in the resolution, and in so doing has carried out the intention of the parties.

The case of *Revier* v. *Berla,* 89 N. J. Eq. 596, shows how far this Court goes to uphold a contract as made by the parties.

If Hedden had refused to perform, claiming that the accepted definition of book value should apply, the Court, under the facts of this case, on proper application, would have compelled him to per-

form. Since he has voluntarily performed, and the intention of the parties has been carried out, the Court should not now change that result, because he has only done that which he agreed to do, namely, buy the stock at the book value, figured according to the Hedden practice.

Hedden is not an infant, nor a person of the category to whom the Court extends especial protection. On the contrary, his counsel have pictured him, and the evidence bears them out, as a man of exceptional business acumen and ability.

He knew the method applied in calculation of the book value, for it was explained to him. The voucher which accompanied the check clearly stated that the check was in payment of the stock at the book value in accordance with the resolution. He signed it unhurried, and in the quiet of his office, with ample opportunity to consider what he was doing.

Apparently, it never occurred to him that there was any different method of figuring book value until Owen, the accountant, was called in after the contract had been fully executed.

He should not now be heard to repudiate the bargain.

(2) Nor should Hedden be heard to claim fraud in the transaction.

The facts recited show that Dozier acted openly and above-board in the matter, and that Hedden was fully advised of what he was doing.

The Vice-Chancellor,—erroneously, we think,—has found fraud, but upon that finding he has awarded no equitable relief.

He does not decree a rescission of the contract or a restoration of the status quo because of this alleged fraud. He allows the complainant to retain Dozier's stock (which it never offered to return),

and, in addition, he orders Dozier to pay $65,219 to the complainant.

The Vice-Chancellor did not find against the resolution. He says the indictment against it is of secondary interest (p. 37, line 10). He decreed no cancellation of the resolution, or rescission of the bargain. He treated the executed transaction as a nullity.

A law court, with a jury, could have done as much. The defense of an adequate remedy at law is demonstrated by the final decree.

III.

All of the stockholders and directors are bound by the resolution of August 15, 1922, by which the company agreed to buy Dozier's stock upon his retirement as treasurer.

The Vice-Chancellor was of the opinion that the resolution was not binding because there was no consideration, and it was not the unanimous act of the stockholders; that Toothe did not assent to it and that its consummation would have impaired the capital of the Company contrary to the statute and the ruling of this Court in *Siegman* v. *Electric Vehicle Co.*, 72 N. J. Eq. 403; and that Hedden's alleged promise of January 5th could not bind Toothe or the Company (p. 40, lines 20-30).

It may be conceded that Hedden's promise of January 5th standing by itself would not be binding upon Toothe or the Company.

The resolution of August 15, 1922, however, was the unanimous act of the Directors, with the knowledge and consent of Toothe, who was the only stockholder at that time not a menber of the Board of Directors.

There can be no doubt of the acquiescence of Toothe in the action of the Company at that time. As Secretary of the Company he had custody of the minute book and had every opportunity of knowing what was contained therein. He was present at the meeting and signed the minutes (p. 88, line 17).

He swore in his affidavit (D-11, p. 150, lines 15-35) that the resolution had been adopted on August 15, 1922, and that "at that time a resolution on which he had no power of voting was submitted to the then Board of Directors" (p. 150, line 19).

Furthermore, by his own admission, he and his grandfather, Hedden, discussed the purchase of Dozier's stock and also the price to be paid (p. 155, lines 12-15).

While the resolution was not formally ratified by the stockholders, it was in fact ratified by those of the stockholders who were directors who participated in the meeting and, of course, had full knowledge of it at that time, and it can hardly be said that Toothe, who was also present and who was the only other stockholder, and who was entirely under the influence of his grandfather, who had given him the stock, and who knew all about it, did not in fact assent to it.

The *Siegman* case cited by the Vice-Chancellor is not in point. In that case the Bill was filed to compel a former director, Kissel, to pay to the Company the amount of certain dividends which were unlawfully declared and paid out of capital.

There is nothing in that case which militates against the right of a corporation to buy its own stock.

Not only so, but it is well settled that where no question of public policy or interests of creditors are involved, and where the stockholders have knowledge of, and acquiesce in, the acts done, though they were irregular, both the stockholders and the Company are bound, and neither can complain.

The leading case is *Breslin* v. *Fries-Breslin Co.*, 70 N. J. Law 274 (E. and A.), opinion by Justice Pitney. In that case the plaintiff brought suit to recover a judgment for the amount of a balance standing to his credit on the Company's books. The plaintiff was a stockholder and director. He sued for his share of profits of the company. The profits for which he sued were arrived at by stating the balance left after crediting the so-called preferred stockholders with an amount equal to 15% on the amount of the face value of their stock, and the balance was credited in equal thirds to the account of the plaintiff, Fries and John M. Carrol, who were the directors (p. 280). What the directors did was the result of their unanimous act and with the acquiescence of all of the stockholders (p. 281). The Court held that the company and its stockholders were estopped from claiming that the plaintiff was not entitled to the money standing to his credit. Justice Pitney said (p. 282):

> "In the eye of the law corporations are entities separate and distinct from their constituent members and not bound by the individual acts of the latter. The law deals with the corporation as an artificial person. Equity realizes that this legal entity is but a legal fiction; looking through the form it discerns the substance. It finds that a stock corporation is in essence an aggregation of individuals, a statutory partnership with assignable membership and limited liability of the members, and so the doctrine of equitable estoppel applies fully to all the internal concerns of stock companies. Saving so far as public policy and the interests of creditors and other third parties are concerned (none of which is involved in the present case), the stockholders may bind themselves *inter sese* and in favor of the corporation by their own acts and agreements, and what will bind all the stockholders, with respect to an obligation from the company to one of its members, will bind the company as such.

"The authorities to this effect are abundant. Mr. Thompson, in his new work on Corporations, lays it down 'that the body of stockholders are in substance the corporation, that estoppels are concurrent as between the stockholders and the corporation; in other words, that whatever will estop the stockholders will estop the corporation, and whatever will estop the corporation will estop the stockholders'. 4 Thomp. Corp. Sec. 5269. And again, at section 5314, he says: 'The body of stockholders, in every business corporation, are the persons who are incorporated. They are, in a substantial sense, the corporation. They are the ultimate constituency and the directors who are elected by them from their own number are their officers. The ideal body is, in theory of law, the principal and the board of directors are the managing agents; but, in theory of equity, the body of stockholders are the beneficiaries in a trust and the directors are their trustees. It follows that many acts which the directors may do outside the scope of their powers become ratified and validated by the acquiescence of the body of shareholders, and, in general, the body of shareholders can ratify and confirm any act done by the directors or other officers of the corporation without a precedent authorzation which the shareholders could have authorized originally.' See, also, 4 Thomp. Corp. Secs. 4496, 4497."

The principle in this case has been followed consistently ever since.

See:

Perkins v. *Trinity Realty Co.*, 60 N. J. Eq. 723; affirmed on Opinion, 71 N. J. Eq. 304;

Robson v. *Fenniman Co.*, 83 N. J. L. (E. & A.), p. 453;

N. J. Car Spring & Rubber Co. v. *Fields*, 85 N. J. L. (E. & A.), 217;

Bigelow v. *Old Dominion Copper Co.*, 74 N. J. Eq. 457;

Arnold v. *Searing*, 78 N. J. Eq. 146, p. 163.

In *Warren* v. *Pim,* 66 N. J. Equity 353 (E. & A.), Justice Pitney said (p. 396), speaking of the Corporation Act:

> "It is true that many of the provisions of the act, being intended principally for the protection of the corporators themselves, may be waived by common consent. *Breslin* v. *Fries-Breslin Co.,* 58 Atl. Rep. 313."

These principles were applied by Vice-Chancellor Lewis in *Fish* v. *Harrison,* 87 N. J. Equity, 103, affirmed on Opinion, 89 N. J. Equity 212. The complainant was a stockholder. The claim was that Harrison had appropriated to his own use funds of the company. The question for the determination of the Vice-Chancellor was as to the ownership of the Beyea stock. The Vice-Chancellor pointed out that it was a closed corporation (p. 106) and said:

> "If there were a single share of stock held by a person who had not given his consent to the charging off of these overdrafts made by A. Gould Harrison, I should not hesitate to set all the transactions aside, but the Beyea stock has been sold to A. Gould Harrison, and they, therefore, cannot complain; and, as I find that Mr. Fish consented to the crossing off of the overdrafts, he is estopped, and there is no one else to complain, as the wife of A. Gould Harrison has stood shoulder to shoulder with her husband."

So in the case at bar, Toothe, as well as Hedden, with full knowledge, has acquiesced and hence is estopped to complain. Dozier and Fisher stand shoulder to shoulder. Thus all the stockholders are either estopped or consent, and the Corporation is bound.

IV.

The decree should be reversed.

Although the complainant Company had brought its action at law in connection with the same matter (p. 101, lines 1-15 and Exhibit D-6, p. 102, line 9), and this action is still pending and undetermined, it thereafter filed its Bill in the Court of Chancery in the suit now at bar.

It set forth in its Bill a cause of action, in Equity, but it failed to prove any ground for equitable relief. Its equity consisted in establishing that the resolution of August 15, 1922, was a fraud. Complainant, however, proved no such thing. The Vice-Chancellor failed to make any finding of fact against the resolution, and we submit that the evidence is overwhelmingly in favor of the adoption of the resolution, as the defendant claims. Had the resolution been set aside, the Court might then have decreed a rescission of the arrangement and ordered Dozier to restore the money paid him, and ordered the complainant to return him his stock.

But no such finding was made or decree entered. All that the Court found was that Dozier had obtained $65,219 from the complainant by fraud and ordered him to repay it.

We submit such a result is not the awarding of equitable relief. It ignores the well-settled rule that equity will not give relief when there is an adequate remedy at law (see Answer, p. 30, line 38).

Apart from that, this is largely a fact case. We submit the Vice-Chancellor erred in his finding of the facts.

How can Hedden and Toothe be believed, when they say no directors' meetings were held and no

minutes of any meetings were ever written up or signed by them?

Such a claim is contrary to the allegations of the Bill (as well as the Bill in *Toothe* v. *Dozier* and Toothe's affidavit (D-11, p. 150) and the Complaint in the Conspiracy case at law), and is contrary to the proven facts in the case.

How can Hedden be believed when he says he did not know he signed the check, when he admits his signature is genuine? The voucher which accompanied the check, as well as the endorsement on the back of the check itself, told him the whole story.

On the contrary, there is no serious impeachment of Dozier's account of the transaction, and he is corroborated by a large number of witnesses, whose testimony is unimpeached, and also by a mass of documentary evidence, which could not have been made up to suit this case.

The opinion of the Court below was severe and harsh in its language, as well as adverse in its findings.

The defendant Dozier has borne an honorable name and an unblemished reputation among his friends and associates. In addition to the money penalty inflicted, his good name is injured.

He has appealed to this Court for redress and we submit he is entitled to it on both the facts and the law.

The decree should be reversed.

Respectfully submitted,

CONOVER ENGLISH,
ROBERT H. MCCARTER,
Of Counsel with Defendant.

MCCARTER & ENGLISH,
Solicitors of Defendant.

New Jersey Court of Errors and Appeals

Between CHARLES R. HEDDEN COMPANY, a corporation, *Complainant-Respondent,* *and* WALTER J. DOZIER, *Defendant-Appellant.*	*On Bill, &c.* *On Appeal from Final Decree in Chancery.*

BRIEF FOR COMPLAINANT-RESPONDENT.

The learned Vice-Chancellor who advised the decree appealed from found the facts to be (opinion pp. 31-40):

> That the defendant, while a director and treasurer of complainant Company, fraudulently procured a Company check to his own order in the sum of $65,219., whereby he fraudulently extracted that sum from the treasury of the Company.
>
> That the manner in which he did it "was not a clever trick, just a vulgar cheat, a constructive forgery, perfidious and despicable."
>
> That "there can be no doubt that the check of January 14, 1924, was not the result of negotiation and settlement."
>
> That "it is impossible to escape the feeling that the fraud had its inception in the disputed resolution" of August 15, 1922, and the Vice-Chancellor points out certain of the things which to his mind "are inexplicable and which utterly discredit the minute of the disputed resolution."
>
> That "whatever may be the secret behind the resolution or the solution of the manner in which it crept into the minutes, there is no question in my mind that Hedden was not aware of its existence until after his

disillusionment of faith in Dozier in January of 1924."

As an aid to resolving the disputed questions of fact the Vice-Chancellor had the advantage of observing the witnesses on the stand and of noting the contrast between Mr. Hedden's straightforwardness and manifest desire to tell the truth, the whole truth and nothing but the truth on the one hand, and on the other hand Mr. Dozier's shiftiness, evasion, cunning and great confusion as he fell into traps and inconsistencies under cross examination. This important element of the manner and conduct of the witnesses is necessarily lacking in the printed record upon which defendant now asks this Court for a reversal. The Vice-Chancellor had the further advantage of seeing the case built up line by line and step by step before him, of personally examining Mr. Hedden's diary and the originals of all the exhibits, many of which have not been printed in the record.

The direct proofs are substantiated by a multitude of circumstantial proofs scattered throughout the 550 pages of the printed book. We shall therefore first set forth an analysis of the evidence upon which the Vice-Chancellor's findings are based, sorting and arranging it in a chronological statement of the case.

History of the Case as Revealed in the Record.

Mr. Charles R. Hedden is 73 years old (p. 81, l. 1). For fifty years he has been engaged in the building business in Newark and has constructed a large proportion of the most important buildings in this vicinity (p. 66, ll. 10-20). His record is evidence of his honesty and integrity. So, too, was his conduct and testimony

throughout this trial. Nowhere in the record is there any indication of his deviating to the slightest degree from an honest and full statement of the truth. His veracity is unimpeachable.

In 1911 he employed as a bookkeeper and as his private secretary (p. 44, l. 35 to p. 45, l. 10; p. 70, l. 33) one Walter J. Dozier, who was then 41 years of age (p. 263, l. 23), whose business experience prior to that time had consisted of serving as a secretary, accountant, and "confidential man" (Dozier, p. 262, l. 33). In the course of time they became very close associates, not only in business matters but also socially (Aubin, p. 166, l. 30 to p. 167, l. 10). Mr. Dozier handled for Mr. Hedden such intimate private matters as the preparation of his income tax returns, and Mr. Hedden "put every confidence in Mr. Dozier" (p. 57, l. 13).

By the spring of 1918 the relation between them had become such that Mr. Hedden incorporated the Charles R. Hedden Company because he "thought so much of Mr. Dozier" that he wanted to take him into the business (p. 67, l. 31 and p. 71, l. 32 and p. 73, l. 29). The Company started with a capitalization of $46,000., the incorporators (Minute Bk. Ex. C. 3, p. 10) and only stockholders being Hedden $20,000, Doe $12,000, Wathey $4,800 and Dozier $9,600 (p. 73, l. 31 to p. 74, l. 2 and Minute Bk. Ex. C. 3, p. 28).

In the latter part of 1921 or early in 1922 Doe and Wathey sold out, Hedden and Dozier purchasing their stock from them in equal shares (Dozier, p. 264, l. 10 to p. 266, l. 10). On March 1, 1922, Mr. Hedden gave his grandson, James Toothe, 20 shares (p. 138, l. 23 to l. 40), and

shortly thereafter 150 shares of new stock were purchased by and issued to Harold A. Fisher (Dozier, p. 265, l. 31 to p. 266, l. 10). Thereafter during all the time involved in this suit the only stockholders were Hedden, Dozier, Fisher and Toothe (p. 45, l. 35).

At the time of incorporation Mr. Dozier was made Secretary and Treasurer (Minute Bk. Ex. C. 3, p. 21). His special function was to handle the banking and financing (p. 475, l. 4; p. 167, l. 16; p. 172, l. 35; p. 45, l. 38) while Mr. Hedden handled the construction end of the business (p. 77, l. 27). Dozier continued as Vice-President and Treasurer and was in charge of the Company's finances until he resigned on January 15, 1924.

Mr. Hedden has at all times been President and active head of the Company. It had been his business before the incorporation and he had taken those other men in with him (p. 76, l. 16). As to matters of construction he dictated the policy of the Company (p. 77, l. 27).

The purchase by Hedden and Dozier of the Doe and Wathey stock made Mr. Hedden the holder of a majority interest (Dozier, p. 266, l. 34). It is clear that this was not to Mr. Dozier's liking (p. 46, l. 14, *et seq.*). Even at the time of the purchase of Mr. Doe's stock Mr. Dozier read to Mr. Hedden a letter which he had received from Doe under date of December 6, 1921, in which Doe complained that Mr. Hedden had from the very first tried to get more than his legitimate share of the profits and had "seemed to be absorbed with a desire to be supreme both in stock control and administration" (p. 75, l. 31; Letter Ex. D. 1). "After Mr. Hedden read this letter" testifies Mr. Dozier

(p. 328, l. 21) "and I told him about what Mr. Doe wanted, he says 'Wallie, you are not going to put me out of the company, are you?' I said, 'Mr. Hedden, I have been with you a good many years. I have given you my best loyalty as a son could give you,' I says, 'I won't do anything to hurt you.' I said, 'If you want to buy Mr. Doe's stock you buy it. We will keep conditions on just the same.' " Though Mr. Hedden had no idea of it at the time, it appears now that Mr. Dozier, like Mr. Doe, did not take kindly to Mr. Hedden's having control or to his continuing his habit of dictating the policy of the business.

The situation was aggravated when in February, 1922, only a couple of months after the above-mentioned reading to Mr. Hedden of Doe's letter, Mr. Hedden had his grandson, James Toothe, made Secretary (p. 133, l. 36). Up to that time Toothe had been merely a timekeeper for the Company (p. 142, l. 36). It began to look as though Mr. Hedden intended to work his grandson into the Company.

Toward the end of that same month Mr. Dozier had an agreement prepared (Ex. D. 2, dated Feb. 23, 1922) which provided that surviving stockholders might acquire the stock of any stockholder who might die, but Mr. Hedden refused to sign it (p. 266, l. 27 and p. 81, l. 15). He continued to talk to Mr. Hedden about some such agreement being entered into, but without avail (p. 267, l. 11 and p. 89, l. 18).

On August *16,* 1922, he presented another draft of such agreement which also Mr. Hedden refused to sign (p. 82, l. 22, Mr. Hedden *reading from his diary,* and Dozier, p. 267, l. 24; Ex. D. 3). On August 22, 1922, Mr. Hedden

lunched with Mr. and Mrs. Dozier, and Mr. Dozier left that night to go to California (p. 84, l. 8).

Although Mr. Dozier, after his return from California in October, 1922 (p. 275, l. 37), apparently resumed his efforts to get Mr. Hedden to enter into some such agreement (p. 82, l. 12), still there is in the record no mention of any particular instance until the fall of 1923, that is, for more than a year from August, 1922, until about November, 1923, nothing transpired in connection with Mr. Dozier's plan so far as the record reveals.

Meanwhile Mr. Hedden's implicit confidence in Mr. Dozier continued. They two ran the business. Toothe, though nominally Secretary and after April 20, 1923, also a director (Minute Bk. Ex. C. 2, p. 176) was in fact not more than a subordinate employee (p. 172, l. 15 and l. 21). Nowhere in the record does it appear that he ever had a voice in anything, except that the minutes recite him as being present at meetings. Likewise, Mr. Fisher, the fourth stockholder and director and Vice-President, does not appear to have taken any more active part in the management than did Toothe (p. 483, l. 19). Mr. Dozier time and again refers to having taken matters up with Mr. Hedden and to having had Mr. Hedden's consent (as, for instance, on alleged personal loans from the Company to Dozier), but he does not mention ever having consulted either Toothe or Fisher or having asked their consent to anything he did. It is clear that what Hedden and Dozier agreed upon was taken and deemed to be corporate action. Mr. Dozier says "I considered Mr. Hedden as the Company" (p. 415, l. 30). Toothe and Fisher merely acquiesced as matter of course. Mr. Hedden says

that only the annual meetings were actually held (p. 94, l. 35; p. 95, ll. 1 to 22). Otherwise when resolutions and corporate action were desired they were by assent written up in the form of minutes in the minute book (p. 135, l. 12). As Mr. Dozier says six times on as many pages "That was the form" (pp. 331-335). Mr. Dozier prepared them even though Toothe was nominally Secretary (p. 268, l. 18 to p. 269, l. 22), and it never occurred to Mr. Hedden to read or question them (p. 56, l. 14 to p. 57, l. 10; p. 95. ll. 26-36). Likewise Mr. Hedden freely signed checks in blank and entrusted them to Mr. Dozier to use for proper company purposes (p. 58, l. 1; p. 117, l. 28; p. 407, l. 36). And incidentally Mr. Dozier was receiving a salary of $12,000 per year (bot. p. 140, l. 38) besides substantial dividends (p. 251, l. 31).

But friction was developing between them. Mr. Hedden says it was because Mr. Dozier "Was trying to run the whole affair" (p. 108, l. 19). Mr. Dozier gives this version of it (p. 279, l. 24):

"Mr. Hedden had given instructions to me to keep off construction work. * * * He gave me to understand that his grandson, Mr. Toothe, would look after all that work. * * * I told Mr. Hedden that I didn't think I would keep off the work."

In November, 1923, he indulged, apparently for the first time, in some harsh words to Mr. Hedden for which he later apologized (p. 313, l. 33; p. 410, l. 23) and in the course of the conversation he says he told Mr. Hedden that they could no longer agree and asked Mr. Hedden to take his stock and let him out of the Company (p. 313, l. 36 also p. 280, l. 3) but as Mr. Hedden

testified "Every time he came I said I didn't want his stock" (p. 109, l. 2).

The next incident was on December 31, 1923, when Mr. Dozier, sitting within a few feet of Mr. Hedden's desk, wrote a letter (Ex. C. 4) to him as follows (p. 280, l. 23 and p. 60, l. 21; p. 59, l. 21):

> My dear Mr. Hedden:
>
> My connection with the Company is drawing rapidly to a close, and reluctantly I am forced to ask if you will, at your early convenience, make an appointment for a conference between us, that we may have an understanding for a final and amicable agreement regarding the disposition of my stock holdings in the Charles R. Hedden Company.
>
> May I ask for the courtesy of such appointment on or before January 5, 1924, as I am leaving for California the latter part of that month, and am desirous of closing my affairs before that time.
>
> I cannot impress upon you too strongly the necessity of our getting together for the purpose as indicated above, thus relieving both of us from the high tension under which we are now suffering.
>
> Very sincerely and cordially,
>
> Walter J. Dozier

Accordingly on Saturday morning, January 5, 1924, Mr. Dozier went into Mr. Hedden's office to once again bring up the question of Mr. Hedden's buying his stock (Hedden, p. 59, l. 13; p. 110, l. 6; Dozier, p. 280, l. 28) and again Mr. Hedden told him that he did not want his stock (p. 112, l. 20).

At the annual meeting held ten days later, viz, on January 15, 1924, Mr. Dozier made his final attempt. He submitted his treasurer's report and statement for the year ending December 31,

1923, which was accepted "subject to audit," and then offered a resolution that the Company purchase his stock at its book value as shown by treasurer's report, which resolution was lost by a tie vote, Mr. Hedden and Mr. Toothe voting against it, and Mr. Fisher and Mr. Dozier voting for it (p. 47, l. 1; Minute Bk. Ex. C. 2, p. 197). Thereupon Mr. Dozier resigned as a director and as Vice-President and Treasurer, and after the meeting delivered a talk to the employees, in which, among other things, he said that Mr. Hedden "was hard on his employees and never appreciated anybody's efforts, and the like of that" (Aubin, p. 180, l. 32).

Mr. Hedden was not at the office on the following day, Tuesday, the 16th (p. 48, l. 38), but Wednesday, January 17, 1924, was a day of revelations for him. On that day for the first time he learned:

1. That the Harrison Radiator Co.'s check for $82,923.83 had without his knowledge been received on January 11th, and had been deposited in the Montclair Essex Trust Co.

2. That a check on the Company's account at Montclair Essex Trust Co. dated January 14, 1924, to the order of Mr. Dozier in the sum of $65,219 had been certified and credited to Mr. Dozier's personal account at the Montclair Essex Trust Co. on January 15, 1924, prior to the aforesaid meeting, which check bore Mr. Hedden's signature and was endorsed "For the purchase of 275 shares of Common stock of the Charles R. Hedden Company in name of Walter J. Dozier."

3. That on January 16, 1924, Mr. Dozier had caused a journal entry to be made of said disbursement and had later handed the bookkeeper a voucher for it (Ex. C. 10) which read:

"For the purchase of 275 shares of the common stock of the Charles R. Hedden Company, standing in name of Walter J. Dozier, at the Book Value, period ending December 31, 1923, in accordance with resolution of Board of Directors passed August 15, 1922, and recorded in Minute book, page 158."

4. That in the minute book at page 158 appeared minutes which purported to be a record of a directors' meeting held August 15, 1922, which minutes were signed, sealed initialed and certified by Mr. Hedden as President and by Mr. Toothe as Secretary and include the following:

"Further Resolved that should the Treasurer at any time and at his pleasure withdraw from active management of the Company's affairs, his stock holdings in the Company shall be purchased by Charles R. Hedden Company at the book value per share at the closing of business for the fiscal year ending December 31st, preceding his intention to withdraw and date of resignation."

That Mr. Hedden had no knowledge of any of these things prior to January 17, 1924, is conclusively established by the record, as we shall demonstrate hereafter. Is it possible to imagine anything that might have come into Mr. Hedden's life capable of amazing and shocking him to any greater degree? Could this close friend, this partner in business, after thirteen years of intimate association and complete trust and confidence, have been guilty of perpetrating such a fraud? How did he do it? How did those minutes under date of August 15, 1922, get into the minute book and how did they come to be signed, sealed and certified as they are, and how did he ever manage to get a check to his order for such sum with Mr. Hedden's signature on it?

Re Toothe Suit and Affidavit and Conspiracy Suit.

Forthwith Mr. Hedden consulted counsel, exhibited the minute book and told of the check. Messrs. Hedden, Toothe and Fisher, three of the four directors of the Company, were present at that conference in counsel's office. Mr. Hedden and Mr. Toothe both told counsel that the alleged resolution of August 15, 1922, had never been adopted and they never knew anything of it or the check until that same day, and Mr. Fisher, upon being questioned, stated that he had no knowledge of any such meeting or resolution (Hedden, p. 57, ll. 30-40; p. 58, l. 40 to top p. 59; top p. 64; p. 98, ll. 20-40; Toothe, p. 141, l. 31 to p. 142, l. 35; p. 158, l. 38; p. 159, l. 21; Fisher, p. 499 to p. 504, l. 15), but the account given to counsel by Mr. Hedden and Mr. Toothe, which is now set forth in this bill of complaint, then seemed incapable of proof. All the arguments which defendant's counsel now urges against it were manifest at that time: "There are the minutes signed, sealed and certified by both. How can they be gainsaid? In the face of that, how is it possible to prove that the meeting was never held and the resolution never adopted?" No, there appears to be no hope of it. But the resolution is void, illegal and unenforcible. We shall attack it on that ground. Accordingly, the Toothe bill of complaint was filed January 30, 1924, on that theory, and the allegations which it contains were made to that end. (Toothe *v.* Dozier, 96 N. J. Eq. 46.)*

But the question persisted, "Is it possible that this man, treasurer and director of the Company, could use that $65,000 check as he did without criminal liability?" No, the matter should be laid before the prosecutor, and ac-

cordingly the affidavit of Mr. Toothe, as Secretary, was prepared (February, 1924) with a view to laying the question of the check before the prosecutor. There was manifestly no thought or intention of questioning the adoption of the resolution in that affidavit. Clearly the resolution was referred to by way of introduction, as leading up to and laying a basis for the charges relative to the check. The affidavit states "that on August 15, 1922, he was not a member of the Board of Directors and at that time a resolution on which he had no power of voting was submitted to the then Board of Directors, consisting of Charles R. Hedden, Harold F. Fisher and Walter J. Dozier, and said resolution was as follows, etc." If the affidavit had stated "it appears from the minute book that on August 15th, etc.," it would have been strictly according to the fact and would have more accurately expressed what both counsel and affiant intended to express. The resolution was not then being attacked upon the ground that it had never been adopted, but in the Toothe suit in Chancery which was then pending it was being attacked upon the ground that it was otherwise illegal, void and unenforcible. Under such circumstances it is not to be wondered at that Mr. Toothe failed to realize that the affidavit did not contain the words "according to the minute book it appears that, etc."

> Q What is your explanation, swearing two ways, one in this way and one as you swore today? A That was drawn according to the minute book. That is all I can say. Q You said that was passed? A On the face of the minute book it is true. Q It is true anyway, isn't it? A No. Q Then why did you swear to it? A It is in the minute book. (Toothe, p. 150, ll. 35 to 151; l. 8.)

Furthermore, it is not to be wondered at that when this affidavit was sprung on him at the trial and counsel got after him respecting it in such vigorous and persistent fashion, he became confused and made some answers which now appear to be ridiculous, but if the Court will read his testimony (pp. 144 to 153) it will appear clearly that he was an honest witness and that his testimony in answer to the definite and specific questions asked him during the trial is in no way impeached or discredited by reason of the fact that the affidavit which he had previously made lacked the words "according to the minute book it appears." In fact, it was his utter ingenuousness which enabled counsel to confuse him as he did.

But it appeared later that Mr. Dozier was not content with what he had done, but that he was bent upon ruining complainant's business. The Fisher-Williams Corporation had been organized. Mr. Fisher, who had been Vice-President, director and man in "charge of operations and construction" of complainant; Mr. Williams, who had been employed by the complainant; Mr. Hohenhausen, who had been complainant's general superintendent and estimator; Miss Jackson, who had been complainant's head stenographer, and other of complainant's employees had left complainant and had become associated with Mr. Dozier in the competing business of Fisher-Williams Corporation (as to the Fisher-Williams Corporation see Dozier, p. 329; p. 404, l. 10 to p. 405, l. 20; Miss Jackson, p. 464, l. 35; Mr. Hohenhausen, p. 478, l. 20 to p. 480, l. 4; Mr. Fisher, p. 497, l. 20 to p. 498, l. 40). Perhaps they all left complainant as a result of the way Mr. Dozier in his talk to them after the directors' meeting on January 15, 1924, urged them "to give their loyal support to Mr.

Hedden'' (Dozier, p. 323, l. 25 to p. 324, l. 5). Something had to be done to check such inroads. Accordingly, the conspiracy suit against Dozier, *et als.*, was begun July 21, 1924, in our New Jersey Supreme Court. At that time the Toothe suit in Chancery was still pending on appeal to the Court of Errors. Complainant had meanwhile been carrying on its investigation and audit of its books, but there had been no occasion to take up with counsel the details of what had been revealed thereby. In respect to the alleged resolution of August 15, 1922, the attack was still upon the ground that even if adopted it was illegal and void. The complaint in the conspiracy suit was framed accordingly, and in the preparation of it was dictated in part from the bill of complaint in Toothe's pending suit. The fact that it, like Toothe's affidavit, omits the words "it appears from the minute book that, etc.," is in no sense evidential as to whether or not the resolution had actually been adopted.

But then, in October, 1924 the Court of Errors decided the Toothe case adversely to complainant. (Toothe *v.* Dozier, 96 N. J. Eq. 601.) It then became necessary to take the matter up anew. Then, for the first time, Mr. Owen, the accountant who had been investigating, conferred with complainant's counsel and went over his audit and report with them (Owen, p. 255, l. 10; p. 239, l. 30 to p. 242, l. 10). At the same time all the facts and evidence which could be gathered in respect to the pending conspiracy suit were gone into. Such were the discoveries which had been made in the audit and investigation which had been going on from January 17, 1924, until the fall of that year when the said conference was had with Owen, that it then appeared that it could be proved that the alleged resolution of August

15, 1922, had never been adopted, notwithstanding the signing, initialing and certifying of the minutes. As Mr. Fisher had said in a letter addressed by him January 21, 1923 (Exhibit C. 1), to Mr. Edward Toothe, stepfather of Mr. James Toothe, the question of whether the resolution had actually been adopted or the check had been intentionally signed by Mr. Hedden "is simply a question of veracity" (Fisher, p. 508, l. 1). By the fall of 1924, such discoveries had been made as indicated that, in a balance of Mr. Hedden's veracity as against that of Mr. Dozier, there could be no question of the result. On November 25, 1924, complainant's bill was filed. The record proves conclusively that the alleged resolution of August 15, 1922, was never adopted and that Mr. Hedden and Mr. Toothe, and even Mr. Fisher, never knew of it until January 17, 1924. This we shall demonstrate by an analysis of the record.

It is a fact and is proved by the testimony of Mr. Fisher, as well as that of Mr. Hedden, that when Messrs. Hedden and Toothe first conferred with counsel on January 17, 1924, they stated that they had no knowledge of such resolution. What was done thereafter was done entirely by and under the direction of counsel. It cannot be interpreted or justly weighed as evidence except in the light of circumstances as they then existed.

There appeared at that time no possiblity of proving that the resolution had not been adopted. Though Mr. Fisher said he had no recollection of it, still he was hostile and as he testified his "sympathies were entirely with Mr. Dozier," and when Mr. Hedden tried to get him to sign a written statement of what he had said to counsel at the time of that first conference he refused

to do so (p. 496; p. 538). In support of their insistment that the resolution had never been adopted, there was nothing but the uncorroborated testimony of Messrs. Hedden and Toothe, and as against that there was the minute book signed, initialed, sealed and certified by them. The circumstantial evidence that is now in the record was then unknown. We therefore accepted the resolution as we found it in the minute book, because we could not do otherwise, and proceeded to attack its validity in point of law. Accordingly, the pleadings and affidavit were drafted *as if* the resolution had been adopted, for that was the basis upon which we were of necessity proceeding.

If, aside from these pleadings and affidavit, complainant's case has been proved, then truly such weight cannot be given to them as to swing the balance back to defendant. Mr. Toothe has testified that when he signed the affidavit he did not have in mind the *adoption* of the resolution as being the fact he was swearing to. It was only a day or so previously that he and Mr. Hedden had stated to counsel in Mr. Fisher's presence that they had no knowledge of such resolution and insisted that it was fraudulent. No reason existed why Mr. Toothe should have intentionally sworn to the contrary in the affidavit, or why counsel should have prepared an affidavit intending to have the deponent state under oath the contrary of what he had been insisting upon only a day or so previously. Now, on the witness stand he reiterates what he first told counsel and explains that when he signed the affidavit what he had in mind was that by the minute book it appeared that the resolution had been adopted. The circumstances corroborate his explanation. The same is true as to

the allegation in the first bill and in the conspiracy complaint. When these papers were prepared counsel believed that the resolution had never been adopted, but inasmuch as it was being dealt with as if adopted and no issue was then being presented in that regard, it is referred to as a resolution adopted. It would not have been normal or natural to keep on referring to it in the pleadings and affidavit as an "alleged resolution" or as a resolution "which by the minute book appears to have been adopted," when it was being dealt with and treated as if it had been adopted.

We have Mr. Fisher's testimony in respect to that first conference:

> "Q And you know that Mr. Hedden said that he had no knowledge of any such resolution, didn't he? A Why he *always* said that."

All that transpired subsequently to that conference was done by and under the direction of counsel. It is difficult to see how, under such circumstances, the pleadings which are not sworn to and which the probability is neither Mr. Hedden nor Mr. Toothe ever read, or the affidavit can be treated as admissions against interest or as evidence of an alleged fact which Mr. Hedden had at all times denied. The gods would, indeed, seem to be smiling upon Mr. Dozier if by this mere circumstance of the manner in which counsel worded the pleadings and affidavit all the proofs against him should be outweighed.

As to the Toothe suit, the conspiracy suit and the Toothe affidavit see (Hedden, pp. 99 to 102; Toothe, pp. 145-152 and p. 159; Owen, p. 239, l. 30 to p. 242, l. 10).

Most of the Meetings Set Forth in the Minute Book Were Not Actually Held.

Mr. Hedden swears that only the annual meetings were held (p. 52, l. 10 to p. 55, l. 38; p. 84 ll. 10-35; p. 86, ll. 20-35; p. 96, l. 37 to p. 97, l. 20; p. 103, ll. 3-13).

Mr. Toothe swears to the same effect (p. 135, l. 10; p. 143, ll. 22-33).

As has been noted above, the Company was run by Messrs. Hedden and Dozier and whatever they agreed upon was deemed and taken to be corporate action. When resolutions and corporate action were desired they were by assent written up in the form of minutes in the minute book (Toothe, p. 135, ll. 11-20).

Mr. Dozier swore most positively that every meeting was actually held and accurately recorded in the minute book. The value of this testimony of Mr. Dozier can be passed upon only after we examine the whole of his testimony and have pointed out wherein he has absolutely discredited himself.

No witness, except Mr. Dozier and Mr. Fisher, had any knowledge sufficient to testify in contradiction of Messrs. Hedden and Toothe in this respect, and when we come to analyze Mr. Fisher's testimony we shall find it to be of no more value than that of Mr. Dozier.

Fortunately, Mr. Hedden kept a diary, in which he made daily entries of business and personal affairs, made in his own handwriting on the dates therein respectively set forth. He noted all important matters in it. He noted in it all the meetings which were actually held, and considered directors' meetings of the Company of such importance as to note them in his diary.

(As to Mr. Hedden's diary see his testimony p. 52, l. 13, to p. 55, l. 38; p. 82, ll. 13-31.)

From the standpoint of reliability and evidential value, a single entry in this diary, which Court and counsel examined, is worth a carload of such recollections as Messrs. Dozier and Fisher were able to summon up only after studying the minute book and all that Mr. Dozier had seen fit to insert in it.

Regardless of whether it ought or ought not to be done, it is a matter of common knowledge that in such close corporations as was this it is common practice to write up by common assent and insert in the minute book minutes of meetings which were never actually and formally held and resolutions which were never actually voted upon in a formal directors' meeting, although agreed to.

The certified copies of resolutions which were filed with the banks and which were put in evidence were of that nature. There is no doubt that they were satisfactory to all the directors whether or not they had been actually voted upon in a formal meeting, and might be evidential and binding in any controversy between the corporation and any strangers dealing with the corporation; but under the circumstances of this case *as between these four stockholders and directors and as bearing upon the question of whether the meetings were formally held and the resolutions actually voted upon, the certified copies of resolutions authorizing the opening of bank accounts, &c. are of no value or significance whatever.*

As to the Writing Up and Signing of the Minutes.

Mr. Hedden swears that after Mr. Toothe was made Secretary (February 14, 1922) "Mr. Dozier came in to me and said that he had—was familiar with keeping the minutes, had the experience, and suggested that he keep the minutes for Jimmie—Mr. Toothe" (p. 64, l. 24).

Mr. Toothe swears "that he (Dozier) told me that he was familiar with the contracts, bonds and finances of the Company, that it would be easier for him to do the minutes than for me to do it," and that he (Toothe) never wrote up any minutes until after Mr. Dozier had left (p. 134, ll. 14-29).

This is not disputed by Mr. Dozier, excepting that he says Mr. Toothe asked him to. He says that after every meeting he would dictate the minutes from a memorandum pad on which he made memoranda at the meetings, and that he would dictate the minutes to Miss Jackson within two or three days after the meeting; that after the minutes were written up "the book was laid on Mr. Hedden's desk for his approval—to make any modifications if he saw it was necessary" (there is in the whole record not one word of testimony to the effect that in any single instance did Mr. Hedden ever suggest any corrections or modifications); that Mr. Hedden used to bring the book out and ask "who does this belong to"? meaning "for keeping purposes," or he "would bring it out and lay it on my desk—give it to me or Miss Jackson after it was signed up, and then she would carry it out and give it to Mr. Toothe to look over and sign it" (Dozier, p. 268, l. 18, to p. 271, l. 18).

Appended to the minutes of the first meeting of incorporators and the minutes of the first meeting of directors is a certificate which had apparently been prepared by counsel who attended to the incorporation and organization of the Company (Dozier, p. 331, ll. 15-25) and thereafter Mr. Dozier appended the same form of certificate to all the minutes which he prepared. Moreover, on each page of the organization minutes the Secretary had affixed the corporate seal, together with his initials, and Mr. Dozier followed that same practice on all the minutes prepared while he himself was Secretary and on all the minutes which he prepared after Mr. Toothe was made Secretary, having Mr. Toothe initial each page and Mr. Toothe and Mr. Hedden sign each certificate (Dozier, pp. 330-337).

But right here let it be noted that no witness other than Mr. Dozier, not even Mr. Fisher or Miss Jackson, as we shall see, was able to testify that after each alleged meeting Mr. Hedden signed the certificate appended to the minutes of that meeting. Even assuming that Mr. Dozier and Miss Jackson testified honestly when they say that the minutes of each alleged meeting were written up within a few days after the meeting was held, there is still no testimony in the record, except that of Mr. Dozier, that the minutes of the respective meetings were signed within a few days after they, respectively, are claimed to have been held. The truth is that they were submitted to Mr. Hedden in batches. Mr. Hedden testifies "Mr. Dozier would bring the minute book in my room, stand alongside of me; he had markers, foolscap; he would turn to them and he would say 'now, there it is. It has been initialed and it is all right.' They were signed while Mr. Dozier was there in the room,

sometimes for many many months." The minutes of more than one purported meeting would be brought to and signed by him at one time (p. 56, ll. 14-26). Mr. Dozier would turn the pages and he said 'I have indicated where to sign.' He would turn them over himself and I would sign it and in many cases—I won't say all, Mr. Toothe would sign first and initial it" (top p. 57).

Mr. Aubin had nothing to do with the keeping of the minutes, but he sat on one side of the desk on the other side of which Mr. Dozier sat. He saw Mr. Dozier "working up" the minutes "by himself" and then standing over Miss Jackson and dictating them to her, "Sometimes he spent over a half day dictating—a whole afternoon or the biggest part of the morning, or something like that." He remembers that when he first went with the Company Mr. Dozier wrote up the minutes for a whole year at a time. One time in the latter part of 1923 he recalls that "Mr. Toothe had initialed several or quite a number of pages and put the seal on" and Mr. Dozier said "George, look at this. This is legal," and put his hand on the book, but Mr. Aubin had no way of telling and did not know whether Mr. Toothe had at that time signed the minutes of one or more alleged meetings (Aubin, p. 170, l. 33, to p. 172, l. 13). He saw Mr. Dozier take the minutes in to Mr. Hedden and saw the slips of paper between the pages of the minute book (p. 173, ll. 4-22).

Mr. Toothe says that around Thanksgiving (1922) a batch of minutes was submitted to him to sign and initial. He could not be definite as to exactly what minutes, but he definitely recalled having signed a batch at that time "I

should say from six to eight times," that is, from six to eight certificates appended to the minutes (p. 160, l. 34, to p. 163, l. 33).

(It is stipulated (p. 546) that the originals of the minute books be submitted to the Court for examination in lieu of printing them in the State of Case.)

If the Court will examine the minute book it will be noted that Mr. Toothe's signature appears for the first time on page 139 on the waiver of notice of the annual meeting of February 14, 1922. It appears next on page 145 on the certificate which is appended to the minutes of that meeting. Notice, also, that the certificate is on a page by itself, easily shifted about from place to place.

The next of Mr. Toothe's signatures appears on page 148 on the certificate appended to the minutes of March 9, 1922, which certificate is also on a single sheet, easily shifted about. It will be noticed that all of the above mentioned signatures indicate most strikingly that they were signed at one time, with the same pen and ink. Moreover, the T on Mr. Toothe's name is similar in all of them. It will be recalled that Mr. Toothe was away on his honeymoon at the time of the meeting of February 14, 1922, so that he must have signed the said waiver of notice and the said certificates after he returned, and it appears that he signed them all not earlier than March 9, 1922, that is, the February and March minutes were very clearly signed by him at one time.

This is further borne out by the fact that his signature next appears on page 149 under date

of April 18, 1922, where the signature is noticeably different from those above mentioned, particularly as to the size and openness of the middle initial H and most noticeably in the letter T, the ink also indicating that the signature on page 149 was written at a different time from those preceding it.

With this signature of April 18, 1922, on page 149, which has the straight line cross on the T, compare now the signatures on page 151 under date of May 16, 1922, page 153 dated June 20, 1922, page 155 dated July 5, 1922, page 160 dated September 19, 1922, page 167 dated October 17, 1922. All of these have every indication of having been signed with the same pen and ink at the same time and that all have the straight line cross on the T. That is, those minutes from March 9, 1922, beginning April 18, 1922, up to and including October 17, 1922, are clearly the ones which Mr. Toothe had a recollection of signing in a batch in the fall of 1922. He was testifying from recollection, and clearly did not know of these comparisons which our investigation of the minute book now reveals, or else he would have referred to them. They come now as a striking corroboration of that recollection which he testified to.

Now note that after that batch last above mentioned had been signed the next signature is on page 168 dated November 21, 1922, the next on page 171 dated December 19, 1922, and the next on the last page in the first volume of the minutes, page 174 dated January 16, 1923. In these last mentioned, beginning with November 21, 1922, there is a reversion to the looped T as distinguished from the straight line crossed T, most certainly indicating a signing at a different time. A comparison between the ink of the signature on

page 167 and that on page 168 also leaves no doubt that the signing of one batch ended with page 167 and the signing of another batch began with page 168.

But now note this further significant fact. In enumerating the signatures above from page 149 April 18, 1922, to 167, October 17, 1922, which were all signed as one batch, we skipped and made no mention of page 159, dated August 15, 1922. It is a page on which nothing appears but the certificate. It is impossible to believe that this page 159 and the signatures thereon got into their present place in any honest manner. Right in the midst of the batch of straight line crossed T's which were signed in the fall of 1922, appears this looped T in a different ink and with the more open and larger H; entirely different from the signatures which immediately precede and follow it. This is the certificate to the minutes of the meeting of August 15, 1922, which Mr. Dozier and his associate, Mr. Fisher, who says that he is "in entire sympathy with Mr. Dozier" now solemnly swear was signed by Mr. Toothe and Mr. Hedden within two or three days after August 15, 1922, and with full knowledge of all that is set forth in the minutes under that date.

On direct examination (p. 277, ll. 1-13) Mr. Dozier testified most positively that all the meetings mentioned in the minutes were actually held and that the persons mentioned in the minutes as being present were present and that the "minutes truthfully and correctly represent who were there and what was done, and the date it was done," but in his cross examination (p. 329, l. 39, to p. 337, l. 20) he testifies time and

time again that the certificates and the minutes were a mere "matter of form"—"the form in which they were kept"—"that is the way the forms of the meetings were kept at that time" "that was the form." He makes it appear beyond doubt that as between these four stockholders and directors the certificate which was appended to the minutes of the meeting is utterly without significance or evidential value, and that, when he wrote up for insertion in the minute book such resolutions, &c., as were needed, he appended the certificate and Mr. Hedden and Mr. Toothe signed it just as a mere matter of form because he asked them to and because it was done by counsel at the first meeting and Mr. Dozier had continued the form. The book is full of intrinsic evidence that Mr. Dozier's testimony on direct examination is not true. Let us point out a few of the many instances:

On page 88 the minutes recite that Mr. Hedden was present and there was no quorum, while the certificate states that both Mr. Hedden and Mr. Dozier were present, they constituting a quorum.

So again, on page 126, where Mr. Dozier alone is recited as being present, but he and Mr. Hedden certified that they were both present.

And the same thing again on page 132.

And the same thing again on page 133.

On page 134 Mr. Toothe is recited as being present at the stockholders' meeting of February 14, 1922, whereas he was at that time away on his honeymoon.

On page 148, meeting of March 9, 1922, nothing appears but the certificate, the page number on which has clearly been altered, the typing on the certificate being noticeably different from that of the minutes to which it is appended.

On page 149 again only Mr. Dozier is recited as being present, while the certificate certifies that Mr. Hedden was also present.

On page 168 Mr. Dozier alone is recited as being present, while Mr. Hedden certifies that he also was present.

In nearly every instance the certificate stands on a page by itself. Note particularly Mr. Dozier's testimony on pages 329 to 337 of the record.

As further evidence that Mr. Dozier sometimes permitted months to go by without submitting minutes to Mr. Hedden to be signed is the fact that from "mid summer of 1923" until the meeting of January 15, 1924, no minutes had been written. His explanation of this particular instance is that he got tired of writing them up for Mr. Toothe and thought he should be able to write his own minutes (p. 321, ll. 5-17), but on cross examination he admitted that he had never notified Mr. Toothe that he would no longer write up the minutes (p. 332, ll. 33-37).

The record leaves no doubt that they were submitted to Mr. Hedden for signature in batches. No one other than Mr. Dozier swears that Mr. Hedden signed them monthly.

Mr. Hedden did not read them over, but signed them when, where and as requested by Mr. Dozier (p. 56, ll. 14-26).

> "Q Did you have any question whatever at that time as to the entire responsibility and reliability of Mr. Dozier? A None whatever. I put every confidence in Mr. Dozier" (p. 57, ll. 15-18).
>
> "Mr. Dozier was my trusted man" (p. 118, l. 10).

"I had such implicit confidence in Mr. Dozier that I left Mr. Dozier my check"—interrupted (p. 116, l. 23).

"I say, to the best of my knowledge and belief, that many of those meetings were not held, not all of them. That book was presented to me months after for signature—with Mr. Dozier there—without reading them, which I should have done, but I had so much confidence in him that I didn't do it (p. 95, ll. 26-36).

Mr. Dozier emphatically enough exclaims "Oh, yes, Mr. Hedden always examined any paper very carefully before he signed it" (p. 278, l. 5).

As Mr. Fisher said in his letter to Mr. Edward Toothe "that is simply a question of veracity."

The record clearly indicates that Mr. Hedden paid no attention to the minutes. He was not concerned with them. So far as he was concerned the keeping of the minutes was a matter of form which he left to Mr. Dozier. The only time he did have occasion to refer to the minute book it was locked up in Mr. Dozier's private box in the safe so that he could not get at it (p. 104, l. 33, to p. 107, l. 40).

Likewise, nothing could be clearer than that Mr. Toothe was nothing more than a rubber stamp so far as the minutes were concerned. He says he did not read them (p. 135, ll. 20-35).

"I only saw the minute books when they were brought to me" (p. 136, l. 34).

"Q Was it ever suggested to you that you should read those minutes? A No.
Q Were you ever asked? A No.
Q What were you told to do? A Sign it" (p. 140, ll. 14-17).

"Q And did you ever have custody of the minute book at all? A Never.

Q Just a perfect mystery, the whole thing? A Just to sign it'' (p. 144, ll. 10-14).

''Q Did you assume any duty or responsibility in connection with these certificates so they would impress themselves upon you, or did you merely follow directions and instructions? A I followed directions.

Q Did you assume any responsibility? A No'' (p. 163, ll. 27-32).

Mr. Toothe's job was to work ''in the Engineering Department, getting prices on material''—''he worked in the construction department helping everybody''—the estimators and engineers, and taking care of the plans and preparing and estimating, getting prices on materials ''and calling sub-contractors for bids, and the like of that'' (Aubin, p. 172, ll. 15-31).

Defendant's ''Precautions.''

As contrasted with Mr. Hedden's trust and confidence, we find Mr. Dozier keeping a duplicate of the minute book, which he refers to as ''my copy'' (p. 408, ll. 34-37), taking particular care to have his alleged resolution of August 15, 1922, and the minutes of that meeting fully sealed, signed and certified; being particularly concerned to get into the minute book under date of October 17, 1922, a recitation that the minutes of the meeting of August 15, 1922, were read and approved; when he desired to negotiate a ''personal loan'' or ''exchange of checks'' between himself and the Company, being particularly careful to always use for that purpose one of the checks which Mr. Hedden had signed in blank and entrusted to him; taking great care (so he says) to call to Mr. Hedden's attention on January 11, 1924, that the book value of the stock would figure out between $225 and $240

per share, and offering himself still ready to stand by his offer of January 5th, to sell for $200 per share; taking particular care to figure out anticipated profits of $170,000 or so on jobs which ultimately netted an actual profit of something like $50,000; taking care to figure out the good will value of the stock and adding to it his already inflated book value; taking particular care to keep his faith with Mr. Hedden by introducing at the meeting of January 15, 1924, a resolution that the Company buy his stock as per the statement which he had prepared, notwithstanding that he already had in the minute book the resolution of August 15, 1922; taking particular care (if we believe him) in every conference which he had with Mr. Hedden concerning the purchase of the stock to mention to Mr. Hedden and remind him of the resolution of August 15, 1922; taking particular care to call in his nephew to help him prepare the statement of December 31, 1923; taking particular care to see that the nephew was paid in cash out of the petty cash drawer; taking particular care to exhibit a blank check to his wife and Mr. Ferry on the evening of January 14, 1924, and of having Mr. Ferry pass upon the endorsement on the back of the check; taking the unusual "precaution" of having the check certified which he had drawn to his own order and for the payment of which he knew there were ample funds in the bank; taking further precaution of having the check immediately credited to his personal account even before the meeting of January 15, 1924; taking great care in respect to the voucher for said check and the entry of it; after his resignation of January 15th, in his talk to the employees of the Company, taking great care to praise Mr. Hedden and to urge continued loyalty

of the employees to Mr. Hedden, although most of them went with him to the Fisher-Williams Corp.; taking particular care to send for the $65,000 voucher so that he might have a photostatic copy made of it. *In short, taking such extreme precautions in every respect as only a man would who has some reason for such unusual care and precaution.*

Keeping the Minute Book Locked in Safe.

Not the least significant of his precautions was the keeping of the minute book in which the resolution of August 15, 1922, appeared locked in his private compartment in the safe (Hedden, p. 104, l. 33, to p. 107, l. 40; Toothe, p. 136, ll. 24-30; p. 164, ll. 30-35; Aubin, p. 167, l. 20, to p. 169, l. 15; p. 195, l. 27, to p. 196, l. 13; Dozier, pp. 274-275; Jackson, p. 451, l. 20; Hohenhausen, p. 475, l. 12, to p. 476, l. 35; p. 480, l. 38, to p. 481, l. 20).

No doubt the first minute book was kept on the shelf, where Mr. Dozier and his witnesses testified it was kept up until the fall of 1923, when Mr. Dozier got Messrs. Hedden and Toothe to sign the batch of minutes above referred to. Both Mr. Dozier and Miss Jackson (p. 447, l. 30) tell of beginning the new minute book, apparently beginning with the minutes of April 19, 1923. There is no reason why this second minute book should not have been kept by Mr. Dozier on the shelf, as he testified. Not a single witness, however, testifies to ever having seen two minute books together on that shelf or in the safe. There was only an interval of a few months between the time that batch of minutes was signed in November, 1922, and the time that the new minute book was begun. If during that brief in-

terval there had been no minute book on the shelf, neither Mr. Fisher, Miss Jackson or Mr. Hohenhausen would have been at all likely to notice that fact. But none of them had anything to do with the minute book, except that Miss Jackson wrote in it when Mr. Dozier brought it to her. The undisputed fact is that when Mr. Hedden wanted it during Mr. Dozier's absence to refer to the by-laws it could not be found.

Alleged Meeting of August 15, 1922.

Mr. Hedden swears that no such resolution as that of August 15, 1922, was ever adopted and that he never heard of it, and that in fact no such meeting was held (p. 50, l. 23, to p. 53, l. 40; p. 83, l. 30, to p. 84, l. 30; p. 129, l. 33, to p. 130, l. 40).

Mr. Toothe also swears that he never heard of any such resolution until January 17, 1924 (p. 136, ll. 13-22).

Both Mr. Dozier and Mr. Fisher swear that the meeting was held and the resolution was adopted. Mr. Fisher probably relies upon the fact that "that is merely a question of veracity." We shall consider what he has to say about it when we review his testimony later in this brief, but now let us consider the circumstances and Mr. Dozier's testimony.

It will be recalled that prior to August 15th, 1922, Mr. Dozier had been negotiating with Mr. Hedden concerning the stock. One agreement which Mr. Hedden had refused to sign was submitted in February, 1922 (Hedden, p. 81, ll. 10-30; Dozier, p. 308, ll. 30-40; Fisher, p. 482, l. 33, to p. 483, l. 13). Mr. Hedden and Mr. Dozier agree that in August, 1922, another draft of

agreement was submitted by Mr. Dozier to Mr. Hedden, which Mr. Hedden also refused to sign (Hedden, p. 82, ll. 1-38). Mr. Dozier said (p. 309, l. 22) that the agreement was submitted by him to Mr. Hedden "a few days before that meeting" of August 15th; that before Mr. Doe went out (probably at the same conference in which Mr. Hedden, according to Mr. Dozier's story, said "Wallie, you are not going to put me out of the Company are you?") Mr. Hedden agreed "that we could have an agreement between us respecting the sale and purchase of the stock in the event of death. That was followed down in that summer of 1922. Mr. Hedden finally refused to sign that, or the other agreement. The result was he promised to give me in the form of a resolution that the Company would purchase my stock in lieu of signing these agreements. At the meeting of the Board on August 15, 1922, after the vacation was granted to me, then I made the resolution that the Company would buy my stock in case I wanted to retire, at the book value of the preceding or any year ending December 31st" (p. 309, l. 34, to p. 310, l. 15).

Note particularly that Mr. Hedden "refused to sign that, or the other agreement" and that the result was that defendant's resolution was put into the minutes "in lieu of signing these agreements."

> "Q You had been trying to get Mr. Hedden to sign an agreement to do that very thing? A Yes, sir, because he promised to give it to me.
>
> Q Although he promised and you had the agreement prepared by lawyers, you could not get his signature to it could you? A Sure not * * *.
>
> Q You had asked him to purchase your stock in the event of retirement? A I had.

Q * * * Do you mean to say there was never an agreement prepared by a lawyer or you covering the question of his taking your stock, or the Company taking your stock in the event of your desire to resign? A Yes, before the meeting (*i. e.* Aug. 15, 1922, meeting).

Q Before the meeting that agreement had been prepared? A Yes, sir.

Q And he had refused to sign it, hadn't he? A He had up to that time.

Q Then why was it that when that matter came up before the meeting of the Company that he changed his opinion and disagreed? A Mr. Hedden didn't have control of Charles R. Hedden Company and when I agreed to give him the control of the Company by the purchase of Mr. Doe's stock he agreed to execute those agreements with me.

Q And then he refused later to do it, didn't he? A After he had control of the Company he did.

Q After he got control of the Company he went back on his word didn't he? A Yes, that is my understanding'' (Dozier, p. 339, l. 20, to p. 340, l. 24).

Mr. Dozier's complaint was (so he says) that Mr. Hedden had agreed to enter into such a contract with him but had gone back on his word and just a few days before August 15th once again refused to live up to the arrangement. Then Mr. Dozier put this resolution into the minutes, which both he and Miss Jackson say he dictated on the 17th, *i. e.*, on the Thursday following Tuesday, the 15th. Then at a time when he presented a batch of minutes to Mr. Hedden and Mr. Toothe to be signed he succeeded in getting these minutes of August 15th signed and sealed along with the others. Thereafter he was afraid to make known what he had done. He kept the book carefully under his own

control. While he was away in California it could not be found when Mr. Hedden wanted it, and never thereafter did he make any allusion to it until he referred to it on the voucher of January 15th, 1924. Meanwhile he constantly and persistently kept up his negotiations with Mr. Hedden right up until the final conference which he says he had on January 5th, 1924. *From August 15, 1922, until his resignation on January 15th, 1924, his course of conduct was uniformly inconsistent with his having that alleged resolution of August 15th, honestly and properly in the minute book with Mr. Hedden's knowledge and consent.*

The only contemporaneous and unimpeachable record that exists as to whether or not that meeting of August 15th was held is found in Mr. Hedden's diary, in which no meeting is noted under that day (p. 52, l. 13, to p. 55, l. 38), but in which, under date of August *16*, 1922, is recorded "Walter submitted agreement and I turned it down" (p. 82, ll. 9-28).

As to the matters referred to in those minutes of August 15, 1922, other than the paragraphs beginning with the words "the Treasurer reluctantly stated" down to the end of the resolution as to the purchase of Mr. Dozier's stock, we find only matters of the same nature and in much the same form as those contained in the minutes of other directors' meetings. The by-laws provide for monthly meetings, and Mr. Dozier had pursued the practice of inserting in the form of monthly minutes such matters as arose from month to month agreed upon by him and Mr. Hedden and seeming to him to be properly recorded in the minute book. It is most improbable that Messrs. Hedden, Dozier and Fisher all left their work and sat together in

Mr. Hedden's room while Mr. Dozier, as Treasurer, made all the reports that are set forth in these minutes—the renewing of notes, the giving of the Union Indemnity Company bond, the ratification of contracts, and the Internal Revenue Inspector's report as to income tax, all of which Mr. Dozier had no doubt mentioned to Mr. Hedden from time to time as the items arose, and so, too, the item of salaries, no doubt agreed upon between Mr. Hedden and Mr. Dozier, was noted in the minutes for income tax purposes as on other occasions. It is not consistent with the circumstances and organization of this Company that any such formality was gone through every month.

Nowhere else in the minute book is found any such harangue as this about "the Treasurer reluctantly stated," etc., and nowhere in the 229 pages of minutes is found any pen and ink interlineation except in the blank space just above the resolution in question on page 158.

It is easy enough for Mr. Dozier and Mr. Fisher to now read over that paragraph about "the Treasurer reluctantly stated, etc.," and based thereon to give the detailed account which they now give of what transpired at that supposed meeting (Dozier, p. 271, l. 19, to p. 273, l. 10; p. 309, l. 22, to p. 310, l. 15; p. 341, l. 15, to p. 343, l. 13), but it is not so easy for Mr. Dozier to explain why of all the vacations he had taken and trips he had made to California this vacation of August, 1922, was the only one which seemed to call for a specific resolution (p. 337, l. 23, to p. 338, l. 36).

> "Q Did you speak to him (Mr. Toothe) about the Company buying your stock at that time? A No.

Q Never said a word to him about it?
A No not to my knowledge'' (Dozier, p. 342, l. 31, to p. 343, l. 2).

Mr. Toothe who was a stockholder never heard of it until January 17, 1924.

September 19, 1922.

Nothing could be more certain than that the minutes of September 19, 1922 (p. 160), are evidence of nothing else than an attempt on Mr. Dozier's part to bolster up the record upon which he now relies. He was in California at that time and dictated this page sometime in the fall. There is not one chance in a million that during his absence it ever occurred to Mr. Hedden and Mr. Fisher to get together for no other purpose than that one of them should make and the other should second and that they should then both vote in favor of a resolution ''that the reading of the minutes of the previous meeting of the Board of Directors held on the 15th day of August, 1922, be postponed to the next regular meeting of the Board.'' Such action on their part would make them appear to be even more solicitous than Mr. Dozier himself concerning those ''minutes of the previous meeting.'' This page 160, September 19th, 1922, is just such a one as those others which have above been particularly pointed out and which Mr. Dozier said were a mere ''matter of form.''

October 17th, 1922.

These minutes on pages 161-167 of the minute book are apparently the last of the batch which were signed at one time in the fall of 1922, as hereinabove pointed out. Mr. Hedden and Mr. Toothe both deny that there was any such meet-

ing (Hedden, p. 86, l. 30; Toothe, p. 160, ll. 20-40).

There appears first the resolution "that the reading of the minutes of the regular meeting of the Board of Directors held on the 15th day of August, 1922, be ratified, approved and confirmed." Mr. Dozier says:

> "I specifically requested that Mr. Toothe read over the August meeting before the meeting was ratified.
>
> Q Why? A I wanted to see—the August meeting of the 15th ratified by the following meeting, which was in October.
>
> Q Why did you want it ratified? A I was particular about the resolution of the Company purchasing my stock.
>
> The Court: Why were you so anxious about that?
>
> Witness: Well, for a matter of record—matter of form.
>
> The Court: Well, it was already in the record and you knew it was in the record. Why were you so anxious to have it ratified?
>
> Witness: Well, to read the minutes at the following meeting and then ratify and approve those minutes of the previous meeting" (Dozier, p. 311, ll. 19-40).

As originally written this paragraph in the minutes read "be approved and confirmed," but Mr. Dozier's anxiety resulted in an erasure, so that we now have all three words "ratified, approved and confirmed." As to the reading of minutes of all other previous meetings mentioned in the minute book, two of these three words were sufficient, but this one needed to be enforced by the use of all three.

This matter of ratificating minutes of previous meetings was, indeed, as Mr. Dozier himself said, a mere "matter of form." In dictat-

ing the minutes it was repeated time after time simply for the appearance of the minutes.

Then follow a couple of customary resolutions concerning the opening of bank accounts. After them follow some paragraphs of what "the Treasurer reported," a note concerning the settlement of a Mr. Parmelee's account and the ratification of three contracts which had been entered into. The certificate again stands on a page by itself at the end. All of this is just such material as Mr. Dozier had been accustomed to include in the minutes which he "worked up" as he sat at the desk opposite Mr. Aubin, but now, as with the minutes of August 15th, it is easy for him to refer to the various matters which he mentioned in the minutes and, based thereon, to give a detailed account of the supposed meeting.

Fall of 1923.

From the minutes of October 17th, 1922, until the fall of 1923, is the period during which nothing transpired relative to the resolution in question other than Mr. Dozier's continued negotiations with Mr. Hedden (Dozier, p. 279, ll. 2-20; Hedden, p. 108, ll. 1-12). Until during the latter part of 1923 he was broaching the question to Mr. Hedden "pretty near once every two or three weeks" (Dozier, p. 279, l. 18). Then occurred what Mr. Dozier refers to as the Rippel conference, after which he says:

> "A I went back to Mr. Hedden and apologized for speaking a little roughly.
>
> Q And what else did you say if anything about the stock? A I asked Mr. Hedden to take my stock and let me out of the Company, that he and I could no longer agree, the first of the year, and he says, 'I will, Walter; I will go ahead and do it' " (p. 313, ll. 30-40; p. 409, l. 1, to p. 411, l. 27).

Letter of December 31st, 1923.

The above mentioned Rippel conference was before Mr. Dozier's letter to Mr. Hedden of December 31st, 1923.

> "Q Did you reach any agreement in these preliminary conversations before this letter was written? A *He only gave me a slight assurance that the Company would take my stock in case I wanted to get out*" (Dozier, p. 280, l. 20).

As one reads the resolution which appears under date of August 15th, 1922, in the minute book does it look like only a slight assurance that the Company would take his stock in case he wanted to get out?

Then while he sat in the office within twenty feet of Mr. Hedden he wrote Mr. Hedden the letter of December 31st, above quoted. There is no word in that letter concerning the resolution of August 15, 1922, no suggestion that he and Mr. Hedden confer as to carrying out of that resolution (see particularly Dozier, p. 414, l. 12 to p. 415, l. 35).

January 5th, 1924.

Mr. Dozier says that pursuant to that letter he had a conference with Mr. Hedden on January 5th (p. 280, ll. 14-29).

> "Q What was the subject matter of the discussion? A The purchase of my stock.
>
> Q Was any agreement reached as to the result of that conference? A There was.
>
> Q What was the agreement? A He agreed to take my stock at the book value.
>
> Q And tell us what was said that lead up to your agreement? A I went into the matter and Mr. Hedden said 'Well Walter what do you want?' I said 'to sell my stock or buy yours.' He said 'What do you want

> for it?' I said 'Mr. Hedden before we proceed to the meeting I would like to have Mr. Fisher here to hear what we say and have the stenographer take down what occurs' (this certainly was extreme caution as between friends). He said 'proceed Walter, proceed with what you want to say.' I said 'I either want to sell or buy. I will give you $200 a share for your stock or I will sell mine—anything that you want' " (Dozier, p. 281, ll. 15-33).

He then produced the comparative statement (Ex. D. 7). Mr. Hedden said he didn't care anything about it (Dozier, p. 280, l. 14, to p. 283, l. 12). There was some conference on that date. Mr. Hedden also mentions the comparative statement and agrees with Mr. Dozier that he said he didn't care anything about it (p. 111, ll. 25-32). He also agrees with Mr. Dozier that he said "Walter if we agree on a price would you take notes for it?" This certainly sounds like a joke (p. 346, l. 34, to p. 347, l. 5), although Mr. Dozier seems to have taken it very seriously. "He then finally stated 'Walter I don't want to buy your stock' " (Dozier, p. 282, l. 32).

"He says 'the Company will take your stock and the Company will give you a check and you can go out and make up the statement in accordance with the book value of the stock as of December 31st, and he said—Q He said what? Try to remember the exact words as near as you can? A He gave me to understand that I was to go ahead and make up the book value of this stock and settle it on the basis as I proposed to him" (not a very definite recollection of his exact words).

In two or three solid pages of the record (pp. 280-283) Mr. Dozier had been narrating what was said between him and Mr. Hedden on that

occasion and counsel had been trying his best to get out of him what he most wanted, but it didn't come until finally dragged out:

> "Q Was anything said by either of you in that conference about the resolution of August 15th, 1922? A I told him, Mr. Hedden, that the Company had agreed to take my stock under the resolution of August 15th, 1922.
>
> Q What did he say to that, if anything? A *He didn't say very much about it*" (p. 283, l. 10).

Furthermore, Mr. Dozier entirely omitted from his account of the conference any mention of a "confirmatory resolution" until he was forced to an explanation of why that resolution was introduced by him on January 15th, 1924, when he answered on cross-examination "only in the agreement with Mr. Hedden, we had on the 5th of January, I told him at that time of a resolution at that time further confirming that would go through—pass the Board at that time."

> "A Only to keep my faith with Mr. Hedden as of the meeting of January 5th" (Dozier, p. 353, l. 25, to p. 354, l. 38).

Mr. Hedden (p. 123, ll. 12-32):

> "Q Do you remember that on January 5th when you and Mr. Dozier had your conference, that in connection with the arrangements that were made with reference to the purchase of this stock that he said, or you suggested that he put through another resolution? A He said nothing of the kind.
>
> Q Was it not discussed? A No, sir, it was not."

See cross-examination of Mr. Hedden relative to this January 5th conference (p. 109, l. 34, to p. 112, l. 38), and his direct examination (p. 59, l. 13, to p. 60, l. 28).

January 5th to January 11th, 1924.

Mr. Hedden (p. 61, ll. 16-29):—

"Q Did he submit to you figures showing you what the book value was? A Not until the meeting—not to me; he submitted to the Board on January 15th.

Q And had you up to that time seen those figures that he submitted to the Board? A I had not. He only referred to that statement, annual statement, I think it was in December that he was preparing an annual statement and would soon have it ready, and I said before there was any annual statement sent out to the bank, I wanted our books certified by a certified accountant. The books were not certified."

It was time to prepare the regular annual statement and Mr. Dozier was working on it. Messrs. Dozier, Fisher and defendant's other witnesses all seek to make it appear that work on the preparation of the statement was begun immediately after the conference of January 5th and that the preparation of the statement had something to do with that conference. It is clear, however, that not one of them other than Mr. Dozier and possibly Mr. Fisher at that time knew anything about any conference on January 5th, and as we shall see, it is very doubtful whether Mr. Fisher did. Certain it is that Mr. Dozier was working on the statement with a view to drawing his check, but Mr. Hedden knew nothing about all of that and knew nothing of the night work which Whitehurst, Fisher and Dozier were doing on it. As to the preparation of the statement and how he arrived at the value of $237.16 per share, see his cross examination (p. 360, l. 12, to p. 367, l. 15; p. 415, l. 39, to p. 417, l. 27; p. 347, l. 15, to p. 351, l. 20).

"Q You figured book value and then you figured good will as a separate item, did you

or did you not? A Yes, sir, I did" (p. 350, l. 18).

Exhibits D. 8 and C. 12 are Mr. Dozier's work sheets, in which the book value was determined by him, which, exclusive of good will, he got up to $178.99 per share. Among the things which he did to arrive at this excessive book value was to include $134,279 of anticipated profits on uncompleted contracts then pending, the actual profit on which contracts as determined by the accountant after the contracts were completed being only $57,061.02 (Owen, p. 233, l. 20).

Exhibit C. 14 is Mr. Dozier's "supplement" to those original work sheets (Exhibit C. 12). In this supplement he figured the good will of the business to be $52,354.61, or $58.17 per share on the 900 shares of stock outstanding. This he added to the aforesaid book value, giving the total of $237.16 per share, for which he drew the check (Owen, p. 232, ll. 20-35).

Mr. Owen's audit of the books discloses that as of December 31st, 1923, the book value per share, without including estimated profits on work then in progress was a trifle less than $14, and that including the profits which were actually realized on work then in progress the book value was a little over $38.25 per share (p. 226, l. 33, to p. 227, l. 20).

January 11th.

To Mr. Hedden there was nothing remarkable about Mr. Dozier's mentioning to him the preparation of the annual statement. Mr. Hedden says "I think it was in December that he was preparing an annual statement and would soon have it ready." Mr. Dozier, however, fixes the time as January 11th. He says (p. 301, l. 27, to

p. 302, l. 5) that on that date he showed his work sheets (Exhibit D. 8) to Mr. Hedden.

"A We spoke over the 1923 conditions and I told him that the statement, as illustrated here, would show the book value of the stock between $225 and $240 per share.

Q And what did he say? A Mr. Hedden said—I asked him, that is, if he wanted any modifications in the closing of the accounts. He told me to go ahead and close them on that basis" (p. 301, l. 36, to p. 302, l. 5).

Q What was the object of this statement you were working on? A This statement was finished, carried to Mr. Hedden, he and I talked it over and we closed the books on this sheet" (p. 303, ll. 18-21).

Again, at page 347, he says that he had the work sheets with Mr. Hedden and told him that the value of the stock would be approximately $225 or $240 a share "that was on the 11th and I told him that would be the basis on which the settlement between him and myself would be made."

"Q Did you tell him how you got that up? A No, he didn't go into the details of it" (p. 347, l. 36).

Mr. Dozier was cross-examined as to this statement and as to how he arrived at the book value and how he included good will and anticipated profits (pp. 347-351, to which pages attention is particularly directed). It was only on the 5th of that same month he says he had offered Mr. Hedden to buy or sell at $200 per share.

"Q Did he ask you what you fixed for good will or how you reached it? A No.

Q Never did at any time did he? A Not at that afternoon he didn't.

Q Never did at any time? A Not afterwards.

Q Not after or before asked you how you reached the figure of good will did he?

A I told him that the figure of good will was figured in the value of it.

Q My question is this—did he before or after ask you how you reached the figure of good will? A No, he did not. * * *

Q Now that approximation (of anticipated profits) would make a great deal of difference in the value of the stock wouldn't it? A That was the profit.

Q And do you mean to tell us that Mr. Hedden was not sufficiently interested in that approximation to ask you to show him the figures which you made? A I wouldn't say that he was not.

Q Well, he never did ask you did he? A No" (p. 348, l. 24, to p. 349, l. 2).

In respect to the signing of the minutes and the checks Mr. Dozier laid emphasis upon the great care which Mr. Hedden exercised. The defendant himself has not pictured Mr. Hedden as a man who, having been offered on January 5th to buy or sell at $200 per share would say on January 11th after being shown a statement revealing a value of approximately $240 per share "all right Walter, take it at that figure."

In fact, Mr. Dozier even goes so far as to say "I told Mr. Hedden then (January 11th) that my position with him as of the 5th—meeting of the 5th—would still hold good."

"Q Did he tell you any reason why he would prefer to pay you for the Company somewhere between $225 and $240 rather than to take your stock at $200 a share? A He did not" (p. 366, l. 2).

(See further to this same effect Dozier's cross, pp. 365 to 367.)

Such perfect prodigality! $65,219 to be laid out in cash by a company whose capital of $90,000 was already impaired (Owen, p. 226, l. 33, to p. 227, l. 25) and while the Company was largely

indebted to Mr. Hedden for loans and arrears of salary account!

On this same day the Harrison Radiator Company check was received, and although it would naturally have been deposited in the Fidelity Union Trust Company, where complainant had its principal account and to which bank complainant was most largely indebted, Mr. Dozier deposited it in the Montclair Essex Trust Company (Dozier, p. 399, l. 35, to p. 403, l. 20). Notwithstanding Mr. Dozier's testimony that he told Mr. Hedden of this on January 11th, the fact is that Mr. Hedden did not know until January 17th, 1924, that it had been received (p. 58, l. 32, to p. 59, l. 2).

Moreover, by way of preparation for the scheme he had in mind, he told Mr. Aubin early in the month to draw no more checks on that Montclair account (p. 174, ll. 9-40).

Checks Signed in Blank—"Exchange of Checks" —"Personal Loans."

Before we examine the testimony relative to the check itself we must refer to the practice which Mr. Hedden followed of signing checks in blank and entrusting them to Mr. Dozier and what use Mr. Hedden, since Mr. Dozier's resignation, has discovered was made of those checks. "I would sign several checks in blank in different books," said Mr. Hedden (top p. 58) "sometimes more or less; as Mr. Dozier would indicate; sometimes one page, sometimes two or three pages" (see also Mr. Hedden's cross examination, p. 115, l. 39 to p. 118, l. 27).

Mr. Aubin said that some were left in the check book and some were taken out. "In fact,

I always had a few in my petty cash box, and I know Mr. Dozier had a few in his petty cash box'' (p. 173, ll. 23-40).

> ''Q Now at the time that Mr. Dozier told you not to draw any more checks on the Company's account at the Montclair Essex Trust Company, do you know whether there were any checks in that book or on that account which were signed by Mr. Hedden in blank? A Well, I know that right at the close of the year or the first part of January (1923) we had Mr. Hedden sign several batches of blank checks in three of the books. Now, whether there was signed checks in there, I couldn't say, that were unused'' (Aubin, p. 174, ll. 30-40).

Mr. Dozier says (p. 278, l. 37) that the instructions to Mr. Aubin about these checks were ''as soon as Mr. Hedden would sign them to take them out and lock them up.''

> ''Q Did you keep them in your possession? A I did not'' (top p. 279).

He says further (p. 299, l. 15) ''occasionally Mr. Hedden would come out to the bookkeeper's desk and sign a few checks in the book on the desk.''

> (p. 300, l. 33, to p. 301, l. 10):— ''Such checks that Mr. Hedden signed were kept by Mr. Aubin in his safe.''
>
> ''Q Was any notation made on the check stub? A Yes, sir. 'In safe' written in by Mr. Aubin or myself, when I saw them.
>
> Q Written 'in safe.' A Yes, sir, that is in Aubin's safe.
>
> Q When you took up the check-book to draw your check on January 14, 1924, was there any such entry on the check stub book that there were checks in the safe? A *Absolutely no.*''

The fact is, however, that check No. 5408 (Ex. C. 30) is one of the checks that was signed in

blank early in January marked on the stub in Mr. Dozier's handwriting "in safe," and it is still out, unaccounted for and missing. Notwithstanding his "absolutely no" above quoted, he was asked on cross-examination (p. 396, l. 35, to p. 399, l. 20) whether his attention had been called to that fact or whether he had made any inquiry concerning it, and he answered "no, I did not open the check-book," and did not ascertain whether the check was in the safe. "I didn't bother with that part," he says, and did not know the check was out.

At page 405, lines 19-24, he even testified that it was "unusual" for checks to be signed in blank.

> "Q Did you keep blank checks in your possession or control? A Never.
> Q Who did? A Mr. Aubin, if there were any" (p. 304, ll. 3-19).

> Q And there were no blank signed checks with Mr. Hedden's name on alone at that time (January 11th, 1924) in your possession or under your control, were there? A There were not.
> Q But were there any checks in blank out at that time? A Not to my knowledge" (p. 367, ll. 15-27).

And now the Court's attention is directed particularly to the cross-examination of Mr. Dozier on pages 367-392, wherein it appears:—

That on January 10th he drew to his own order a check for $19,000, not an "in safe" check, but most certainly one that had been signed by Mr. Hedden in blank, and either left in the check-book, or taken out without noting on the stub of it the words "in safe." That check No. 12084 (Ex. C. 19) signed in blank on or about *November 30, 1921,* as its place in the book in-

dicates, was held out and used by Mr. Dozier to his own order on *January 16th, 1923.*

That check No. 12259 (Ex. C. 20), one of the "in safe" checks used by Mr. Dozier to his own order for $10,000 was held out from January 31st, 1922, until April 15th, 1922.

That check No. 12499 (Ex. C. 22) to Mr. Dozier's own order for $4,000 was held out from June, 1922, to October, 1922.

That check No. 12260 (Ex. C. 23) to Mr. Dozier's own order for $2,500 was held out from January, 1922, until October, 1922.

That check No. 12560 (Ex. C. 25) to Mr. Dozier's order for $2,000 was held out from July, 1922, until November, 1922.

That check No. 12834 (Ex. C. 26) to Mr. Dozier's order for $13,500 was also one of the "in safe" checks—"a temporary loan," and was held out from December, 1922, to January, 1923.

That check No. 12752 to Mr. Dozier's order for $6,500 was held out from October, 1922, to September, 1923.

All of these were checks signed in blank. Not until after Mr. Dozier had resigned did Mr. Hedden know of the use that Mr. Dozier had made of any of them (Hedden, p. 519, ll. 5-12). Although Mr. Dozier made good those moneys which he withdrew from the company's treasury, nevertheless he was without Mr. Hedden's knowledge using the company's funds for his own purposes by means of those checks signed in blank, and at the time he resigned had in his possession $10,000 of that money which he did not refund until after he had received Mr. Lum's letter of January 17th, 1924 (Ex. D. 4), in which

demand was made upon him to return not only the $65,219, but also the $19,000, which he had drawn out on January 10th, 1924. After receipt of that letter and after he had resigned he went directly to the Montclair Essex Trust Company and deposited $10,000 to the credit of Charles R. Hedden Company, which amount balanced his ledger account.

These 28 pages of cross-examination (pp. 367-392), are as helpful as any pages in the record in aiding the Court to determine the question of veracity as between Mr. Hedden and Mr. Dozier.

January 14th, 1924.

Mr. Hedden was not at the office on this date. The annual meeting was to be held the next day and Mr. Dozier was getting ready for the consummation of his scheme. He handed to Miss Jackson a batch of bills, with each of which was a blank check, and gave her instructions to fill out the checks for the payment of the bills. As a further memorandum for her was a slip of paper, on which appeared nothing but his name, and he instructed her to typewrite his name on one of the checks. Later in the day he had her typewrite an endorsement on the back of the check. Both Mr. Dozier and Miss Jackson (but no one else) swear that the check which Miss Jackson thus prepared had no signatures on it when she prepared it. It had no amount filled in on it. All of the other checks which accompanied the bills had the amounts filled in on them in ink when they were delivered to her to typewrite the name (Miss Jackson, p. 452, ll. 9 to bot. p. 459; Dozier, p. 314, ll. 33 to bot. p. 317). In the check book from which the check in question (Ex. C. 5) was taken the check immediately preceding it is dated December 31st. It will be recalled that

late in December or early in January Mr. Hedden had signed a batch of checks in blank in that book.

Mr. Dozier could not remember whether the voucher for the check (Ex. D. 10) was prepared that same day or the following day, but he says "I didn't receipt it until after the check had been signed by Mr. Hedden—the voucher was not receipted."

> "Q It appears now to be receipted? A Yes sir I receipted it after Mr. Hedden signed the check. That was the next day" (p. 317, l. 37 to p. 318, l. 5).

New York City—January 14th, 1924.

Strangely enough, Mr. Dozier says that when he went to New York on the evening of the 14th, he put the check in his pocket and took it with him. When he met his wife at the hotel he showed her the check, and then when he went to a dinner at the Builders Trade Club, he showed it also to his personal friend, Mr. James M. Ferry, with whom he had previously discussed his negotiations with Mr. Hedden. He says that he saw Mr. Ferry look at the check both front and back and that at the time Mr. Ferry looked at it it had no signatures on it (Dozier, p. 318, l. 5 to p. 319, l. 25).

It is respectfully submitted that the testimony of Mr. Dozier's wife and his personal friend, Mr. Ferry, as to what transpired between them and Mr. Dozier in New York City at a time when no other representative of the complainant company was present is not competent evidence. However, let us glance at their testimony.

Mrs. Dozier says (p. 434, l. 15), "when Mr. Dozier came upstairs and took off his coat he had

the envelope, and he takes and lays it on the dresser and took his things out. I said to him 'have you finally severed your connection with Mr. Hedden?' I had so much of Mr. Hedden I was almost distracted, and he said 'yes.' I said, 'Did you get your check?' He said, *'Not filled out,'* and with that he took it out of his trunk and showed it to me."

She says further there was nothing particular about the check that would enable her to identify the Exhibit C. 5 as being the particular piece of paper which she saw (top p. 435). She testified that she was not able to say whether the amount was filled in.

Mr. Ferry is a lawyer not engaged in active practice. He testified (pp. 427-432):—

> "Q How did the check come into the conversation? A Mr. Dozier took this out of his pocket and showed it to me. I said 'Walter is it signed?' and he just handed it to me. I looked at it and I said 'why it is no signed. I am sorry it isn't signed.' Then I looked on the back to see the endorsement on it, which had been discussed" (p. 428, ll. 23-33).

He also says that he cannot identify Exhibit C. 5 as being the same paper (p. 429, ll. 25-33). He says that it was he who had suggested the endorsement on the check during his various discussions with Mr. Dozier "on this proposition."

> "I said 'I am sorry it is not signed.' That to my mind would have closed the transaction" (p. 430, l. 20).

He had no interest in this transaction "except as a friend." Mr. Dozier had discussed it with him "frequently."

> "Q Did he speak to you about how he was going to get this money out of the com-

pany? A No * * * except in a general way, his negotiations with Mr. Hedden for the purchase and sale of his stock."

The Court: "Q Can you recall that he gave any reason why he should bring the blank check to your attention?

Witness: He knew I was greatly interested in the success of his negotiation."

"No it was *another step in progress.*"

"I told him I was very glad he *had gone that much further.*"

"I was glad he was one step further on and was sorry his check was not signed."

He also could not say whether or not the amount of the check was filled in at the time he saw it.

The Check on January 15th, 1924.

"Q Now after you got back to the office the next morning which was Tuesday (15th), what did you do with this check? A Took this check *with a few others,* put them in a blue envelope and went to Mr. Hedden's room.

Q Was he there? A He was not. Mr. Hedden didn't come in until very late.

Q What did you do with the envelope? A I left the envelope with the checks and other vouchers for other checks on Mr. Hedden's desk.

Q When did you next see the check and the voucher after you left it on his desk? A About 2 o'clock on the 15th. Mr. Hedden came from his office and gave me the vouchers and checks.

Q And then what did you do? A I turned the vouchers over to the bookkeeper and went up to the Montclair Essex Trust Company and had the check certified" (Dozier, p. 319, l. 31 to p. 320, l. 25).

Prior to hearing Mr. Dozier's defense in this case Mr. Hedden had been unable to conceive of any way by which Mr. Dozier obtained the check in question other than that he had used one of the checks which had been signed in blank, which, in the light of the whole record, is still a possible if not even a probable explanation. But Mr. Dozier has furnished another explanation just as plausible and perhaps even more probable, to wit:

There were in all 76 checks prepared on the preceding day, Monday, January 14th, 29 of them in the Montclair Essex Trust Company check book No. 2, checks numbered 5479 to 5508 both inclusive; 42 checks in Fidelity Union Trust Company check book No. 29, checks numbered 14145 to 14186, inc.; one check in the Springfield Avenue Trust Company, check book No. 3, check No. 3387; and four in the North Ward National Bank, check book No. 4, checks numbered 2117 to 2120 both inclusive. Each check had a voucher attached to it. Here was Mr. Dozier's last chance to get, before he quit the company on the next day, the check which he had so long been endeavoring to induce Mr. Hedden to give him. *It was slipped into this blue envelope along with the 75 other checks. Then Mr. Dozier sat outside of Mr. Hedden's office awaiting the result.*

As we have seen, Miss Jackson never saw the amount filled in on the checks; Mrs. Dozier and Mr. Ferry could not swear that the amount was filled in when they saw it on the night before; and the check had not been seen by any others. No doubt the amount was not filled in on either the check or the voucher attached when it was put with these 75 other checks on Mr. Hedden's desk.

By this scheme Mr. Dozier thought that he had everything to gain and nothing to lose. If by any chance Mr. Hedden should notice and question the check, no harm would come of it. It would simply be the occasion for a further discussion and an effort on Mr. Dozier's part to induce the purchase of his stock before he quit on the following day. If Mr. Hedden should by any inadvertence put his signature on that check along with the 75 others, that to Mr. Dozier's mind "would have closed the transaction." Even if Mr. Hedden had noticed the check drawn to Mr. Dozier's order for a blank amount, but had not noticed the endorsement on the back of it with the voucher attached, the record gives us every reason to believe that he would have unquestioningly signed it just as he had been accustomed to do with such checks. But the record makes it absolutely certain that if Mr. Hedden had noticed the amount on the check or the endorsement on it or the voucher he would not have signed it.

Notice Mr. Dozier's anxiety to testify that he "took this check with *a few others,* put them in a blue envelope and went to Mr. Hedden's room." He had not been asked whether there were few or many checks in that envelope, but he knew how many were in it, and as he gave his testimony the picture which came to his mind of that bundle of checks made him volunteer those words "with a *few* others."

The proof comes from the defendant's own mouth:—

> "Q And then you never spoke to him about the amount of this check at any time? A Yes, sir, at that date when he brought the check back.

Q What did you say to him then? A He brought the check back to me at the desk.

Q What did you say to him? A I asked him if the checks were all in there and signed and he said 'yes.'

Q Was this check shown to him? A That check was in the envelope.

Q That is not my question, whether the check was in the envelope. There were lots of checks in the envelope. Did you at any time ever in your life show this check to Mr. Hedden either before or after it was signed? A He was not there that morning.

Q And the answer is you never showed this check to Mr. Hedden at any time in your life did you? A It was on his desk, I put put it on his desk.

Q And this most important of all transactions between you two was closed without his ever facing you with this check or you facing him with this check, wasn't it? A No he had the check.

Q You mean it went in in a blue envelope with a lot of more checks and came out signed? A There were several checks in this envelope at the time it came out.

Q And when that blue envelope came out it was handed to you by Mr. Hedden, wasn't it? A Yes, sir.

Q He didn't say a word to you about 'I see the check figures out $65,219, and I have signed it?' He didn't say anything like that? A No, sir; *didn't say anything about the check.*

Q You didn't say anything about it? A No. *I said 'was all the checks signed?' and he said 'yes'* " (see Mr. Dozier's cross-examination, p. 354, l. 39 to p. 357, l. 20).

Note his anxiety as he sat outside of Mr. Hedden's office awaiting the result. When the envelope was handed to him his first and only question was whether "the checks were *all* in and *signed.*" Imagine the state of Mr. Dozier's pulse when the answer came from Mr. Hedden "yes."

And now we have some light upon the strange things which Mrs. Dozier and Mr. Ferry said. This coup of Mr. Dozier's had been planned for the previous day, the day on which the checks were drawn, but Mr. Hedden had not come to the office that day. What could have been more natural than Mrs. Dozier's breathless inquiry as soon as she met Mr. Dozier on the evening of the date for which it had been planned "Did you get your check," and as he took it out of the envelope and handed it to her impatiently asking "Walter is it signed?"

Mr. Ferry knew about the check before he met Mr. Dozier on Monday evening, for he had even suggested the endorsement. With him, as with Mrs. Dozier, his first question was when Mr. Dozier took the check out of his pocket and showed it to him "Walter is it signed? and he just handed it to me. I looked at it, and I said 'why it is not signed!' It was 2 P. M. when he got the check on Tuesday, the 15th, and immediately he "turned the voucher over to the bookkeeper and went up to the Montclair Essex Trust Company and had the check certified."

Note his attempts on pages 392-394 to answer the Court's questions as to why he took the "precaution" of having the check certified inasmuch as he knew that the money was in the bank and that Mr. Hedden had just signed the check pursuant to his arrangements which were made at the conference of January 5th, and in accordance with the figures agreed upon in the conference of January 11th.

Note also that he says, at p. 320, l. 20, that he immediately turned the vouchers over to the bookkeeper, although he elsewhere says that this particular $65,219. voucher he turned over to the

bookkeeper after the directors' meeting (p. 323, l. 10). By his own testimony he did not sign the voucher until after Mr. Hedden had handed back to him the envelope containing the checks and vouchers.

The Meeting of January 15th, 1924.

The meeting was scheduled for 3:30, and his running up to Montclair to have the check certified before the meeting caused him to be late in getting to the meeting. His account of the meeting on direct examination is found at pp. 320-323. He had the resolution which he offered at the meeting prepared in advance on a yellow sheet (Ex. C. 6):

> "Resolved that Charles R. Hedden Company purchase shares of stock in the Charles R. Heddon Company now standing in name of Walter J. Dozier on the books of said company at the book value thereof as shown on treasurer's report submitted to this meeting and accepted and approved."

He submitted his treasurer's annual report, but it was not "accepted and approved" as he had planned, but on the contrary was accepted "subject to audit." Then he asked Mr. Toothe to read his resolution from the yellow slip, which was done. Upon being put to a vote it failed to carry, Mr. Hedden and Mr. Toothe voting against it and Mr. Dozier and Mr. Fisher voting in favor of it.

Note his attempt to explain why this "confirmatory resolution" was introduced notwithstanding his claim that the August 15th, 1922 resolution was already on the books and that pursuant thereto Mr. Hedden had signed the check and Mr. Dozier had already had it certified and deposited to his personal account (p. 343, l. 3 to

p. 344, l. 15; p. 353, l. 25 to p. 354, l. 38, including the Court's questions).

"Q And when he (Mr. Hedden) voted against the resolution, what did you say on that subject? A Why, I was very much amazed and surprised for Mr. Hedden to do it.

Q I did not ask about your amazement. I asked what you said. Please answer my question. A I don't remember.

Q Don't remember what you said? A Don't remember what I said.

Q Do you remember whether you said anything? A No, he was in a ruffled condition.

Q Do you remember whether you said anything? A Yes, sir. I don't remember very much about what followed.

Q You don't remember saying anything to Mr. Hedden nor to Mr. Toothe when that resolution of the company to buy your stock in January, 1924, was not passed? A I do not remember except that I told Mr. Hedden I was rather amazed at the outcome of the meeting. I remember saying that.

Q And that is all you remember saying? A That is all I remember, yes, sir.

Q You didn't say to him that there was already a valid resolution perfectly good for that purpose, did you? A I do not remember.

Q You didn't tell him that you already had a check for what you figured the value of your stock to be, safe in the bank, did you? A He knew that already.

Q You please answer my question Mr. Dozier. Repeat the question. A I don't think anything was said at the meeting about that, because he had already signed the check and we had discussed it before" (p. 345, l. 29 to p. 346, l. 27).

At that meeting he tendered his resignation, which the minutes note was accepted "with regret."

After the meeting he delivered his lecture to the employes in the office (p. 180, l. 30) and then (p. 323, ll. 10-18), he says that after Mr. Hedden had left he went over to the bookkeeper's desk and delivered to Mr. Aubin the voucher (Ex. C. 10) and "I told him that was an entry for his journal and he took it and entered it from this voucher in his journal that afternoon."

January 16th, 1924.

Mr. Aubin testifies that at about 9:30 A. M., on the next day, Wednesday, the 16th, Mr. Dozier came to the office; that Mr. Hedden was not at the office on that day; and that Mr. Dozier, holding the voucher in his hand, dictated to him an entry of it to make in his journal; that later on that same day Mr. Dozier delivered the voucher itself to him (Aubin, p. 180, l. 13 to p. 185, l. 38).

On the same day (16th) Mr. Dozier got the corporate books and papers together, made a list of them and put his stock certificates with them, and then tried to get from the unsuspecting Mr. Toothe, a receipt for them all, but Mr. Toothe would not receipt for the stock certificates. Mr. Dozier and Mr. Toothe then took them down to the Fidelity's vaults and they put all of the papers into it, including Mr. Dozier's stock certificates (Dozier, p. 325, l. 20 to p. 327, l. 22; Toothe, p. 140, l. 23 to p. 141, l. 27; Dozier, p. 357, l. 25 to p. 358, l. 40); Mr. Dozier even goes so far as to testify that at the meeting on January 15th, Mr. Hedden told him to turn over his stock certificates to Mr. Toothe.

January 17th.

On Thursday, January 17th, as was his practice on Thursdays, Mr. Aubin started to reconcile the company's check books for the purpose of making up the payroll. In doing so he discovered for the first time the stub entry in Mr. Dozier's handwriting of the $65,219 check, which, with all the other checks that had been signed on the 15th, left the company with insufficient balance in the bank. He took the check book in to Mr. Hedden and showed it to him. "He (Mr. Hedden) just like flew off the handle and immediately called up the Montclair Essex Trust and told them to stop payment on the check, but was informed that it had already been paid." Mr. Aubin told Mr. Hedden of the journal entry which Mr. Dozier had dictated to him the day before and Mr. Hedden "immediately called Mr. Toothe to bring this minute book and he looked on this page and it stated (what is) in this journal entry" (Aubin, p. 185, l. 38 to p. 190; Mr. Hedden, p. 48, l. 38 to p. 50, l. 2).

Miss Jackson testifies (p. 464, ll. 10-20), that on this day (January 17th) "I knew there was some excitement. I didn't know what it was" * * * "yes, sir; I remember Mr. Aubin was running in and out of Mr. Hedden's office."

Mr. Fisher, who was at the office on that day, also corroborates the fact that Mr. Hedden was "wild" when he learned about the check and resolution (Fisher, p. 512, ll. 25-30).

> "Didn't you make any explanation to Mr. Hedden, 'Why that is based on the August resolution?' or, 'on a resolution that was passed?' A Not to my knowledge. After they found this out evidently they went right over to Mr. Lum's office and I was called right over there afterwards" (p. 512, ll. 30-38).

This conduct on Mr. Hedden's part, testified to by the defendant's own witnesses, is just as consistent with his version of this transaction as Mr. Dozier's conduct throughout was inconsistent with his, Mr. Dozier's, account of the resolution and check.

On this same day, January 17th, Mr. Dozier took the further precaution of telephoning to Mr. Aubin early in the morning and asked Mr. Aubin to let him have the voucher so that he might make a photostatic copy of it.

Mr. Aubin did and later Mr. Hohenhausen, at Mr. Aubin's request, got it from Mr. Dozier and brought it back to the office (Aubin, p. 211, ll. 20-38; Dozier, p. 305, ll. 9-28).

Defendant's Witnesses.

Messrs. Fisher and Hohenhausen and Miss Jackson are the only witnesses who testified in respect to either the resolution or the check (except Mrs. Dozier and Mr. Ferry on the New York incident). They were all formerly associated with Mr. Hedden and complainant company and have now gone over with Mr. Dozier to the Fisher-Williams Corporation. Certain portions of their testimony should be specially noted.

Mr. Fisher (pages 481-513).

He is a practical man, a builder.

He has "seen Mr. Hedden looking over and reading the minute book on the desk many times" (p. 484, l. 10).

"Mr. Dozier used to take notes during the progress of the meeting or during the course of

the meeting'' (p. 486, l. 5). Mr. Toothe and Mr. Hedden agree with this, but it was only at the annual meetings, for they were the only formal meetings which were held.

He says that to his knowledge the minutes were written up after the meetings were held and before any great length of time had elapsed (p. 486, l. 18). This may be true, but the question is when were they signed? No witness for the defense other than Mr. Dozier has or assumes to have any knowledge as to that.

On p. 486, l. 35 to p. 489, l. 15, he gives an account of what happened at the alleged meeting of August 15th, 1922, which consists of nothing else than repeating what he had read in the minutes ''the treasurer reluctantly stated, etc.,'' concerning his health and vacation.

> The Court: ''Q Please tell us what happened with reference to this resolution as you recall it, if you have any recollection?
>
> Witness: A The only recollection that I have then was after discussion of his retirement from the company, along the line of getting out, *not the purchase of stock.* This resolution was put in by Mr. Dozier.''
>
> ''The only discussion was along that line and the vacation. We simply thought a vacation would do him good and he would not want to retire'' (p. 488).

Whatever discussion took place, he says, preceded the offering of the resolution and when the resolution was offered it was ''simply voted on and passed'' (top p. 489).

He says the discussion was ''not as to the purchase of stock,'' and that the resolution was ''simply voted on and passed.'' As a stockholder in the company it is strange that he had not sufficient interest to at least inquire what the book value would amount to, and made no ques-

tion as to whether his own stock might be disposed of in the same way.

The only time he ever examined the minute book was during Mr. Dozier's absence when he got curious about salaries and got the minute book out to look at it.

> "Q Do you know when you had the minute book in your hands for the purpose of that examination whether or not these minutes of August 15th, 1922, were in the minute book? A I didn't notice those, but I noticed the book was full" (bot. p. 489).

He has a "fair mental picture" (bot. p. 490) of the alleged meeting of October 17, 1922, but the picture includes nothing else than a reading of the minutes would reveal to him.

The minutes of the previous meeting, he says, were always read. That is, the minutes say so.

At Mr. Dozier's request, he says, he came from Lockport, New York, to attend Mr. Dozier's conference with Mr. Hedden on January 5th, but Mr. Heddon refused to have him present (p. 491, ll. 19-24).

> "Q Did Mr. Dozier say anything to you following that conference? A Yes, sir, he told me that everything was settled and asked me if I would co-operate with him in getting up the book value of the stock" (p. 492, ll. 22-28).

It is strange that Mr. Fisher, who was a stockholder and director and vice-president was satisfied with so little information as to what the settlement was which had been arrived at.

As Mr. Dozier and Mr. Hedden were going out of the door after the meeting of January 15th he "heard Mr. Hedden tell Mr. Dozier to *turn* over his *stock,* bonds, papers, books and everything to Mr. Toothe" (p. 145, ll. 15-20).

He says that the idea of the Fisher-Williams Corporation first came up "oh, around practically the first of the year, 1924."

On January 17th he was with Mr. Hedden and Mr. Toothe at Mr. Lum's office and told them when asked concerning the alleged resolution of August 15th, 1922, that he "had no recollection of any meeting of the Board of Directors at that time," and further:

> "I said I had no knowledge of any resolutions of any Board of Directors at that time."
>
> "Q *And you knew that Mr. Hedden said that he had no knowledge of any such resolution, didn't he? A Why he always said that.*
>
> Q And he was intensely surprised and a very angry man at that hearing, wasn't he? A He seemed to be" (p. 500).

He was in the office when Mr. Hedden first learned about the check having been taken and says, "Mr. Hedden seemed very much surprised."

> "Yes, sir, he was very angry."
>
> "Q *You said to me you had no recollection of any resolution of August, 1922, didn't you? A That is correct. Those are my exact words*" (p. 504, l. 8).

> "Q At that time (meeting of January 15th) was the August resolution in any way discussed? A No, sir.
>
> Q The subject of an August resolution was not mentioned? A No, sir.
>
> Q Why did you not say—did you know then of the August resolution? A No, I was not specially concerned about it. I had no (interrupted).
>
> The Court: The question is whether you knew?
>
> Witness: No, I had no recollection at that time.
>
> Q Had no recollection of it, and Mr. Dozier referred to no August resolution? A No, sir.

The Court: Nobody did'' (p. 505, l. 24 to p. 506, l. 11).

Then p. 506, l. 30 to p. 508, l. 27, has to do with the letter of January 21st, 1924, addressed to Mr. Edward Toothe, in which he makes a report to Mr. Edward Toothe of the meeting of January 15th and in which he says: ''Mr. Dozier made a motion that the C. R. H. Co. buy his stock at the book value, which, *of course,* was lost.''

Why those words ''of course'' if there was already a resolution on the books to the same effect under date of August 15th, 1922, and if at the January 5th conference ''everything had been settled'' and Mr. Hedden and Mr. Dozier were friendly and happy in carrying through the arrangement. If Mr. Fisher testified truly on his direct and cross-examination, what possible explanation can be made as to why he said in this letter that the resolution was ''of course'' lost? He says further in his letter ''Mr. Dozier then resigned as treasurer and as a director. *What followed is the card he had up his sleeve.* A year ago last August a resolution was passed which Mr. Hedden signed and Jimmie initialed providing, etc., * * * Mr. Dozier had a proper check drawn up and got his money. Mr. H. was wild when he heard it. Claimed he knew nothing of any such meeting or of signing any such check. *That is simply a question of veracity.''*

The Court's questions and Mr. Fisher's answers as to why he made no mention to Mr. Hedden of the August resolution are important (p. 511, l. 20 to p. 513, l. 15).

Mr. Hohenhausen, pages 474-481.

This is the man who pried open Mr. Dozier's private compartment in the safe to get a drink from it during Mr. Dozier's absence. Strangely enough he noticed no minute book in the drawer when he got it open (p. 476, ll. 8-37).

He also says that after the conference of January 5th Mr. Hedden and Mr. Dozier were very friendly (p. 477, l. 12).

He is the only witness who testified that in Mr. Dozier's talk to the employees after the meeting of January 15th Mr. Dozier told the employees that "all his financial arrangements were made" (bot. p. 478). The talk was on general lines of "devoting our best efforts to the company." But, nevertheless, Mr. Hohenhausen went with Mr. Dozier into the Fisher-Williams Company.

Miss Jackson, pages 446-449.

The only knowledge she has of directors' meetings is "only by writing the minutes, that is only—" (interrupted) (p. 447, l. 10).

> "When I wrote the minutes up sometimes I would put them on Mr. Dozier's desk for him to look them over and if Mr. Dozier was not there I took them in myself and laid them on Mr. Hedden's desk and he brought the book back to me again and handed it to me."
>
> The Court: Signed?
>
> Witness: *I didn't open the book to see if it was signed. I don't know whether it was signed"* (p. 448, ll. 10-20).

She fixes no time in respect to her above statement. It might have been sometime prior to the signing of the batch of minutes in the Fall of 1922 or subsequently to the opening of the new minute book at the beginning of 1923.

As to August 15th, 1922, minutes we find this on p. 449, l. 20:

"The Court: Have you any present recollection of writing them?

Witness: No.

The Court: Only by what you see there?

Witness: Yes, sir, and by things in my own handwriting.

The Court: *It doesn't bring back to you any recollection of having written them?*

Witness: *No, sir, it does not, not now.*"

On pp. 450-451 she says that she *wrote up* the August 15th, 1922 minutes before Mr. Dozier left for California and that the minutes and all the records of the company were brought up to date before he went away and the "book was back in the safe again." Even admitting that was so, the important question is whether they were *signed* before Dozier went away, and as to this Miss Jackson cannot and does not testify.

All the testimony that counsel put in by Miss Jackson and Mr. Fisher relative to Exhibit D. 9 (p. 538) only goes to corroborate the fact that up to that time Mr. Fisher had disclaimed knowledge of any August 15, 1922 meeting or of any such resolution. He was about to resign from complainant company and Mr. Hedden wanted to get a statement from him to that effect before he left, but by that time he was hooked up with Mr. Dozier in the Fisher-Williams Corporation and refused to sign it.

Mr. Whitehurst, pages 436-446.

He was paid out of petty cash drawer for the night work which he did at Mr. Dozier's request and without Mr. Hedden's knowledge (p. 442, l. 33 to p. 443, l. 15).

He failed to discover the missing check No. 5408 which is marked on the stub "in safe."

He did not complete his work until Sunday, the 13th, although Mr. Dozier says that Mr. Hedden said to go ahead and close up the books on the basis of the statement which Mr. Dozier says he submitted to Mr. Hedden on January 11th (p. 444, l. 33).

He is Mr. Dozier's nephew (p. 437, l. 28). In 1919 he was employed for eight months by complainant company (p. 437, l. 35), but after that time had not worked for the company until his uncle called him in to do this secret night work.

Summary as to Alleged Resolution of August 15th, 1922.

As to whether or not any such resolution was adopted or known to Mr. Hedden is "merely a matter of veracity," and as to "veracity" the record discloses nothing favorable to Mr. Dozier.

Mr. Hedden's conduct throughout was consistent with his claim that he knew nothing of the resolution until January 17, 1924.

Mr. Dozier's conduct throughout was inconsistent with his claim that from August 15, 1922, until the date of his resignation the company was bound by a resolution unanimously adopted to purchase his stock at its book value.

Mr. Hedden's diary under date of August 16th, 1922, the day after the alleged meeting, contains

a memorandum "Walter submitted agreement which I turned down."

The minutes of alleged monthly meetings were written up by Mr. Dozier as a "matter of form."

The signing, sealing and certifying of the minutes was a mere matter of form, and as between these four directors and stockholders does not, under the circumstances, prove their accuracy.

Mr. Hedden signed the minutes without reading them, in reliance upon Mr. Dozier's putting into them nothing but what had been agreed upon by him.

Mr. Toothe's signing of the minutes was like the impression of a rubber stamp by Mr. Dozier.

The minute book itself contains proof that the signing and certifying was a mere "matter of form."

The certificates almost invariably appear on a separate sheet appended after the minutes.

The book is a loose leaf book in which the pages can be readily rearranged, inserted and renumbered.

The minutes were *signed* in batches, and not month by month.

The book containing the alleged resolution was kept locked up by Mr. Dozier.

Mr. Dozier displayed too much anxiety about having the minutes of May 15th "ratified, approved and confirmed" in the minutes of October 17th.

From October 17th, 1922, until the fall of 1923, it does not appear that any reference was ever made by Mr. Dozier to this alleged resolution,

notwithstanding that during that period be kept up persistent negotiations with Mr. Hedden which were inconsistent with the resolution being of record.

Mr. Dozier himself testifies that up until January 5th, 1924, in all his negotiations with Mr. Hedden he had succeeded in getting nothing else than "a slight assurance that the company would take my stock in case I wanted to get out."

In his letter of December 31st, 1923, he made no allusion to the resolution of August 15th, 1922.

His own account of the January 5th, 1924 conference is clear proof that no such resolution was on the records with Mr. Hedden's knowledge.

The resolution which he offered on January 15th, 1924 is proof that the alleged prior resolution was not on the records with the knowledge of the other stockholders.

The fact that at the meeting of January 15th, 1924, after Mr. Dozier's resolution had failed to carry, no mention was made by anyone of the alleged prior resolution is proof that they did not know of it.

On January 17th, 1924, at the conference in counsel's office, Mr. Fisher had no knowledge of the resolution or meeting of August 5th, 1922.

No one other than Mr. Dozier has testified that the resolution was in the minutes of August 15th, 1922, when Mr. Hedden signed them or that he knew it was there when he signed.

One who could be guilty of doing what has been proved Mr. Dozier did in respect to the use of checks signed in blank and in respect to the $65,219 check, would not scruple to insert this resolution in the minute book if he thought he could make it serve his purpose.

The unimpeached testimony of Messrs. Hedden and Toothe that the resolution was not adopted and that they never heard of it until January 17th, 1924, is corroborated and completely substantiated by all the circumstantial evidence.

The testimony of Messrs. Dozier and Fisher has been so completely discredited, that it cannot prevail to sustain this resolution.

SUMMARY AS TO THE $65,219 CHECK.

On January 5th, 1924, Mr. Dozier made an offer to Mr. Hedden to either buy or sell at $200 per share.

On January 11th, 1924, Mr. Dozier says he showed his work sheets to Mr. Hedden and told him that the book value would work out between $225 and $240 per share, and told him further that his offer of January 5th to sell at $200 per share still held good, but that Mr. Hedden chose the higher figure.

Mr. Dozier, and he only, fixed the amount of the check.

In computing the value which he placed on his shares (1) he estimated anticipated profits of $134,279 on uncompleted contracts, whereas the actual profit on them, determined after completion, was only $57,061, and then (2) to the $178.99 per share of book value so determined he added $58.17 for goodwill, making a total of $237.16 per share, notwithstanding that goodwill was carried on the books at $1 and the actual book value was only a little over $38.25 per share.

He deposited the Harrison Radiator Company $82,000 check in the company's relatively inactive bank account at the Montclair Trust Company, concealed from Mr. Hedden the fact that it had

been received, and gave the bookkeeper instructions not to draw checks on that account.

For months previously he had been breaching his trust as treasurer and abusing the confidence which Mr. Hedden placed in him in that he had been using for his own personal purposes company checks which Mr. Hedden had signed in blank and entrusted to him to be used only for proper company purposes.

On January 14th, 1924, he had the stenographer make out 75 checks and vouchers and also a check to his own order, on which the amount was left blank.

On the night of January 14th, 1924, he took that blank check to his own order to New York and exhibited it to his lawyer friend, Mr. Ferry, who passed upon the form of the endorsement which was typed on the back of it.

On January 15th he put that check with 75 others in an envelope on Mr. Hedden's desk, in the hope that Mr. Hedden would sign it along with the others without noticing or questioning it.

When Mr. Hedden handed the envelope back to him: "I said 'was all the checks signed' and he said 'Yes—No, sir, he didn't say anything about the check.' "

He admits that never at any time did he show that check to Mr. Hedden or have any conversation with Mr. Hedden concerning the amount of it.

Mr. Hedden swears that he never knowingly either saw or signed the check, and no one, not even Mr. Dozier, can deny the truth of that statement. All that Mr. Dozier knows or can say about it is that he put the check in an envelope

along with the 75 others and that it came back to him signed. On the other hand, Mr. Hedden's conduct throughout and all the circumstances of the case thoroughly corroborate and substantiate his statement that he never knowingly saw or signed the check.

"It was not a clever trick, just a vulgar cheat, a constructive forgery, perfidious and despicable."

Immediately upon its being handed to him by Mr. Hedden Mr. Dozier rushed from Newark to Montclair with the check, had it certified and credited to his personal account, notwithstanding that he knew the money was in the bank to meet it, and claims that it was given to him by Mr. Hedden pursuant to an alleged valid resolution and as the result of negotiations and an agreement arrived at which was not only friendly but so satisfactory to Mr. Hedden that upon its being arrived at Mr. Hedden passed cigars around to everybody in the office.

Then he rushed back to attend the meeting of January 15th and offered the resolution which failed of adoption.

When the resolution failed of adoption he made no mention of or reference to the fact that he had already paid to himself the amount that he claims would be due to him if the resolution had been adopted.

On January 17th Mr. Hedden first learned of the check, "went wild," telephoned to the bank to stop payment on it, was advised that it had already been paid, and then went at once to consult counsel.

The August 15th, 1922 Resolution, If It Had Been Adopted Would Be Illegal and Unenforcible.

There was no consideration for this alleged agreement by the company to purchase Mr. Dozier's stock.

It was not the unanimous act of the stockholders. Mr. Dozier does not even claim that Mr. Toothe voted for it. He claims it was adopted by the directors, and Toothe was not a director at that time, although he was a stockholder.

The company's debts to creditors on December 31st, 1924, amounted to $389,104.68 (Owen, top p. 255) and defendant could not at law or in equity enforce such agreement between him and the company. The rights of the creditors would be affected.

Its consummation would have further impaired the $90,000 capital of the company, which as of December 31st, 1924, had already been seriously impaired.

Section 30 of our General Corporation Act, as amended by P. L. 1904, p. 275 (C. S. p. 1617), provides that a corporation shall not "divide, withdraw or in any way pay to the stockholders or any of them any part of the capital stock of such corporation or reduce its capital stock except as authorized by law."

Section 29 of the Act prescribes the sole method by which the capital stock may be decreased.

The statute prohibits the company from decreasing its outstanding capital stock in such manner as is provided for in the alleged resolution.

Siegman v. *Elec. Vehicle Co.*, 72 N. J. Eq. 403.

The burden rests upon defendant to show affirmatively not only that no deception was practiced by him and that all was fair, open and voluntary, but that it was all understood.

In re Fulper, N. J. Advanced Reports of April 17th, 1926 (Vol. IV, No. 16), Vice-Chancellor Buchanan treats at length of the rationale and application of the following rule:

> "In all transactions between persons occupying relations, whether legal, natural or conventional in their origin, in which confidence is naturally inspired, is presumed, or, in fact, reasonably exists, the burden of proof is thrown upon the person in whom the confidence is reposed and who has acquired an advantage, to show affirmatively not only that no deception was practiced therein, no undue influence used, and that all was fair, open and voluntary, but that it was well understood."

In the opinion many cases are cited in which the rule is applied and the Vice-Chancellor observes "that the rule applies by its terms not merely to gifts—nor even merely to transfers—but to *'all transactions'* wherein an advantage has accrued to the dominant *fiduciary* or *quasi-fiduciary.*"

Not only in respect to Mr. Hedden but also in respect to the corporation Mr. Dozier held a position of trust and confidence. There arises, therefore, "a presumption on all these points adverse to the transferee, and the duty is cast upon him to overcome that presumption, upon each point, by a preponderance of the evidence. If he fails so to do, on any one of the points, the transfer will be set aside."

One searches the record in vain for affirmative proof that no deception was practiced by Mr.

Dozier, and that all was fair, open, voluntary and well understood. The proofs support rather than rebut the presumption which the rule raises against Mr. Dozier.

OUR COURT OF CHANCERY HAD JURISDICTION TO MAKE THE DECREE WHICH IS APPEALED FROM.

In his answer the defendant sets up as a defense to this action in the twenty-fifth and twenty-ninth paragraphs thereof, that the complainant has an adequate remedy at law (Case, p. 30). It is now the contention of the appellant that, inasmuch as the relief granted was in the form of a decree for the payment of a certain sum of money, in effect the Court has found that the remedy at law would have been adequate. In other words, the insistment is apparently that the action of the complainant is grounded upon fraud for which an ample remedy exists in the courts of law.

At this point, we would refer to the prayers of the bill of complaint which can be found on pp. 21 and 22 of the printed case. The supplications are that the resolution alleged to have been adopted by the Board of Directors may be decreed to be fraudulent of no effect, illegal, *ultra vires* and void, and that the defendant may be decreed to return the money received by him with interest, and further that if the resolution be held valid and binding, then that the book value of the defendant's shares of stock may be ascertained and the excess received by defendant returned to the company.

The nature and extent of the jurisdiction of the Court of Chancery in cases of fraud is considered in the case of *Eggers* v. *Anderson*, 63 N. J. Eq.

264 (1901). In this case the complainants were induced to support the testatrix during several years by her fraudulent pretense that she was destitute, when, in fact, she had a considerable estate in the bank. The Court of Errors and Appeals held that the complainants were entitled to be recompensed out of the estate for money and property furnished to her and their bill in equity for such compensation was sustained. In the course of the opinion, Mr. Justice Dixon reviews the English authorities and the recognized writers on equity jurisprudence, and at page 271, he says:

> "But New Jersey is distinguished from her sister states by her adherence to the standards of the mother country respecting both rights and remedies in equity, and I know of no constitutional or statutory provision or judicial decision in this state which can be regarded as withholding or withdrawing from our Court of Chancery any jurisdiction possessed by its English prototype. True the jurisdiction of equity, in cases of fraud remediable at law, has not been much invoked, but that may be accounted for, in large degree, by the less expensive, equally efficient and in former times more speedy, remedy secured in the courts of law. When resorted to, however, the jurisdiction of equity has not been doubted."

Again at page 272, he says:

> "The generality of the jurisdiction, as well as the limited scope in which courts of equity are disposed to exercise it, is indicated by the case of Krueger *v.* Armitage, 13 Dick. Ch. Rep. 357, where a bill to recover damages on a fraudulent sale of stock was demurred to for want of jurisdiction, and Vice-Chancellor Emery said: 'In support of the jurisdiction the settled rule is relied on that equity has jurisdiction concurrent with law in cases of fraud.' But he held that in the case before him the jurisdiction should not be exercised,

> because it had been challenged *in limine,* and the assessment of damages could be made as well by a jury as by the court. This case was followed in Polhemus *v.* Holland Trust Co., 14 Dick. Ch. Rep. 93; on appeal, 16 Dick. Ch. Rep. 654, where the complainant's claim was of like character, and Mr. Justice Collins, delivering the opinion of this court, expressly approved the doctrine declared as above by the learned vice-chancellor, accompanying his approval, however, with the unsupported statement that 'for the recovery of damages the exclusive remedy in this state lies with the law courts.' ''

By reference to *Krueger* v. *Armitage,* it appears that it was an action by the purchaser of personal property for damages resulting from fraudulent representations which induced the sale thereof. Likewise in *Polhemus* v. *Holland Trust Company* the purchaser sought to recover damages upon a sale which was induced by fraud or false representations.

This subject was considered in the case of *Schoenfeld* v. *Winter,* 76 N. J. Eq. 511. The bill in this case was filed to procure a decree rescinding a contract alleged to have been made between the defendant and two persons as partners, one of whom was dead, the complainant being the survivor. The contract related to the purchase and sale of personal property and a lease. A demurrer was interposed to the bill upon the ground principally that the cause of action was cognizable in the courts of law. In the course of the opinion Vice-Chancellor Howell says at the bottom of page 511, fourth paragraph:

> "The bill sets out a cause of action which would undoubtedly be triable in the common law courts in an action for deceit. It alleges that the contract was induced by representations which were false, and which the defendant knew were false at the time the

contract was made. These allegations are admitted by the demurrer, and while the bill sets out a common law action for deceit, this does not interfere with the jurisdiction of equity. In order to set aside a contract founded in fraud, it is only necessary in equity to prove that the representation upon which the action is founded is false, that it is material, and that damage has ensued; while at the common law the proof must go to the extent of satisfying the jury that the defendant knew that the statement relied upon was false. It will therefore be seen at a glance that the remedy in equity is much broader and much more efficient than the remedy at law could be."

Referring to the case of *Krueger* v. *Armitage,* the Vice-Chancellor says at the bottom of page 512:

"There does not appear to have been any prayer for the rescission of the contract, which possibly differentiates the case from the one in hand. The report shows that it was merely a bill for damages based upon a false representation of fact, there being no equitable remedy appealed to except the recovery of damages. Vice-Chancellor Emery held that in that case the jurisdiction should not be exercised because it had been challenged *in limine,* and that the assessment of damages could be made by a jury as well as by this court. In Polhemus *v.* Holland Trust Co., a transferee of bonds, issued by a foreign corporation, attempted to recover in equity the amount paid by him for the transfer upon the sole ground that the sale was fraudulent, and therefore the complainant had the right to rescind the transaction and recover back his money; and Vice-Chancellor Reed held that the recovery of money paid by the inducement of false representations was not within the scope of modern equity jurisdiction * * *"

"In these two cases it will be observed that there was no ground of equity jurisdic-

tion except the false representation of fact. But in the case in hand the complainant appeals to the Court to declare that the contract induced by fraudulent representations should be rescinded and canceled, and this upon the ground that the contract being void by reason of fraud, the complainant should not continue to rest under the obligation of any portion of it, but that he should be discharged from its performance in whole and in part."

Again this subject was considered in *Erdmann* v. *Gregg,* 90 N. J. Eq. 363. The bill in this case sought the rescission and cancellation of a written contract signed by complainant for the purchase of certain improved real estate and the recovery from defendants of the part of the purchase price which complainant paid when the contract was signed, and also seeks an injunction preventing defendant suing at law for the recovery of the unpaid portion of the purchase price. At the return of an order to show cause why an injunction should not issue, the defendants rested their defense on the objection that the averments of the bill were insufficient to justify the relief sought. In the course of the opinion, Vice-Chancellor Leaming says, at the bottom of page 364:

"It is clearly within the jurisdiction of this court to entertain a bill to rescind and cancel a contract procured through coercion, misrepresentation, or any other fraudulent means, and in such suit to enjoin proceedings at law for the enforcement of the contract, and also to award recovery of the money paid under and by reason of the fraudulent contract. The ancient jurisdiction of the court of chancery of England in this class of cases, as defined in *2 Pom. Eq. Jur. Sec. 912,* obtains in this state. See to that effect *Eggers* v. *Anderson, 63 N. J. Eq. 264, 271.* Whether the jurisdiction should be exercised,

however, depends upon the circumstances of the particular case. In this suit the circumstance that a successful defence at law to an action for the balance of the purchase price would afford but partial relief to complainant herein is alone a justification for retention of the bill."

By reference to the facts established in this case it appears that the action is brought by a corporation against a former director and officer thereof with respect to his dealings with the property and affairs of the corporation. In such cases equity will deem fraudulent, because of the relations existing between the parties, conduct which would not be objectionable in the absence of such relations (see 21 C. J., 113). This principle is applied in such relations as that existing between the plaintiff and defendant in this case.

Again we quote from *21 C. J., page 114*:

"In addition to the foregoing cases, where actual fraud either exists or is presumed from circumstances, there is a class of purely constructive frauds, where no actual imposition is shown or even inferred, but the circumstances are such that public policy demands that they should be treated in the same manner as fraudulent acts * * * Contracts contrary to the policy of the statute are in like manner treated as if fraudulent."

This subject was referred to in *Gnichtel* v. *First National Bank of Hightstown*, 66 N. J. Eq., page 88. The bill in this case was filed by a trustee in bankruptcy to compel the bank to pay over to complainant certain moneys received by the defendant from the bankrupt. A demurrer was interposed to the bill. In the opinion Vice-Chancellor Reed says, at the top of page 89:

"But in this state the jurisdiction of equity is not excluded in all cases where there is an

adequate remedy at law. There is a class of cases where the jurisdiction of the courts are concurrent, and this class includes suits in which the gravamen is fraud, actual or constructive. The remedy at law may be perfectly adequate and yet the jurisdiction of a court of equity to afford relief exists, although it is not always exercised" (cases cited).

"The transaction set out in the bill is constructively fraudulent or unlawful, by force of the provisions of the Federal Bankruptcy Act. Because the property was received by the bank in the shape of money, and therefore the decree asked for is that the bank pay the money to the trustee, the cause presents an aspect which at once suggested the adequacy of an action at law, and therefore suggested the exclusion of any equitable remedy. But the money held by the bank stands in exactly the same posture as any other property which the bank might have received, and the decree asked for only requires the bank to turn over to the trustee the property which it has received."

Referring now to the opinion of the Court below at page 40 of the printed case, it appears that the Court did pass upon the effect of the resolution found upon the minutes of the corporation insofar as it was evidential of a contract and in effect held that it was null and void. The Court held that there was no consideration for the same and that it was not the unanimous act of the stockholders, and furthermore that its consummation would have impaired the capital of the company. The Court there refers to the statute forbidding the paying of any part of its capital to a stockholder pursuant to the provisions of our Corporation Act (C. S. 16 and 17). In effect then the Court did rescind any contract that might have been evidenced by this resolution and held that the same was of no effect, illegal, *ultra vires* and void.

Reference to the early cases shows very clearly that any objection to the jurisdiction of the Court was taken promptly upon the institution of the suit. The nature of the complainant's claim was very apparent from the allegations of the bill and the objection that there was an adequate remedy, at law could have been and should have been taken promptly. According to the present practice instead of a demurrer, the defendant is obliged to move to strike out the bill. There is no provision today in our practice for interposing a demurrer with an answer. According to our rules demurrers are abolished. Evidently it is the intent of our present rules to expedite the speedy trial of the issues on the merits. The defendant had an opportunity to interpose his objection and should not now be permitted after he has pleaded to the merits and the cause has been heard and decided against him to interpose such an objection on this appeal.

The Court below elected to retain jurisdiction, and, in the light of the authorities above cited and the peculiarly equitable elements involved, its power to do so is not open to question.

The Resolution of August 15, 1922, was not the unanimous act of the stockholders and was not assented to by either Hedden or Toothe.

The Vice-Chancellor found as a fact that "whatever may be the secret behind the resolution or the solution of the manner in which it crept into the minutes, there is no question in my mind that Hedden was not aware of its existence until after his disillusionment of faith in Dozier in January of 1924." This finding, as has been demonstrated by the foregoing analysis of the proofs, is the only finding that could be made consistently with Dozier's own testimony.

It has been equally demonstrated in like manner that Toothe knew nothing of the resolution until January 17th, 1924.

To charge both Hedden and Toothe with knowledge of it appellant relies in his brief upon the signing of the minutes and upon the wording of the affidavit and the complaints in the other suits. "Yet," as the Vice-Chancellor held, "in the face of this impressive evidence, it is impossible to escape the feeling that the fraud had its inception in the disputed resolution." The proofs lead inevitably to that conclusion.

Neither Dozier nor Fisher testifies to any single act or word on Toothe's part evidencing assent by him. Even if the resolution had been adopted at a directors' meeting as recited in the disputed minutes, the signing of those minutes by the secretary could not be construed as assent by him. In such case he would at most have been merely recording not what he assented to, but what the directors assented to. In the whole record no attempt was made to prove assent by Toothe. Appellant's brief does not claim any more than that Toothe knew of it. He is now sought to be bound for having merely stood by, but even assuming appellant's claim as to the facts in this regard, mere knowledge by Toothe of the resolution can not be construed as assent. The undisputed fact is that the first time he had an opportunity to vote on the proposition, which was at the meeting of January 15, 1924, he voted against it.

No such case is presented here as was involved in Breslin *v.* Fries-Breslin Co., 70 N. J. L. 274, and the other cases cited by appellant, for here (1) there was not unanimous *assent and agreement* by all the stockholders, (2) the "interests of creditors and other third parties" are involved

in the present case, and (3) this case involves *a fraud* perpetrated upon the company by its treasurer.

It is respectfully submitted that the decree appealed from should be affirmed with costs.

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