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(Filed October 20, 1922.)

In Chancery of New Jersey

To his Honor, Edwin Robert Walker,
Chancellor of the State of New Jersey.

Complaining shows unto your Honor, your orator, Alexander Rubenstein, of the City of Paterson, County of Passaic and State of New Jersey.

1 That there was organized under the laws of the State of New Jersey, in the year of 1916, a certain corporation, known as the Stanley Silk Dyeing Co., having its principal offices in the City of Paterson, County of Passaic and State of New Jersey. That said Company was organized for the purpose of, and ever since has been conducting the business of silk skein dyeing.

2. Your orator further shows that the Company was formerly organized and shares of stock issued on the 4th day of October, 1916. That your orator as one of the stockholders, was elected to the Board of directors and President of the Company, and ever since has been President of the Company, and a member of the board of directors.

3. Your orator further shows that the last meeting of the Board of stockholders, was held two years ago, at which time he was re-elected as director and President of said Company, the other directors being William Kaspirzack, Stanislaw Kaspirzack and Andrew Buszczad. That no election has been held since, and your orator by virtue of said election, has been President as aforesaid, and he together with the said mentioned persons have been directors of the Company.

4. Your orator further shows that by the by-laws of said Company, it is provided that there

should be seven direcors; that for the past two years there has only been four directors, of which your orator is one and the said William Kaspirzack, Stanislaw Kaspirzack and Andrew Buszczad are the other three.

5. Your orator further shows that at this time the total number of shares outstanding are one hundred and sixty-five, which are divided as follows:

Your orator holds ninety-five shares, and the remaining seventy shares are held by Veronica Kaspirzack ten shares, Stanislaw Kaspirzack fifty-five shares and William Kaspirzack five shares.

6. That the said Stanislaw Kaspirzack, Veronica Kaspirzack and William Kaspirzack are related as follows: Stanislaw Kaspirzak is the father of Veronica Kaspirzack and the brother of William Kaspirzack.

7. Your orator further shows that the Treasurer of the Company is Stanislaw Kaspirzack and William Kaspirzak is the Secretary.

8. Your orator further shows that by the by-laws of the said Company, it is provided that stockholders in order to vote at any meeting for the election of directors and other officers, must have the stock in their names registered on the books of the Company twenty days before such election.

9. Your orator further shows that on the 11th day of October, 1922, a notice was received by him informing him of the holding of the annual meeting on Saturday the 21st day of October, 1922, in the afternoon, at the office of the company; that your orator did not as President call said meeting; and had no notince that any meeting was desired or to be held until he received the notice in question.

10. Your orator further shows that ever since the said company has been in existence, your orator in addition to being an officer has been its general salesman and has given the utmost of his best efforts and time to the said company, and as the result thereof, the said company has greatly increased its assets, and has heretofore prospered.

11. Your orator further shows that on the 17th day of August, 1922, desiring to register on the books of said company, certain shares of stock, to wit, forty shares he called at the office of the said company and tendered forty shares of stock and requested same to be registered on the books of said company in his name, in accordance with the proper practice. That he tendered the said stock to the secretary of said company and requested that the transfer be duly made, but the said secretary refused to transfer the same.

12. Your orator further shows that if said stock had been properly transferred, there would or should have appeared upon the books of the said company in his name ninety-five shares of stock, which shares would have constituted a majority of the stock of the company.

13. Your orator further shows that on the ninth day of October, 1922, after the call for the annual meeting had been sent to him, aforesaid, he visited the office of the said company with his attorney, Abram I. Bluestein, for the purpose of inspecting said stock and transfer book. That previous there he had made a demand to see the said stock and transfer book but was refused, said books having been removed from their registered office of the company. That at the time he visited the plant at the reg-

istered office with his counsel, Abram I. Bluestein, he requested to inspect the stock and transfer book and was forced to wait a short time until the Secretary came into the office and opened the section of the safe wherein the books were placed, the key being in the possession of the Secretary, William Kaspirzak. That your orator's counsel made a request upon the secretary to transfer the shares of stock held by the said Alexander Rubenstein as of the 17th of August, 1922. That the counsel of the orator had stated that it was improper on the part of the secretary to have refused to transfer said stock of your orator on the books of the company, when tendered on the 17th day of August, 1922. The said secretary thereupon offered to transfer said stock as of the date aforementioned, but refused to transfer same as of the 17th day of August, 1922, when the first request was made. That no valid excuse was offered for his failure to transfer said stock as of the 17th day of August 1922, other than it had not been offered to him, which excuse was untrue.

14. Your orator further shows that dissensions have arisen in the corporation, between your orator on the one part, and the said Veronica Kaspirzack, Stanislaw Kaspirzack and William Kaspirzack on the other. That the said friction is the desire on the part of the said Kaspirzacks to have exclusive control of the said corporation, and to discharge your orator from employment as manager, and from any authorative voice in the management and conduct of the corporation, and to leave all actual authority exclusively with them, the said William Kaspirzack, Stanislaw Kaspirzack and Veronica Kaspirzack.

15. Your orator further shows that if a meeting is held on the 21st day of October, 1922, in accordance with the notice, that there will be allowed to be voted, the stock held by the Kaspirzacks and part only of the shares held by your orator, and your orator will be completely out-voted, whereas he will have control of said company in the event of his being allowed to vote the stock actually held by him, but which does not appear upon the books of the company.

16. Your orator further shows that he has in a friendly manner requested the said Veronica Kaspirzack, Stanislaw Kaspirzack, and William Kaspirzack, to cause said stock to be entered in the book so that the same can be voted upon, or to arrange for the postponement of the annual meeting until such time as your orator's stock wil be entered and voted upon, but that the Kaspirzacks, and each of them have absolutely failed and refused to do so, and have informed your orator that they intend to proceed with said annual meeting on the 21st day of October, 1922, and at said time elect themselves as members of the Board of Directors, and one of them as President of the corporation, excluding your orator from having any voice in the management of said corporation.

17. Your orator further shows that he can only be relieved by his stock being first entered upon the books of the said company, and by the meeting being adjourned until such time as your orator will be able to vote upon the shares of stock so held by him; that no harm can come to the said corporation, or to the stockholders or the remaining members of the Board of Directors by reason of a reasonable

adjournment, as no meeting has been held, for such purpose for two years, and that during said period of time the present board of directors and officers have been in control of said company.

18. In consideration whereof for as much as your orator is without relief, except in this Honorable court, he prays that the said Veronica Kaspirzack, Stanislaw Kaspirzack and William Kaspirzack and the said Stanley Silk Dyeing Co., may answer this bill, but without oath, and that the said Veronica Kaspirzack, Stanislaw Kaspirzack and William Kaspirzack, their agents or assigns, be enjoined and restrained from holding any meeting or attending any meeting of the stockholders or of the board of directors of the Stanley Silk Dyeing Co., on the 21st day of October, 1922, or at any time thereafter until such proper time shall be fixed by the Court; that the Stanley Silk Dyeing Co., its officers and agents may be enjoined and restrained from holding any meeting; that the secretary of the Stanley Silk Dyeing Co., Wiliam Kaspirzack, may be ordered and directed to enter upon the books of the said company, the shares of stock belonging to your orator so that the same shall appear in his name upon the books of said company, and that your orator may have such further and other relief as may be equitable and just.

May it please your Honor, the premises considered, to grant to your orator, not only a writ of injunction issued out of and under the seal of this honorable court to be directed to the above named defendants, Veronica Kaspirzack, Stanislaw Kaspirzack and William Kaspirzack and The Stanley Silk Dyeing Co. enjoining and restraining each of them

from holding or attempting to hold any meeting of the stockholders of the Stanley Silk Dyeing Co., on the 21st day of October, 1922, as hereinabove set forth, from holding any meeting of said stockholders at such date or any other date until the Court shall fix the same, and that the said defendants may be ordered and compelled, by its proper officers, to enter upon the books of the Stanley Silk Dyeing Co. all the stock of your orator, so that there shall appear upon the stock and transfer book the ninety five shares so belonging to the complainant, but also the State's writ of subpoena issued out of and under the seal of this court to be directed to the defendants, Veronica Kaspirzack, Stanislaw Kaspirzack, William Kaspirzack and The Stanley Silk Dyeing Co. to command them and each of them to answer said bill of complaint, at a certain time and at a certain place therein expressed, and to abide by such decree as this Court may make in the premises, and that your orator may be given such further and other relief as may be just.

Abram I. Bluestein,
Solicitor for and of counsel with complainant.

AFFIDAVIT OF ALEXANDER RUBINSTEIN

State of New Jersey
County of Passaic } ss:

Alexander Rubenstein, of full age, being duly sworn according to law upon his oath, affirms and says:

1. He resides at No. 104 Seventeenth Avenue, in the City of Paterson, County of Passaic and State of New Jersey.

Affidavit of Alexander Rubinstein

2. That he with seven others organized a corporation under the laws of the State of New Jersey, in the business of dyeing silk, which corporation was formed on or about the fourth day of October, 1916, under the name of StanleySilk Dyeing Co. That at the first meeting of stockholders he was elected a director of said corporation, and thereafter at the Board of Directors' meeting was elected President of said company, and ever since the first election has been President of the said company, and a member of the Board of Directors.

3. That from the time of the formation of said company up to the date hereof all the stock held by the stockholders of the said company was disposed of by them, with the exception of those held by your affiant, Stanislaw Kaspirzack, William Kaspirzack and ten shares purchased by Veronica Kaspirzack from Andrew Briszczad.

4. Affiant further says that the last meeting of the Board of Directors was held about two years ago, at which time he was re-elected as director and president of said company. Stanislaw Kaspirzack and William Kaspirzack and Andrew Briszczad were re-elected as directors of said company but the said Andrew Briszczad having disposed of his stock to Veronica Kaspirzack is no more a member of the Board of Directors. That no election has been held since, and that by virtue of his election two years ago he has held the office of President, and together

with the aforementioned has been director of the company.

5. Affiant further says that the by-laws of the said company provides that there shall be seven directors. That as as a mater of fact, for the past two years there has only been four directors and that at the present time, by reason of the said Andrew Briszczad disposing of his stock to the said Veronica Kaspirzack, there is only three directors.

6. Affiant further says that to the best of his knowledge and belief, there is outstanding at the present time one hundred sixty-five shares of the capital stock of said company, which are divided as follows: Alexander Rubinstein, your affiant, ninety-five shares, ten shares by Veronica Kaspirzack, fifty-five shares by Stanislaw Kaspirzack and five shares by William Kaspirzack.

7. Affiant further says that the said Stanislaw Kaspirzack, William Kaspirzack and Veronica Kaspirzack are related, the said Stanislaw Kaspirzack being the father of Veronica Kaspirzack, and the brother of William Kaspirzack.

8. Affiant further says that at the election two years ago, Stanislaw Kaspirzack was elected Treasurer and William Kaspirzack, Secretary, both holding their respective offices up to the day and date hereof.

9. Your affiant further says that the by-laws of said company provide that each stockholder in order to vote his or her stock at any stockholders' meeting for the election of directors, must have stock in his or her name registered on the books of the company twenty days before said election.

10. Affiant further says that on the eleventh

day of October, 1922, a notice was received by him informing him of the holding of an annual meeting on Saturday, the twenty-first day of October, 1922, in the afternoon, at the office of the company. That he received said notice from his daughter at his home six o'clock on the day and date aforesaid, which meeting your affiant, as President, did not call, and had no notice that any meeting was desired or to be held until he received the notice in question.

11. Deponent further says that ever since said company has been in existence, in addition to being an officer, stockholder, and director, he has been its general salesman and has given his best efforts and time to the up-building of the said company, and that as a result thereof the said company has greatly increased its assets and has heretofore prospered.

12. Affiant further says that on the sixteenth day of August, 1922, Veronica Kaspirzack, who was the bookkeeper of the said company, and the daughter of Stanislaw Kaspirzack, and the niece of William Kaspirzack, under the direction of Stanislaw Kaspirzack, who was the Treasurer of the company, telephoned to Frank Rea, the accountant of the company, to call at the office of the company at one o'clock in the afternoon on the seventeenth day of August, 1922, for the purpose of transferring ten shares of stock purchased by Veronica Kaspirzack from Andrew Briszczad. That on the seventeenth day of August, 1922, the accountant, Frank Rea, appeared at the office of the company and was requested by your affiant tao transfer the forty shares of stock held in his name so that the shares may be properly recorded on the books of the company in his name, and tendered said forty shares

of stock to the accountant, Frank Rea, and to the proper officer of the corporation for transfer. That at the same time, Veronica Kaspirzack offered her ten shares of stock for transfer. That your affiant stated that he would sign new shares of stock in place and stead of the ten shares held by Veronica Kaspirzacck, so that the said shares of stock would appear in the name of Veronica Kaspirzack, if his forty shares were transferred on the books of the company, in accordance with his tender. That the secretary and the proper transfer officers refused to transfer the forty shares aforementioned upon the books of the company. Present at this meeting were, your affiant, Veronica Kaspirzack, Stanislaw Kaspirzacck, William Kaspirzack and Frank Rea.

13. Affiant further says that if all of his stock, including the forty shares aforementioned had been properly transferred on the proper books of the company, there would now appear upon the books of the company in his name, ninety-five shares of stock, which represents a majority of the stock of the company.

14. Affiant further says that on the ninth day of October, 1922, after the call for the annual meeting, he visited the office of his attorney, Abram I. Bluestein, who suggested to him that it would be proper for him to first inspect the stock and transfer book, possibly they may have transferred the shares without his knowledge. Affiant then visited the plant, with his Counsel, demanded the stock and transfer book, and after being forced to wait about a half hour, was shown the stock and transfer book. The transfer of affiant's shares did not appear upon

said books. That at this meeting, there were present Veronica Kaspirzack, Stanislaw Kaspirzack, William Kaspirzack, your affiant, and three employees of the company, and your affiant's Counsel, Abram I. Bluestein. He stated to those present that it was very improper conduct on the part of the Secretary to refuse to transfer the stock of Alexander Rubinstein, when originally tendered. Thereupon the seccretary, through Veronica Kaspirzack, offered to transfer said stock as of the ninth day of September, 1922, but when requested to transfer the stock as of the original day when the tender was made on the seventeenth day of August, 1922, refused, and when asked for his reason for refusing, he answered through Veronica Kaspirzack, that the said stock was not offered for transfer on the seventeenth day of August, 1922, which excuse, your deponent says, was untrue.

15. Your affiant further says that there has arisen dissensions amongst the stockholders in said corporation from the day and date of the purchase of the ten shares of stock by the said Veronica Kaspirzack. That it is the desire of the said Veronica Kaspirzack Stanislaw Kaspirzack and William Kaspirzack to have exclusive control of the said corporation and to discharge your affiant from employment in said company, and from any authorative voice in the management and conduct of the said corporation, and by so doing it would leave all actual authority exclusively with them.

16. Affiant further says that if a meeting is held on the twenty-first day of October, 1922, there will only be allowed to be voted the stock held by Veronica Kaspirzack, Stanislaw Kaspirzack and Wil-

liam Kaspirzack, and only such stock as appears on the transfer books in said company in the name of your affiant, and that your affiant will be completely out-voted, which will leave complete control in the hands of Veronica Kaspirzack, Stanislaw Kaspirzack and William Kaspirzack, whereas in fact he has and will have control of the company in the event of his being allowed to vote the stock actually held by him, but which does not appear on the books of the said company.

17. Affiant further says that he has in a friendly manner requested of the said Veronica Kaspirzack, Stanislaw Kaspirzack and William Kaspirzack to cause said stock to be entered in the proper books of the said company, so that the same can be voted upon and that they arrange for the postponement of the annual meeting until such time as your affiant's stock is entered and voted upon, but they have refused to transfer said stock and to adjourn said meeting, that they will proceed with the annual meeting on the twenty-first day of October, 1922, and at which time they will elect such directors as will be favorable to them, and thereafter by such conduct and their having control of the company, your deponent will be forced to leave the company and have no voice in said company or its management.

18. Affiant further says that his only relief can be had by his stock being first entered upon the books of the company and the meeting being adjourned until such time as your affiant will be able to vote upon the stock held by him. That inasmuch as the said directors and stockholders have acted for the past two years, and inasmuch as no meeting has been

held for the past two years, there can come no harm to the present stockholders, directors, or officers of said corporation, and that a reasonable adjournment will not in any way interfere with the management of the company or injure the rights of Veronica Kaspirzack, Stanislaw Kaspirzack, and William Kaspirzack, remaining stockholders of said company. That the same officers and directors will be in control and management of said business as have been for the past two years.

Sworn and subscribed to before me this 19th day of October, 1922.

George Wenger, Attorney at Law.

Alexander Rubenstein.

AFFIDAVIT OF FRANK REA

State of New Jersey, }
County of Passaic, } ss:

FRANK REA, of full age, being duly sworn upon his oath, says:

That he resides at No. 81 Diamond Bridge Avenue, Hawthorne, N. J., and that he has an office located in the Elbow building, 115 Market Street, Paterson, N. J., that by occupation he is an accountant, and has been the accountant taking care of the books of the Stanley Silk Dyeing Co. since the formation of its company about six years ago, excepting the period when he was in the service of the United States Government during the late war.

Deponent further says that he was present at the office of the Stanley Silk Dyeing Co. on Thursday the seventeenth day of August, 1922, having been called to the office of the Stanley Silk Dyeing

Co. by Alexander Rubenstein, to enter the transfer of the stock of the respective stockholders holding stock in the company, and which has as yet not been transferred in the books of the company. That he appeared at the office of the company about 1:00 o'clock in the afternoon of the aforesaid date, and present at this meeting were Alexander Rubenstein, Veronica Kaspirzack, Stanislaw Kaspirzack and William Kaspirzack, being all of the stockholders of the Stanley Silk Dyeing Co. and being also all of the officers of the company, the transfer agent being William Kaspirzack, who was also present at this meeting. Mr. Rubenstein tendered his forty shares of stock for transfer, which shares of stock he stated, he had purchased from several stockholders, and asked that they be transferred on the books of the company on his name. Veronica Kaspirzack then stated that she had ten shares of stock which she had purchased and asked that they be transferred on the books of the company on her name. Stanislaw Kaspirzack, who was the Treasurer of the company stated that the said forty shares of Alexander Rubenstein would not be transferred on the books of the company and that the shares of stock of the said Veronica Kaspirzack would be transferred on the books of the company. Alexander Rubenstein then stated that if his shares were not transferred, he would not consent to sign the new certificate of stock to Veronica Kaspirzack.

Deponent says that the said forty shares of stock were offered for transfer on the aforesaid date, but were refused to be transferred by the proper officers of the company.

Sworn and subscribed to before me this 18th day of October, 1922.

George Wenger, Attorney at Law.

Frank Rea.

Answer

(Filed November 21, 1922.)
(Title Omitted.)

ANSWER

The joint and several answer of William Kasprzack, Stanley Kasprzack, Veronica Kasprzack (respectively impleaded as William Kaspirzack, Stanislaw Kaspirzack and Veronica Kaspirzack) and the Stanley Silk Dyeing Company to the Bill of Complaint of Alexander Rubenstein.

These defendants jointly and severally answering the Bill of Compaint in the above stated cause say:

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted except as to the allegation that there are four directors of the company of whom Andrew Bieszczad (called in the bill Andrew Buszszad) is one: the fact being that said Andrew Bieszcad is no longer a director so that the board consists of but three directors.
5. They deny that the total number of shares outstanding at this time amounts to one hundred and sixty-five shares and say that the total number of shares outstanding is one hundred and twenty-five shares. They deny that complainant holds ninety-five shares but admit that said Veronica Kasprzak holds ten sares, said Stanley Kasprzak holds fifty-five shares and that said William Kasprzak holds five shares.

These defendants say that the allegation of the

5th paragraph of the bill that one hundred and sixty-five shares are outstanding of which the said complainant holds ninety-five shares is erroneous. The facts are that at the time of the organization of the corporation, or shortly thereafter, twelve shares of the capital stock were issued to one John Harsche, fourteen other shares were issued to John Lingelbach, two other shares were issued to Albert Walzak and twelve other shares were issued to Stanislaw Oltarzewski. That subsequently all of said last mentioned shares, amounting to forty shares in the whole, were purchased by the Stanley Silk Dyeing Company and retired. That the complainant at the time of the purchase of said shares by the company was the president of the company and the executive and financial head thereof and attended to the details of the purchase of said shares, the payment of the money therefor and the receipt for the money of the outstanding certificates for said forty shares. That the said forty shares were never reissued and defendants, up to the summer of 1922, supposed that there was no claim on the part of the complainant to own the shares in his own right and that the certificates purchased by the company as aforsaid were and always had been in his custody as the financial manager of the corporation. And defendants aver that the complainant has no right or title to or in the said forty shares of stock.

6. They admit paragraph 6 of the bill.

7. They admit paragraph 7 of the bill.

8. They admit paragraph 8 of the bill.

9. They admit paragraph 9 of the bill except as to the allegation that complainant had no notice that any meeting was desired or to be held until he

received the notice thereof and in respect of that statement aver that he had the notice arising from the by-laws of the company which fix the date of the annual meeting.

10. They deny paragraph 10 of the bill.

11. They deny paragraph 11 of the bill except as to the allegation that complainant was at the office of the company on or about August 17, 1922.

12. They admit that if on August 17, 1922, forty shares of stock of the company had been transferred to the complainant there would have appeared on the books of the company in his name ninety-five shares of stock and that said ninety-five shares would have constituted a majority of the company; but they deny that said forty shares were properly transferable to him.

13. They admit that on or about October 9, 1922, complainant visited the office of the defendant company with his attorney Abram I. Bluestein for the purpose of inspecting the stock books of the company, but not to inspect the transfer book as the company never had a transfer book. They deny a refusal by defendants or any of them to show the stock books to complainant and deny that said books had been removed from the registered office of the company. They deny that the secretary of defendant company offered to transfer said forty shares of stock as of October 9, 1922, or as of any other date and say that the request for transfer of said forty shares by the complainant to said secretary was absolutely refused. All the other allegations of the paragraph are denied.

14. They admit that dissensions have arisen in the corporation between complainant on the one

side and said Veronica, Stanley and William Kasprzak on the other but they deny that said dissension or friction arose from a desire on the part of said Veronica, Stanley and William Kasprzak to have exclusive control of said corporation or from a desire to prevent his having any authoritative voice in the management and conduct of the corporation or from a desire to vest all actual authority exclusively with the said Veronica, Stanley and William Kasprzak.

15. They admit the allegations of the 15th paragraph of the bill except the allegation that complainant would have control of the company in the event of his being allowed to vote the stock actually held by him, but which does not appear on the books of the company, and say that the total number of shares actually held by him in his own right amount to but fifty-five shares, at the utmost, and that he does not actually hold the additional forty shares in his own right but only as custodian thereof for the defendant company.

16. Defendants deny that the complainant ever requested said Veronica, Stanley or William Kasprzak, in a friendly manner, to cause said forty shares of stock to be entered in the book so that the same could be voted upon or to arrange for the postponement of the annual meeting and say that the only request ever made for such transfer was in anything but a friendly manner and was at the time that the said complainant for the first time disclosed that he claimed to own the forty shares

which were in reality the property of the corporation as hereinbefore set forth.

These defendants pray to be hence dismissed with their costs, etc.

William I. Lewis,
Solicitor of Defendants.

(Filed October 23, 1923.)
(Title Omitted.)

CONCLUSIONS

Messrs. Ward & McGinnis and Mr. Wood McKee for complainant.

Mr. William I. Lewis for defendants.

Fielder, V.C.

Complainant claims to be the owner of forty shares of the Stanley Silk Dyeing Co. by purchase from former owners thereof, which stock he presented to the proper officers of the company for transfer to his name and transfer was refused. He filed his bill against the company and its officers (who are the only other stockholders), praying that the secretary be directed to transfer said shares to his name on the company's books and that pending this suit, the stockholders and directors be restrained from holding meetings. The defence is that the shares in question were purchased by the company and retired and that the certificates of stock are held by complainant as custodian for the company.

This is a close corporation, all stock issued being held by Stanley Kasprzak, who is treasurer; William Kasprzak, who is secretary; Veronica Kasprzak and complainant, who is president. Stanley and William Kasprzak and complainant constitute the present board of directors. If the shares in question belong to complainant and are added to other shares

he owns, he has a majority of the capital stock, but if the shares were purchased by the company and should be retired, the Kasprzak family has the stock control so that the Kasprzaks are the persons really interested in resisting complainant's claim.

The admitted facts are that prior to August, 1918, the forty shares in question were owned by Albert Walzak, John Lingelbach, Stanley Olterzewski and John Harsche, that such shares were purchased from the owners and paid for by the company's checks and notes dated August 5, 1918, to the order of the owners, for a total of $7200; that the certificates were assigned by the owners thereof and delivered to complainant, who held them in his possession until August, 1922, when he presented them to the company's officers with the request that they be transferred on the company's books to his name as owner and a new certificate delivered to him, which request was refused on the ground that the shares belonged to the company. As to practically everything else of importance in the case alleged by the one side, there is a flat denial by the other and it is difficult to determine where the truth lies, but relying largely on the minutes of the company and on its books of account, all being records kept at a time when the relations between the parties were harmonious and when it does not seem probable that complainant was laying a foundation for a claim which he waited four years to assert, I have reached the conclusion that the complainant's story of the transaction is the true one and that he is entitled to the relief he seeks.

The company was incorporated October, 1916, Rubinstein, the complainant, Stanley Kasprzak, Harsche, Lingelbach, Walzak and William Kasprzak

were on its first board of directors, which was completed by the election of Olterzcwski, December, 1916. Rubenstein was elected president and Stanley Kasprzak,treasurer and by argeement with the company, Kasprzak was employed as superintendant and manager of the business and Rubenstein was employed as its soliciting agent. As early as April, 1917, the other stockholders and directors were complaining of the management of Kasprzak and Rubenstein and at a meeting of the board held April 30, 1917, four dissatisfied stockholders expressed a desire to dispose of their shares and were informed that the company would not buy because it did not have the money. At five directors' meetings prior to June 24, 1918, the subject of the sale of this stock to the company was discussed and it was reiterated that the company had not the money and would not buy. From the minutes of six other directors' meetings during the same period, it appears that the company's business was poor; that many repairs to and replacements of machinery were required and that because of lack of funds, a frequently discussed dividend could not be paid. At the meeting of June 24, 1918, William Kasprzak informed the board that he had sold his shares to Rubenstein and the secretary asked why he had sold his shares without notice to the company. Rubenstein replied that the company had not the money and that because certain shareholders had stated they proposed to buy he, Rubenstein, had bought the shares from William Kasprzak. For some undisclosed reason, this sale of stock did not go through. About this time the four dissatisfied stockholders took their troubles to Attorney Benson,

who after several interviews with Rubenstein, arranged with Rubinstein for a sale of the stock. In the minutes of a directors' meeting held July 29, 1918, it is recorded that Rubenstein, upon being asked about these stockholders, stated that he had been called to Benson's office July 20 with Olterzcwski, Walzak and Stanley Kasprzak, and that he and Stanley Kasprzak had made arrangements to purchase the stock. Rubenstein testified that after his first meeting with Benson, he consulted Stanley Kasprzak, who told him that the company could not take the stock and that he then asked Kasprzak if he, Kasprzak would buy and Kasprzak said he would not and told Rubenstein to purchase it; that Rubenstein then asked Kasprzak if he could borrow the necessary money from the company and that Kasprzak consented and thereupon Rubinstein informed Benson that he would buy. This is denied by Kasprzak, but because, at the directors' meetings it had been uniformly officially decided that the company was not in funds and could not buy and because of other circumstances to which I shall refer, I feel that Rubinstein's story is corroborated.

The sale was consummated August 5, 1918, at Benson's office. Harsche, one of the stockholders who sold, had previously signed the form of transfer endorsed on his certificate and had given his certificate to Walzak to deliver for him and was not present at the transfer. Walzak, Lingelbach and Olterzcwski, who were at Benson's office when the sale was closed, testified that they signed the assignments of their certificates in blank and delivered the certificates to Benson in exchange for their checks and notes. Benson had not known Rubinstein prior to this transaction and he was

acting in the matter for Walzak, Lingelbach, Olterzewski and Harsche. He is a disinterested witness and he testified that the body of each assignment, including Rubinstein's name as assignee, is in his (Benson's) handwriting and that he is quite sure that the assignments were filled in as they now appear, before the assignors signed. Rubenstein's testimony is to the same effect. Whether Benson filled in the assignments before or after the assignors signed, it is apparent from his testimony that his understanding of the transaction was that Rubinstein was purchasing the stock and hence he named Rubinstein as the assignee in the assignments and this in spite of the fact that the checks and notes which were delivered at his office in payment for the stock, were made by the company. The certificates of stock were then delivered to Rubinstein who has had them ever since.

The checks and notes which paid for the stock were prepared by Veronica Kasprzak, daughter of Stanley Kasprzak, who was then the company's bookkeeper. These disbursements of company's funds were entered in the cash book by Veronica Kasprzak under date of August 5, 1918, as payments to the respective stockholders who sold, with the amount paid each opposite his name, the total being $7200, and the four entries were bracketed by her and outside the bracket she wrote the words "a loan." Rubinstein repaid the money to the company in three installments, as follows: October 21, 1918, $3500; November 23, 1918, $2000 and May 3, 1919, $1700, each of which payments is credited to Rubinstein in the company's cash book in the handwriting of Veronica Kasprzack and to each of which she

added the words "return of loan." Veronica Kasprzak says that when she made the entry of August 5, 1918, she knew that the transaction was a purchase of the stock in question, but that she did not know Rubinstein to be the purchaser and that she made all the entries in the cash book, including the words "a loan" and "return of loan" under Rubinstein's direction, without understanding the reason for or meaning of such entries. This Rubinstein denies and he says she was with her father when he and Kasprzak discussed the proposed loan to Rubinstein.

Miss Kasprzak graduated from a Paterson grammar school in 1914, and after being employed in a mill, went to work as bookkeeper for the company in July, 1918, when she was about seventeen years old. She is an intelligent young woman, speaking and writing the English language perfectly and througout the trial of this case she sat with defendant's counsel and was frequently consulted by and she advised with him in connection with the trial. Before and after the purchase of the stock she resided with her father. It seems improbable that the purchase of this stock was not discussed in her presence in the home and in the office, and that she did not understand the whole transaction and did not know that the first entry she made in the cash book indicated that the company was loaning $7200 to Rubinstein to pay for the stock purchased from the four stockholders, nor does it seem probable that when she made the first entry of repayment by Rubinstein and added the words "return of loan" October 21, 1918, after she had kept the company's books nearly four months, she did not know that Rubinstein was returning part of the money loaned

him by the company to purchase the stock in question.

A bookkeeper not regularly employed by the company, but called in from time to time to keep the company's ledger, posted the entries from the cash book. He testified that in posting the first entries to which I have referred, he charged Rubinstein's loan account with the $7200 paid the stockholders, because Miss Kasprzak told him that the amount should be so charged and that he credited the loan account with the three payments made by Rubinstein, because the cash book entries showed they should be so credited. The ledger was kept in the office of the company and Miss Kasprzak had access to it and it does not seem probable that she did not know of Rubinstein's loan account and the entries therein.

The minute record of a directors' meeting of August 26, 1918, shows Stanley Kasprzak, Rubinstein and Bieszczad as the only persons present, the latter being then secretary and a director, but having since sold his stock to Veronica Kasprzak. At this meeting Rubinstein reported that on August 5, 1918, he had paid the four stockholders $7200 for their shares, whereupon Bieszczad asked Rubinstein who paid for the shares. Kasprzak answered the question by saying that the stock had been paid for "with the company's money." Rubinstein then stated "to the company" that he would like to have the forty shares divided equally between Kasprzak and himself and Bieszczad asked Kasprzak if he agreed to this and the minutes show that Kasprzak replied "that he isn't." It is contended by Kasprzak that the word last quoted, as originally written in

the minutes was "is" and that it has been changed by some person, who, it is inferred, is Rubinstein, to "isn't." Rubinstein, who signed the minutes, says that it was originally written "isn't," while Bieszczad, who took the minutes in Polish and whose son afterward translated them into English and wrote them in the minute book, says that the word was originally "is." The disputed word has a different appearance from the other words in the sentence, but I am not convinced that the handwriting is different, but rather that the difference in appearance is due to a greater quantity of ink having been used in writing the word.

Kasprzak, by his filed answer and by his testimony, contends that the stock was not purchased by or for the benefit of any individual, but by the company and was retired, notwithstanding that up to the time of the purchase, the minutes show that the board of directors had refused several times to purchase for the company and that the company apparently did not have the money with which to purchase. It therefore seems to me that at the meeting of August 26, 1918, after Kasprzak had stated that the stock had been paid for "with the company money" and Rubinstein, speaking as though he had the right to dispose of the shares, had stated "to the company" that he would like to have Kasprzak take half of them, Kasprzak could not have said he was willing and the secretary who took the minutes could not have noted that Kasprzak said "that he is," because Kasprzak's natural reply to Rubinstein's proposition would be a statement to the effect that Rubinstein was not the owner of the stock and could not make any disposition of the

shares. The books of account show that the money used for the purchase of the stock was loaned to Rubinstein and that the loan was repaid by him. The certificates for the forty shares have always been in Rubinstein's possession. The fact that Kasprzak never paid, or offered to pay Rubinstein for twenty shares and never made demand on Rubinstein for any shares, also negatives his claim that at the meeting in question he agreed to take half of them. If, however, at this meeting Kasprzak did agree to an equal division of forty shares between Rubinstein and himself, it must have been his understanding that Rubinstein and not the company had purchased because if he believed the company to be owner of the stock, he must have known that he and Rubinstein could not take the stock purchased with company funds and for the company, to the exclusion of the other two stockholders, William Kasprzak and Bieszczad.

Defendants call attention to a dividend amounting to $2050 which was paid by the company November 21, 1918. At that date the stock outside of the forty shares was held as follows: Rubinstein ten shares, Stanley Kasprzak seventeen shares, Biesczcad ten shares, and William Kasprzak five shares. Of this dividend Rubinstein and Stanley Kasprzak received equal amounts and the defendants argue that if Rubinstein was then the owner of the forty shares in question, he would not have consented to share equally in this dividend with Kasprzak. Rubinstein's explaination is that he and Kasprzak were friends when they formed the company and that they then agreed to share equally in all amounts drawn from the company, whether

for salaries or profits, regardless of their stockholdings. They did share equally in salaries and in other amounts drawn by them from the company under resolutions passed by the board of directors and while his explanation of an equal sharing of dividends, when, as he claims, he owned fifty shares and Kasprzak owned seventeen, appears on its face improbable, yet if the situation was as Kasprzak claims, namely, that the forty shares had been retired and he owned seventeen shares and Rubinstein owned ten, he, Kasprzak, was consenting to an equal apportionment of the dividend between Rubinstein and himself, notwithstanding the difference in the number of sharesheld by each, so that the manner in which the dividend was paid out, does not affect my opinion as to the merits of Rubinstein's claim.

In explanation of his holding the certificates purchased, from August 5, 1918, to August, 1922, and failing to present them to the secretary for transfer, Rubinstein says he did not know it was necessary to have the shares transferred and that his ignorance continued until he learned that Veronica Kasprzak had purchased Biesczcad's shares and had presented them for transfer in August, 1922, whereupon he presented his shares. None of the stockholders had had any experience with corporations or with stock ownership and all were more or less ignorant of business methods, so that Rubinstein's explanation appears to me to be reasonable.

Section 48 of the Corporation Act (Gen. Stat. 1630) provides:

> "Nothing but money shall be considered as payment of any part of the capital stock of any corporation organized under this act,

except as hereinbefore provided in the case of the purchase of property and no loan of money shall be made to a stockholder or officer therof; and if any such loan be made the officers who make it, or assent thereto, shall be jointly and severally liable, to the extent of such loan and interest, for all the debts of the corporation until the repayment of the sum so loaned."

The connection in which the prohibition against a loan to a stockholder or officer is placed in this section would indicate that it bears some relation to the requirement that only cash shall be considered as payment for stock, but however that may be, the statute seems to have been enacted for the benefit of creditors to secure them for their debts as against the dissipation of corporate funds through loans to stockholders and officers, by making the officers who assent to such a loan, liable for the repayment thereof in case the borrower fails to pay. If such a loan be made and be repaid, no creditor can complain and the penalty prescribed by the statute is ended. The defendants insist that a loan such as the one in question, is prohibited by the statute, and if it was made, Rubinstein became trustee for the company not only of the money borrowed, but of the stock purchased by the loan as well. "The company" in this case is Stanley Kasprzak, William Kasprzak and Veronica Kasprzak and they and not the artificial person, the corporation, will benefit by the position they assume. There is no doubt but that Rubinstein returned the money which they say he held in trust and the individuals mentioned, representing "the company" say they also want the benefit

of the stock he purchased. That is, that "the company" having refused to buy the stock and having permitted Rubinstein to purchase and assume the risk of loss, may now change its position and for the advantage of individuals, two of whom actively participated in the transaction and the other of whom probably knew of it and did not disavow it until four years later, demand the stock for "the company." It is my view of the testimony that in borrowing from the company and purchasing the stock, Rubinstein acted in good faith and that Stanley Kasprzak and Veronica Kasprzak knew that Rubinstein was borrowing the money for such purpose on his own account. William Kasprzak was in the employ of the company and was at its place of business daily. While he was not at the meeting of August 26, 1918, at which the sale of the stock was reported, he was a director of the company and knew that Walzak, Lingelbach, Olterzcwski and Harsche had been endeavoring to sell their stock and that having been directors, they ceased to hold such office and he, himself, had been negotiating with Rubinstein for the sale of his own stock. He attended the annual meeting October 28, 1918, at which he was elected a director and secretary and as such secretary the minute book came into his possession. It does not seem probable that as an employee, stockholder, director and secretary, and as a brother of Stanley Kasprzak, he was not familiar with the proceedings of the directors and the minute record thereof and did not know of the loan to Rubinstein, its purpose and its repayment. Under these circumstances, I do not consider it equitable for Stanley Kasprzak, William Kasprzak and Ver-

onica Kasprzak to insist that Rubinstein holds this stock as trustee for the company.

(Filed November 13, 1923.)
(Title Omitted.)

FINAL DECREE

This mater coming on to be heard on final hearing on bill, answer, replication and proofs in the presence of Ward & McGinnis and Wood McKee, solicitors and of counsel with complainant in the presence of William I. Lewis, solicitor of the defendants and

It appearing by the bill of complaint that the complainant purchased, on or about the 5th day of August, 1918, from Albert Walzak, John Lingelbach, Stanley Olterzcwski and John Harsche, ten shares each of capital stock of the Stanley Silk Dyeing Co. and the said stock was duly assigned to complainant by the said mentioned persons and that on or about the 22d day of October, 1922, complainant tendered certificates of said shares of stock to the secretary of the corporation and demanded that the same be reissued to him in his own name and the secretary having refused to do so and the complainant having filed his bill to (amongst other things) compel the defendant corporation by its proper officers to transfer to him on the books of the company the said mentioned forty shares which the defendant, Stanley Silk Dyeing Co. and other mentioned defendants having by their answer alleged that the stock in question did not belong to the complainant but in fact belonged to the Stanley Silk Dyeing Co.: and the Court upon hearing the proofs and being satisfied of the truth of the allegations in the complainant's bill and that he is entitled to the relief prayed for;

Final Decree

It is on this 13th day of November, 1923, by **EDWIN ROBERT WALKER,** Chancellor of the State of New Jersey ordered, adjudged and decreed that the said shares of stock so formerly held by Albert Walzak, John Lingelbach, Stanley Olterzcwski, and John Harsche, aforesaid, and assigned by them to complainant as aforesaid, were by virtue of the said assignment, and are in fact, the absolute property of the complainant; and it is further

Ordered, adjudged and decreed that the said defendant Stanley Silk Dyeing Co. by its proper officers do within five days after the service of a certified copy of this order and upon presentation of said forty (40) shares of stock issue to the said complainant in his own name forty shares of capital stock of the defendant, Stanley Silk Dyeing Co., and it is further

Ordered, adjudged and decreed that the defendants Stanislaw Kasprzak, William Kasprzak and Veronica Kasprzak pay to Messrs. Ward & McGinnis, solicitors and of counsel of the complainant, the sum of six hundred dollars as counsel fee, and to the complainant the costs of this suit to be taxed; and that execution issue therefore according to the practice of this Court; and it is further

Ordered, adjudged and decreed that the complainant have leave to apply from time for such other relief necessary to carry into effect this decree.

E. R. Walker,

C.

Respectfully advised
James F. Fielder,
V. C.

A True Copy,
Jesse R. Salmon,
Clerk.

Notice of Appeal

(Filed November 24, 1923.)
(Title Omitted.)

NOTICE OF APPEAL

The defendants hereby appeal from the Final Decree made in the above stated cause on the thirteenth day of November, 1923, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes; and particularly from that portion of said decree which orders, adjudges and decrees that the shares of stock formerly held by Albert Walzak, John Lingelbach, Stanislaw Olterzewski and John Harsche and assigned by them to the complainant were by virtue of said assignment and are in fact the absolute property of the complainant; and from that portion of the decree that the defendant Stanley Silk Dyeing Company by its proper officers do within five days after the service of a certified copy thereof and upon presentation of the forty shares of stock therein mentioned do issue to the complainant in his own name forty shares of the capital stock of said Stanley Silk Dyeing Company; and, also, from that portion of the decree that the defendants Stanislaw, William and Veronica Kasprzak pay to Messrs. Ward & McGinnis, solicitors and of counsel with the complainant, the sum of $600.00 as counsel fee and to the complainant the costs of said suit to be taxed and that execution be issued therefor according to the practice of this Court.

Dated November 22, 1923.

William I. Lewis,
Solicitor of Defendants.

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

William I. Lewis,
Of Counsel with Defendants.

Petition of Appeal

(Filed December 11, 1923.)
(Title Omitted.)

PETITION OF APPEAL

To The Honorable, The Court of Errors and Appeals, In The Last Resort In All Causes:

The petition of Stanley Silk Dyeing Company, a corporation, William Kasprzak, Stanislaw Kasprzak and Veronica Kasprzak, defendants, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery, by his Honor Edwin Robert Walker, Chancellor of New Jersey, on the thirteenth day of November, 1923, wherein the said Stanley Silk Dyeing Company, a corporation, William Kasprzak, Stanislaw Kasprzak and Veronica Kasprzak were defendants and said Alexander Rubinstein was complainant, in this respect, to wit:

That the said decree adjudges that the shares of stock formerly held by Albert Walzak, John Lingelbach, Stanislaw Olterzewski and John Harsche and assigned by them to the complainant were by virtue of said assignment, and are in fact, the absolute property of the complainant:

And also that the said decree adjudges that the defendant Stanley Silk Dyeing Company by its proper officers within five days after the service of a certified copy thereof and upon presentation of the forty shares of stock therein mentioned do issue to the complainant in his own name forty shares of the capital stock of said Stanley Silk Dyeing Company:

And also that the said decree adjudges that the defendants Stanislaw, William and Veronica Kas-

przak pay to Messrs. Ward & McGinnis, solicitors and of counsel with the complainant, the sum of $600.00 as counsel fee and to the complainant the costs of said suit to be taxed and that execution be issued therefor according to the practice of said Court:

And your petitioners humbly appeal from the whole and every part of said decree upon the ground that the said decree is erroneous, for that the same should have been in favor of these appellants instead of in favor of the respondent, and upon the further ground that the Court should have adjudged and decreed that said bill of complaint should be dismissed.

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

William I. Lewis,
Solicitor and of Counsel
with Appellants.

IN CHANCERY OF NEW JERSEY
(Title Omitted.)

Transcript of shorthand notes of testimony taken on final hearing in above stated cause at Chancery Chambers, Jersey City, March 5 and 6, 1923, before His Honor James F. Fielder, Vice Chancellor.

Appearances.

Messrs. Ward & McGinnis and Hon. Wood McKee for complainant.

Hon. William I. Lewis for defendants.

Complainant's Case.

JOHN O. BENSON, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. McKee.

Q. You are a counsellor at law in the state of New Jersey? A. I am.

Q. Practising in the city of Paterson? A. Yes.

Q. Were you practising there on the third of August, 1918? A. I was.

Q. I will show you several certificates of stock of the Stanley Silk Dyeing Company, and ask you if you ever saw these certificates before? A. Yes.

Q. I ask you if the transfer of these certificates was made in your office? A. I believe they were.

Q. Signed by the respective holders? A. Yes.

Q. And I ask you who filled in on these certificates the word "I" and the name "Alexander Rubinstein" in each one? A. That is my hand writing.

Q. Kindly look at them all. A. They are in my hand writing.

Q. Were these names inserted there before the transfer was made to Mr. Rubinstein? A. I believe they were.

Q. I ask you if the name John Benson as a witnes is in your hand writing and is signed by you? A. Yes.

Q. And the money paid by Mr. Rubinstein in your office? A. That I do not remember.

Q. You do not remember that? A. No.

Mr. McKee—I offer in evidence Certificate No. 4 of the Stanley Silk Dyeing Company, for ten shares of stock made to Mr. John Harsche, dated October 4, 1916, and assigned by John Harsche on the third day of August, 1918, to Alexander Rubinstein.

(Marked Exhibit C-1)

Mr. McKee—I offer in evidence Certificate No. 5 of the Stanley Silk Dyeing Company for ten shares of stock issued to John Lingelbach on the fourth day of October, 1916, and by the same man assigned to Alexander Rubinstein, on the third day of August, 1918.

(Marked Exhibit C-2)

Mr. McKee—I offer in evidence Certificate No. 7 of the Stanley Silk Dyeing Company for two shares of stock issued to Albert Walzar, dated the fourth day of October, 1918, and by him assigned on the third day of August, 1918, to Alexander Rubinstein.

(Marked Exhibit C-3)

Mr. McKee—I offer in evidence Certificate No. 8 of the Stanley Silk Dyeing Company for twelve shares of stock issued to Stanislaw Oltarzewski dated the ninth day of December, 1916, and by the same man assigned to Alexander Rubinstein, on August 3, 1918.

(Marked Exhibit C-4)

Mr. McKee—I offer in evidence Certificate No. 10 of the Stanley Silk Dyeing Company, for two shares of stock issued to John

Harsche, dated on the sixth day of June, 1917, and by the same person assigned to Alexander Rubinstein, on the third day of August, 1918.

(Marked Exhibit C-5)

Mr. McKee—I offer in evidence Certificate No. 11 of the Stanley Silk Dyeing Company for three shares of stock issued to John Lingelbach on the fifteenth day of June, 1917, and by that person assigned on the third day of August, 1918, to Alexander Rubinstein.

(Marked Exhibit C-6)

Mr. McKee—I offer in evidence Certificate No. 12 of the Stanley Silk Dyeing Company, for one share of stock issued to John Lingelbach, dated the second day of January, 1917, and by that person on the third day of August, 1918, assigned to Alexander Rubinstein.

(Marked Exhibit C-7)

Cross Examination by Mr. Lewis:

Q. This transaction occurred four years ago last August, did it not? A. I think it did. Whatever the date is on the certificate I think is the date of it.

Q. Do you remember the people mentioned in the certificates of stock being there? A. No; I would not remember their names. I might perhaps remember their faces, but I don't know their names, except I think there was one man by the name of Walzak there. I don't know their names.

Q. Do you remember the manner in which they

signed and delivered the certificates? A. No; I don't remember that—you mean as to numerical order?

Q. Yes. A. No, I would not remember that.

Q. Do you remember that within a comparatively recent period Mr. Smit, who is sitting at my right came to see you and asked you if you had any recollection of the affair? A. Yes.

Q. Didn't you tell him that you had no recollection of the affair?

Mr. McKee—I object to that as not proper cross examination.

The Court—Objection overruled.

A. That is true. I told him I had no recollection. That is true: I have not any.

Q. Have you any recollection, Mr. Benson, as to the time of the delivery of these shares to Mr. Rubinstein? A. Why, I don't. I remember these gentlemen came to my office one night just as I was leaving; I told them they would have to come in again and I think they did come in again, that is my recollection of it, but how soon after—

Q. Do you remember their being there on more occasions that one? A. It seems to me—I just simply take that from the circumstances of the first meeting, but I don't recall positively their being there the second time.

Q. Do you remember Mr. Rubinstein himself being there? A. Yes, I think he was there.

Q. Do you remember Stanley Kasprzak being there? A. Which is Stanley Kasprzak? Is he in court? I think I could tell if I saw him.

Q. One of the other men in the company, other

than those who were selling stock? A. I would not know him except by seeing him.

Q. Would you remember, if you saw him? A. There is a possibility of remembering him.

(Counsel calls upon Stanley Kasprzak to stand up.)

Q. Do you remember seeing that man? A. No; I could not say whether he was there or not.

Q. You could not say whether he was there or not? A. No.

Q. On any occasion? A. No.

Q. Do you recall whether of not you filled out the name of the assignee of the shares at the time of the delivery by the owners or whether it was done afterwards? A. I think the signature in the certificates was put in first and then—

By The Court.

Q. What do you mean by the signature? A. The name of the assignee of the stock.

By Mr. Lewis.

Q. You speak of the signature? A. The signature—I don't—

Q. The signature of the owner appearing on the face of the certificate was put down, signed first, do I understand you to say? A. No; I think the assignee's name was filled in and then they signed after that.

Q. That is what you think, or do you have any accurate recollection of it? A. I am quite sure it was done that way.

Q. That is four and a half years ago? A. Well, the whole transaction is rather hazy to me, the

first time I have seen this stock is here now, and of course, it is gradually coming back to me.

Q. You don't remember Mr. Smit asking you about that? A. I do not remember the circumstances when they signed, only I know—

Q. (Interrupting.) Nor do you remember the fact that the name of the assignee was inserted in the assignment on the back of the certificate, do you? A. No; I think Mr. Smit was more concerned about the general circumstances of the transaction rather than the time of signing. When he spoke to me about it he asked me if I recalled the transaction, and I said generally I did not. I asked him if he had anything that would refresh my memory and he said "No."

Q. Do you remember whether payment for the shares that were assigned was made at the time of the assignment, to the assignor? A. I do not. I do not recall positively as to the form of payment or whether it was made at that time or not.

Q. Do you remember how it was made? A. No.

Q. Do you remember how the agreement for sale was made? A. It runs in my mind that they came there that night, and there was some little disagreement and that brought them back again, but I do not recall what the disagreement was about.

Q. You do not know between whom the disagreement was? A. No.

Q. Nor how many were there? A. There were probably four or five men altogether.

Q. Might there have been six? A. There is a possibility, yes.

Q. Might there have been seven? A. It is possible. There was a number of them came in the evening just as I was leaving.

Q. Do you remember what the dispute was about? A. It was a matter of price, I know it was the question of price; they had some discussion.

Q. Was the question disputed by more than one person? A. That I do not recall.

Q. Or two? A. That I do not recall.

Mr. McKee—That is not cross examination.

The Court—The question is answered.

Q. The conversation between these people was in Polish, was it not, Mr. Benson? A. Partly, I think it was.

Q. Do you remember whether there were any of them that could speak English, and if so, which? A. As I say, there was one named Walzak. Mr. Walzak spoke in English.

Q. And Mr. Rubinstein? A. And Mr. Rubinstein. Yes.

Q. Were the others unable to speak English? A. That I am not sure.

Q. The general conversation was between Rubinstein and Walzak? A. It just runs in my mind, but I am not sure of that, because I did not place any great importance in it.

Q. You do not remember whether Stanley Kasprzak was there? A. That is the yong man who stood up?

Q. He is not so very young. A. I would not say whether he was there or not; I could not say.

Q. You would not say whether he was there or not? A. No.

Q. Do you remember whether Rubinstein, during the course of this conversation which led to the

disagreement, consulted any one at all? A. That I do not recall either.

Q. You do not remember whether it was one against four or two against four? A. No.

Q. Were the certificates delivered to you in escrow by the owners after they had been signed? A. I do not believe they were. I do not recall that they were left with me.

By The Court:

Q. Let me ask a question right there, please: Do you recall who produced the certificates at your office before they were signed? A. No, I believe that each individual had his own stock. It just runs through my mind that the individual owners must have had their stock there, because they stayed there a little time discussing, as I believe, the price. That was the question, and then I told them I had to go away—I recall that—that I had to be at a certain place. That is why I think the thing was not closed that night.

Q. Do you recall what was done with the certificates after they had been signed by the assignors and you witnessed them? A. That I do not recall what happened afterward. They were not held by me.

Q. I mean: Do you recall whether you gave them to anybody? A. Well, I must have handed them over—

Q. (Interrupting) Do you recall? A. No, I do not.

Q. Do you recall who had the certificates in his or their possession when the transaction was

closed and the people left your office? A. No; I do not.

By Mr. Lewis:

Q. Do you recall whether or not it was not Mr. Rubinstein, who gave you, if at all, any instructions in the matter so far as the interest of the assignee was concerned? A. It seems to me that the only person who gave me any instructions was Mr. Walzak. I knew him. I did not know Mr. Rubinstein, only just by sight, I think, at that time.

Q. Walzak represented the assignors, he spoke for the assignors? A. I think he did; yes.

Q. And Mr. Rubinstein was on the other side of the transaction? A. Yes.

Q. And that is all you recall of the whole thing? A. That is all.

Q. Do you recall seeing the checks in payment of the price? A. No; I am quite sure there were no checks.

Q. Do you remember checks being delivered to you, to be delivered to the assignors? A. I do not recall of any checks coming to my hands.

Q. Do you recall how payment was made? A. No.

FRANK REA, sworn as a witness on the part of the defendant testifies as follows:

Direct Examination by Mr. McKee:

Q. Where do you live? A. 81 Diamond Bridge Avenue, Hawthorne, N. J.

Q. What is your business? A. Accountant.

Q. Were you ever employed by the Stanley Silk Dyeing Company as an accountant? A. Yes.

Q. For how long and when? A. Well, with exception of the two years that I was in service during the war, I was their accountant until this Chancery action started, whenever that was, October or November last.

Q. In August last do you remember visiting the Stanley Silk Dyeing Company with Mr. Rubinstein? A. I remember being called to the Stanley Silk Dyeing Company.

Q. By whom? A. By Mr. Rubinstein on the telephone.

Q. Do you remember what day that was in August? A. It was the seventeenth.

Q. Seventeenth day of August, 1922? A. Yes.

Q. And when you arrived there, who were present at that time, do you recall? A. When I first came there, Miss Kasprzak and Rubinstein.

Q. I show you Exhibits C-1 to C-7 inclusive and ask you if you ever sa wthem before? A. Yes, sir.

Q. Did you see them on the seventeenth day of August, 1922? A. Yes.

Q. And how did you come to see those certificates? A. Why, I was called to the office by Mr. Rubinstein and there was this stock and some stock Miss Kasprzak had bought was to be transferred. That is how I happened to be present.

Q. From whom did you receive these shares of stock? Exhibits C-1 to C-7 inclusive? A. Rubinstein.

Q. With what request? A. With the request that I make out a certificate for him for forty shares in exchange for this stock.

Q. Did you make out a certificate for forty shares? A. I did not.

Q. Why? A. Well, the treasurer, Mr. Kasprzak, was there, and there was some dispute over the stock. I simply told them I did not want to mix up in it. It was not up to me. I would not touch it either way.

Q. Was this stock at that time offered for transfer? A. Yes, and another certificate of ten shares.

Q. Were these shares Exhibit C-1 to C-7, inclusive, formally transferred to Mr. Rubinstein? A. No, sir.

Q. Was there any entry made upon the stock ledger of these forty shares? A. No, sir.

Q. Why not? A. Because, as I have said, there was a dispute and I would not have anything to do with it,—let them fight it out among themselves.

Q. Who were the officers present at that time do you recall? A. All of them.

Q. All of the officers of the Stanley Silk Dyeing Company were present at that time? A. Officers and stockholders.

Q. To whom were these certificates offered for transfer? A. Why, they were offered to me, as I was—it was the practice of that company, with the members all present, for me to write out the certificates, and they would look them over and sign them, and I was requested to do the same thing, as I had made the original stock out in 1916, I was called for that purpose, just to write out the certificates, just as I had always done for them, with all of them present.

Q. Why didn't you continue your practice at that

time of making out the transfers to Rubinstein? A. Well, there was an objection.

Q. From whom? A. From Mr. Kasprzak, the treasurer of the company.

Q. He was treasurer? A. Yes.

Q. What was his objection, do you recall? A. Why, his objection was something, that twenty shares belonged to Rubinstein and twenty belonged to him.

Cross Examination by Mr. Lewis:

Q. You say all the officers were present at the time the certificates were offered to be transferred? A. Yes, sir.

Q. To whom were they offered with the request that they be transferred? A. I was asked to write out the certificates with both the secretary and treasurer and the president standing there as had been their practice, especially in the certificate work, to have me write it, and they looked it over and signed it.

Q. Was one of the officers that you referred to being present Stanley Kasprzak? A. Yes, sir.

Q. Was another that you referred to as being present William Kasprzak? A. Yes, sir; he was there too.

Q. And Rubinstein was there? A. Rubinstein was there; yes, sir.

Q. And was Miss Kasprzak there? A. Yes.

Q. Her name is Veronica Kasprzak? A. Veronica Kasprzak, yes, sir.

By the Court:

Q. Did anybody but the treasurer voice any objection to the transfer being made? A. He just told me.

Q. Who else? A. Miss Kasprzak voiced objection also.

Q. What office did she occupy? A. Nothing; none that I know of. To the best of my knowledge she held no office.

Q. Did the president and the secretary both object? A. The president and secretary both objected.

By Mr. Lewis:

Q. Do I understand you to say that Miss Kasprzak objected also? A. Yes, sir.

Q. The only one that wanted them transferred was Rubinstein? Is that right? A. He wanted the forty shares; yes, sir.

Q. You say you had been the accountant of the company up until the time of Chancery action, with the exception of two years that you were in service? A. Yes, sir; that was in 1917 and 1918.

Q. Now, how long before 1917 had you been the accountant of the company? A. From its inception.

Q. When was that? A. I should judge about September, 1916, I am not sure of the date, but I think it was September, 1916.

Q. How soon after that were you employed? A. I do not know whether to designate it being employed whatever work I did, I did more in consideration of the fact that I knew Mr. Kasprzak whom I had worked with a number of years.

Q. You were employed, were you not, by Mr. Rubinstein? A. Absolutely not, in fact, I did not know Mr. Rubinstein until Mr. Kasprzak introduced him to me; I had never seen him before.

Q. How long had you known Mr. Kasprzak before 1916? A. I worked with him for about five years.

Q. Where? A. With the Weidman Silk Dyeing Company.

Q. What did you do in that company? A. I was a bookkeeper at that time.

Q. What was he? A. He was a dyer.

Q. Was he an employee of that company? A. Absolutely, the same as I was; yes, sir.

Q. How did you come to meet in that capacity of bookkeeeper and dyer in the company? A. At that time I had practically full charge of the plant although I was in the capacity of bookkeeper; I also had charge of giving the samples and so forth, and laying out what is known as strips and so forth, the burden rested on me. I gave him instructions of colors, and he did the actual dyeing, and that is how we came in contact.

Q. When you took hold of the books of this company, a bookkeeper had already been employed in that office, had there not? A. No, sir.

Q. There was no bookkeeper there? A. Not when I first took hold.

Q. Not in the office? A. No.

Q. Who kept the day books of the company at that time? A. Actual day books?

Q. Yes. A. That I could not say.

Q. You could not say? A. No, not the day book.

Q. You did not keep it? A. I kept the general ledgers and journals and so forth.

Q. You did not keep the day books? A. The record book—let me see—in 1916, that is so far

back that I cannot really vouch for anything, but I have a faint recollection that the original record book until they employed a bookkeeper, was kept by me, but I did that work for them nights and Saturday afternoons.

Q. What books do you refer to now, were kept by you?

The Court—Is this cross-examination?

Mr. McGinnis—We put him on to prove tender of the stock.

Q. How did you come to go to the office of the Stanley Silk Dyeing company on the the seventeenth of August, 1922? A. I answered that question before; I said I was called by telephone.

Q. Tell us now? A. I said I received a telephone call.

Q. From whom? A. Mr. Rubinstein.

Q. Did you get word at that time also from Miss Kasprzak to come there? A. I could not say positively. I may have. I could not positively say.

Q. Do you remember, Mr. Rea, that there had been a quarrel between Miss Kasprzak and Rubinstein just before that time?

Mr. McGinnis—I object to that as not cross examination.

The Court—Objection overruled.

A. Yes, sir.

Q. The cause of that quarrel was that Miss Kasprzak had accused Rubinstein of using the moneys of the company to buy an automobile, the

title to which he had taken in his own name, was it not? A. Yes, sir. I will go further than that, and I will also say that I coincided with Miss Kasprzak at the time.

Q. You coincided with Miss Kasprzak? A. At that time.

Q. In what respect? A. That that should not have happened and it was rectified right away.

Q. How was it rectified? A. It was rectified by the bill of sale being changed,

Q. So that it went to the company? A. Absolutely, which was the original intention.

Q. Now, don't you know that you were there on Miss Kasprzak's call that morning to have that rectified on the books? A. I am not positive. She often called me on occasions, but I cannot recall that specific date that she called me, but I do know that Rubinstein was after me to go up there and that is how I went there; in fact, the original intention was to go in the morning and I had to put it off until the afternoon. I cannot swear whether Miss Kasprzak called me or not. I know I was called by telephone, to come there by Rubinstein. Whether she also called me I cannot say.

Q. What other stock certificates had you made out, other than the ones that you had been requested to make? A. At that particular time?

Q. At any time? A. I already answered that question. I told you that I made out all the stock certificates until this Chancery action.

Q. The practice was to have Rubinstein sign them and Stanislaw Kasprzak sign them? A. After they were looked over by both of them and in addition by Miss Kasprzak.

Q. Did you know of the contract between Rubinstein and the Stanley Silk Dyeing Company under which Rubinstein had charge of the accounts and all the books of the company?

Mr. McKee—I object to that.

The Court—How is that proper cross examination? The witness is called for the purpose of proving that the complainant produced these certificates of stock, and tendered them to the proper officers of the company for transfer.

Mr. Lewis—I will have to put this witness on the stand to prove certain books of the company. May I ask that he be instructed to remain?

The Court—We will ask Mr. Rea to stay here until you want to use him, if you are through now with cross examination.

Q. That was the first time that you had been asked to transfer these forty shares, was it not? A. Yes, sir.

Mr. McKee—Will you admit, Judge Lewis, that the transfer has never been made on the books of the company?

Mr. Lewis—Very cheerfully.

Mr. McGinnis—We would like to have read into the record paragraphs eight and nine of the bill of complaint, and the defendant's answer.

(Counsel reads paragraphs referred to and the answer thereto.)

Complainant Rests.

(Alexander Zglejc, sworn as interpreter.)

ANDREW BIESZCAD, sworn as a witness on the part of the defendant, testifies as follows:

Direct Examination by Mr. Lewis:

Q. Where do you live? A. 86 East Sixteenth Street.

Q. What city? A. Paterson.

Q. How long have you resided in Paterson? A. Over eighteen years.

Q. What is your present employment? A. Foreman of the Nicholson File Shop.

Q. How long have you been foreman of the Nicholson File Shop? A. Over five years.

Q. How long have you been employed by that company? A. Over twenty years.

Q. Do you know Alexander Rubinstein, the complainant, in this case ? A. Yes.

Q. Do you know Stanley Kasprzak, one of the defendants in this case? A. Yes.

Q. And his daughter, Veronica Kasprzak? A. Yes.

Q. And his brother, Wiliam Kasprzak? A. Yes.

Q. And do you recall the original organization of the Stanley Silk Dyeing Company? A. Yes, sir.

Q. (Showing witness.) I show you a paper, and I ask you if you have ever seen that paper before? A. No, sir.

Q. I show you a signature, being the third signature to the paper, and ask you if it is your signature? A. Yes; it is my signature.

Q. Do you remember signing it? A. Yes, sir.

Q. Do you know the signatures of the other parties to it?

Mr. McKee—We object to that.

The Court—The signatures are not witnessed. I think the complainant would be entitled to cross examine the witness as to his familiarity with the signatures of these other people. You may ask him as to the first signature first, and let us take one at a time.

Q. Did you see Stanley Kasprzak sign the paper? A. I did not see him sign it.

Q. Did you see any of the other persons sign that paper? A. (No answer.)

By The Court:

Q. Did you see any of the other persons whose names appear on this paper sign it? A. Yes; I did see them when they were signing that paper.

Mr. Lewis—I offer this paper in evidence.

Mr. McKee—I object to it.

The Court—I think you would be entitled to cross examine this witness on the fact of of the execution of the paper before it will admitted in evidence.

Cross Examination by Mr. McKee:

Q. You say you never saw that paper before? A. I will have to read that paper or some one read it for me. I cannot tell by looking at that paper, if it is anything I have seen or not.

By The Court:

Q. The fact that your signature is on the paper, would that lead you to think whether you had seen

it before or not? A. I only seen that paper once when they organized, but if that is the same paper or not, I don't know.

By Mr. McKee:

Q. Then you do not know whether Stanley Kasprzak, Alexander Rubinstein and the other signatures on there were made in your presence or not, do you? A. At that same time, we all had signed.

By The Court:

Q. You all had signed the same paper? A. We did, all together.

Q. Is this the paper that you say they signed? A. Yes.

By Mr. McKee:

Q. How do you know? A. We all had signed at that same time.

Q. Did you sign more than one paper at that time? A. I don't remember.

Q. Do you remember signing this particular paper? A. Yes; I do, when they organized.

Q. And you still do not know what this paper says, do you? A. No.

Mr. McKee—That is the basis upon which we base our objection.

Mr. Lewis—May I examine further?

The Court—Yes.

Q. When you signed any papers at the organization of that company, were they translated to you by anybody?

Mr. McKee—I object to that, that has no bearing on this case.

The Court—Objection overruled.

A. It was read to me, but I don't remember.

Q. Were the people who signed that paper which you have seen, stockholders in the company?

Mr. McKee—Objected to.

The Court—Objection sustained. The stock book is the best evidence.

Q. Were the people whose signatures appeared on that paper interested in the organization of the company?

Mr. McKee—Objected to.

The Court—Objection sustained.

Q. Were the people whose signatures appeared on that paper proposing to organize a company, which was afterward organized.

Mr. McKee—Objected to.

The Court—Objection overruled.

A. Yes.

Q. Had they, before they signed any papers, agreed between themselves that if anyone of the number wanted to sell his stock in the proposed company when it was organized, that they would first offer it to the other signers of the agreement?

Mr. Ward—I object as leading.

The Court—Objection sustained.

Mr. Lewis—I will leave that for a moment and hold the offer in abeyance, subject to other questions on a further line.

Q. Were you made secretary of the Stanley Silk Dyeing Company when it was organized?

Mr. Ward—Objected to.

The Court—Objection sustained. The minute book is the best evidence.

Mr. Lewis—I would like to submit on that point, this, that while the minute book is evidence, it is not exclusive, and other evidence of the fact may be offered, other than the minute book.

The Court—If the minute book shows nothing at all on the subject. Suppose the minute book should show I was elected secretary and he says he was?

Mr. Lewis—The difficulty is this: Here is the minute book. It shows all these facts. He was the secretary. The proceedings of the directors were all had in Polish; he took them down in Polish; he then took the Polish minutes and had his son translate them and the son transcribed them into this minute book.

The Court—Does the minute book show he was elected secretary?

Mr. Lewis—Yes, sir.

The Court—That is sufficient. Are the minutes signed by him?

Mr. Lewis—The minutes are in some in-

stances signed by him and in some instances by Rubinstein.

Q. What is this book? A. The book is whatever at the meeting is being said, they enter all this in this book.

Q. Meeting of what? A. Whatever meetings is held.

By The Court:

Q. Meetings of what? A. The company.

Q. What company? A. Stanley Silk Dyeing Company.

By Mr. Lewis:

Q. Of the directors of that company? A. Yes.

Q. And of the stockholders of the company when held? A. Yes.

Q. I show you page 8 of the book we have just been talking about, and ask you if that is your signature to the minutes? A. Yes.

Mr. Lewis—I offer that minute in evidence, and I will read: "Mr. Rubinstein—"

The Court—Why are you reading them?

Mr. Lewis—To show that he was elected secretary.

The Court—I can see that in the book myself.

Q. In what language was the business of the meetings of the directors had? A. Polish.

Q. Did you take the minutes of these meetings? A. Yes.

Q. In what language did you write down what was said? A. Polish.

Q. When you had so written the minutes down, how did they come to be written in this book in English? A. I had taken the minutes in Polish and then my son had translated them in English.

Q. And when your son had translated into English, who wrote the translation in the minute book? A. My son.

Q. And after your son had written them in the minute book, did you sometimes sign the minutes? A. No.

Q. Who did sign them? A. Mr. Rubinstein.

Q. Why did he sign them?

Mr. McKee—I object to that.

The Court—Objection sustained.

Q. After the minutes were written in the book, did you show the written minutes to Rubinstein?

Mr. McKee—I object as leading.

The Court—Objection overruled.

A. No, sir.

Q. Does Rubinstein read English?

Mr. McKee—I object.

Q. Do you know Rubinstein's signature when you see it? A. Yes, sir.

Q. Take the book and show where he has signed some of the minutes of the company. A. That is my writing; this is my writing.

The Court—The witness is pointing to page 31 and says: "This is my writing."

The Witness—My son's.

By The Court:

Q. The question is: Find in the book where

Rubinstein signed the minutes. A. There.

The Court—The witness points to pages 32, 34, 36, 38, 40, 42, 44, 47, 49, 52, 53, 55, 75, 78, 80, 82, 84, 86.

The Witness—This last signature, page 86, I don't remember. That is not in my time. Page 82 is my last time that I was secretary.

Mr. Lewis—I offer in evidence the minutes of the company.

Mr. McKee—I object on the ground that they are irrelevant; also that they are not proven.

The Court—The witness says that this book is the book in which the record of the meetings of the directors was kept. The record of the first meeting shows that he was elected secretary of the company. I think I will admit it.

Mr. McKee—There is no proof of the translation. This man does not swear that the matters that—

The Court—I will let the proof go in afterwards. Of course, there will have to be some proof that the minutes were properly kept before I will regard what is stated in the minute book.

Mr. Lewis—I only offer up to page 82.

By Mr. Lewis:

Q. Which was the last minute that you kept in that book; on what page does it appear? A. The last is on page 82.

Q. Is it dated properly, October 28, 1918? A. Yes, sir.

(The minute book is marked Exhibit D-1.)

Q. Do you know when Rubinstein signed the minutes that you have pointed out? A. When I read the minutes I have asked them all at the directors' meetings, do they all agree to what I have read, and at that time, when they all agreed, Mr. Rubinstein had signed this minute book.

Q. When you read what is written in the book, did you read it in English or Polish? A. In English.

Q. Can you read English? A. Yes, sir; I can read what I have had myself entered at which meeting I was present; I can read that in English.

Q. Who wrote the English in the book? A. My son.

Q. Could you read your son's writing in the book? A. Yes, sir.

Q. Did you read to the directors what your son had written in the book? A. Yes, sir.

Q. And did you, when you read it, read it in English, or did you translate it into Polish? A. I was reading in English.

Q. How many persons at the meeting could understand your English?

Mr. McKee—I object.

The Court—Objection sustained.

Q. Had you spoken with any of the persons who were present at the meetings, in English, at any time?

Mr. McKee—I object.
The Court—Objection overruled

A. We always spoke in Polish; we all spoke in Polish.

Q. How soon after you read what your son had written in the minute book to the directors at their meetings, did Rubinstein sign the minutes? A. Well, as soon as I had read and they all agreed, I turned the book over and Mr. Rubinstein signed it.

Mr. Lewis—Subject to cross examination at this point, I would like to withdraw this witness with the right to put him on again.

Further Cross Examination by Mr. McKee:

Q. Referring to page 82 of the book marked Exhibit D-1, would you kindly read in English what is on that page? A. "The superintender gives statement to the firm that the business is perfect. The president, A. Rubinstein, represents to the company that he has paid $5,000 on the mortgage, leaving $500 due. This statement has been accepted to consideration. Statement given by the president to the company that there is $17,000 in the bank. This was taken to consideration as being satisfactory. The meeting was adjourned."

Q. Signed "A. Rubinstein"? A. Signed "A. Rubinstein."

Q. That was the correct translation of what you had already written in Polish, was it? A. Yes, sir.

Q. You can understand what I ask you in English, can you not? A. In work, what happened to work I can very well understand, but in court words

come up which I think I would make a mistake. I am the first time in court as a witness.

Q. Can you answer this: Why didn't you sign the minutes as secretary? Answer that in English, can you? A. Rubinstein was president. I wrote the minutes. He can sign. Let Rubinstein sign his name.

Q. You have not signed as secretary any of these minutes, have you? You have not signed any except the first, have you? Answer that in English. A. Except the first, yes.

Q. That is the only one that you have signed? Answer that in English. A. I don't know if there is any more there or not.

By The Court:

Q. Cannot you find any minutes in that book except the first one that you signed? A. A few more, but I don't know how many.

Q. Find them. A. There is one.

Mr. McKee—Page 27.

By Mr. McKee:

Q. You signed twice? A. That is all.

Q. Why did you sign one of them twice? A. That is just what pertained to me, and I signed.

Q. So that when the minutes pertained to you, then you signed, and when they did not pertain to you, you had somebody else sign? A. I didn't have the power to sign at all times.

Q. What do you mean by that? A. The directors did not give me power to sign, and when I did get the power I signed. In later times I got the power to sign.

By The Court:

Q. Why did you take down the proceedings of the meeting in Polish? A. I could not write in English.

Q. Why did you take them down at all, if you didn't have the power to sign them? A. I didn't have the power to sign, and nobody told me I should sign it; so it didn't pertain to me and I didn't sign it, because I didn't have the power.

Q. I call your attention to the minutes of the meeting that appears to have been held April 30, 1917. Did you take the minutes of that meeting down in Polish? A. Yes, sir.

Q. And did you have your son translate that into English? A. Yes, sir.

Q. The minutes of that meeting are in your son's handwriting? A. Yes, sir.

Q. Why didn't you sign the minutes? A. I don't know whether I have to sign.

Q. Why did Mr. Rubinstein sign the minutes of that meeting? A. When I read these minutes at the meeting I asked them all if they agreed to what I had read. If they didn't have anything against what I read, then I handed to Mr. Rubinstein as president to sign it, and he did.

By Mr. McKee:

Q. I call your attention to the minutes of the meeting of December 9, 1916, page 27, and ask you why you did not have the president sign those minutes instead of signing it yourself? A. At that meeting one had been taken in. You see, at that time there were seven of us and one more joined and he de-

sired to have the same privilege. Well, all of us directors we gave him the same privilege as we had, and at that time I had signed as secretary of the organization, that he has the same power as we all.

By The Court:

Q. Why did you sign and not Rubinstein? A. I don't know.

(Recess until two o'clock.)

WALTER BIESZCZAD, sworn as a witness on the part of the defendants, testifies as follows:

Direct Examination by Mr. Lewis:

Q. Where do you live? A. 56 East Sixteenth street, Paterson.

Q. Where are you employed? A. Erie Railroad, Jersey City, Stores Department.

Q. How old are you? A. Twenty-two.

Q. Have you always lived with your father? A. Yes.

Q. He was the last witness on the stand? A. Yes, sir.

Q. Did you have anything to do with the keeping of the minutes of the Stanley Silk Dyeing Company? A. Yes, sir.

Q. Just tell the Court what you did. A. After every monthly meeting my father would come home that night and the following evening he would call me in and dictate to me what was talked at the meeting. He would put it on one paper that he

had for a scrap and I would put it on another paper. After we had the minutes well completed together, then I wrote it into the minute book.

Q. Do you understand Polish? A. Yes.

Q. Do you speak it? A. Yes, sir.

Q. And read it? A. Yes.

Q. And you can read and write English? A. Yes, sir.

Q. And you afterward entered, did you, in the minute book the translation that you made from your father's notes? A. Yes, sir.

Q. I show you this minute book, Exhibit D-1, an ask you if the entries in that book are in your handwriting, some or all of them? Just examine it and see? A. As far as I have gone.

By The Court:

Q. How far have you gone? A. To page 82.

By Mr. Lewis:

Q. Were you careful in making translations? A. Yes, sir.

Q And your father had them in what form before you translated them? A. He had them on paper of his own.

Q. In the Polish language? A. In the Polish language.

Q. Could you read that? A. He read them to me, and as he read them I took the words as he dictated them, in my own notes on paper in English. After I had mine finished I read it over to him and translated to him whatever was on that minute in English, and I put it into the book.

Q. I call your attention to page 78 of the minutes and to the last word in the first paragraph on that page, and I ask you if that word, which is the word "isn't" is in your handwriting? A. No, sir.

Q. Is the rest of the minute in your handwriting under that date? A. Yes.

Q. What date is it? A. August 26, 1918.

Mr. Lewis—I would like the Court to examine that page before it is further handled.

Cross Examined by Mr. Ward:

Q. Do you mean that the whole word is not in your handwriting? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Do you mean that it is not in your handwriting? A. It is not my handwriting.

Q. When did you first discover that? A. I just discovered it when Judge just spoke to me about it.

Q. So that your attention was never called to that before? A. No, sir.

Q. Yet you knew that these books had been in the possession of the Kasprzaks? A. Yes, sir.

Q. And in the possession of your father up until what time? A. Until it comes to that paragraph I pointed out on page 82, as far as I have gone in my handwriting.

Q. That was October, 1918, was it not? A. I don't know what the date is on that.

Q. Mr. Bieszczad, were you ever present at any of these meetings? A. No, sir.

Q. And the slips that your father brought to you in the Polish language, were they examined by you? A. Why, he translated all that to me in the Polish language.

Q. He would read it off to you? A. He would read it off to me and I would translate it into English.

Q. Then, after putting the English on a slip of paper, you would read it back to him? A. And I would tell him what every word meant.

Q. And that is all that was done? A. Yes, sir.

Q. You are sure that that is the course that was always pursued by you? A. Yes, sir.

Q. And nothing else was ever done by you? A. No, sir.

Q. Or by your father? A. No, sir.

Q. Is your recollection very good about that? A. Yes, sir.

Q. Why didn't you take the paper that your father had and read it yourself and translate it into English? A. Why didn't I?

Q. Yes. A. It was up to him to do it.

Q. Did you ever suggest that to him? A. Did I—

Q. Did you ever suggest that your father read to you from the slip? A. I cannot remember.

Q. Did he ever suggest to you that you take the sheet that he had, with the original notations on, the original minutes, and that you translate it? A. I don't remember.

Q. You don't remember that? A. No.

Q. What became of the sheets afterwards? A. I didn't keep them at all.

Q. Do you know what your faher did afterwards with the sheet that he had? A. He just kept it for a while and threw it away.

Q. And the original sheet that you had, the original sheet which was written out in the Polish language by your father, containing the minutes on page 78, has that been destroyed? A. They have.

Q. And the English sheets? A. They have. I just copied that on a piece of scrap paper that I had temporary until I had my minutes fixed up.

Q. You were careful in putting down— A. Yes; I took particular notice. When I did not know what a word meant, I took the dictionary and looked it up to make sure I was right.

Q. You have gone to school? A. Yes, sir.

Q. You are accustomed to read and write? A. Yes, sir.

Q. You are accustomed to read and write English? A. Yes, sir.

Q. I call your attention to the sentence which was indicated to you before. Did you put the question mark there? A. No, sir.

Q. In lead pencil opposite the last line? A. No, sir.

Q. Now, in this minute: "President A. Rubinstein stated to the company that he would like to have the shares divided between myself and Mr. Kasprzak, one-half or twenty shares, Mr. A. Rubinstein would take, and the remaining twenty shares to go to Mr. S. Kasprzak. On this statement the secretary asked whether Mr. Kasprzak agreed to this. He, in answer to that statement, said that he "—" you didn't have anything else there; you did not have the word "is" or "isn't" there? A. That word is not in my own handwriting.

Q. Do you notice that without that last word the sentence is incomplete? A. Yes, sir; I read it.

Q. Did you leave the sentence incomplete in that way? A. That is not my handwriting.

Q. Did you leave the sentence incomplete? A. I refuse to answer.

By The Court:

Q. You will answer the question? A. I told him that is not my handwriting.

The Court—Strike out the answer.

Q. Answer the question.

(Stenographer repeats question.)

A. I don't remember.

By Mr. Ward:

Q. Well, you are sure, however, now that that, without the last word, is an incomplete sentence, are you not? You know that? A. Yes, sir.

Q. And after having put down the minute in English on a separate sheet of paper, you read it over carefully, did you not, to see that each sentence was complete? A. Yes, sir.

Q. And then, when you transcribed it into this book marked Exhibit D-1, you again read it over to see that the sentences were complete, didn't you? A. Yes, sir.

Re-direct Examination by Mr. Lewis:

Q. Do you know whether or not the translation which you made of the Polish in the minutes of that date, was preserved? A. I just cannot get that.

By The Court:

Q. Do you know whether the translation of the Polish which you made was kept? A. No, sir.

Q. Do you mean you do not know, or do you mean it was not kept? A. It was not kept; it was destroyed.

By Mr. Lewis:

Q. Were the other minutes also destroyed? A. Yes, sir.

Q. Did you see them destroyed? A. Yes, sir.

Q. You say—you answered a question on cross examination—in answer to Mr. Ward when he asked you substantially if you knew that the Kasprzaks had kept these books since your father ceased to be secretary,—did you know that of your own knowledge? A. Not of my own knowledge. That is what I was told—that the company had the books, not Mr. Kasprzak.

Re-cross Examination by Mr. Ward:

Q. What kind of a pen do you use? A. I had different kinds of pens.

Q. Was it stub or straight? A. I had a fountain pen at times and a stub pen at times.

Q. Do you know with what kind of a pen you wrote on this particular page? A. I cannot remember.

Q. At what kind of a table did you usually sit? A. Regular, round table.

Q. Flat as this is? A. Yes; flat; not as rough as this.

Q. Is that the kind of pen you sometimes used? A. I used a fountain pen.

Q. Write the word "isn't" there. Get in the position you usually assumed. A. (Witness does as requested.)

Q. Now, will you write the words "stated that he isn't"? A. Do you want me to write underneath?

Q. Yes; write it right underneath that. A. (Witness does as requested.)

Q. Now, write the word "don't." A. (Witness does as requested.)

Q. And "not." A. (Witness does as requested.)

Q. Now, write the word "isn't" again several times. A. (Witness does as requested.)

Q. Write the word "isn't" as though at the end of a sentence. A. Period?

Q. Yes. A. (Witness does as requested.)

The Court—Give him the sentence.

Q. "On this statement the secretary asked whether Mr. S. Kasprzak agreed to this, and he said that he isn't." A. (Witness does as requested.)

Q. Write the word "is" two or three times. A. (Witness does as requested.)

Mr. Ward—I ask that this sheet of writing be marked for identification.

(Marked C-8 for identification.)

(Walter Urbanski sworn as interpreter.)

ANDREW BIESCZCAD, heretofore sworn as a witness on the part of the defendants, recalled and further examined as follows, through interpreter:

Direct Examination by Mr. Lewis:

Q. I call your attention to page 78 of the minute book and also to the word "isn't" written at the end of the first paragraph, and ask you when Rubinstein

signed that minute, whether the word "isn't" was there? A. It was not there.

Q. What word was there? A. I am not quite sure, but I think it was the word "in his." I am not quite positive, but I think it was the word "in his."

By The Court:

Q. "In his"? A. Something similar to that word.

By Mr. Lewis:

Q. Can you tell us what the word that was there meant?

Mr. Ward—I object to that. There is no testimony as to the word that was there, and now he asks what the word that was there meant.

The Court—Objection sustained.

Q. Do you remember the proceedings at the meeting of August 28th, 1918? A. It was four years ago, and I am not quite positive. I imagine it is so.

Q. What was so? A. I recollect.

Q. Do you recollect? A. Yes.

Q. Tell us what was said at that meeting by Mr. Rubinstein and by Mr. Stanley Kasprzak and by yourself concerning the forty shares of stock that had just been purchased? A. At that time Presiden Rubinstein called the meeting, and the meeting was called to order. There was three of us at the time, and he put it up to us that he has bought in the stock. He bought in forty shares for $7200. He further stated he bought the forty shares and

he paid eighty per cent for said shares; $4,000 the value was of the shares and interest was $3200.

Q. Go on. A. At the total sum was $7,200. After this introduction I asked him who has bought the stock and Rubinstein did not make any answer to my question, but Stanley Kasprzak answered that the company has bought the stock.

Q. The company? A. He said "the company." He said that the company has purchased the stock.

Q. Go on. A. Then Rubinstein stated that he desired to divide the stock among himself and Mr. Kasprzak.

Q. What next? A. I asked the question of Mr. Kasprzak if he cares to do it, and he answered; "Yes."

Q. Was there anything else said? A. I don't remember any more.

Q. When did you cease to be secretary—at that meeting or the next one? A. In 1918, at the yearly meeting.

Q. What date was that—October? A. October it was. I know it was in October, but I don't recollect the date.

Q. Did you keep the minutes of that meeting in October? A. Yes, sir.

Q. Look at them and be sure. A. (Witness does so.)

Q. That (indicating) is the last minute you kept? A. Yes; I think that is the last.

Q. What date is it? A. October 28, 1918.

Q. That minute of October, 1919, you did not keep? A. No.

By The Court:

Q. At what meeting did you cease to be secre-

tary? A. At the yearly meeting I ceased to be secretary.

Q. In 1918 or 1919? A. 1918.

By Mr. Lewis:

Q. Was there an election of officers held in 1918? A. There was an election of officers.

Q. Did you give up the minute book to anyone? A. I didn't turn the minute book over; I held it in my possession.

Q. For how long? A. Until the meeting where the election of officers was, when Kasprzak was elected secretary. Then I turned the minute book over.

Q. Whom did you turn it over to? A. Stanislaw Kasprzak.

Q. That is the brother of Stanley Kasprzak? A. Yes.

Q. Where were you when you turned it over to him? A. At the office.

Q. Did you stay there as long as he did at that time? A. We all walked out the same time from the meeting room.

Q. Did you see him take the minute book? A I didn't see.

Q. You had ten shares of stock in the company, didn't you? A. Yes, sir.

Q. Did you sell those shares? A. Yes.

Q. When? A. Last year.

Q. To whom? A. To Miss Veronica Kasprzak.

Q. Do you know what time of the year it was? A. I don't remember what time of the year it was.

Q. How much did she pay for them? A. I

want to know if it is necessary to answer this question.

Mr. Lewis—I withdraw it. It is not important.

The Witness—If it is necessary, I will answer the question.

The Court—Do you withdraw it or not?

Mr. Lewis—I withdraw it if he does not want to answer.

At this time I want to offer in evidence the agreement which the witness has testified that he and the others signed.

Mr. McGinnis—We object to it.

The Court—I suppose the agreement may be offered in evidence and marked as an exhibit so far as the identification of the witness's own signature is concerned, but I would hold that there is not enough proof adduced from this witness or any other witness to identifiy the signatures of the other parties to the document.

Mr. McGinnis—Assuming that he gets past that, I object to the offer of the paper on the ground that it is immaterial.

The Court—I do not know as to the materiality of it. I do not think that Judge Lewis would offer a paper that had no bearing on the issue.

Mr. McGinnis—We think it has no bearing on the issue, and we object to it on that ground.

(The paper in question is read.)

Mr. Lewis—I am going to show that the

New Jersey State Library

whole thing is part of one transaction—it is all part of the original scheme.

The Court—For the present I will sustain the objection and allow you to offer the paper later on.

Cross Examination by Mr. McKee:

Q. How long ago is it that you saw these minutes? A. Over four years.

Q. You have never seen this book from the time you left the company as secretary up to to-day? A. I did not see the book since that ime.

Q. And you mean to say that you recollect from your own recollection just what took place at this meeting of August 26, 1918? A. I don't quite remember all the transactions at that meeting, but most of it I do.

Q. You seem to recall pretty thoroughly just what took place regarding this talk about the stock, don't you? A. I recollect the last year.

Q. You recall the conversation or statement that was made by Mr. Rubinstein to the effect that he had bought the forty shares of stock? A. I do.

Q. And you recall that without having referred to this minute book at all? A. I can further state that I have the last minutes in my pocket.

Q. You recollect without having seen these minutes that Mr. Rubinstein at the meeting of August 26, 1918, stated that he had purchased the forty shares of stock? A. I recall when he gave me notification.

Q. When was that? A. I was in August.

Q. That is what it says in here. What was it that you said to Mr. Rubinstein at that meeting?

A. He told me that he has bought in the stock from the others.

Q. What was said about the business for the month prior to August, 1918? A. Whatever he stated I put it in the minute book.

Q. Don't you rememeber what you put in the minute book about the business of July? A. I don't remember all; I don't have it all in my mind in reference to how much money was taken in.

Q. You don't recall that? That was quite important, was it not? A. I entered everything into the minute book and it is there.

Q. You were interested, of course, in the business that was done each month? A. I was interested in that.

Q. How much did he say the business for the month of July was? A. Whatever he stated I entered that.

By The Court:

Q. What Mr. McKee is asking you to say is what Mr. Rubinstein said? A. I don't remember.

By Mr. McKee:

Q. You don't remember that, do you? A. It is not in my mind.

Q. Still you recollect everything he said about this purchase of stock out of your mind, don't you? A. I was very much interested on that subject.

Q. You say that you have not seen these minutes since you left in October, 1918? A. Not since October I have not seen the minutes.

Q. Have you had a talk with anybody about these minutes? A. No, sir.

Q. With Mr. Kasprzak? A. No, sir.

Q. You never talked with him about this minute? A. No, sir.

Q. How is it that you can recollect that the minutes of August 26, 1918, just what the word was in here, or if there was any word in there, indicating the last word in the first paragraph on page 78? A. Which word?

Q. (Indicating) Here. A. This word was not there at that time.

Q. What was there? A. "He is" I guess—something like that.

Q. The words "He is"? A. Something like that.

Q. What do you mean by "'He is'—something like that"? Are you not positive what it was? A. It was not there what is there now.

Q. I am not asking you that. I am asking you what was there at the time? A. "That he is" I think.

Q. You are not sure about that? A. I imagine so.

Q. You imagine so? That is not from your recollection? A. I don't quite remember. I know this is not my writing. It has been erased.

Q. What writing did you have in there that has been erased? A. I stated before.

Q. What was it that you stated before? A. Shall I state it in English?

Q. Suit yourself. A. "That he is" I think.

Q. You stated that before. You stated that there was some word in there erased. I want to know what word it was that you had in there that was erased? A. "That he is" I guess.

Q. Are you positive of that, or are you guessing? A. I am positive that this word was not there.

Q. This is in the handwriting of your son, is it not? A. Yes.

Q. You say that at the time this meeting was held and it was signed by Mr. Rubinstein, the words appearing in there were "He is" you think?

Mr. Lewis—He does not say so.

Mr. McKee—I so understood him.

The Court—What he said, as I recall it, was that at the time the minutes were signed by Mr. Rubinstein the word "isn't" was not there.

Mr. McKee—And he said that he thinks the words "He is" were there.

Q. Do I understand you to say that at the time that this minute was signed by Mr. Rubinstein, that the words in the last line of the first paragraph on page 78—that the words "He is" were there? A. That word was not there.

Q. What word? A. That word that is in there now.

Q. Was there any word there in place of "isn't" at that time? A. There was another word in there.

Q. What was the other word? A. I don't recollect.

Q. You don't recollect what word it was? A. If it was in Polish, I could perhaps understand.

Q. You can read English. You understand English when you read it? A. I am positive that that word was not there.

Q. Your recollection is very good as to the part of this statement that you have not seen in four

years, and actually you can recall the last word that was in there, could you not? A. Somebody erased it.

The Court—Strike it out.

By The Court:

Q. Answer the question. He is not asking you whether the word "isn't" was in there. He wants to know what word was there when Mr. Rubinstein signed the minutes. A. "That is is."

By Mr. McKee:

Q. Now, you are sure "that he is" was there? A. Yes; I am sure.

Q. You are positive of that?

The Court—He has been positive of that four or five times.

Q. You have the original Polish notes that you made of that meeting, have you not? A. Referring to these minutes?

Q. Yes; the minutes of August 26, 1918? A. I have notations in English.

Q. Where are they? A. (Witness produces paper.)

Q. When were these made? A. At the same time.

Q. This whole thing was made at the same time, was it? A. I recopied for my own purpose at the same time.

Q. And you have kept this where? A. In my own home.

Q. Your son copied this, didn't he? A. Yes.

Q. And this is in his handwriting? A. Yes, sir.

Q. Did you keep this with the other minutes at your home, this memorandum? A. I have kept this in my own pocket.

Q. You carried this in your pocket since then? This is the only one you have seen? A. This is the only one.

Q. Where are the Polish notes that you had from which this was written? A. I didn't keep any.

Mr. Lewis—I object to that. He has not said that he copied that from the Polish notes.

The Court—Suppose we strike out that question and let the Senator ask: "Where are the Polish notes of the minutes?"

Q. Where are the Polish notes of the minutes of the meeting of August 26, 1918? A. I have no Polish notations from the minutes of 1918.

Q. What did you do with the Polish notes that you made? A. After the minutes were signed by Mr. Rubinstein I tore them up and threw them into the fire and burned them up.

Q. And at that time you had this copy which you have in your hand now, of these minutes? A. Yes, sir.

By The Court:

Q. Have you been carrying that around in your pocketbook for four years? A. I have a little safe home and I kept this in my safe, and I also kept these books in my safe when I was secretary.

By Mr. McKee:

Q. You have not been secretary since 1918? A. No, sir.

Q. And in 1918 you delivered these books to Mr. Kasprzak? A. Yes.

Q. Now, at the time you delivered these books to Mr. Kasprzak, you had this copy made, didn't you? A. I copied that—.

Q. You did not copy this yourself personally? A. My son.

Q. You had this copy made at that time, didn't you? A. Yes, sir.

Q. And you have been carrying it around in your pocket ever since, have you?

Mr. Lewis—He didn't say so.

The Court—Strike out the question.

Q. Didn't you testify a moment ago that you had carried this in your pocketbook for four years? A. I don't recollect saying that.

By The Court:

Q. As a matter of fact, you had this copy made by your son in October, 1918, didn't you? A. Yes.

Q. Where has it been since then? A. I have a safe home, and I kept this copy in the safe.

Q. When did you take it out of the safe? A. I have took it out when I was notified to come to court.

Q. When was that? A. Last week on Friday.

Q. And you had not taken it out of the safe between October, 1918, and last week? A. I took it out every now and then, looking it over, and made sure I had it.

By Mr. McKee:

Q. Why? A. Being that I belonged to the company and I wanted to be sure that I had this in my own possession.

Q. For what purpose? A. The minutes are with reference to the sale of stock and different transactions and I want to have a copy of those minutes in order to prove different things.

Q. All the minutes that you wrote there were transactions of the company, were they not? A. Yes.

By The Court:

Q. Did you ask your son to make this copy for you? A. Yes, sir.

Q. Did you give him the minute book? A. Yes.

Q. Did you see him make the copy? A. Yes; I did.

Q. And this paper that you have before you is just as your son handed it to you, is that right? A. Yes, sir.

The Court—I call attention to the fact that the son testified that there was no word after "he" in the minute book.

By Mr. McKee:

Q. How do you account for the fact that your son testified that there was no word after the word "he" in the last line of the first paragraph on page 78, at the time that that was signed by Mr. Rubinstein? A. There was another word after "he."

Q. How do you account for the fact that your

son testified that there was no other word after "he"? A. There was a word after "he." Perhaps he made a mistake.

Q. This was given to you by your son as an exact copy of the minutes of that meeting, was it not, referring to the meeting of August 26, 1918? A. That is the entire minutes of that meeting outside of that word what is erased there.

Q. You have not changed the writing on that copy that your son gave you, have you? A. No.

Q. Positive about that? A. Yes.

Q. You remember that distinctly, don't you? A. Yes, sir.

Q. You remember receiving this from your son as an exact copy? A. Yes.

Q. You remember putting it in the safe? A. I do.

Q. You remember taking it out two or three times and reading it? A. Yes.

Q. You remember taking it out and putting it in your pocket last week when you were subpoenaed to appear in this case? A. Yes.

Q. And at no time have you changed that copy that he gave you or made any addition or alteration in it, have you? A. No, sir. Whatever was written there, it is there.

Q. That was a copy of the minutes of the meeting of August 26, 1918? A. Yes, sir.

Q. Did you personally compare it with the original minutes of August 26, 1918? A. Yes.

Q. And it is just the same, is it not? A. The same.

Q. Why did you bring it here? A. That is my evidence.

Q. Evidence of what? A. In case something should be erased or added to the minutes, why I could prove that there was something added or erased. I have got this for evidence.

Q. That was your object in bringing it? A. To compare it with the minutes.

Q. And you knew, of course, before you got here to-day, that this word "isn't" in this last paragraph on page 78 was not the same as your copy, didn't you? A. No; I don't know anything about this word.

By The Court:

Q. Is to-day the first that you knew that there was a change? A. The first time that I have seen that this word was different.

By Mr. McKee:

Q. Is this the first time that you have heard of it being changed? A. I must state the truth. My counsel called me to the office. Then he pointed out to this word and asked me if that was referring to the minutes.

Q. How long ago was that? A. Last Thursday.

Q. And did you have this with you last Thursday? A. No.

Q. Did you ever show this to your lawyers? A. No, sir.

Q. But you told them you had a copy of it, didn't you? A. I did tell them I have a copy.

Q. Who was the lawyer that you told? A. Judge Lewis.

Q. This exact copy that you had made four years ago, which you compared yourself, if this is an

exact copy of this book, can you explain how your name is signed to it? A. Yes; in order to leave evidence to my children in case I should die.

Q. For what? Leave evidence to them for what? A. To identify that I signed it.

Q. That is not a copy of the minutes, is it? The minutes are signed by A. Rubinstein? A. I held this for my own evidence, and I signed it.

Q. Now, there was another man admitted in your company away back in 1917, was there not? A. Stanislaw Sileski.

Q. That, of course, made a difference in your holdings in the company or your interest in the company? A. There was no difference concerning my holdings in the company.

Q. Was it not important enough for you to sign because it referred to your interest, as you testified? A. The directors authorized me to sign.

Q. They did not authorize you to sign the others, did they? A. No.

Q. You did not keep a copy of the minutes of that date, did you? A. Which meeting?

Q. The minutes on page 27 when the new member was brought in? A. No; I don't have any copy.

Q. You never kept any copy of any other minutes except this one of August 26, 1918? A. This is the only copy I have.

Q. Now, let us see: When did you leave that company? A. 1922.

Q. What time in 1922? A. I don't remember the month or day.

Q. That is only six months ago, is it not? A.

I am saying the year, but I do not recall the month or date.

Q. Your recollection is rather vivid in regard to these different transactions. Do you mean to say that you cannot recall when you left this company in which you had this interest? A. I had no notations, as I was making deposits in the bank of the company's money.

Q. Well, your interest ceased in August, 1922, didn't it? A. No; I was there until the yearly meeting.

Q. When was that? A. October—I don't remember the date—it was in October.

Q. Of 1922? A. I don't quite understand what you are referring to.

By The Court:

Q. Did you attend the yearly meeting last year? A. No. sir.

Q. How long before the yearly meeting had you sold your stock? A. Prior to the yearly meeting about two months.

By Mr. McKee:

Q. Why didn't you destroy this copy of your minute after you had lost all your interest in the company; what did you save that for? A. That was evidence for me.

Q. For what? You had no interest in the company then?

The Court—Don't you think we have had enough of that?

Q. You sold your stock to Miss Kasprzak? A. Yes.

Q. And you were there the time the transfer was to be made on the books, were you not? A. No, sir.

Q. You were not there? A. No, sir.

Q. You have not been very friendly with Mr. Rubinstein for some time, have you? A. I have nothing against him.

Q. You had some trouble with him last summer, didn't you? A. I was demanding a dividend.

Q. You were demanding $500 for being secretary, were you not, and he refused to pay you? A. Not for secretary; simply for work that I have done.

Q. He refused to pay you, didn't he? A. Yes; he did refuse.

Q. Long after this trouble started in the Court of Chancery, you have been paid, have you not, what you claim? A. I did not receive any payment from anybody.

Q. Didn't you get any money of the Stanley Silk Company for the payment of your bill of $500 after this trouble started in the Court of Chancery? A. No, sir.

Q. Not at all? A. No, sir.

Q. The bill that you sent in to the company and wanted Mr. Rubinstein to pay has not been paid to you since? A. Nobody paid me.

Q. Do they still owe you that money? A. The company owes me the money.

Q. Were you present at any time when your transfer of stock was made or when you gave your stock to Miss Kasprzak? A. No, sir.

Q. Were you ever in the presence of Mr. Rubinstein, when his partners wer present, and say:

"Now you've got him. Put your foot on his neck"? A. No, sir.

Q. Now, in the meeting of August 26, 1918, didn't Mr. Rubinstein state that he had purchased the stock, the forty shares of stock, for himself? A. He stated to me that he has bought stock for himself. Rubinstein told me that he has bought in the stock.

Q. Didn't he offer to sell half to Mr. Kasprzak? A. He did.

Q. And didn't Mr. Kasprzak say he didn't want it? A. Kasprzak said he agreed to buy it.

Q. Didn't he offer to sell you some? A. No, sir.

Q. Didn't you tell him that you did not want to put any more money in the business? A. I didn't say anything.

Q. Didn't he offer to sell you some? A. He didn't say anything to me.

Q. Can you tell us what you received for your stock last August when you sold it? A. Is it necessary to state?

Q. I think so; yes. A. $4500.

Q. You were the owner of ten shares? A. Yes, sir.

Q. Do you know what the book value was at that time? A. No, sir.

By The Court:

Q. Did the $4500 include your claim against the company? A. I don't know. I received $4500 for my stock.

By Mr. McKee:

Q. You have not brought suit for your claim

against the company? A. What claim—the $500?

Q. The $500? A. No; I did not.

Q. Have they promised to pay you? A. No, sir.

Re-direct Examination by Mr. Lewis:

Q. How was your $4500 paid to you for the stock—in what form—cash or notes or what? A. I received one hundred dollars in cash and a check of $4400.

Q. Whose check? A. Miss Kasprzak's

Q. Veronica Kasprzak? A. Yes, sir.

Q. And did she pay the one hundred dollars to you? A. Yes, sir. She gave me one hundred dollars in cash.

By Mr. McKee:

Q. Was that a personal check for $4400? A. Yes, sir. I don't know if it was her father's or her's.

Q. Was it not the company's? A. I don't know; I don't remember.

Q. You don't know whose check it was, then? A. She gave me the check and I am positive it was not the company's check.

WALTER BIESCZCAD, a witness already sworn on the part of the defendants, recalled and further examined as follows:

Direct Examination by Mr. Lewis:

Q. I you testified a while ago that when these

minutes were written up there was no word following the word "he" which is now followed by "isn't," did you intend to say that originally when you wrote these minutes there was no word there?

Mr. McKee—I object. The record will disclose just what he did say.

The Court—I think the record will show what he did say, and I think it is quite clear.

Mr. Lewis—Now, then, I ask, if the record does show that he said that, whether he intended so to testify.

Mr. Ward—It is for Your Honor to say whether he should be permitted to answer that question, considering that he has had the opportunity to consult with the parties interested since he was on the stand before.

The Court—I will allow the question.

A. There was a word there, but I was not asked that. I was asked was that my handwriting at that particular place and I said it was not.

Q. I ask you: Was there a word following the word "he" when you finished these minutes? A. There was a word in there when I finished the minutes.

Q. Can you tell us what that word was? A. "He is."

Q. Was it "He is" or "is' following the word "he." A. "Is" yes, following that.

Cross Examination by Mr. Ward:

Q. You have been talking about this since you left the stand, have you not? A. No, sir; I have not.

Q. You were present in the seat when your father was asked whether or not there was a word after the word "he," were you not? A. I was sitting there, sure.

Q. You heard what your father testified to, didn't you? A. Yes.

Q. You heard him say that the word "is" was after the word "he," didn't you? A. Yes, sir.

Q. You heard the question asked how he could explain that you had testified that there was no word after "he," did you not? A. I don't remember what—.

Q. Didn't you hear that question asked of your father? A. If he knew—.

Q. How could he explain your testimony that there was no word after the word "he"—you heard that question asked of your father, didn't you? A. You will have to read it over to me again.

Q. (Question repeated.) How he could explain your testimony that there was no word after the word "he"—you heard that question asked of your father, didn't you? A. Yes, sir.

Q. And you heard your father say that you might have made a mistake, didn't you? A. That he made a mistake?

Q. That you might have made a mistake. You heard your father say that? A. I don't know; I was not paying attention to that.

Q. You were talking to someone at the rear immediately thereafter, were you not? A. I just stood there.

Q. You were called up to the rail and stood at the rail talking to someone immediately after that? A. I was standing up?

Q. Yes. A. Not right away.

Q. After that question was asked of your father

you were called to the rail and you were talking to someone standing up there? A. I was.

Q. Was it then that it first occurred to you that you might have made a mistake? A. No, sir.

Q. Do you recall, on cross examination, when you were on the stand before, that you had admitted that the sentence ending with the word "he" was an incomplete sentence? A. I said is was an incomplete sentence.

Q. Do you remember admitting that you had left it as an incomplete sentence at the time that you finished the minutes in the book? A. No, sir.

Q. You don't remember admitting that? A. I don't remember admitting that I left a word out. I admitted that that was an incomplete sentence, as you asked me.

Q. Did you not say that you were familiar enough with the English language to know when a sentence was incomplete? A. Yes, sir.

Q. And did you not say that you knew that at the time you wrote up the minutes, that you had left the sentence as an incomplete sentence ending with the word "he"? You remember saying that, don't you? A. I don'tknow. I could not remember now just what I said.

By The Court:

Q. Do you remember saying that no part of the word "isn't" was in your handwriting? A. No.

By Mr. Lewis:

Q. Who was the person to whom you spoke that counsel asked you about, when you were standing up

there? A. The only one I had reference to was—.

Q. I was the person? A. Yes.

Q. What did I ask you? A. You asked me if I said there wasn't any word after the word "he."

Q. What did you answer? A. I said I didn't answer that question; I was only asked whether that was my handwriting. That is all I said to you.

FRANK REA, heretofore sworn as a witness on the part of the complainant, called as a witness on the part of the defendants, testifies as follows:

Direct Examination by Mr. Lewis:

Q. I understood you to testify that you, in the presence of the stockholders or officers of the company, had issued all the certificates of stock of the company that had been issued; is that so? A. I didn't say that.

Q. What did you say? A. I said that I had made out all the stock that was issued, but I did not say that I made out every one of those specific certificates in the presence of all the stockkholders.

Q. But you did make out all of the certificates that were issued? A. Yes, sir.

Q. (Showing witness.) I ask you if this is the stock certificate book of the Stanley Silk Dyeing Company? A. Yes, sir; all my writing, everyone of them.

Q. Were the certificates attached to the stubs that now remain in the book? A. Yes, sir.

The Court—That is, the certificates originally attached to stubs?

Mr. Lewis—No, sir; I refer to these—as to whether the stubs had attached certificates to them.

Q. Did you issue them for the company? A. Yes, sir; I made them out.

Q. (Showing witness.) Are these the certificates that were originally issued by the company? A. Yes, sir.

Q. Now, who got Certificate No. 1? A. Stanley Kasprzak.

Q. For how many shares? A. Fifteen.

Q. Who got Certificate No. 2? A. Rubinstein.

Q. Eh? A. Alexander Rubinstein.

Q. For how many shares? A. Ten.

Q. Who got Certificate No. 3? A. I cannot pronounce the name—B-i-e-z-c-z-a-d.

Q. Is it Mr. Biezczad who was just on the stand? A. It may be; I cannot identify the name.

Q. For how many shares was Biezczad's certificate? A. Ten.

Q. Who got Certificate No. 4? A. John Harsche.

Q. For how many shares? A. Ten.

Q. Who got Certificate No. 5? A. Lingelbach.

Q. For how many shares? A. Ten.

Q. Who got Certificate No. 6? A. William Kasprzak.

Q. For how many shares? A. Five.

Q. Just go on and give me the others? A. Certificate No. 7, two shares, Albert Walzak; Certificate No. 8, twelve shares, Stanislaw Oltarzewski; Certificate No. 9, two shares, Stanley Kasprzak; Certificate No. 10, two shares, John Harsche; Certifi-

cate No. 11, three shares, John Lingelbach; Certificate No. 12, one share, John Lingelbach; Certificate No. 13, fifteen shares, Alexander Rubinstein; Certificate No. 14, eight shares, Stanley Kasprzak; Certificate No. 15, thirty shares, Alexander Rubinstein; Certificate No. 16, thirty shares, Stanley Kasprzak.

Mr. Lewis—For the convenience of the Court, I have prepared a table which shows exactly what the issue was. Perhaps counsel without further proof will admit that it shows what the issue was, and I offer it as a memorandum that may be of aid to the Court.

(Paper is marked D-2 for identification.)

Q. John Harsche, John Lingelbach, Albert Walzak and Stanislaw Oltarzewski were the four shareholders who sold their forty shares of stock, that has been testified to here in this case, were they not? A. Well, the stock certificates bear their names.

Q. After Biezczad ceased to be secretary, who succeesed him? A. William Kasprzak.

Q. Who kept the minutes; who entered the minutes? A. I entered the minutes—these minutes here—I think two or three meetings I entered the minutes.

Q. William Kasprzak cannot read and write English, can he? A. He can read English, I believe. At least I only wrote the minutes for him.

Q. After you had written them—? A. After I had written them, then he signed.

Q. Were there any meetings really held that are not put down here in the minutes as meetings?

A. That I cannot answer, because I do not know.

Q. You don't know whether there were other meetings or not? A. I wrote down whatever they gave me, and they were there and signed them; I merely acted the part of a clerk.

Q. Who gave you the minutes? A. I believe Rubinstein gave me the minutes, but there was also present Miss Kasprzak and—I won't say every one —Stanislaw Kasprzak was there and Bill.

Q. The minutes that were written you say were in the handwriting of Rubinstein? A. I cannot answer—I cannot remember whether it was in handwriting or whether I was told what to put down.

Q. By Rubinstein? A. I cannot say. All I know is it was passed on by all.

Q. But there were no formal meetings, is that right? A. I have told you already I acted as clerk only for them and I wrote the minutes up for them.

Q. What books did you keep yourself? A. General ledger only.

Q. Didn't you keep a journal? A. Well, the journal was kept by the bookkeeper. There may have been some entries in it made by me. Of course there are some.

Q. There are some, you say, made by you? A. Yes, sir; made by me and also by the bookkeeper.

Q. How far did your bookkeeping go in determining the propriety of the entries in the books? A. In relation to what?

Q. In relation to any transaction. For instance, the sixty shares that were issued. A. What about them?

Q. What do you know about that entry? A. That was put in according to instructions.

Q. By whom? A. Given to me by both Kasprzak and Rubinstein.

Q. Do you speak Polish? A. No, sir; they both can speak English.

Q. Does Stanislaw Kasprzak speak English? A. I think he can. I worked with him for five years, and I —.

Q. Did you ever speak English with him? A. Many times.

Q. To what extent? A. Various questions and conversations we have had, especially when I was employed the same as he was in the same plant.

Q. Was he able to discuss business? A. Oh, yes.

Q. In English? A. Yes, sir.

Q. What business could he discuss? A. Well, anything, any questions I had to ask him, and if he could not answer in English, his daughter would answer for him, but generally he could answer them for me because I did not ask him any technical questions he could not answer.

Q. There were times his daughter had to answer for him? A. I won't say "had to answer for him," but to make it more specific she answered for him.

Q. Do you know what was the basis of the issuance of these sixty shares for $6,000? A. Yes, sir.

Q. Do you remember entering the minutes of October 27, 1918? A. I copied this in my handwriting. I would not remember it if I didn't see it. It is in my handwriting. That is all I will say.

Q. Was it dictated to you by Rubinstein or not? A. I told you I could not remember that.

Q. You could not remember whether or not you were present at any meeting? A. I was not.

Q. You were not present at any meeting? A. Not at any meeting.

Q. (Continuing.) When these were put down? A. Not at any meeting when these were put down.

The Court—What is the date of it?
Mr. Lewis—October 27, 1919.
Mr. Ward—What page is that?
Mr. Lewis—Page 83.

Q. Do you remember, at or about the time of that meeting, any sort of conversation with Rubinstein about the transaction here entered, namely: "Motion made and seconded that fifteen additional shares be issued to A. Rubinstein and eight additional shares to S. Kasprzak, at the par value of said shares, namely, one hundred dollars? A. No; I do not. All I know is that the stock was issued, but I cannot recall exactly how that took place. That is three and a half years ago, and I have issued thousands of shares of stock since then and I cannot place it.

Q. Do you remember whether anything was said at that time about Stanley Kasprzak getting eight shares and Rubinstein getting fifteen shares, that it would make them even stockholders in the company—make their holdings even?

Mr. Ward—I object to the question.
The Court—Objection overruled.

A. I cannot say positively, but I understand it was, but I never went to the trouble to check up how the stock stood because the stock was not where

I could check it up. In fact, they sort of guarded these minutes and things like they would guard a box of gold. Instead of the accountants having access to them, we never had access to them.

Q. You remember there was something said about it, although you did not check it up? A. I believe I heard some general conversation on it, but it was—

Q. Between Rubinstein and Stanley Kasprzak? A. I cannot say—

Q. Between you and Rubinstein? A. If anything, I talked more with Kasprzak than I did with Rubinstein; so I don't know just who said it, or what. I could not say, but I have a faint recollection of someone saying it, but I never took the trouble to check it up and verify it.

Mr. Ward—I object and move it be stricken out if it was not in the presence of Mr. Rubinstein.

Mr. Lewis—It was in the presence of Mr. Rubinstein.

The Witness—I did not say that. I told you it was a general conversation, but what source it came from I don't know.

The Court—I will let it stand.

Q. All of these minutes that follow page 82 are in your handwriting, up to the meeting of August 15, 1922? A. Up to the trouble, yes.

Q. Is that right? A. Yes; up to the trouble between them.

Q. Do you remember anything about the transactions which occurred subsequent to August 26, 1918, after the forty shares had been acquired? A. I already informed you this morning that for two

years I was in the service of the United States Government, and I know nothing of the happenings in 1917 and 1918.

Cross Examination by Mr. Ward:

Q. From the time that you started to write up the minutes of these meetings, you were as available to Mr. Kasprzak as you were to Mr. Rubinstein, were you not? A. Absolutely.

Q. Just as open to conversation with the Kasprzaks as you were with Mr. Rubinstein? A. Yes, sir.

Q. In fact, your acquaintance with Kasprzak was older than that with Rubinstein? A. Yes.

Q. Had Mr. Rubinstein been a friend of yours? A. I never knew him until he went into this business.

Q. Had he ever been a friend of yours outside of your business acquaintance with him? A. No, sir; not outside of business acquaintance, no, sir.

Q. Were you ever requested by any of the Kasprzaks to cancel these forty shares of stock? A. No, sir.

Q. I refer to the forty shares of stock that have been introduced in evidence as Exhibits P-1 to P-7 inclusive. A. No, sir.

Q. Were you ever asked to retire this stock? A. No, sir.

Q. Referring to the same exhibits, to make them treasury stock? A. No.

Q. You made out the income tax reports, I believe? A. Yes, sir.

Q. Under the supervision of the Kasprzaks and Rubinstein? A. Both; yes, sir.

Q. And the reports were submitted to them? A. Copies were submitted also.

Q. And the matters were discussed with Kasprzak and Rubinstein and others of the company? A. Yes, sir.

Q. Did you ever report these certificates of stock in the returns made by you as treasury stock? A. No, sir.

Q. Did you ever report these forty shares as retired stock? A. No, sir.

Q. How did you report them? A. I reported them as outstanding.

Q. Outstanding stock? A. Yes, sir. The balance sheets will show it.

Q. And that was as late as when? A. 1921, the last one I made.

Q. You, of course, being familiar with the affairs of the company, the issuance of the stock and so forth, knew that this stock was out? A. I knew those shares were outstanding; yes, sir.

By The Court:

Q. Did you ever see the certificates of stock in the company's safe or office in 1919, 1920 or 1921? A. No, sir; not until the trouble, I never seen them.

By Mr. Ward:

Q. In order to make out proper and correct returns, did you make investigations and inquiries of Kasprzak and Rubinstein? A. What for?

Q. Well, aside from their books? A. No; not aside from their books.

Q. I beg pardon? A. Not aside from their books I didn't.

Q. Who had control of the minute book so far

as you knew? A. Well, for a while there it was in the safe; I don't know who directly had control.

Q. Who had control of the safe? A. I believe the keys were in the office; I don't think any person particularly had sole access to it.

By The Court:

Q. When you wanted to have access to it, how did you get it? A. I only had access about two or three times, and then the books were presented to me.

Q. By whom were they presented to you? A. I could not say who presented them.

By Mr. Ward:

Q. Mr. Rea, did you know at that time that Mr. Rubinstein did not have or know the combination of the safe? A. No; I don't know anything about that.

Q. These reports showing these forty shares and other shares to be outstanding, by whom were they signed? A. The report was signed by the president and treasurer, as required by law.

Q. Who were the president and treasurer? A. The president is Rubinstein, and Stanley Kasprzak is treasurer.

WILLIAM KASPRZAK, one of the defendants, sworn as a witness on the part of the defendants, testifies as follows, through interpreter:

Direct Examination by Mr. Lewis:

Q. You are a brother of Stanley Kasprzak? A. Yes, sir.

Q. Are you a stockholder in the Stanley Silk Company? A. Yes, sir.

Q. How many shares do you hold? A. Five.

Q. Have you always held them? A. Yes, sir.

Mr. Lewis—I understand in regard to this agreement, Your Honor will not admit it for the present, on the question of materiality, and that I may offer it again; but I would like to inquire now as to whether any further proof of the signatures is needed?

The Court—At the time of your offer I could not see the materiality of it. Later on it may appear to be material, and I will let you offer it again some time before the case is closed.

Mr. Lewis—I ask now whether there will be any necessity of making further proof of the signatures to the agreement. If so, I will ask each one of the witnesses, as we go along, whether he signed it.

Mr. Ward—I do not think we should take up the time of the court with that.

The Court—Then, the signatures are admitted?

Mr. Ward—Yes, sir.

Mr. Lewis—Then, it is now admitted that the signatures appearing on the paper marked D-3 for identification are the signatures of the parties to the agreement, which they purport to be.

Mr. Ward—Of course, I do not admit the paper.

The Court—You are just waiving preliminary proof of the signatures.

Q. Have you been secretary of the Stanley Silk Dyeing Company? A. Yes, sir.

Q. For how long? A. From 1918 to 1923.

Q. Have you been secretary ever since Mr. Biezczad ceased being secretary? A. Yes, sir.

Q. Have you entered any of the minutes in this book; are any of them in your handwriting? A. No, sir.

Q. This is the minute book of the company, which I am now showing you, is it not? A. Yes, sir; this is the minute book.

Q. When you signed the book, had the minutes been written before you signed them? A. No, sir; it was not written before I signed.

Q. Did you sign in blank? A. Why, the minute was drawn in, and Rubinstein called on me, and I signed the minutes.

By The Court:

Q. After it had been written in the book? A. After the minute was drawn into the book, but nobody read the minutes to me.

By Mr. Lewis:

Q. Do you know whose handwriting the minutes are in after Biezczad stopped being secretary? A. I cannot say who has written the minutes if I did not see the party who wrote it.

Q. Do you remember signing the minutes of a meeting last August? A. 1922?

Q. 1922? A. I recall signing the minutes.

Q. Who wrote those minutes? A. I do not know; for I did not see the minutes being written.

Q. Do you remember the minutes of any meeting at which there was a quarrel between Stanley Kasprzak on one side and perhaps his daughter, and Rubinstein, when Rubinstein left the meeting? A. I recall the meeting. I recall the misunderstanding among them, but I did not hear what the arguments were about.

Q. Do you remember signing the minutes of that meeting? A. Yes, sir; I remember.

Q. Do you know who wrote the minutes? A. My brother's daughter, Veronica Kasprzak.

Q. She asked you to sign this, did she? A. Yes, sir; she told me to sign.

Q. Did she ever ask you to sign any other minutes? A. No, sir.

Q. When Biezczad ceased to be secretary, did you get the minute book? A. Yes, sir.

Q. Have you kept it ever since? A. I did not.

Q. What became of it? A. Rubinstein informed me that the law says that the books must be at the office.

Q. Who got it then? A. I turned them over to Mr. Rubinstein.

Q. Have they been in Mr. Rubinstein's possession ever since? A. Yes, sir.

Q. Up to what time? A. Up to about two or three months ago, since I got hold of them in my hand.

Q. Do you read or write English? A. No, sir.

Q. Do you understand spoken English? A. A few words referring to my work.

Q. Do you speak English? A. Very few words, more or less referring to my position that I hold.

Cross Examination by Mr. Ward:

Q. How long have you been in this country? A. Since 1907.

By The Court:

Q. Are you a citizen? A. No, sir.

By Mr. Ward:

Q. You did all the ordering for the company, did you not—all the ordering of supplies? A. No, sir.

Q. Who did the ordering? A. Rubinstein.

Q. Why, wasn't Rubinstein the outside man of the company, the salesman? A. Rubinstein was acting as a sort of a salesman on the outside, taking care of the affairs on the outside.

Q. Many of your supplies were ordered from Van Winkle and Company, of Paterson, were they not? A. Yes.

Q. Didn't you always personally order from that company? A. No, sir.

Q. Didn't you order in English? A. No.

Q. Do you read in English at all? A. I cannot read English at all.

Q. Do you know Mr. Rea? A. No.

Q. Did you know who wrote the minutes up? A. I don't know.

Q. Did you know that as secretary of that company you were responsible for these minutes? Try to answer that question in English. Go ahead. A. I don't know.

Q. You don't know? A. No.

Q. Did you know Mr. Rea at all? A. I saw Mr. Rea coming to the office, but I don't know what he did in the office.

Q. Did you see Mr. Rea take the books, using the books? A. I see—they call me to sign them—to sign the books. I don't know what stands on the books; I don't know what is on the books.

Q. Your niece was there, was she not? A. Yes.

Q. She has been there for how long? A. I don't remember how long.

Q. Months, years or what? A. I don't remember how long she has been over there.

Q. Is it not so that your niece has been employed in that company for five years or more? A. I don't know if it is five years; if it is six years, I don't know.

Q. Do you remember when the company was formed? A. Yes.

Q. And how long after the company was formed did she come to work for you? A. I don't remember that.

Q. Is it not true that she has been there over six years? A. I don't remember.

Q. Can you give us any idea whether it is months or years or how long it is? A. I cannot give you any idea because I do not remember that.

Q. You cannot tell us whether she has been there one month or one year? A. Maybe she stay there one year; maybe she stay there three years. I don't remember that.

Q. Now, Mr. Kasprzak, you understand English well enough, don't you, to know that when you put your name to anything, it was something that was important in business? A. (Through interpreter.) I don't know how important that was.

Mr. Ward—From the place where I requested the witness to answer in English up to the last question, he has answered in English.

The Court—The stenographer will note that fact.

Q. You know what signing your name is, don't you? A. Only that much, that I sign it.

Q. You know what it means to sign your name? A. That is there—I cannot read that much.

Q. You would not sign your name to anything that anybody asked you to sign, would you? A. Yes.

Q. You would? A. Yes.

Q. If I should come and ask you to sign a paper— A. I sign it.

Q. You would sign it? A. Yes.

Q. If any stranger came to you and asked you to sign a paper, would you sign it? A. Yes.

Q. You knew that the book that has been shown you here had in it what was done at the meetings, didn't you? A. No.

Q. You didn't know that? A. I don't know.

Q. You knew you were secretary of the company? A. I don't know that.

Q. You didn't know that you were secretary of the company? A. I know I am secretary of the company, but I don't know what the meeting is.

Q. You don't know what the meetings were? A. No.

Q. So that when you were present at these different meetings and you talked in Polish, you didn't know what it was? A. No.

Q. You know what a meeting is? A. No.

Q. You know what a meeting of the company is? A. No.

Q. You don't know? A. No.

Q. You don't know what a meeting of the board or directors and officers of the company was? A. No.

Q. Who was president of the company? A. They say Rubinstein is president. They say this is the treasurer, but I don't know what means that.

Q. You don't know what? A. What means that—what president is, what treasurer is.

Q. Why, when this man Biezczad handed this book over to you, didn't you ask him what it was for? A. I never ask nothing.

Q. When that book was given to you, you did not know what it was given to you for? A. No.

Q. When Mr. Rubinstein told you that the law said that the books should be kept at the office, did you know what that meant? A. I think there is a law that way; that is what I think.

Q. You know what "law" is, don't you? A. I don't know nothing about the law.

Q. You know what "law" is, don't you—something that you have got to obey—you know that, don't you? A. I never done anything; I never been in any jail; I don't know what the law is.

Q. Didn't you ask your brother what you should do about it; do you know whether you asked your brother? A. No; I didn't ask my brother.

Q. You didn't ask your brother? A. No.

Q. When you were told to give up this book or to bring it out from time to time, you never asked your brother about that? A. No.

Q. When you sat together, you and the presi-

dent and your brother, from time to time, just before you signed these minutes, you did not ask what it was all about? A. No.

Mr. Lewis—There was nothing said about their sitting together.

Q. You do remember different times sitting with Mr. Rubinstein, your brother and others, when Mr. Biezczad was there in the company—you remember that, don't you? A. Since Mr. Biezczad left the secretary we never held a meeting.

Q. You never held a meeting? A. One meeting they held, I was sick, lying in the bed, so I cannot come in.

Q. Before Mr. Biezczad got out of office, you held meetings then, didn't you? A. (Through interpreter.) Yes; prior to that there was meetings held.

Q. And you went to those meetings; you were there? A. I was to those meetings, or maybe two of them.

Q. You knew what those meetings were for, didn't you? A. I was tired from work and I sat down in the corner and I slept, and that is the truth.

Q. How many shares of stock did you have? A. Five.

Q. Were you there at the meeting when you were elected secretary? A. Yes.

Q. You were at that meeting; you knew what it was to be elected secretary? A. I don't know what the word secretary is.

Q. You remember the meeting? A. That meeting I remember.

Q. Why do you remember the meeting, if you did not know what it was to be elected secretary? A. (Through interpreter.) When I came to the meeting Mr. Rubinstein said: "We have elected new officers."

Q. You knew what "officers" meant, didn't you? A. I don't know what "officers" is.

Q. You knew that something was done at that meeting about you, didn't you? A. I don't know nothing what they do with me.

Q. You don't know? A. No.

Q. You did not know you had been elected secretary? A. I know I am elected secretary, but what is secretary I don't know.

Q. Did you take an oath to perform your duties as secretary? A. No. Nobody asked me to do it.

The Court—Do the minutes show he did?
Mr. Lewis—No.

Q. You knew you had been elected secretary? A. That is all I know.

Q. Didn't you go to your brother and ask him what that meant? A. No.

Q. Didn't you go to Mr. Rubinstein and ask what that meant? A. No.

Q. That was in 1918, was it not? A. Yes.

Q. That was almost six years ago, was it not? A. I don't know how many years it was.

Q. Did you know what the other man, Biezczad, did as secretary? A. I see the most of the time the other man read what you call minutes. Myself I am sleeping I am tired from work.

Q. Do you know what the other man, Biezczad, did as secretary? A. I don't know.

Q. You knew that you were taking the position that he left, didn't you? A. I know I take some position.

The Court—What is it that you are trying to prove by all of this?

Mr. Ward—I suppose it attacks his credibility as much as anything else.

Q. Mr. Kasprzak, there were keys to the safe, were there not? A. (Through interpreter.) Yes; there were keys.

Q. That book, with other books, was in the safe, was it not? A. Yes.

Q. Do you remember, during the month of August, 1922, Mr. Rubinstein coming to the office with Mr. Bluestein, this gentleman sitting here? A. Yes.

Q. Now, did Mr. Rubinstein have possession of the keys at that time? A. No.

Q. And when Mr. Rubinstein and Mr. Bluestein came in, it was necessary for Miss Kasprzak, your niece, to send and get the keys, was it not? A. (Through interpreter.) Yes, sir.

Q. To whom did you send or did she send? A. (Through interpreter.) I had the keys in my pocket in the boiler house.

Q. For how long a period of time had you been carrying the keys around? A. (Through interureter.) From the time when I asked Mr. Rubinstein to turn the secretary's book over to me.

Q. Was that when the book was brought to the

office—yes or no? A. (Through interpreter.) Was that the time when I asked Rubinstein for the books you are referring to?

Q. Do you remember when you were told that you would have to bring the books to the office, because that was the law—yes or no? A. (Through interpreter.) At that time the books were in the office.

Q. How long after that was it that you got the keys? A. (Through interpreter.) When Rubinstein was with Bluestein?

Q. I have not asked you about that time. You testified that Mr. Rubinstein came to you at some time after you became secretary and told you that the law required you to bring the books to the office; do you remember that? A. Yes.

Q. With that time in mind, how long after that did you get the keys? A. (Through interpreter.) The keys were in my possession at all times.

By The Court:

Q. How long had you had the keys—since 1918? A. No; about three months.

By Mr. Ward:

Q. Who had them before that? A. Mr. Rubinstein.

(Adjourned to Tuesday, March 6, 1923, at ten o'clock in the forenoon.)

Court met pursuant to adjournment, this sixth day of March, 1923.

Appearances as heretofore.

Mr. Lewis: I call your Honor's attention to the first entry in the organization meeting of this company. There is a copy of the agreement which has been offered in evidence, the agreement between the stockholders, which was spread on the minutes. Then I call your Honor's attention to the fact that at the first meeting all of the incorporators and subscribers were present, and they included everybody except Oltarzewski, who came in afterwards. I call your Honor's attention to the minute here, which shows the election of all of these organizers as directors of the Company, that is to say, Rubinstein, the two Kasprzaks, Biezczad, Walzak, Harsche and Lingelbach, and then there follows another agreement between the Company and Stanley Kasprzak and Alexander Rubinstein and the Company itself, three parties to it. It is a contract of employment and that is ordered spread on the minutes, and is on the minutes.

I call your Honor's attention to the fact that it was provided in that agreement that said party of the first part, that is, Stanley Kasprzak, agrees to work for said Company as superintendent of the workers, employees, and servants of the company, and to supervise the machinery and instrumentalities and in general to take charge of all the personal property of the company used in connection with its business of dyeing silk. The party of the first part agrees to engage in and work for said company in manner aforesaid

for a period of time beginning the first of November, 1916, and ending the first of November, 1921. Said party of the second part agrees to enter into the service of the said corporation, that is, Rubinstein, as a sales agent for it in its business, and to continue to act as such for said company for the period of five years, beginning November 1st, 1916, and ending November 1st, 1921, subject to the general control of the directors, and that he will, during said period of time, devote the whole of his time and attention and energies to the performing of his duties as sales agent and shall not, either directly or indirectly, alone or in partnership, be connected with or concerned in any other dyeing business during said period of time within twenty-five miles of said City of Paterson. In addition to the foregoing, said party of the second part will superintend the business of the company, keep proper books of account, do and perform all clerical work to be done, and shall make correct entries of all orders received, or if the orders are in writing he shall, immediately upon receipt of such written orders, file the same in the proper office of the company and will make true and correct entries of all his transactions in dealing with or in relation to said business and shall serve said company diligently and according to his best abilities in all respects.

Then the corporation agrees to employ them both from November 1st, 1916, and to pay each of them for his services at least

thirty dollars a week until the first day of May, 1917, and therefater any sum not exceeding fifty dollars, the amount of which, except as hereinbefore limited, shall be determined upon by the directors, and said payments for services shall continue to be made to each one as long as each is actually engaged in carrying out his agreement herein set forth.

Then there is an agreement about the reasonable expenses of the sales agent, and the other agreements which do not seem to be important at the present time.

If counsel agree to it, I will offer that in evidence at the present time. The argeement I have just read, concerns the employing of Rubinstein by the company, which is here spread upon the minutes.

Mr. McKee—What bearing has that upon the suit?

Mr. Lewis—It shows the arrangement under which the corporation was organized and the relative positions occupied by Rubinstein and Kasprzak toward themselves and toward the company, and the whole progress of events in the manipulation of the stock will receive light from this agreement; also the agreement itself shows that it was Rubinstein's duty to take care of the books of the company, which was an important thing in this case. This is the agreement I referred to. It is signed by Rubinstein and the seal of the company is on it.

Mr. McKee—I think that this contract is

absolutely irrelevant in this case. The fact is, they were both employed by the company, but as to what bearing it has on this case I fail to see. It seems to me we are loading the record with immaterial matters.

The Court—As I understand your defense, Judge Lewis, you say that the stock which the complainant claims to own, and which he desires to have transferred on the books of the company to his name, and which he says, and which the testimony up to the present time shows, the company refused to transfer, was really stock owned by the company and bought by the company's funds.

Mr. Lewis—Yes.

The Court—And that Rubinstein is not the owner of the stock.

Mr. Lewis—That is it.

The Court—I have not heard much about that defense so far. I confess I cannot see what bearing this agreement has on the defense that you set up in your answer. I will sustain the objection. You may offer it again later on if the evidence shows that the agreement is relative to the issue.

JAMES J. HASTINGS, sworn as witness on the part of the defendants, testifies as follows:

Direct Examinationby Mr. Lewis:

Q. Where do you live? A. Eight fourteen East Nineteenth Street, Paterson.

Q. What is your business? A. I am a certified

public accountant, member of the firm of Walsh & Hastings, certified public accountants.

Q. Did you, at the time the bill was filed by Mr. Rubinstein against the Stanley Silk Dyeing Company, for the purpose of having a receiver appointed, make an examination of the books of the company? A. My firm was engaged to make an examination and I had personal charge of that examination and made the examination personally.

Q. I show you exhibit D-1 in this case and ask you if you have seen that book before? A. I have seen this book before and recognize it as the minutes of the Stanley Silk Dyeing Company.

Q. I call your attention to page 78 of the minute book and to a question mark in pencil in the margin of that book and ask you who wrote that question mark in the margin? A. During the course of my examination—.

By The Court:

Q. Just answer the question. Who made that mark? A. I did.

By Mr. Lewis:

Q. Please explain why it was made.

Mr. Ward—I object to that.
The Court—Objection overruled.

A. I made it because it seemed irregular, seemed as if it had been changed from the original writing.

Q. Who gave you the book? A. Miss Veronica Kasprzak gave me the book.

Q. And did you call her attention to the change in the book?

Mr. Ward—I object to that as leading.

The Court—Objection overruled.

A. I did call her attention to the change in the word "isn't".

Q. Did she fail to give you any explanation? A. She advised that it was—.

Mr. Ward—I object to that.

The Court—Objection sustained.

Mr. Lewis—This is not a matter of hearsay. It is a fact. It is proof of a fact. I want to prove that when this change was shown to Miss Veronica Kasprzak by the witness that she then said that she had never seen that before. That is a fact in this case.

The Court—Miss Kasprzak can testify to the fact that she had never seen it before.

Cross Examination by Mr. Ward:

Q. When was this that you made the examination? A. I believe that I made that examination in November, 1922.

Q. Did you have the minute book in your possession? A. I had the minute book in my possession.

Q. And away from the office of the company, you had it away from the office of the company, didn't you? A. I had the minute book away from the office of the company.

Q. At your own place of business? A. At my own office.

Q. Given to you by whom? A. Miss Kasprzak.

Q. How long before your examination? A. My examination started a certain day, and I took pos-

session of the books of the company in the office of the company, and found it necessary to read the minutes—

By The Court:

Q. It will help us a great deal if you would answer the question and then stop. The question was: How long before your examination was the minute book given to you by Miss Kasprzak? A. I did not get the book until I started my examination.

By Mr. Ward:

Q. The same day? A. The same day.

Q. How long did you have it in your possession? A. During the course of my examination.

Q. How long was that? A. Approximately a week.

Q. Did you have it until the firm of William Surosky & Company got it from your office? A. No; I returned the book when we had completed our examination.

Q. Did you again get the book in your office? A. I did.

Q. A second time? A. A second time.

Q. And retained it there until the firm of William Surosky & Company got the book; is that correct? A. I did.

Q. When she handed you the book, from where did she get it? A. From the safe.

Q. Was the safe locked at the time? A. The safe was open.

Q. Who else worked on this examination be-

sides yourself? A. One of my assistants, Mr. Helliger, since deceased.

Q. He did the work under your supervision? A. He worked under my supervision.

Q. The work was not all personally done by you. There were things submitted to you that you accepted as correct? A. No; I did not accept them as correct. I passed on them as to their correctness.

Mr. Lewis—I will object now that this is not proper cross examination. I asked him only how that mark came there.

Q. This book that has been referred to as Exhibit D-1, was kept in the locked box, was it not, in the safe? A. I could.

ALBERT WALZAK, sworn as a witness on the part of the defendants, testifies as follows:

Direct Examination by Mr. Lewis:

Q. Where do you live? A. Thirty-three North York street, Paterson, New Jersey.

Q. What is your business? A. I am at present superintendent of the Stanley Silk Dyeing Company,

Q. Were you one of the original incorporators of the Stanley Silk Dyeing Company? A. I was.

Q. Do you remember the cause of your severing your connection with that company? A. I do.

Q. You may tell us what that was?

Mr. McKee—I object to that.

The Court—How is it relevant?

Mr. Lewis—It leads up to the sale of the stock.

The Court—Is he one of the owners of the certificates that were sold?

Mr. Lewis—Yes.

The Court—Objection sustained.

Q. Do you recall any conversations you had with Rubinstein concerning dividends on stock of the company?

Mr. McKee—Objected to.

The Court—Objection sustained

Q. Do you recall a meeting of some of the stockholders of the company and Rubinstein and Stanley Kasprzak, at the office of the Stanley Silk Dyeing Company? A. I do.

Q. At which the sale of stock was discussed?

Mr. McKee—I object as leading.

The Court—Objection overruled.

A. I do.

Q. Who was present at that meeting? A. There was Mr. Stanley Kasprzak, William Kasprzak, Stanley Oltarzewski, Alexander Rubinstein and myself.

Q. Where was John Harsche? A. John Harsche was in the Army that time.

Q. Had he made any transfer of his stock to you before that meeting? A. He did not make really transfer of the stock, but I should handle his stock.

Q. Was Linglebach there? A. At that meeting, no.

Q. Was Biezczad there? A. I believe he was.

Q. Was it a regular meeting of the directors of the company, or was it an informal meeting? A. I don't remember that.

Q. How was the conversation carried on—in Polish or English? A. Mostly in Polish.

Q. Now, tell us what occurred at that meeting?

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Mr. McKee—I object on the ground that if it were a regular meeting of the Board of Directors, that the minutes themselves are the proper evidence. He does not know whether this was a regular meeting of the Board of Directors or whether it was an informal meeting.

The Court—Objection overruled. The date ought to fixed.

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Q. What was the date of this conversation? A. Well, I don't remember.

Q. How long was it before you were paid for your stock? A. I think it was about three months —two or three months.

Q. That would be in the spring. A. It was in the spring; maybe it was in March or April.

Q. 1918? A. Something like that.

Q. Did you come to any agreement at that time between yourselves about the sale of stock to anyone? A. We did.

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Q. What was said at this meeting which made the agreement that you refer to? A. I do not quite understand.

By The Court:

Q. What was the conversation at this meeting? A. The whole conversation or only just about the stock?

Q. About the sale of the stock? A. Selling the stock, a settlement was made on sixty-five per cent to be sold—

Q. Tell us what was said and who said it? A. I don't quite understand.

By Mr. Lewis:

Q. Try and repeat the conversation that occurred between you there as nearly as you remember it. A. Well, at that meeting there was something put up against us; there was some silk put up on the table, which they said was damaged, which they had to pay damages for it, and so forth, so that was the agreement made between Oltarzewski and myself; we said we were to sell the stock; I didn't want to sell the stock; we were to sell the stock and so this agreement came, they would sell it sixty-five per cent plus the dividends.

Q. What do you mean by sixty-five per cent? A. It means par value of the share and sixty-five per cent extra, plus dividends.

Q. What dividends do you refer to? A. There was dividends declared of twenty-five per cent which were never put on the books.

Q. Is there any reference to those dividends in the minutes? A. There is.

Q. Was Rubinstein present all the time at this meeting? A. He was.

Q. Was there anything said as to who should

buy the stock? A. We sold the stock to the company.

The Court—Answer the question. Was there anything said as to who should buy the stock? Strike out the answer.

Q. Was there anything said about who should buy the stock from you and pay for it? A. The company.

The Court—Strike out the answer. The answer to the question is yes or no.

Q. Yes or no? Was there anything said about who should buy the stock? A. Yes.

Q. What was said?

Mr. Ward—We object unless he tells us by whom.

The Court—It was said in Rubinstein's presence, objection overruled.

A. That we would sell out stock to the company.

Q. Was that agreement carried out? A. It was.

Q. As to the price which was to be paid?

Mr. Ward—I object as calling for a conclusion.

Q. Did you get the 165 and dividends that had been declared? A. We got the 165 and fifteen per cent dividends; the ten per cent we let go.

Q. You did not get a dividend of fifteen per cent from the company, did you? A. We got all the money from the company.

Q. All the money you got— A. (Interrupting.) Was from the company.

By The Court:

Q. When you say "we got our money from the company," whom do you mean? A. The four of us, or three of us; there was four of us altogether.

Q. Who were they? A. There was Stanley Oltarzewski, John Harsche, John Linglebach and myself.

By Mr. Lewis:

Q. I show you Exhibit C-3 in this case, and ask you if you have ever seen that paper before? A. I did.

Q. Is it your certificate of stock in the Stanley Silk Dyeing Company? A. It is.

Q. For two shares? .A Yes.

Q. Were you at Mr. Benson's office? A. I was.

Q. When the agreement to sell was in process of being carried out? A. I was.

Q. Who was there besides you? A. Stanley Oltarzewski—there is something which I will have to explain.

By The Court:

Q. I don't think you will. Just answer the question: Who else was there at Mr. Benson's office? A. Mr. Stanley Oltarzewski, and Stanley Kasprzak, the treasurer, and Mr. Rubinstein. The treasurer of the company was Mr. Kasprzak.

By Mr. Lewis:

Q. Did you act for Harsche at that meeting? A. I did.

Q. And did you act for Linglebach and Oltarzewski? A. I could not exactly act for Mr. Linglebach and Mr. Oltarzewski. Mr. Oltarzewski was present with me, he was there with me, and Mr. Linglebach, I did not know what he wants to do with his shares.

By The Court:

Q. Was he there? A. He was not there when we made the agreement.

By Mr. Lewis:

Q. Who delivered the certificates to Mr. Benson? A. Each one personally.

Q. Who was in the office when the certificates were delivered to Mr. Benson? A. There was nobody in the office.

Q. Wasn't Mr. Benson there? A. Except Mr. Benson.

Q. And you four men? A. No; there was Mr. Oltarzewski, and myself what I remember when I handed over my stock, that is, my stock and Mr. Oltarzewski's.

Q. And where was Mr. Linglebach? A. He was not with us that time.

Q. You did not know about his delivery of the stock? A. No.

Q. When you went to Mr. Benson's office, taking the certificates with you, had you already signed the transfer on the back of the certificate?

Mr. McKee—Objected to.
The Court—Objection sustained.

Q. When did you sign the certificate, before or after taking it to Mr. Benson's office? A. I took this certificate out of my pocket and there was a check—

The Court—Please answer the question. When did you sign the certificates, before or after taking it to Mr. Benson's office, or during the time?

A. During the time.

By The Court:

Q. You mean you signed this certificate at Mr. Benson's office? A. At Mr. Benson's office, and the certificate was blank when we signed it.

The Court—Strike out the last part. The answer to the question is: "I signed the certificate at Mr. Benson's office."

By Mr. Lewis:

Q. I call your attention to the written words in the transfer on the back of the certificate, that is to say, to the word "I" to the name "Alexander Rubinstein" twice written, and to the date "August 3rd, 1918," and ask you whether those words were in the assignment when you handed the certificate and assignment to Mr. Benson? A. No.

Q. Did you authorize Mr. Benson or anyone else

to fill in the name of Alexander Rubinstein in that certificate? A. No.

Q. I show you a check dated August 5th, 1918, purporting to be the check of the Stanley Silk Dyeing Company for $350.00, drawn on the Hamilton Trust Company of Paterson, and ask you if that is your endorsement upon the back of the check? A. It is.

Q. When did you get this check? A. When I gave this certificate to Mr. Benson he handed over to me the check.

Q. Mr. Benson did? A. Mr. Benson himself.

Q. When the transaction was over and closed, did you have any further association with the company? A. No.

Q. With the Stanley Silk Dyeing Company? A. No.

Q. You never attended any more directors' meetings? A. No.

Mr. Lewis—If counsel are willing to admit the signatures to this check without formal proof, I will put it in evidece now.

Mr. Ward—No objection.

Mr. Lewis—I offer the check in evidence.

(Check is marked Exhibit D-4.)

By The Court:

Q. You say Mr. Harsche was not present at that meeting? A. No.

Q. Did you see his certificate of stock at that meeting at Mr. Benson's office? A. I do not recall.

Mr. Lewis—I had forgotten that. I should

have asked that, as to whether that was delivered.

By Mr. Lewis:

Q. Did John Harsche deliver his certificate of stock to you before he went to the war? A. He gave his certificate to Stanley Oltarzewski.

Q. Did you see his certificate at Mr. Benson's office? A. I did.

Q. Was there a check given in payment of John Harsche's shares? A. There was.

Q. To whom was it delivered? A. Delivered to Mr. Benson.

Q. And to whom did Mr. Benson deliver it? A. Mr. Benson put it in the savings account of Mr. Harsche, in the Paterson Savings Institution, on his book.

Q. How did he get Mr. Harsche's book, do you know? A. That I don't know but he put it on his savings account.

Q. Did you get all your money in payment of your stock in checks or was there a note? A. We got $175.00 in a check and five per cent in a note.

Q. I show you a note purporting to be a note of the Stanley Silk Dyeing Company, for three months, for $10.00, payable to your order, and ask you, if you have seen that note before? A. Yes.

Q. Is that your endorsement on the back? A. It is.

Q. It was paid in due course? A. It was.

Q. What was this note given for? A. This note was given when we were paid out from the company, they didn't have any more money, so they gave us five per cent in a note.

By The Court:

Q. The five per cent that you refer to in your testimony? A. Yes.

Mr. Lewis—I offer the note in evidence. (Marked Exhibit D-5.)

Cross Examination by Mr. Ward:

Q. You say that there was some difficulty in the company about some silk; is that correct? A. Yes.

Q. You became dissatisfied, you and these others became dissatisfied? A. There was four.

Q. You wanted to sell out? A. Yes.

Q. And you were the person who made the offer to sell out? A. I was.

Q. Did you hear the others offer to sell out? A. I do not recollect.

Q. What did you say at the time; what were your words? A. I cannot recall exactly the words what I say at that time.

Q. Do you remember any of the words that were spoken? A. I say I want to sell my stock; I want to get out of here.

Q. Do you remember what was said by anyone else? A. I do not recollect.

Q. So that you have no recollection of anything that was said by anyone else? A. It didn't interest me. It only interested me what I said.

Q. All that you remember, then, that was said at that time, was that you wanted to sell out and get out? A. That is what it was.

Q. You don't remember any other part of any other conversation or any other words? A. Oh,

there was a lot of discussion there, but I cannot remember those words what everybody has been saying.

Q. You testified on your direct examination, you were asked, that something was said about the company. What was said about the company? A. They would sell the stock to the company.

Q. Who said that? A. I did.

Q. You said it, did you? A. Yes.

Q. And that was all that was said about that, was it? A. It was agreed upon.

Mr. Ward—I move to strike that out.

The Court—Strike it out.

By the Court:

Q. Mr. Ward wants the conversation. What was said? A. The conversation.

By Mr. Ward:

Q. Yes. A. Well, it was about the price, that the company has not got money, they cannot pay us that much.

Q. That the company did not have the money? A. It did not have so much money.

Q. Do you remember whether it was said that the company could not pay the money because they were about to erect a building? A. There was nothing said about the building.

Q. You knew that they did contemplate, at that time, erecting a building, didn't you? A. I did not.

Q. Don't you know that that was talked about amongst the members of the company and the directors then? A. That I don't remember.

Maybe it was talked by the members, but not before me.

Q. Don't you remember that you talked about it yourself? A. I remember once meeting, but that was before that, that we were not able to put any building up yet.

Q. You do remember that before that, there was talk about erecting a building, putting up a building? A. By asking me, it brings it to my mind.

Q. You remember that, don't you? A. I think it was.

Q. Don't you remember that the company wanted to retain the money due you, so as to erect that building? A. I don't know.

Q. You wanted a dividend declared, didn't you? A. We did.

Q. And was not that the reason that no dividend was declared, because the company wanted to retain the money to erect a building? A. A dividend was declared.

Q. At the time that you got out? A. Before.

Q. I am not asking you about before. I am asking you about the time that you got out. Were you not dissatisfied because no dividend was being declared? A. Well, the dividend was declared.

By the Court:

Q. Then you were not dissatisfied? A. Beg your pardon.

Q. The answer is "no", is it not? A. Yes.

By Mr. Ward:

Q. At the time you got out of this company was there any dividend paid? A. I don't know.

By the Court:

Q. Do you know whether any had been paid to you? A. Only when we got paid on these certificates.

Q. Before you agreed to sell your stock, did you receive any dividend from the company? A. No.

Q. The dividend had been declared? A. Yes.

Q. As I understand you to say, you think it was entered on the minute book? A. On the minute book, but not on the business book.

Q. But it had not been paid? A. No.

By Mr. Ward:

Q. When was that dividend declared? A. At the first year of the business.

Q. And the business was a prosperous business, was it not? A. I don't know.

Q. Well, you say that there was a dividend of what per cent. declared? A. There was a lot of fighting about the dividend—

Q. What was the per cent., do you know? A. Twenty-five per cent.

Q. Is it not a fact that because that was not paid you were dissatisfied? A. No.

Q. Is it not so that the money that the company had, Mr. Rubinstein explained should not be paid out on the dividends but should be retained for erecting a building? A. We were satisfied

with that. Nobody wanted to take the money out.

Q. Then, you were satisfied with that, were you? A. But it should be entered on the business book.

By the Court:

Q. Were you satisfied that the company was not paying out the dividend but was holding the money? A. Holding the money, but put on the book as a dividend.

By Mr. Ward:

Q. Well, then, you knew that the company was holding the money, the surplus, didn't you? You knew that. Did you or not know that? A. Well, they must have if they didn't pay it out.

Q. And you knew that the company did not want to pay that money out, didn't you? A. What was the question?

Q. You knew that the company did not want to pay that money out, didn't you? A. We were the company.

Q. You knew that, didn't you? A. We were the company.

By the Court:

Q. Then, you are one of those who did not want to pay it out? A. Wanted to put it on the books.

Q. You wanted it entered up, did you, to your credit on the company's books? A. Exactly.

Q. But you did not want it actually paid out? A. No.

Q. Why not? A. We did not want to actually take it.

Q. Why not? A. Because they are short of cash.

Q. When was this they were short of cash? A. That was in 1918.

Q. What time in 1918? A. Well, in January or February, some time.

By Mr. Ward:

Q. So, then, when you said at this meeting, to which you have referred, when you wanted to sell your stock, that you would sell that stock to the company, is it not true that the company did not want to spend the money for that stock? A. I don't know.

Q. Was not that talked over? A. I don't know.

Q. Do you mean you don't remember? A. It may be talked over when I went out.

Q. You mean that you don't remember? A. I don't know. I cannot recall that, because—

By the Court:

Q. Was it talked about in your presence? A. I don't think so.

By Mr. Ward:

Q. Is it not true that it was talked about in your presence that the money that the company had should be kept by the company to erect a building? A. I don't know. I don't recall that.

Q. And should not be spent for the purpose of

buying your stock? A. It was never put up that way to us.

Q. Well, did you talk to Mr. Rubinstein later about that? A. In Mr. Benson's office.

Q. Who made the arrangements for you to go to Mr. Benson's office? A. Mr. Oltarzewski and myself.

Q. With Mr. Rubinstein? A. Mr. Benson called Mr. Rubinstein.

Q. So that you went to Mr. Benson's office first, didn't you? A. I did.

Q. Mr. Benson had been a lawyer for you before? A. No; I never had no case. It was the first case of my own.

Q. Did you go anywhere else aside from Mr. Benson's office for the purpose of selling this stock? A. Yes; I recall we went to Mr. Smit.

Q. You went to Mr. Smit, who is now in Court here? A. Mr. Frank Smit.

Q. And Mr. Smit communicated with Mr. Rubinstein, didn't he? A. That I don't remember.

Q. Don't you know that Mr. Rubinstein went to see Mr. Smit and did not Mr. Smit so tell you? A. I don't recall that.

Q. You remember putting this matter in the hands of Mr. Smit, don't you? A. What is that?

Q. You remember putting this matter in the hands of Mr. Smit, don't you? A. First I did.

Q. Did you ask him to send for Mr. Rubinstein? A. I don't recollect.

Q. Did not Mr. Smit tell you that Mr. Rubinstein had explained to him what the trouble was down there? A. Never.

Q. Well, you didn't sell your stock at that time, did you when you had the matter in the hands of Mr. Smit? A. We did not.

Q. Later you went to Mr. Benson? A. We did.

Q. Why? A. Because we wanted to sell the stock.

Q. If you had made arrangements with the company to buy that stock, why didn't the company buy the stock when Mr. Smit had the matter in charge? A. Shall I answer that?

Q. Yes; that is why I asked you. A. After we had that meeting in the shop, we were closed out; we couldn't get in anymore; the door was closed; when I see that the door was closed in front of me, I say that is the reason to sell my stock, because I don't know what is going on in there; I could never get in the shop anymore.

Q. Then the other reason you gave was not a true reason? A. Which reason?

Q. The reason about the silk being placed on the table? A. That was the first reason.

Q. Are there any more reasons that you know why you wanted to sell your stock? Now let us see. You say that the first week when this silk was placed on the table and you were notified that the company would have to pay for that silk, that you wanted to sell your stock, right at that time? A. What do you mean, the first week?

Q. You said a moment ago when I asked you about the silk being placed on the table, that that was the first week? A. That was at the meeting.

Q. That was before the door was closed on you? A. That was before.

Q. How long before? A. I don't recollect.

Q. About how long before? A. Oh, that was the last time I was in the office.

Q. About how long before the door was closed

on you, was it that you had the meeting when the silk was placed on the table? A. Until the regular meeting should be called.

Q. Can you give me any idea of days or weeks? A. It must be four weeks or three weeks, about something like that.

Q. So, then, although when the silk was placed on the table, and you were dissatisfied with the dispute that arose about that and you stated that you wanted to sell your stock to the company, and although you say there was an agreement made, nevertheless that stock was not bought for more than three weeks after that, was it? A. What? I don't quite understand.

Q. Your stock? A. I don't quite understand the question.

Q. Is it not true that you became dissatisfied because of the complaint made about the silk, and there was trouble there, and you offered your stock for sale, when there was trouble, to sell it to anyone that was ready to take it at that time? A. We wanted—

Q. (Interrupting) You wanted to, but there was no one, neither the company nor anyone else, that wanted your stock at that time? A. I cannot vouch for anybody else, I have to vouch for myself.

Q. Then, it is not true when you say that the company agreed to buy it on that date, is it? A. I don't know what you mean.

Q. It is not true when you say that when this dispute arose about the silk, that the company agreed to buy your stock? A. The company did agree to buy the stock.

By the Court:

Q. Let me ask you a question: I understood you to say that this meeting, at which you expressed your dissatisfaction, was held in March or April, 1918? A. Something like that.

Q. Somewhere around that time? A. Yes; I cannot remember the date.

Q. Your stock was finally bought in August, 1918? A. I think so.

Q. That is right. The check is dated August 5, 1918? A. Yes, sir.

Q. Who expressed dissatisfaction at this meeting, in February or March, about the silk; who was it complained about the silk? A. It was Mr. Rubinstein and Mr. Kasprzak.

Q. Mr. Stanley Kasprzak? A. Yes.

Q. Then you say at this meeting, in February or March, 1918, it was agreed that the company should buy your stock? A. That is what it was.

Q. Who spoke for the company? A. Well, they all were speaking.

Q. You did not agree for the company that the company should buy your stock, did you? Somebody agreed for the company? A. Well, of course, must have.

Q. Who was it? A. I don't recollect that.

Q. Was it Mr. Stanley Kasprzak? A. I don't recollect. It was talked together.

Q. Was it Rubinstein? A. It was talked together.

Q. Was it Rubinstein? A. I don't recollect.

Q. Were you a director of the company at that time? A. I was.

Q. And the other men who wanted to sell, were directors too? A. Yes.

Q. Why didn't you call a meeting of the directors then? A. Well, we didn't.

Q. Why didn't you? A. I thought that time we didn't have to, but we did.

By Mr. Ward:

Q. You knew that all the business of the company was done through the directors, didn't you? A. All the business?

Q. You have been in several corporations, have you not? A. Not at that time.

Q. Well, you knew that it was up to the directors, didn't you? A. Well, I did.

Q. You knew that you held meetings and you voted on certain things, didn't you? A. Yes.

Q. And you knew in order for the company to buy your stock, or any other stock, that there would have to be a meeting of the directors to authorize the company to buy the stock, didn't you? You knew that, didn't you? A. I didn't know that.

Q. You said that up to that time you had not been a director in any company? A. I didn't say that—"in any company."

Q. I beg your pardon, had you been a director in any company before that? A. In one company, that is the Polish Home, Paterson, New Jersey.

Q. How long before? A. That was organized 1912, I think.

Q. You knew, that one of the purposes of holding these directors' meetings was to authorize the company to do certain things, though, didn't you? A. I don't know.

Q. You don't know that? A. No.

Q. How long have you been in America? A. Twenty-four years.

Q. You are a Pole, are you not? A. I am an American citizen.

Q. You came from Poland? A. That is a different question. I did.

Q. Mr. Kasprzak is also a Pole? A. Nationality has got nothing to do with me. I am an American.

Q. Answer the question. A. I refuse to answer. I do not want to get nationality in this business.

Mr. Lewis—We admit that Mr. Kasprzak is a native of Poland.

Q. As a matter of fact, you were present at the meeting when Mr. Harsche sold his stock, were you not? A. I don't recollect.

Q. When Mr. Harsche wanted to sell his stock in 1917? A. That might be.

Q. Do you remember being present and hearing it discussed? A. I do not recollect. I must be anyway.

Q. Does it refresh your recollection at all to see these minutes of the meeting? A. Yes. I wish—

Q. I call your attention to the minutes of a meeting of July 30, 1917, at which there was present S. Kasprzak, A. Rubinstein, A.— A. (Interrupting) Bieszczad, John Harsche, John Linglebach, S. Oltarzewski and A. Walzak.

Q. (Reading) "The secretary received a special delivery letter from one of the shareholders saying that he is going in the army and wants to

have his money for his shares." Do you remember that? A. I do.

Q. Then you knew at that time that it had to come before the board of directors, the buying of the stock by the company, didn't you? A. What do you mean?

Q. Why, you knew on July 30th, 1917, that in order for the company to buy stock from a shareholder of the company, that the matter had to be brought up before the board of directors? A. We had an agreement from the beginning that we should not sell outside inside of so many years.

Mr. Ward—I move that that be stricken out.

The Court—Strike it out.

Q. Now, Mr. Walzak, I want you to listen to the question if you will and answer it. In July, 1917, you know that in order for the company to buy shares of stock from shareholders of the company, it was necessary to bring the matter up before the board of directors, didn't you? A. Under that agreement that we had before—

The Court—Strike it out.

Q. (Question repeated) In July, 1917, you knew that in order for the company to buy shares of stock from a shareholder of the company it was necessary to bring the matter before the board of directors, didn't you? A. Before anybody could sell outside.

By the Court:

Q. It had to come before the board of directors? A. Yes.

By Mr. Ward:

Q. And on July 30th, 1917, you voted on that matter, didn't you, the sale of the stock?

The Court—What is the use of asking that question? The minutes show whether he did or not. Suppose the minutes show that he did and he said he didn't.

Q. You went to Mr. Smit, and the company did not buy your stock, did it? A. What do you mean?

Q. Why, your stock was not bought while you were negotiating with Mr. Smit, yes or no? A. No.

Q. How long were you negotiating with Mr. Smit? A. I don't remember.

Q. Then you went to Mr. Benson? A. I did.

Q. And you asked him to send for Mr. Rubinstein, didn't you? A. I did.

Q. And he did send for Mr. Rubinstein, didn't he? A. He did.

Q. Mr. Rubinstein came to Mr. Benson's office. You knew that, didn't you? That was reported to you, was it not? A. That was reported by Mr. Benson that Mr. Rubinstein was in his office.

Q. Then, did you see Mr. Benson personally? A. Several times up in Benson's.

Q. Alone? A. I don't know how many times alone, but the last agreement was made when

Stanley Kasprzak, the treasurer, was with Mr. Rubinstein when we got the settlement.

Q. Was that the last time? A. That was the last time.

Q. You remember that distinctly? A. Because that was my money.

By the Court:

Q. Do you remember it? A. I do.

Q. Did you go to Mr. Benson to employ him as your attorney in this matter or was he the attorney of the company? A. Ours.

Q. He was your attorney? A. Yes.

By Mr. Ward:

Q. Had all the arrangements been made for the sale of your stock before Mr. Rubinstein came to Mr. Benson's with Mr. Kasprzak—Mr. Stanley Kasprzak? A. No.

Q. What arrangement, if any, had you come to with Mr. Rubinstein before that day? A. What do you mean?

Q. Had you come to any arrangement with reference to how much you were to be paid for your stock before the day when you brought the stock to Mr. Benson's office and turned it over to Mr. Benson? A. Well, it was disputed about the money. We wanted the twenty-five per cent.

By the Court:

Q. Let me see if I can get this thing straightened out. Your certificate of transfer, your assignment of stock, has a date on it—August 3, 1918? A. Yes, Your Honor.

Q. And the check that you got from the company you say bears date August 5th, 1918? A. Yes.

Q. Was it bought that time that you were in Mr. Benson's office? A. Your Honor, shall I answer that? I was in the office when I took this certificate out of my pocket.

Q. I understood you to say the assignment was blank? A. Yes.

Q. I am calling your attention to the fact that there is a date on it? A. I don't know.

Q. The check that was offered in evidence, from the company for $350. is dated August 5th, 1918. Would you say that that was the day you were in Mr. Benson's office? A. That is the date when I took the certificate in Mr. Benson's office.

Q. You got the check the day you were at Mr. Benson's office? A. Exactly.

Q. He had it there? A. He had it there, certainly.

Q. Did he produce it or did Mr. Stanley Kasprzak or Rubinstein produce it? A. Mr. Benson produced it.

Q. The question that counsel is trying to direct your attention to is this: Before August 5th, 1918, had you completed an arrangement with the company, or with Mr. Rubinstein or anybody else, for the sale of the stock? A. Before; yes.

Q. And you went to Mr. Benson's office on the day you got the check to settle this thing that you had agreed to do before that date? A. Exactly.

Q. So, there was no discussion of terms at Mr. Benson's office, was there? A. At what time?

Q. August 5th, when you got the check? A. No; we just handed the certificates.

By Mr. Ward:

Q. Mr. Walzak, who was present when you came in with this certificate of stock? A. I can remember very well Mr. Oltarzewski and myself and Mr. Benson.

Q. That was all? A. I don't remember anybody else.

Q. Had you been there before that day? A. Several times I was there.

Q. I mean on that day; had you been there before on that day? A. I only 'phoned Mr. Benson —who has the check. So he said: "Mr. Rubinstein has the check ready for the certificates. Come and get your check and bring the certificates with you." That is the answer I got.

Q. Can you recall, with reference to the time you got the money or the check from Mr. Benson, when it was that you saw Mr. Kasprzak over at Mr. Benson's office? A. No; I cannot recollect.

Q. Was it at the time that you signed this share of stock, Exhibit C-3—was it at that time when you signed this, that Mr. Kasprzak was at Mr. Benson's office? A. It was not; I said that before.

Q. When you gave this to Mr. Benson, did you see Mr. Benson sign it? A. No.

Q. Was his name on it? A. No.

Q. Up to the time you left the office and left the stock with him, had he signed it? A. He did not, only just bunched it up and went away with it; there was nothing more.

Q. This writing was not there? A. Positively no.

Q. Positively was not there? A. No. I can give my life for it.

Q. You say that you were accompanied by this other man, Mr. Oltarzewski? A. Yes.

Q. Do you remember whether or not he handed his stock over to Mr. Benson? A. He is here himself.

Q. I have not asked you that. A. I beg your pardon.

Q. (Former question repeated) Do you remember whether or not he handed his stock over to Mr. Benson? A. I think he did.

Q. You say that you received for that stock $165 or at least sixty-five per cent. above the par value of the stock? A. Exactly.

Q. And fifteen per cent. dividends? A. Yes.

Q. And that you waived the ten per cent. dividends? A. We did.

Q. Is it not true that you received $175. for a share of stock and only five per cent. dividend? It is not true.

Q. Well, you stated on your direct examination that you got a note for the dividends, didn't you?

Mr. Lewis—He did not.

A. I did not.

Mr. Ward—I object to counsel correcting the witness.

Q. Did you not say that you received a note for five per cent. and that was for dividends? A. I did.

Q. Was it for dividends? A. Yes, five per cent., and ten per cent. we got in cash for the dividends.

Q. Ten per cent. in cash? A. Ten per cent. in cash and five per cent. in note.

Q. But you did receive $175 in cash, didn't you? A. Exactly.

Q. Now, you have been doing business with Kasprzak since you have been out of the company, have you not? A. What kind of business?

By the Court:

Q. Any kind of business? A. What do you mean?

Q. Any kind of business with Kasprzak? A. What do you mean?

Q. The question is very plain. Have you been doing any business with Mr. Kasprzak? A. No. What kind of business?

By Mr. Ward:

Q. Any kind of business? A. What do you mean by "business"?

Q. Have you had any transactions, business transactions of any nature, with Mr. Kasprzak? A. Any business transaction?

Q. Yes. A. No business transactions.

Q. What kind of transactions? Have you borrowed any money of him? A. Yes; I borrowed from Mr. Kasprzak and gave it back.

Q. You knew that that was a business transaction, didn't you? A. That is only a loan.

Q. You knew that that was a business transaction didn't you, a moment ago when I asked if you had any business transactions with Mr. Kasprzak? A. What do you mean by "business"?

Q. How many times have you borrowed money from him? A. Only once.

Q. Do you owe him anything now? A. No.

By Mr. Lewis:

Q. How long ago was that loan that you had from Kasprzak? A. It was 19—and well, it was after this transaction, well, 1919, I should judge, in the spring.

Q. And you paid it back shortly afterwards? A. I did.

By Mr. Ward:

Q. Mr. Kasprzak is also on the board of directors of the same Polish home with you, is he not? A. He is only an honorable member now.

By Mr. Lewis:

Q. Do you recall how often at the meetings of the board of directors you expressed your dissatisfaction with the failure to enter the dividends on the books of the company? A. Well, it was pretty nearly every meeting there was this question about the dividends.

Q. Was there a refusal or neglect to enter that dividend after it was declared? A. It was not a refusal but it was never paid out; it was never put in the books.

Q. Were you on the committee that was appointed to examine the books? A. I was.

Q. And did you look to see whether the dividend was on the books or not? A. I did.

Q. Did you report that it had not been put on? A. I did.

Q. You said, in answer to a question from Mr. Ward, that you knew about the necessity of a meeting of the board of directors in regard to the

purchase of stock before it could be sold to outsiders? A. I did.

Q. What do you mean by the sale to "outsiders"? A. Which did not belong to the company.

Q. How is that? A. Those which were not interested in the company.

Q. Well, were you under any sense of obligation— A. (Interrupting) We were.

Q. In respect to whom you should sell? A. We were.

Q. What was that obligation? A. There was a certain agreement signed—

Mr. Ward—I object to anything about that.

Mr. Lewis—It seems to me that the cross examination makes this a proper question. He was asked if he did not know it was necessary to have a meeting of the board of directors before the company could buy stock, and he said: "I knew it was, as far as a sale to outsiders was concerned." I want him to explain that more fully.

The Court—I think the answer is sufficient.

Q. From what did the necessity of having a meeting of the board of directors, before a sale could be made to outsiders, spring?

Mr. Ward—I object.

The Court—Objection sustained.

Q. Were you restrained, in anyway, by the

existence of any agreement, from offering to sell to outsiders before you offered to sell to those who were in the company?

Mr. Ward—I object.
The Court—Objection sustained.

Q. I show you an agreement marked D-3 for identification and ask you if you have seen that paper before? A. Yes; I seen that agreement.

Q. And now, when the subject of the sale of stock was under discussion between you and the other shareholders, when Rubinstein was present, was any reference made to the agreement D-3 for identification? A. I don't recall that.

Q. You have already testified that no dividend was paid by the company or entered upon the books of the company, and when you speak of your getting part of the dividend when you were paid for the stock, do you refer to anything more than the arguments you used as to why your stock should be paid for and at the price it was?

Mr. Ward—I object to the question as leading.
The Court—I do not think it is leading. Objection overruled.

By the Court:

Q. Do you understand that question? A. No.

(Stenographer being requested repeats pending question.)

Q. Yes or no? A. That is hard to decide there—

Q. If you understood the question, you could answer it, yes or no? A. I don't understand it. I don't want to answer what I don't understand.

By Mr. Lewis:

Q. When you were discussing the price to be paid to you for your stock, how did you arrive at the price which was paid to you, and what was said; how did you arrive at the price which was to be paid to you? A. Well, the price I want was sixty-five per cent. and par and then twenty-five per cent. of dividends what we declared.

By the Court:

Q. Judge Lewis wants to know how you fixed that price of $165. Why not $175 or $265? A. Well, that was a discussion at the meeting that we will sell the shares at $165.

Q. How did you fix $165? How did you get that figure? A. Because I seen the business that was before, the year before, that they could pay that money; on this basis that the company was able to pay $165. On this basis we fixed the price.

By Mr. Lewis:

Q. Did you look at the books? A. The last books I don't know when I looked at them.

By the Court:

Q. Did you look at the books before you fixed the price? A. No.

By Mr. Lewis:

Q. Did you fix the price in relation to book value at all? A. To previous months.

Q. The book value at previous months? A. The last month or two months before that. I did not get any more books. I was told the books are by the public accountant.

Q. Who told you that?

Mr. Ward—I object as irrelevant and immaterial.

The Court—Objection overruled.

A. Mr. Rubinstein. He had charge of the office.

By Mr. Ward:

Q. Mr. Walzak, as a matter of fact, during the period of time when you say that you protested and wanted these dividends entered in the book, you were writing up the minutes yourself, were you not? A. I did not.

Q. Didn't you write some minutes? A. What do you mean, some minutes?

Q. Didn't you write in the minute book some of the minutes? A. I did not.

Q. Mr. Walzak, is it not a fact that before this difficulty which you had about the spoiled silk, that you had on other occasions offered your stock to the company? A. I did.

Q. Is it not true that right along, the company had refused to buy your stock? A. That I don't know.

Q. Why, didn't you give that as one of the reasons for voting against the company buying the stock of Harsche? A. What?

Q. (Question repeated) Why, didn't you give that as one of your reasons for voting against the company buying the stock of Harsche? A. What reason?

Q. The fact that the company would not buy your stock? A. I don't recall that.

Charles Bobrowski, sworn as an interpreter.

JOHN LINGLEBACH, being duly sworn and examined through the interpreter, testifies as follows:

Direct Examination by Mr. Lewis:

Q. Can you speak a little English? A. Very little.

Q. Where do you live? A. In Brooklyn.

Q. How long have you lived in Brooklyn? A. Four years.

Q. Did you ever live in Paterson? A. Nine years.

Q. What is your present business? A. I have a wood-turning place.

Q. What was your business in Paterson? A. Wood-turning.

Q. Were you one of the stockholders of the Stanley Silk Dyeing Company? A. Yes.

Q. I show you Exhibit C-2 in this case and ask you if you have seen it before? A. Yes.

Q. How many shares is that certificate for? A. Ten.

Q. Did that certificate once belong to you? A. Yes.

Q. I show you Exhibit C-6 and ask you if you have seen that before? A. Yes.

Q. For how many shares? A. Three.

Q. Is it a certificate for three shares in the Stanley Silk Dyeing Company? A. Yes.

Q. Did you once own these shares? A. Yes.

Q. I show you another Exhibit C-7, and ask you if you have seen that before? A. Yes.

Q. For how many shares? A. One share.

Q. Did you once own that certificate? A. Yes.

Q. Did you get those certificates from the Stanley Silk Dyeing Company? A. Yes.

Q. Did you get them on the dates that they are respectively dated? A. I don't think so.

Q. Who delivered them to you? A. I received them in the office.

Q. From whom, do you remember? A. I don't remember.

Q. Do you remember whether you got them at one time or at different times? A. I don't remember.

Q. Did you sell these shares of stock? A. Yes.

Q. To whom did you sell them? A. To the company.

Q. Whose signature is that on the assignment of these shares at the bottom? A. Which signature do you mean?

Q. Whose signature is this? A. Mine.

Q. Whose signature is this? A. Mine.

Q. And whose signature is this? A. Mine.

Q. Where were you when you put your name on these assignments? A. In the lawyer's office.

Q. Was there any writing over your name in the assignment when you signed it? A. I don't know—in what way?

Q. Anything written over your name? A. I did not see it.

Q. Did you give anyone any authority to write in the name of Rubinstein over your name? A. No.

Q. Who paid you for these shares? A. I received a certified check in the lawyer's office.

Q. Who gave you the check? A. The lawyer.

Q. To whom did you give the stock certificates? A. To the lawyer.

Q. I show you a check of the Stanley Silk Dyeing Company signed "A. Rubinstein, President, S. Kasprzak, Treasurer", dated August 5th, 1918, for $2450, and ask you whose signature that is on the back of the check? A. My own.

Q. Did you get the money for the check? A. Yes.

Q. How much was it? A. $2450.

Q. Did you also get a note? A. Yes.

Q. I show you a note of the Stanley Silk Dyeing Company for $70, payable to the order of John Linglebach, in three months, dated August 5th, 1918. Is that your signature on the back of the note? A. Yes.

Q. Was the note paid? A. Yes.

By the Court:

Q. How? A. I put it in the bank and the bank paid me.

Mr. Lewis—I offer the check and note in evidence.

Mr. McKee—No objection.

(Check is marked Exhibit D-6. Note is marked Exhibit D-7.)

Cross Examination by Mr. McKee:

Q. You know Mr. Walzak? A. Yes.

Q. He was in the company with you, was he not? A. Yes.

Q. He was the man that usually directed things for you before the shareholders, was he not? A. He had the same say as the rest of the directors.

Q. (Question repeated) He was the man that usually directed things for you before the shareholders, was he not? A. No.

Q. Did you know lawyer John Benson in Paterson? A. I was there the first time.

Q. Who took you there? A. Nobody.

Q. How did you come to go there? A. I got a letter to come.

Q. Didn't you go there with Mr. Walzak? A. I come myself.

Q. Did you go with Mr. Walzak to Mr. Smit? A. I want to know—no. I was down to Mr. Smit's office many times, but I don't know when I—

Q. Did you ever go there with Mr. Walzak about selling your stock? A. No.

Q. Did you ever personally go to Mr. Smit about selling your stock? A. No.

Q. Did you ever offer to sell your stock at the meeting; did you ever offer at any other place to sell your stock? A. No.

Q. How did Mr. Benson know that you wanted to sell your stock, do you know? A. I don't know.

Q. Didn't you ever tell Mr. Benson that you would sell your stock? A. I was there for the first time.

Q. You were there for the first time at the time you received your check? A. Yes.

Q. Had you told Mr. Walzak that you would sell your stock? A. Yes.

Q. When did you take your stock to Mr. Benson? A. I don't remember the date.

Q. Was it the date that you got your check? A. Yes.

Q. Your stock had never been out of your possession up to that time? A. No.

Q. How do you account for the assignment being dated August 3rd, and your check being dated August 5th? A. I don't know how it happened.

Q. Did you tell Mr. Benson to whom you were selling the stock? A. No.

Q. Can you read English? A. Not much; very little.

Q. I show you Exhibit D-6. Would you kindly read that? A. The check is for the amount of $2450. and is signed by A. Rubinstein and S. Kasprzak.

Q. Can you read this large print? A. It is written "Stanley." Which print do you mean?

Q. The large print? A. "Hamilton Trust Company."

Q. What did you say? A. "Hamilton Trust Company."

Q. Now, when you took your stock to Mr. Benson's office, you had not signed it yet, had you? A. No.

Q. And Mr. Benson was there at the time you signed it? A. Yes, sir.

Q. And was anybody else there that time? A. I don't remember. I think Oltarzewski and Walzak.

Q. Who told you to sign your name here where it is signed, referring to Exhibit C-6? A. The lawyer.

Q. And at that time you say there was no writing in the body of the assignment? A. I don't remember.

Q. You don't remember whether there was any writing in there or not, do you? A. There wasn't any writing in there.

Q. How do you know? A. I was signing it, and I ought to know.

Q. You said a moment ago that you did not remember whether there was anything written in there or not? A. I thought you meant at the bottom.

Q. There is nothing written on the bottom but your name, is there? A. Yes.

Q. Did you look at this part of the assignment, referring to the top part of the assignment of Exhibit C-6? Did you look at it at all at the time that you signed it? A. I took it out of my pocket and signed the assignment and got the check.

Q. And it had not been out of your pocket before that time? A. No.

Q. You are sure about that? A. Sure.

Q. Did you tell the lawyer that you were selling this to the Stanley Silk Dyeing Company? A. He didn't ask me anything and I didn't tell him anything.

STANLEY OLTARZEWSKI, sworn as a witness on the part of the defendants, being examined through the interpreter, testifies as follows:

Direct Examination by Mr. Lewis:

Q. Were you a stockholder in the Stanley Silk Dyeing Company? A. Yes.

Q. I show you Exhibit C-4 and ask you if you have seen it before? A. Yes.

Q. Did that certificate once belong to you? A. Yes.

Q. For how many shares is it? A. Ten.

Q. Look at it and be sure. A. Twelve. I made a mistake.

Q. Did you sell these shares? A. Yes.

Q. To whom did you sell them? A. To the company.

Q. I call your attention to the signature at the bottom of the transfer. Is that your signature? A. Yes.

Q. Where were you when you signed it? A. In John Benson's, the lawyer.

Q. Was there anything written above your signature when you signed it? A. No.

Q. Was the place where "Alexander Rubinstein" is now written, blank when you signed it; were the places where "Alexander Rubinstein" was written on the assignment blank when you signed it?

Mr. McKee—I object to the question as leading.

The Court—It is merely a repetition.

Mr. Lewis—Question withdrawn.

Q. Did you authorize anybody to write anything over your signature? A. No.

Q. I show you a check dated August 5th, 1918, signed "Stanley Silk Dyeing Company, A. Rubinstein, President; S. Kasprzak, Treasurer," for $2100, payable to your order and ask you if that is your signature on the back of the check? A. Yes.

Q. Did you get the money for that check? A. Yes.

Q. How much? A. The amount that is on the check.

Q. Where did you get the check paid? A. In the bank.

Q. Did you, at the time that you got the check, get a note? A. Yes.

Q. I show you a note of the Stanley Silk Dyeing Company, dated August 5th, 1918, for $60, payable in three months, and ask you if you were given that note? A. I don't remember where I signed it, but the signature is mine.

Q. Did you get it; was it given to you? A. Yes.

Q. Who gave the check and the note to you? A. John Benson.

Q. To whom did you give your certificate of stock? A. To John Benson.

Mr. Lewis—I offer the check and note in evidence.

Mr. McKee—No objection.

(Check is marked Exhibit D-8. Note is marked Exhibit D-9.)

By the Court:

Q. Was the note paid? A. Yes.

Q. How? A. In the bank.

Q. How did it get in the bank? A. I don't remember, but I think I put it on the book.

Mr. Lewis—All of these documents are in the usual form and bear the usual bank endorsements.

The Court—I suppose your testimony later on will show that these checks and notes are produced here today by the company or by you in behalf of the defendants.

Mr. Lewis—I produce them on behalf of the defendants right now. There is no doubt about that.

The Court—The record will show that the checks and notes came through the bank to the company, which must be evidence that they were paid by the company.

Cross Examination by Mr. McKee:

Q. How often had you been to Mr. Benson's office? A. I don't remember exactly, about two or three times.

Q. You went there with Mr. Walzak? A. Yes.

Q. He took you to Mr. Benson's office, didn't he? A. No.

Q. Did you know Mr. Benson before that time? A. No.

Q. You never had done any business with him at all? A. No.

Q. How did you know to go to Mr. Benson? A. I was in Mr. Smit's office and he sent me. He directed me to Mr. Benson.

Q. Mr. Smit did? A. Yes.

Q. You had been to Mr. Smit to offer to sell your stock, had you not? A. I was in Mr. Smit's office but not in regard to selling the shares—only about the trouble that we could not get in the office of the factory.

Q. Well, didn't you and Mr. Walzak and Mr. Linglebach all agree to sell your stock? A. Yes.

Q. And you had had several meetings before you went to Mr. Smit's office to try to get the company to buy your shares, had you not? A. In the office.

Q. And they would not buy your shares, would they? A. I don't remember.

Q. Why, you don't remember that the company refused to buy your shares that time? A. I remember now that the company said at one meeting that they would, and the next meeting they refused to buy it; they would not buy it.

Mr. Ward—The witness testified at one meeting they said they would and the next meeting they refused to buy, because they said there was no money to buy the shares. That is most important. That is our contention.

The Court—Is that what he said?

The Interpreter—That is what he said now. He corrected himself.

Mr. Ward—He said that the first time, but the interpreter did not interpret it all to us.

The Court—I believe the interpreter is doing the best he can. He has not been in court very often.

Mr. McKee—I think he has been trying to do his best up to this time.

Q. So, it was after the meeting that the company refused to buy your stock that you went to Mr. Smit, was it not? A. I don't remember.

Q. You went to Mr. Smit for him to sell your stock, didn't you? A. I went to see Mr. Smit about not being able to get into the office—not being admitted to the office.

Q. Didn't you talk to Mr. Smit about selling your stock? A. We only talked what we could do about it.

Q. About what? A. What we could do about not being able to get into the office.

By the Court:

Q. Did you ask Mr. Smit anything about the stock? A. We only asked what we could do about that—about the shares.

Q. Why did he send you to Mr. Benson? A. Bcause he would not have anything to do with it.

By Mr. McKee:

Q. With what? A. Because he would not like that; he didn't want to have anything to do with the company, and he would rather have somebody else transact that.

Q. Transact what? A. In regards to the matter of not being able to get into the office.

Q. You never spoke to Mr. Benson about not being able to get into the office, did you? A. Yes.

Q. And then did you speak to him about selling your shares afterwards? A. First off, we did not; we only spoke of being refused admittance to the office.

Q. And then afterwads you did? A. We did afterwards, and he advised us the best way. Settle it and have it done peaceably and sell the shares.

By the Court:

Q. Did you employ Mr. Benson to arrange the sale of your shares for you? A. We did not hire him, but he says that he would take care of the matter.

Q. Who paid Mr. Benson for his services? A. We did.

By Mr. McKee:

Q. Mr. Smit was the attorney for the company, was he not? A. Yes.

Q. Why would they refuse to let you go in the office? A. I don't know.

Q. And that is what you objected to, isn't it? A. Yes.

Q. And when you spoke to Mr. Benson about selling your stock, did he notify you that he had made provisions for the sale of the stock? A. I don't know.

Q. You do know, though, that Mr. Benson had told you that he was going to sell your stock? A. We were there all the time when we were talking about it.

Q. With whom were you talking? A. With Mr. Benson.

Q. And then you brought your stock down to Mr. Benson, didn't you? A. When we agreed, we did; after we agreed we did.

Q. After you agreed you did? A. What did you agree on—the price? A. Yes.

Q. And with whom did you have the argument about the price? A. Mr. Rubinstein and Mr. Kasprzak.

Q. And did you sign Exhibit C-4 before the day that you received your check? A. No; the same day I got the check.

Q. The same day you got your check. Don't you remember one day being there with Mr. Rubinstein and Mr. Benson told you to go home and come back when Mr. Rubinstein had the money? A. Yes.

Q. And that was the day that you signed your certificate, was it not? A. I don't remember—only I didn't assign the share until I got the money.

Q. Of course not, but it was the next day or two days afterwards, was it not that you got your check? A. Maybe, but I don't remember.

Q. You say at the time you signed this transfer there was no writing on it at all? A. No.

Q. Sure about that? A. Yes.

Q. To whom did you instruct Mr. Benson to transfer these shares? A. Nobody.

Q. Was Mr. Rubinstein present on the day that you received your check, on the fifth of August? A. I don't remember.

Q. Mr. Linglebach and Mr. Walzak went with you at the time that you received your check? A. Only Mr. Walzak. I don't remember about Mr. Linglebach about it.

Q. You had several meetings at Mr. Benson's office before you received your check, did you not? A. Yes.

Q. Was Mr. Walzak always present? A. I don't remember.

Q. Well, you remember being present more than the one time when you got your check, don't you? A. Yes.

Q. How many times about? A. I don't remember exactly how many times, but about two or three times.

Q. And you only had two or three meetings, didn't you? A. I don't remember; maybe two or maybe not.

Q. Do you ever recall any meeting you had about the transfer of this stock that Mr. Walzak was not present? A. I don't remember.

Q. Well, Mr. Walzak was present at all the meetings, was he not? A. I don't remember yes or no.

Q. Linglebach was present at all of these meetings, was he not? A. I don't remember.

Q. Don't you remember him being present at any of the meetings? A. I don't remember.

Q. Do you remember being with him at Mr. Smit's office? A. No.

Q. He objected, as well as you, to the fact that they would not let you go in the office, didn't he? A. I think so.

Q. Was it not you and Walzak and Linglebach and Harsche that were objecting because they would not let you go in the office—you four? A. Yes.

Q. And you were together? A. Harsche, I don't remember because John Harsche was in the army, and Mr. Linglebach lived in Brooklyn.

By the Court:

Q. Do you remember the day you took the stock to Mr. Benson's office? A. Yes.

Q. Was that the same day that you wrote your name on the back of it? A. Yes.

Q. And where did you take it from before you wrote your name on the back of it? A. From my pocket.

Q. Did you hand it to Mr. Benson before you wrote your name on it? A. No.

Q. What I understand you to say is that you wrote your name on it first and then handed it over to Mr. Benson? A. He handed me a check first and then I wrote my name, I assigned my shares; signed my name on the back of my shares.

Q. Was that the first time it went out of your possession after you got in Mr. Benson's office? A. Yes.

Mr. McKee—Before we adjourn there is one matter I would like to bring to the court's attention. I would like to have permission to examine these books.

The Court—If you call for the books and they are produced on your call, you must offer them in evidence.

Mr. McKee—May we make application for an examination of the books under the Evidence Act?

The Court—You have not done that.

Mr. McKee—May we do it now?

The Court—No.

(At this point recess is taken until two o'clock in the afternoon.)

FRANK SMIT, sworn as a witness on the part of the defendants, testifies as follows:

Direct Examination by Mr. Lewis:

Q. You are an attorney at law of this state? A. Yes.

Q. Practising in Paterson? A. Yes, sir.

Q. Did you act as attorney in the organization of the Stanley Silk Dyeing Company? A. I did.

Q. Whom did you represent at that time—what person? A. Mr. Kasprzak.

Q. Stanley? A. Stanley Kasprzak.

Q. Later on, when the quarrel arose between some of the stockholders of the company, were you visited by Mr. Walzak? A. Yes.

Q. And others? A. And one other I remember—one other stockholder beside Mr. Walzak.

Q. Did you decline to act at that time? A. Yes, sir.

Q. Why? A. This gentleman, Mr. Walzak, and the other stockholder came in and said that—

Mr. Ward—I object.

Q. Why did you decline to act?

Mr. Ward—I object.

The Court—Objection sustained.

Q. Later on, in the Fall of 1922, were you visited by Mr. Kasprzak? A. Yes.

Q. With his daughter? A. Yes.

Q. Do you know about the time the notice was sent out for the annual meeting of the company? A. The exact time I do not know. It was

around the latter part of September or the first of October.

Q. Were you about that time visited by Mr. Rubinstein? A. Yes.

Q. Tell us what Mr. Rubinstein said to you? A. Mr. Rubinstein said that he was in a great trouble with Mr. Kasprzak and the company; they wanted to put him out. He said to me that I was the only man who could fix it up. He said to me: "I will do anything if they only will not put me out." I am hazy about this part. I have recollection that I asked him what he wanted to do. He said—this I remember distinctly—he said: "I will settle it fifty-fifty, but I want one more share than they have. I want to be boss."

Cross Examination by Mr. Ward:

Q. You have been admitted how long? A. Since 1906.

Q. Do you form many corporations? A. Yes.

Q. And have acted in an advisory capacity in a great many instances? A. Yes,

Q. With reference to corporation work? A. Yes.

Q. Corporation law? A. Yes.

Q. This corporation was formed under your immediate supervision, was it not? A. Yes.

Q. At the time it was formed, were you present at the first meeting? A. The first meeting of what?

Q. Of the corporation? A. Of the stockholders or directors?

Q. Of the incorporators? A. Yes; when they signed the certificate of incorporation I was present.

Q. You advised them from time to time, did you? A. No, sir.

Q. Did you have the secretary sworn in at the first meeting? A. They were sworn in the first meeting.

Q. After that were you aware of the fact that the office of secretary was occupied by some other person than the original holder or occupant of the office? A. No, sir.

Q. You do recall, however, that Walzak and several others were in some difficulty with the company, and they consulted you about it? A. Walzak and one other consulted me.

Q. And one other? A. Yes.

Q. At that time you were acting as attorney for the corporation? A. No, sir.

Q. You were not? A. No, sir.

Q. Had you done any work for them? A. In the beginning I incorporated them and searched their title; I think I drew up their bond and mortgage to the Hamilton Trust Company.

Q. I mean: After the incorporation, had you done any work for them? A. None that I can remember.

Q. Had you advised them at all? A. I cannot remember.

Q. Then, why did you hesitate to act in behalf of Walzak? A. Well, Walzak said to me Mr. Kasprzak and Mr. Rubinstein had shut them out of the office. Well, I said: "I will do all I can to settle this, but I will not take active proceedings against the company because of my friendship for Mr. Stanley Kasprzak."

Q. Stanley Kasprzak was your friend in the company? A. Yes.

Q. I mean the one person who was your friend? A. Yes.

Q. You did do something, however, didn't you, with reference to Walzak and his difficulty with the company? A. I think not.

Q. Why, you sent for Mr. Rubinstein? A. I didn't send for him.

Q. Well, Mr. Rubinstein came to see you? A. Yes.

Q. You had some talk with him then? A. Yes.

Q. Did you advise your client, Stanley Kasprzak—

Mr. Lewis—I object to the question as not proper cross examination.

The Court—I think the question is proper, except the use of the word "client."

Mr. Lewis—Furthermore, the visit of Mr. Rubinstein is a matter of two or three years after the visit of Walzak.

Mr. Ward—The witness has not said that. The question is withdrawn.

Q. At the time that Walzak came to see you with reference to his difficulties in 1918, did you at that time advise him that it would be best for him to sell his stock? A. Yes.

Q. And it was you who suggested that to him, was it not? A. I don't know whether it was suggested to me by his question or by my own initiative; I don't know which.

Q. But that was your advice, was it not? A. Yes.

Q. And then thereafter you attempted to ef-

fect some such thing as that, did you not, with Mr. Rubinstein—I mean almost immediately thereafter? A. No; I don't remember that.

Q. Well, Mr. Rubinstein came to see you, however, about that time, after Walzak had visited you? A. I don't remember Mr. Rubinstein again until the Fall of 1922.

Q. What did you do, if anything, with reference to what they had told you? A. I said I would do all in my power to settle it, but if it was a case of antagonizing Mr. Kasprzak, I would not enter into the matter.

Mr. Lewis—I think he is talking about the Fall of 1922.

The Court—That is not the question that Mr. Ward is asking.

By the Court:

Q. I understand you are speaking about the time when Mr. Walzak and another stockholder came to see you? A. Yes.

Q. Prior to the Fall of 1922? A. Yes.

By Mr. Ward:

Q. What did you do in the matter before directing them to Mr. Benson? A. Nothing that I remember.

The Court—He hasn't said that he directed them to Mr. Benson.

Q. Did you direct them to Mr. Benson? A. No.

Q. Do you know how they came to go to Mr.

Benson? A. What their motive was I don't know, but I remember Mr. Walzak saying: "Well, if you won't take it, we will go to Mr. Benson."

Q. Between the time that Walzak came to you in 1918 and 1922, did you see Mr. Rubinstein at all? A. I might have seen him on the street.

Q. Never in your office? A. I cannot remember.

Q. Is your recollection good or— A. Poor.

Q. Poor? A. Yes, sir.

Q. As a matter of fact, if I may refresh it, do you recall having done some work for Mr. Rubinstein in 1918, making a search for him? A. I cannot remember.

Q. Do you know what was done by Walzak with Mr. Benson? A. When?

Q. In 1918, after they had left your place, when you told them that you could not act? A. When they left the office I did not hear again from them for some time. How long I do not know exactly.

Q. When was it that you learned that this stock had been transferred by them? A. During the month of September, 1922.

Q. Was that the first that you learned of it? A. It might have been in the latter part of August; it was around that time—the latter part of August or the first part of September.

Q. From whom did you learn it? A. From Mr. Kasprzak—Miss Kasprzak.

Q. Thereafter you acted for Mr. Kasprzak? A. Yes.

Q. And against Mr. Rubinstein? A. Yes.

Q. And did not the same motives actuate you at that time that actuated you in 1918? A.

The same motives—my friendship toward Mr. Kasprzak.

Q. You had done work, had you not, on two occasions—made two different searches for Mr. Rubinstein? A. I cannot remember.

Q. (Showing witness) You directed that this notice be sent out, did you not? A. I drew up one notice or one form of notice I believe.

Q. Which—one form of notice or one notice? A. I remember drawing only one notice.

By the Court:

Q. Of what? A. Annual meeting of stockholders.

By Mr. Ward:

Q. Is that the notice that you drew up? A. Yes.

Q. Is that (showing witness) the envelope in which it was sent? A. I don't know.

Mr. Ward—I ask that notice be marked for identification.

(Notice dated October 10, 1922, is marked C-10 for identification.)

Q. Was there anything done by you between the time in September when Mr. Kasprzak came to see you and the time that this notice was drawn up on October 10, 1922? A. There were some shares transferred in my office—a share of Biersczcad—I think one of his shares. That is all I can remember at this time.

Q. When you say "transferred" what do you

mean? A. I believe there was a share transferred, or shares of Mr. Biersczcad to Veronica Kasprzak.

Q. Transferred to whom? A. To Veronica Kasprzak, if I remember exactly.

Q. And that was the last transfer of shares before this law suit, was it not? A. I don't remember; I don't know.

Q. Why, you have been entirely familiar with all of these proceedings, you have gone over the matter and acted in an advisory capacity, have you not? A. When you speak of "last" it is a matter that is relative. Whether this is first or last I don't know that positively.

Q. So far as you know, this was the last effort made to transfer stock? A. To the best of my recollection, yes.

Q. Now, Mr. Smit, when in September did Mr. Kasprzak come to see you? A. I don't know the exact date or approximately.

Q. Had you not been advising with him in August, 1922? A. I cannot say positively.

Q. Do you remember his return from Europe? A. Yes.

Q. Do you know when that was? A. It must have been around August. That is my best recollection.

Q. Can you give us any idea what part of August? A. No; I cannot.

Q. Was it not immediately after his return that he came to see you? A. I don't know if it was immediately or not.

Q. Now, as a matter of fact, your recollection having been refreshed in that way, was it not in

August that he came to see you? A. That is my impression, it was August.

Q. Then you made a mistake when you said it was September? A. I am not positive. It may have been August or September.

Q. When he first came to see you, what did he do, if anything? A. Whom do you mean by "he"?

Q. Mr. Kasprzak? A. We simply discussed the matter of the next annual meeting of stockholders.

Q. Were you going to add something else? A. The matter of the stockholders' meeting, what notice should be sent, and what should be done for the proper holding of that meeting.

Q. Well, did you not suggest that they call a directors' meeting, that Mr. Kasprzak call a directors' meeting? A. No, sir.

Q. Did you not know that a directors' meeting was called?

Mr. Lewis—For what time?

Q. Did you not know that a directors' meeting was called shortly after Mr. Kasprzak first came to see you? A. I cannot remember that.

Q. Did you not advise the sending of a notice of a directors' meeting to Mr. Rubinstein? A. No. The only notice I remember advising being sent was the notice of the annual stockholders' meeting, which you have just shown me.

Q. Do you know of the directors' meeting which was held before the annual meeting of the stockholders? A. No doubt, I have forgotten all about it. I don't know; I cannot say.

Q. Did you not advise that a meeting might be held and that Mr. Rubinstein's salary might be reduced? A. No.

Q. Did you know that that had been done at any time? A. Yes; I heard of it later, from the minutes, that there was a proposed reduction of salary or attempted reduction. I know no more than appears from the minutes of the meeting of the directors here.

Q. When Kasprzak first came to see you, the trouble was about an automobile that had been bought by Mr. Rubinstein, was it not—that was one of the things, was it not? A. Yes.

Q. And also about a claim that the company had against him for money that he had taken and used in a trip to Europe? A. Whom do you mean by "he"?

Q. Mr. Kasprzak. A. That I don't remember. I remember the item of the bill of sale.

Q. Do you remember that Kasprzak had also borrowed $1500 from the company? A. It was not suggested to me at the time or spoken about, at that time.

Q. Did you learn about these things before you drew the notice of the annual meeting — the notice dated October 10, 1922? A. My recollection is I knew of the bill of sale being in the name of Mr. Rubinstein before that notice was sent.

Q. Now, as a matter of fact, Mr. Smit, did you not know about all of these things that I have mentioned? When I say "all of these things" I mean the automobile, about the claim that Mr. Rubinstein contended the company had against Mr. Kasprzak for the European trip, the money

that paid for the European trip, and about the mortgage? A. No; I do not know about that matter of expenses of the trip to Europe until after that notice, and my information about it is very vague and very small, very slight.

Q. Did you know about it before the annual meeting? A. About what?

Q. About the money that was borrowed by Mr. Kasprzak, as Mr. Rubinstein contended, for his trip to Europe? A. I think it was after that notice was sent that I first learned about that.

Q. Why did you simply have one notice drawn and that directed to Mr. Alexander Rubinstein? A. The others were all friendly to Mr. Kasprzak and they waived any right to any notice.

Q. You knew, as a matter of fact, to comply strictly with the law, that they required notice as well? A. They could sign a waiver of notice.

Q. You knew that this meeting was being called for the purpose of ousting Mr. Rubinstein from this company, didn't you? A. That might have been their motive.

Q. You knew it to be their motive, didn't you?

Mr. Lewis—I object to that as calling for disclosure of confidential communications between counsel and client. I have not objected so far. All of this is not cross examination.

The Court—Do you object now?

Mr. Lewis—I do.

The Court—On what ground?

Mr. Lewis—I am objecting because it calls for—I leave that to Mr. Smit. I withdraw the objection.

Q. (Question repeated) You knew that this meeting was being called for the purpose of ousting Mr. Rubinstein from the company—you knew it to be their motive, didn't you? A. Their motive was to remove him as director.

Q. Did you know it was their motive to remove him from the company? A. If I am able to get that question, it calls for yes or no. I cannot answer it.

Q. You had talked the matter over with the Kasprzaks, had you not? When I say "the Kasprzaks" I mean Veronica and Stanley. A. Yes, sir.

Q. You knew from what had been said to you that they wanted to eliminate Mr. Rubinstein from that company as far as possible? A. Yes.

Q. And the only thing that they had against him was because he had bought an automobile with the company's money, is it not?

Mr. Lewis—I object to that as not cross examination.

The Court—I don't think it is.

Mr. Ward—I won't press it.

Q. You were still acting for them, or for the Kasprzaks, when this meeting was held about which you sent the notice dated October 10, 1922, were you not? A. Yes.

Q. Still advising with them? A. Yes.

Q. Almost daily? A. Yes.

Q. Why were you not present at the meeting? A. The Friday previous to the meeting I think they had been served with the rule to show cause why the meeting of the stockholders should not

be restrained, and the matter was turned over to Judge Lewis.

Q. The meeting, as a matter of fact, was never held, was it? A. Never held.

Q. You were visited by Mr. Rubinstein shortly before the notice of the annual meeting, were you not? A. After the notice and before the meeting.

Q. After the notice? As a matter of fact, Mr. Smit, didn't Mr. Rubinstein go up to your office and consult with you and tell you about the directors' meeting that had been held at which an effort was made to reduce his salary? A. No.

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

Q. Yet, upon receiving this notice of the annual meeting, he sought your advice, didn't he? A. He sought my assistance, not advice, I believe.

Q. Well, your assistance; and he told you about the directors' meeting, didn't he?

Mr. Lewis—Directors' meeting of what date?

Mr. Ward—The directors' meeting that had taken place after Mr. Kasprzak's return from Europe.

A. I don't remember.

Q. Well, you did, however, learn about what had taken place from Mr. Rubinstein or at least learned all about what had taken place at the directors' meeting from Mr. Rubinstein when he came to see you? A. I don't know whether it was all or not; I don't know.

Q. You learned at that time, did you not,

that they had demanded that he turn over the automobile to the company? A. They made a demand.

Q. You learned that the Kasprzaks had demanded that he turn over the automobile to the company? A. Yes, sir.

Q. You learned at that time that he said he would willingly do that, if Mr. Kasprzak would give back the money he had used for his trip to Europe? A. I don't remember that.

Q. Did you ever know that Mr. Kasprzak had used the money of the company for his trip to Europe?

Mr. Lewis—I object as not cross-examination.

The Court—Objection sustained.

Q. Well, after your interview with Mr. Rubinstein and after the sending of this notice, do you recall that Mr. Bluestein came to you with Mr. Rubinstein? A. Yes.

Q. You will recall at that time that there was no claim made by you that this stock in question, the subject of this controversy, had been bought by Mr. Rubinstein for the company? A. Claim made by whom?

Q. By you? A. No.

The Court—The answer to the question is somewhat ambiguous. Let the question be repeated.

Q. (Former question repeated) You will recall at that time that there was no claim made

by you that this stock in question, the subject of this controversy, had been bought by Mr. Rubinstein for the company? A. At the time that Mr. Bluestein called on me I did not make the claim that it belonged to the company.

Q. In fact, Mr. Smit, there was no claim made at any time by you or to your knowledge, until the answer was filed in this cause, that this stock had been acquired by Mr. Rubinstein in behalf of the company? A. Oh, yes; that had been claimed weeks before that—before the answer had been filed.

Q. How long before? A. I think it was about the time of—during the week of the annual meeting.

Q. "During the week of the annual meeting." By that you refer to the meeting that was called in your notice of October 10th? A. Yes; to the best of my recollection.

Q. Was that after the restraining order had been served? A. Before.

Q. How long before the restraining order in this case restraining the holding of the meeting, was served, did you first learn about any claim that this stock was claimed to have been bought by Mr. Rubinstein for the company? A. I cannot remember.

Q. Mr. Smit, you had several interviews with Mr. Bluestein, didn't you? A. Two, if I remember rightly.

Q. And each itme Mr. Rubinstein accompanied him? A. Yes.

Q. And on none of those occasions did you claim to Mr. Rubinstein or to Mr. Bluestein that the stock over which this controversy had arisen

and that you were attempting to acquire, had been obtained by Mr. Rubinstein in behalf of the company, did you?

Mr. Lewis—I object to that. There is no evidence that Mr. Smit was trying to acquire any stock.

Mr. Ward—Question withdrawn.

Q. You were attempting to acquire the stock or part of the forty shares that Mr. Rubinstein had acquired in 1918, were you not? A. I made no attempt on their behalf.

Q. Why, did you not suggest that the matter be adjusted fifty-fifty? A. That was at a conversation between Rubinstein and myself.

Q. Didn't you later suggest that to Mr. Bluestein in Mr. Rubinstein's presence? A. Suggest what?

Q. That the matter be settled fifty-fifty? A. Settled. Compromises are always offered without prejudice.

Q. Didn't you suggest that your client, Mr. Kasprzak, would pay one-half of the $7200 that had been paid by Mr. Rubinstein to acquire this stock? A. I don't remember.

Q. Did you not suggest that upon the payment of one-half of the $7200 that Mr. Rubinstein had paid, that upon payment of that sum by Mr. Kasprzak to Mr. Rubinstein, that Mr. Rubinstein would assign twenty of the forty shares to Mr. Kasprzak? A. No.

By the Court:

Q. Or assign the shares to anybody else? A. No; I did not make that suggestion.

By Mr. Ward:

Q. Did you ever make the suggestion that Mr. Rubinstein assign twenty shares or one-half of those forty shares, to Mr. Kasprzak? A. Did I suggest that?

Q. Yes. A. I may have.

Q. And did not Mr. Rubinstein reply No, that he would not do that, but that he would be willing to assign the shares which were left over after he had retained fifty-one per cent. of the shares? A. No; he did not say. He merely made the general statement that he wanted to have only one share to control the company.

Q. As a matter of fact, you were instructed by Mr. Kasprzak and were endeavoring in his behalf, to acquire sufficient stock to control the company, were you not?

Mr. Lewis—When?

Mr. Ward—During the negotiations with Mr. Bluestein or Mr. Rubinstein.

A. I made no endeavor. I was advising him from time to time.

Q. Was that your object? A. Yes.

Q. Now, Mr. Smit, at that time did you know that it was claimed by Kasprzak that these forty shares had been acquired by Mr. Rubinstein in behalf of the company? A. At what time?

Q. At the time you were carrying on the negotiations with Mr. Rubinstein and Mr. Bluestein? A. It developed during that time I believe.

Q. During that time—then, why didn't you ever mention it to them? A. To whom?

Q. To Mr. Rubinstein or Mr. Bluestein? A. They came to the office—there wasn't any reason on my part to suggest that—they came to the office and asked if they could see the books of the company; they wanted to see the books of the company; where were they? I said they were at the office of the Stanley Silk Dyeing Company.

Q. These conferences lasted an hour and sometimes an hour and a half? A. Which conferences do you mean?

Q. With Mr. Bluestein and Mr. Rubinstein in your office? A. Oh, about a quarter of an hour, or half an hour.

Q. When you learned that the claim was being advanced that Mr. Rubinstein had acquired this stock in behalf of the company and for the company, at that time had the restraining order in this case been served? A. Not yet.

Q. How soon after? A. To the best of my recollection, a few days later; it might have been a week later; I have forgotten.

By the Court:

Q. You said early in your cross-eaxmination, Mr. Smit, that you first learned of this stock transfer to Mr. Rubinstein in August or September, 1922, from Miss Kasprzak? A. From Miss Kasprzak?

Q. Is not that what you said? A. Transfer from whom?

Q. To Mr. Rubinstein? A. I don't remember.

Q. I have a note here that you said: "I heard first of the stock transfer in August or September, 1922, from Miss Kasprzak, and thereafter I acted for Stanley Kasprzak." A. That is the

transfer, referring to the transfer in Benson's office, these forty shares; I had reference to that. The first time I heard about it was that time after they left my office.

Q. That is what Mr. Ward is talking about. As I understand him, he is talking about the forty shares, and you say now you were talking about the forty shares.

Mr. Lewis—My understanding is that Mr. Ward is now cross-examining the witness upon the conversation held in the fall of 1922 between the witness and Mr. Rubinstein and Mr. Bluestein a few days before the restraining order was issued on the present bill, while the transfers in Benson's office were made in August, 1918.

The Court—Yes. Now I understand that the witness now says that it was during the negotiations with Mr. Bluestein and Mr. Rubinstein held some time after the notice for the annual meeting was sent out, that he first heard about this stock transfer; but early in his cross-examination, I called his attention to the fact that I understood him to say that he first heard of the stock transfer in August or September, 1922, from Miss Kasprzak.

Q. Which is right? A. I misunderstood the question.

Q. Which question did you misunderstand? A. This last one.

Q. Tell us what the fact is. When did you first hear that Rubinstein had acquired or that he

claimed to be the owner of those forty shares of stock?

Mr. Lewis—The witness has not testified at any time, as I understand it, that he was informed that Rubinstein had acquired stock.

The Court—Mr. Smit is a lawyer and is associated with you in the conduct of the case and knows about the case.

Mr. Lewis—I think not. I do not think he is associated with me in the conduct of the case—

The Court—He knows what this controversy is about; he is sitting here listening to the testimony, and I would suggest to Mr. Ward to let Mr. Smit clear this up in his own way; let him make his own statement as to his first knowledge of the transfer of the stock, who he understood was the owner of it, when he first heard about it. Is that satisfactory?

Mr. Lewis—May I be permitted to ask this question—

The Court—This is Mr. Ward's cross-examination.

Mr. Lewis—It is just a suggestion as to the form of the question—when he first heard that Mr. Rubinstein made a claim to own the forty shares of stock that formerly belonged to Walzak and the others.

Q. When Mr. Rubinstein first made the claim that he owned the forty shares—tell us when Rubinstein made the claim—when you first heard

that he made the claim? A. I think it was during the week of the annual meeting, to the best of my recollection.

Mr. Lewis—May I ask whom did he hear it from?

Mr. Ward—If His Honor will permit.

By Mr. Lewis:

Q. Whom did you hear it from? A. I believe —this is from a hazy recollection—I think it was from Mr. Rubinstein in the office.

By Mr. Ward:

Q. As a matter of fact, right from the time that Kasprzak consulted you down to the present time, this controversy has been kept alive, has it not? A. I withdrew from the case when the rule to show cause was served, a day or two previous to the date of the annual meeting, when I turned the matter over to Judge Lewis.

Q. Before that Mr. Bluestein was in consultation with you, was he not? A. I remember he was there twice.

Q. Before that Miss Kasprzak and Mr. Kasprzak had been up to see you, had they not? A. Yes.

Q. And there had been some effort made to transfer the stock owned by Mr. Biezczad to Miss Kasprzak, had there not? A. Yes.

Q. That was when? Would your recollection be refreshed if you had the stock certificate? A. I would not remember it.

Q. Wouldn't that refresh your recollection? A. It might have, if I witnessed it.

Q. August 15, 1922, "Witness: Frank Smit"? A. My name is there. That is my writing.

Q. That is correct, is it? A. Yes.

Q. The date is in your handwriting? A. Yes, sir.

The Court—What does that date refer to?

Mr. Ward—Transfer of stock from Mr. Biezczad.

The Court—That is Biezczad's signature?

Mr. Ward—Yes, sir.

Q. Now, Mr. Smit, you knew at that time when you transferred that stock that there was going to be a special meeting that day or night, didn't you? A. On the same day, August 15th?

Q. Yes. A. No.

Q. Didn't they tell you so? A. Who?

Q. Mr. Kasprzak and Miss Kasprzak? A. They did not speak to me about a special meeting then.

Q. Did they speak to you about a meeting that was going to be held that night? A. Not that night.

Q. That day? A. Not that day.

Q. You have testified, however, that they did tell you about the meeting later on? A. The annual meeting.

Q. About that meeting, you have testified? A. I never testified—

Q. Didn't you testify that you knew after that meeting that there was a controversy about Mr. Rubinstein and the automobile; have you not

testified to that? A. Meeting of the client and myself in my office.

Q. You knew that there was a meeting at which Mr. Rubinstein had been in attendance when the Kasprzaks accused him of having bought the automobile with the company's money; you knew about that? A. I learned about it later.

Q. You heard about it from the Kasprzaks, didn't you? A. Yes.

Q. You heard from the Kasprzaks that there had been a meeting, didn't you? A. I don't remember.

Q. You don't remember? A. No.

Q. Didn't you hear from them at that time that there had been an effort on the part of Mr. Rubinstein to have forty shares of stock transferred on the stock transfer book? A. August 15th?

Q. That the effort had been made on August 15th? A. No.

Q. So, then, the Kasprzaks did not tell you that at a meeting at the same time that the automobile was discussed, that Mr. Rubinstein tried to have forty shares of stock transferred to him or at least transferred on the stock transfer book? A. No; they didn't tell me that; no, sir.

Q. Did they tell you that he wanted the stock transferred on the seventeenth of August? A. No; they didn't tell me.

Q. Did they tell you that the stock that you yourself had attempted to transfer or have assigned to Miss Kasprzak had not been transferred on the transfer book because Mr. Rubinstein would not do it? A. No.

Q. Did they tell you that Mr. Rubinstein had refused to sign the transfer because they would

not transfer forty shares of his? A. They didn't tell me that, to the best of my recollection. I don't remember.

Q. Didn't they consult you about the matter, about their rights with reference to transferring this stock? A. Yes.

Q. Right at that time? A. I withdraw that answer. No, sir. All they consulted me about was drawing up this form of assignment on August 15. All they asked me to do was to witness the assignment of the stock.

By the Court:

Q. What assignment of stock are you speaking of? A. From Biezczad.

The Court—Are you sure it was August 15th? The witness first said August 5th.

By Mr. Ward:

Q. It was as early as August 5th that that stock was transferred? A. Yes.

Q. Don't you remember telling Mr. Rubinstein and Mr. Bluestein shortly before the restraining order was served, and while the negotiations were going on between you and Mr. Bluestein, that you had advised Miss Kasprzak not to transfer those forty shares on the transfer book; do you remember that? A. Yes and no. What forty shares?

Q. The forty shares that we are talking about, that are the subject of this suit, Mr. Smit. A. Those forty shares, no.

By the Court:

Q. What forty shares did you refer to? A. At

that time Miss Kasprzak—I have forgotten what time it was but during the arguments, there was talk about a certificate of forty shares, one certificate for forty shares instead of four certificates for shares amounting to forty shares; there was a confusion; they wanted to see the books; that is Mr. Bluestein and Mr. Rubinstein talked about a proposition of settlement.

By Mr. Ward:

Q. You then decided that you would take a fifty-fifty settlement? A. That is what I was deciding, the proposition of settlement.

Q. You did say that? A. I say no, sir; I just told you—

Q. Do you remember around the latter part of August advising Miss Kasprzak to enter the ten shares of stock which you had attempted to have assigned to her, to enter them in the stock transfer book herself? A. I told her to have them entered; I don't remember if I told her to do it.

Q. But you did tell her to have them entered? A. Yes.

Q. Didn't you know at that time that there was a dispute about the entering of those shares?

Mr. Lewis—Which shares?
Mr. Ward—The ten shares.

A. I never knew there was any dispute concerning the Biezczad shares.

Q. Didn't you know that there was a dispute about having those ten shares entered upon the the stock transfer book? A. No, sir.

Q. Why was it necessary or did you deem it necessary to tell her to enter those shares herself? A. I did not tell her to enter them herself. I told her to have them entered in the usual way. All they came to see me about was the formality of the assignment.

By the Court:

Q. Didn't you know at that time that Mr. Rubinstein objected to the transfer of these ten shares on the company's books? A. No, sir.

By Mr. Ward:

Q. You knew that Miss Kasprzak herself had entered these ten sharse, didn't you? A. Now, when?

Q. Some time after you attempted to have the shares assigned to her? A. I don't know who entered them.

Q. Didn't you tell Mr. Rubinstein and Mr. Bluestein in your office that when Miss Kasprzak reported to you that Mr. Rubinstein would not consent to the transfer of these ten shares, that you had advised her to do it herself? A. No.

Q. Were you not in the confidence of Mr. Kasprzak and Miss Kasprzak? A. Yes.

Q. Yet I now understand you to say that in August, when there was this refusal on the part of Miss Kasprzak to transfer Mr. Rubinstein's forty shares and his refusal to transfer or consent to the transfer of her ten shares, that they did not tell you about it?

Mr. Lewis—Objected to.
The Court—Objection sustained.

Q. In August, 1922, after you had had the assignment of these ten shares made up in your office, did you learn from Mr. Kasprzak or Miss Kasprzak that Mr. Rubinstein had refused to have these ten shares transferred on the stock transfer book and that Miss Kasprzak had refused to have transferred the forty shares of Mr. Rubinstein?

Mr. Lewis—I object to the coupling of these two matters in the one question. One part is possibly cross-examination and the other is not; that is, the part in reference to the ten shares is not cross-examination.

The Court—Objection sustained.

Q. In August, 1922, did it come to your knowledge from any source, that Miss Kasprzak had refused to transfer forty shares held by Mr. Rubinstein? A. No.

Q. And your best recollection now is that the first that that came to your attention was around the time the restraining order was served? A. What came to my recollection?

Q. That Miss Kasprzak and Mr. Kasprzak had refused to transfer on the books of the company forty shares held by Mr. Rubinstein? A. No. I never testified that they refused during August to do anything.

By Mr. Lewis:

Q. What is that? A. There was no testimony given by me that they made any refusal in August.

By the Court:

Q. Mr. Ward's question was whether it came to your attention about the time the restraining order was served, for the first time, which as I understand it was in October, 1922? A. I cannot answer that Yes or No in the form it is put, but if Your Honor permits I will explain that.

By Mr. Ward:

Q. If you cannot answer, that is sufficient. You stated, in reply to questions by His Honor and by Judge Lewis, that around the time this restraining order was served, or shortly before as I recall your evidence, that it came to your attention that Mr. Rubinstein held forty shares of stock, which the Kasprzaks had refused to put on the transfer book; is that correct? Am I correct in that? A. I cannot answer that form of question.

By the Court:

Q. You ought to be able to state, in answer to that question, when the first time was that you heard that Rubinstein claimed the stock and the Kasprzaks refused to make the transfer? A. To the best of my recollection, it was during the week of the annual meeting.

By Mr. Ward:

Q. Before that time did you know anything about the fact that Mr. Rubinstein held forty shares, referring to the forty shares that are the subject-matter of this suit? A. No; I did not.

By the Court:

Q. Before October, 1922, what information or knowledge did you have about the transfer by the several stockholders of the forty shares that are now in question? A. I cannot recall anything. To the best of my recollection, it came to my knowledge around the week of the annual meeting.

Q. I understand this, then, Mr. Smit, that you at one time knew that Walzak, Linglebach, Harsche and Oltarzewski were stockholders of the company? A. I knew they had been; yes.

Q. You knew they had been? A. Yes.

Q. When was the first time that you learned that they had transferred their stock to anybody? A. I can only repeat that to the best of my recollection, it was during the week of the annual meeting. That is the only time I can fix my dates on anything.

By Mr. Ward:

Q. Do you recall meeting Mr. Bluestein on the street about a week before the restraining order was served, in front of the City Hall? A. I cannot recollect.

Q. You cannot recollect? A. I cannot recollect. My impression was the only time I met him was at my office.

Q. It was at noon time and you were just going to your lunch and he was going to his? A. I cannot remember; I do not remember that.

Q. Can you tell us any more definitely how long it was before the annual meeting that you knew anything about the forty shares that were

owned by Mr. Rubinstein and which are the subject matter of this suit? A. No more than I have testified.

Q. Was it a week or two weeks or a day or two days? A. During that week is the best I can say.

By the Court:

Q. That is, during the week? A. During the week of the annual meeting.

Q. During the week of the day for which the annual meeting was called? A. Yes.

Q. Not during the week of the date of the notice? A. During the week of the date the annual meeting was called for.

By Mr. Ward:

Q. When you sent this notice out dated October 10th, did you then know about this stock?

The Court—I cannot permit any further questioning on that. He has distinctly said two or three times recently that the first he knew about it was during the week of the date for which the annual meeting was called, and not the week of the date of the notice.

STANLEY KASPRZAK, one of the defendants, sworn as witness on the part of the defendants, testifies as follows:

Direct Examination by Mr. Lewis:

Q. You live in the City of Paterson? A. Yes, sir.

Q. And have lived there how long? A. In Paterson eighteen years.

Q. When did you come from Poland? A. 1905.

Q. Have you lived in Paterson ever since you came there? A. Yes.

Q. What is your business? A. Silk dyer.

Q. How long have you been a silk dyer? A. From 1890.

Q. Have you been engaged as a silk dyer ever since you came to Paterson? A. Yes, sir; in the old country, too.

Q. Where did you work in Paterson as a silk dyer? A. In Wagaraw Silk Dyeing Company.

Q. For how long? A. From 1909 to 1916.

Q. When did you first become acquainted with Alexander Rubinstein, the complainant? A. I don't understand that.

Q. When did you first know Rubinstein? A. I live in 1909 in the same house with him.

Q. Upstairs or downstairs? A. I don't remember.

Q. Who first talked about forming the corporation, the Stanley Silk Dyeing Company, to you? A. Two years before I was in the street. "What for I no go in business?" I say I no like it.

Q. Who said that? Who asked you why you did not go into business? A. Rubinstein. I say I no like to go in business.

Q. Go in what business? A. Any kind of business.

(On application of counsel Peter Prazmowski is sworn as interpreter, and ex-

amination of witness continues through interpreter.)

Q. When did Rubinstein first talk to you about forming the Stanley Silk Dyeing Company? A. I remember it was in September, and we started to work in November.

Q. Was that the first talk you had with him about going in business together? A. It was my first talk to join the business of dye house.

Q. Where was the conversation held? A. Mr. Rubinstein came into my house.

Q. What did he say about raising money for the company? A. I said I have no money, and he said he also has no money, but he said that other people have money.

Q. How did you finally get the money to pay for your shares? A. I had so much money, so much of my own money.

Q. How did Rubinstein get the money to pay for his shares? A. He had eight hundred dollars and two hundred dollars he borrowed from my wife.

Q. Did William Kasprzak come into the company at the same time? A. Yes, sir.

Q. When you had agreed to form the company, did you enter into an agreement in writing with each other about it? A. With who?

Q. With the other stockholders? A. No.

Q. Did you make any agreement about selling the stock of the company? A. No.

Q. Do you remember any agreement that they all signed? A. Yes, sir.

Q. Not to sell their shares to outsiders?

Mr. Ward—Objected to.

The Court—Objection sustained.

Q. When the company was organized did you and Rubinstein sign an agreement with the company? A. We all signed one paper.

Q. I mean an agreement about the work that was to be done? A. I remember there was some other papers signed but I don't know what.

Q. (Showing witness) Is that your signature to this paper? A. Yes, sir.

Q. Do you know the handwriting of Alexander Rubinstein? A. Yes, sir.

Q. Is that (indicating) his signature to that paper? A. Yes, sir.

Q. Do you know the seal of the Stanley Silk Dyeing Company? A. Yes, sir.

Q. Is that (indicating) the seal of the Stanley Silk Dyeing Company to that paper? A. Yes, sir.

Mr. Lewis—I offer this paper in evidence.

Mr. Ward—I don't see the relevancy of it. I object to it.

Mr. Lewis—It shows the relation of these people to the corporation.

The Court—Objection sustained. I suppose that is the same agreement that is in the minutes.

Mr. Lewis—Yes, sir.

The Court—The minutes are in evidence.

Mr. Lewis—I would like to have the paper marked for identification.

(Paper is marked D-10 for identification.)

Q. Do you remember after the corporation was formed that John Harsche and the other stockholders wanted to sell their shares? A. Yes, sir; I remember.

Q. Do you remember that they made their offers to sell at the meetings of the company?

Mr. Ward—I object to the question as leading.

The Court—Objection sustained.

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Q. Do you remember whether they made any offers to sell at any meetings of the company? A. I don't remember.

Q. Do you remember any talk you had with Rubinstein in 1918 about the purchase of the stock of Harsche, Linglebach, Walzak and Oltarzewski? A. Yes, sir; at Lawyer Benson's office.

Q. Who bought those forty shares? A. We made the contract, and the company bought and

20 the company paid for.

Q. Did you and Rubinstein talk over the way in which the shares should be bought? A. No, sir.

Q. Was there any agreement that the shares should be bought by the company?

Mr. Ward—I object. There is nohting in the question about Rubinstein.

The Court—Agreement with whom and when?

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Q. Was there any agreement or talk at any time anywhere between you and Rubinstein that the shares should be bought by the company?

Mr. Ward—I object. There is nothing certain.

The Court—Objection overruled.

A. Yes.

Q. What was said between you and Rubinstein about that? A. Rubinstein said that we should pay off and do not bother any more with them.

Q. When was that? A. It was a few weeks before we paid them off, but I do not remember exactly when it was.

Q. Where was it? A. At the shop.

Q. Was there anything said about using the company's money to buy the shares? A. Yes, sir.

Q. Do you remember the meeting, the first meeting following the purchase of the shares, held by the board of directors of the company? A. Yes, sir.

Q. Do you remember what was said at that meeting about the purchase of the shares and payment for them? A. Yes, sir.

Q. Was Rubinstein present at that meeting? A. Yes, sir.

Q. Was Biezczad present? A. Yes, sir.

Q. Now, what was said by Biezczad at that time? A. After the minutes were read, he asked me who paid for the shares and who bought the shares and who paid for them.

Q. What did you say? A. I say the company buy and the company pay.

Q. Did Mr. Rubinstein hear that? A. Yes, sir.

Q. Did he say anything? A. No, sir.

Q. Was anything then said by Rubinstein about dividing the shares? A. He said, after the minutes

was read by the secretary, that he would like to give him half and keep half for himself.

Q. Give whom half? A. Half for myself and half for Mr. Rubinstein.

By the Court:

Q. What did you say to that? A. I say I am satisfied.

Q. You were satisfied with what? A. With twenty shares.

Q. That is, with twenty of the forty shares that had been bought from these men? A. We bought forty shares; so twenty shares for Mr. Rubinstein and twenty shares for me out of the forty.

By Mr. Lewis:

Q. At the the time of this purchase of the forty shares how many shares did you own in the company, besides any interest in the forty shares —outside of that? A. Seventeen shares.

Q. How many did Rubinstein have at that time? A. Ten.

Q. How many did your brother William have? A. Five.

Q. After the forty shares were bought, how many other stockholders were there in the company besides Rubinstein and Stanley and William Kasprzak? A. One.

Q. Who was he? A. Andrew Biezczad.

Q. How many shares did he then hold? A. Ten.

Q. Did you, at any time after the purchase of the forty shares, have any conversation with Rub-

instein about the desirability of your holding an equal number of shares in the company? A. I did not say anything. Mr. Rubinstein started to talk with me himself.

Q. What did Mr. Rubinstein say to you? A. Right the next day after the meeting I asked Mr. Rubinstein to make out new shares, to write out new shares, a new certificate.

Q. What did he say? A. Mr. Rubinstein said to me that he will ask his lawyer about it and the next day he said to me that the lawyer advised not to do it, because besides we have two shareholders and they are liable to make trouble for us in the future, as they have a contract with us; that the two shareholders hold a contract with us and they are liable to make trouble in the future.

Q. Do you know what contract is referred to? A. I remember.

Q. What was the contract?

Mr. McKee—I object.
The Court—Objection sustained.

Q. What contract did you understand him to refer to?

Mr. McKee—I object.
The Court—Objection sustained.

By the Court:

Q. After Rubinstein had told you that his lawyer advised against transferring the shares, what other conversation did you have with Rubin-

stein about the shares? A. Absolutely nothing until 1922.

Q. When Rubinstein told you that his lawyer advised against the transfer of the shares, what reply did you make? A. Nothing at all.

Q. The next time either one of you spoke about the shares was in 1922, was it? A. After I went to Europe and came back, Mr. Rubinstein—

Q. (Question repeated) The next time either one of you spoke about the shares was in 1922, was it? A. Yes.

By Mr. Lewis:

Q. Some time after Rubinstein said that there could not be a division of the forty shares, did he say anything to you about his being made equal with you in the company? A. Yes, sir.

Q. What did he say? A. It doesn't look nice that I should have more shares, and he would prefer us to have equal parts—equal amount of shares.

Q. How many times did he speak to you about that? A. Several times; I don't remember how many.

Q. Did you finally agree with him that he should be made equal with you? A. Not then.

Q. When did you so agree, if you did so agree? A. The second time he came to me and I agreed to that, that we should have an equal amount of shares.

Q. How long was that after the stock transfer for forty shares? A. I don't remember whether it was before or after; I don't remember.

Q. Could you refresh your memory at all by looking at the stock certificate book? A. Of

course, if I see the book I will surely know, because I cannot remember everything.

Q. How was it arranged, what method was used, to make Rubinstein equal with you in the company? A. I had no method. It was all his proposition. I didn't mean to buy any more shares.

Q. Was Rubinstein made equal with you in the number of shares you held in the company?

Mr. McKee—I object. The question assumes a set of fact that is not so. That is our contention, that is the subject-matter of this suit, whether or not Mr. Rubinstein was an equal or superior stockholder to the defendant. Mr. Rubinstein did not hold as many shares as Mr. Kasprzak.

The Court—I assume Judge Lewis is talking about these other forty shares, or outside of the forty shares—

Mr. Lewis—Outside.

The Court—Leaving the forty shares out of consideration, what method was used, if any, to equalize the holdings?

Q. After the forty shares were bought from Harsche and the others, did the company issue more shares to you?

Mr. McKee—I object to that as leading.

The Court—I would not rule against it on that ground, so I overrule the objection.

Mr. McKee—Well, on the ground of immateriality.

The Court—Objection overruled.

A. Yes.

Q. How many shares did you get? A. Eight.

Q. At the same time were more shares issued to Mr. Rubinstein? A. Yes, sir.

Q. How many shares were issued to Rubinstein? A. I remember fifteen.

Q. Did that make you and him equal in ownership of shares in the company? A. Yes, sir.

Q. You say you cannot remember the date but if you saw the stock book it would refresh your memory; is that so? A. What shares? What book?

Q. Stock certificate book of the company? A. Yes.

Q. I ask you to look at the stock certificate book and to tell me whether it refreshes your memory as to the time the eight shares and the fifteen shares were issued? A. I don't know how to read this. I know that it says "eight."

Q. Is that your stock? A. Yes.

Q. Can you read the date? A. It was on the twenty-seventh day of, I don't know what month, 1919.

The Court—Won't you all agree it was October 27, 1918?

Mr. McKee—Yes, sir.

The Court—It is agreed that on October 27, 1918, fifteen shares were issued to Rubinstein and eight shares to the witness.

Q. When you got these eight shares how many shares altogether did you then have in the company? A. Seventeen and eight, it was twenty-five.

Q. And how many altogether did Rubinstein

have when he got his fifteen? A. Ten and fifteen is twenty-five.

Q. Do you remember the directors' meeting at which the issue of these eight and fifteen shares was authorized? A. There was no such meeting.

Q. Have you since seen an entry in the minutes signed "W. Kasprzak", in which it is said that authority was given by the board of directors to issue the shares? A. I do not read English.

Q. Did you get the eight shares? A. Yes, sir.

Q. Did Rubinstein get the fifteen shares? A. Yes, sir.

Q. And did you give any copy of a minute of a meeting, in which it was said that a motion was made and seconded that fifteen additional shares be issued to A. Rubinstein and eight additional shares to S. Kasprzak at the par value of said shares, namely, one hundred dollars, to Frank Rea and tell him to put it in the minute book?

Mr. McKee—We object.

Mr. Lewis—Frank Rea testified that he got this minute from somebody, from Rubinstein or Kasprzak or somebody. I want to show that Frank Rea did not get this minute from this witness.

Mr. Ward—As I recall, Frank Rea was your own witness on that.

Mr. Lewis—I was not bound by Frank Rea. Frank Rea was an antagonistic witness.

(Stenographer being requested repeats question.)

The Court—I think the question is objectionable in that form. I cannot say, however that there would be any difficulty about asking him whether he told Frank Rea to make any such entry in the minute book.

Q. Did you tell Frank Rea to write in the minute book that there was a meeting held— A. I would like to know who wrote the minutes.

Q. Did you tell Frank Rea at any time to put anything in any minute book of the company? A. No, sir.

(Adjourned to June 18, 1923, at ten o'clock in the forenoon.)

Mr. Lewis—Pending the arrival of the interpreter we will withdraw Stanley Kasprzak from the stand temporarily and will call another witness.

VERONICA KASPRZAK, sworn as a witness on the part of the defendants testifies as follows:

Direct Examination by Mr. Lewis:

Q. How old are you? A. Twenty-two.

Q. Are you the daughter of Stanley Kasprzak? A. Yes, sir.

Q. And live at home with him? A. Yes, sir.

Q. You live in Paterson? A. Yes, sir.

Q. How long have you lived there? A. Ever since I came over from Europe, the last fourteen or fifteen years.

Q. Where were you educated? A. Paterson grammar schools.

Q. And when did you graduate from the grammer school? A. 1914.

Q. And when you graduated what did you then do? Did you go to work or did you live at home? A. I stayed home for a little while and then I worked in the mill.

Q. What mill did you go to work in? A. In Hugo Huttig Hosiery Company.

Q. What did you do there? A. I was a mender.

Q. Mending what? A. Silk hosiery.

Q. Where did you go to from there? A. Shortly after I began to work in the office of the Stanley Silk Dyeing Company.

Q. When did you begin to work in the office of the Stanley Silk Dyeing Company? A. In the early part of July, 1918.

Q. What work did you do there? A. I worked in the office.

Q. Doing what? A. Bookkeeping, taking care of the books, office work.

Q. Had you had any experience at bookkeeping when you went there? A. No, sir.

Q. You knew how to read and write? A. Yes, I did.

Q What books did you make entries in of the Stanley Silk Dyeing Company? A. Just the ordinary day book.

Q. What entries did you make? A. I made the

entries, just whatever Mr. Rubinstein directed me to.

Q. Are these books here in court the books that you kept or some of them? A. Yes. They are on the desk right by you.

Q. I show you three books and ask you to tell us what those books are? A. This is the cash book.

Q. Did you keep this? This is the cash book of the Stanley Silk Dyeing Company? A. Yes.

Q. You made entries in it? A. Some of the entries; not all.

Q. The entries that you made in this book, what entries were they? A. Well, entries such as money receivable and the expenditures.

Q. How did you know what entries to make; who directed you to make those entries? A. I did not know. I did just as Mr. Rubinstein told me to.

Mr. Lewis—I offer this book in evidence and ask that it be marked.

(Book is marked Exhibit D-11.)

Q. Take up the next book and tell us what that book is? A. This, as I understand, is the credit journal.

Q. Did you make any entries in that? A. Yes, a few.

Q. How many? A. I made some each month such as returned containers and credit bills I entered in here.

Q. At whose direction did you make these entries? A. At Mr. Rubinstein's.

Mr. Lewis—I ask that this book be marked in evidence.

(Book is marked Exhibit D-12.)

Q. I show you this third book and ask you what that is? A. I understand this is a journal, but I never kept this book.

Q. You never made entries in the journal? A. No.

Q. That is the journal of the Stanley Silk Dyeing Company? A. Yes.

Q. Now, will you, for the sake of the record, tell us from what date to what date the entries in Exhibit D-11 run? A. The entries that I made or from the beginning?

Q. From the beginning of the book to the end of it. A. This is July 2, 1918.

Q. And the book ends when? A. June 14, 1923.

(At this point the witness is withdrawn for the purpose of recalling Stanley Kasprzak.)

STANLEY KASPRZAK, a witness already sworn, resumes the stand.

(Charles Legenda sworn as interpreter.)

Direct Examination (continued) by Mr. Lewis:

Q. Near the close of the evidence at the last trial do you recall that you testified that you had a conversation with Mr. Rubinstein about the use

of the money of the company to buy the forty shares?

Mr. McKee—I would like to know what page is referred to?

Mr. Lewis—At the foot of page 189: "Question. Was there anything said about using the company's money to buy the shares? Answer. Yes, sir."

That is what I refer to. I want him to state what that conversation was. I will withdraw the question and ask another.

Q. Did you ever have any talk with Rubinstein about using the company's money to buy the forty shares of stock? A. Yes.

Q. Relate that conversation to us. Tell us what that conversation was. A. Before paying off the four stockholders Mr. Rubinstein came up to me and said: "The company has got enough money. We pay off these four stockholders and we won't have no bother with them at all."

Q. Did you afterwards hear that Rubinstein had turned back the $7200 that was paid for the stock of the company? A. No, sir; positively no.

Q. I asked if you heard afterwards that Rubinstein had paid back the $7200?

Mr. McKee—We object to the question as leading.

The Court—Objection overruled.

A. Yes.

Q. When did you first hear it? A. August 19th or 18th—I cannot recall which—1922, when I came

back from the other side, from Europe, that he had paid that money into the company.

Q. After the forty shares were bought did you have any conversation with Rubinstein about the manner of dividing the profit of the Stanley Silk Dyeing Company? A. The company bought that forty shares.

Q. Did you have any conversation with Rubinstein about the manner of dividing the profits after the forty shares were bought? A. Yes.

Q. Tell us what the talk was? A. There was a meeting. At this meeting was I, Mr. Rubinstein and Biezczad, and Mr. Rubinstein said he would like to divide with the shares.

Q. After the forty shares were bought, did you and Rubinstein draw money out of the company? A. No.

Mr. Lewis—I do not think he understood the question.

Q. (Question repeated.) After the forty shares were bought did you and Rubinstein draw money out of the company? A. Yes.

Q. Did you have any talk with Rubinstein about it? A. Yes.

Q. Tell us the talk. A. About that company's money?

Q. About drawing the money out of the company. A. Mr. Rubinstein says: "There is plenty of money in the bank and we can withdraw."

Q. Did you have any talk with him after the purchase of the forty shares about dividends on the stock? A. No.

Q. Did you have any talk with Rubinstein about the company's declaring dividends on the stock? A. The dividends were voted with all the stocks.

Q. Did you have any talk with Rubinstein after the forty shares were bought about dividends on the stock of the company? A. Yes, sir.

Q. What was the talk? A. The dividends are voted, money is there, and that is all.

Q. How many dividends were ever declared on the stock of the company? A. I cannot recall. I believe first twenty-five per cent.

By The Court:

Q. The question is: How many—how many times? A. Once or twice, I can't recollect.

By Mr. Lewis:

Q. Was there more than one dividend declared on the stock after the forty shares were bought? A. I don't remember. I don't know if it was before the shares were bought.

Q. Did you get any money from the company after the forty shares were bought, besides your salary? A. Yes, sir.

Q. Can you tell us how much? A. A couple of thousand dollars. I cannot recollect. The books show.

The Court—Are you sure he said "A couple of thousand"?

The Interpreter—He said "A couple."

Mr. Lewis—Was it "several" or "couple"?

Q. Was it more or less than two?

Mr. Ward—We object to that. This is a competent interpreter. These are suggestions coming from Miss Kasprzak.

The Court—Objection overruled.

A. I recall it was over $7000.

Q. Do you know whether or not Rubinstein got money from the company at the same time you got it? A. Just the same time.

Q. Do you remember any occasion when there was more paid to one of you than to the other? A. I recall that I have got a check $60 over.

Q. Over what? A. Because Mr. Rubinstein was getting $5 a week more salary than I was and I got a check for $60.

Q. Why? A. Because Mr. Rubinstein was getting $5 more a week, and the reason why I got that more, Rubinstein wanted to be equal in the company, that is, getting the same salary and all.

Q. How much do you recall—how much was that check, the whole check? A. $5 a week more.

By The Court:

Q. You got a check for $60 more than Rubinstein, you say; is that right? A. Yes.

Q. How much was the check you got? A. $5300 —I do not recollect.

By Mr. Lewis:

Q. When did you go to Europe? A. 16th of May, 1922.

Q. When did you return? A. 24th of July, same year, 1922.

Q. Did your daughter on your return tell you anything about Rubinstein?

Mr. Ward—I object.
The Court—Objection overruled.

A. Yes.

Q. What did she tell you?

Mr. Ward—Objected to.
The Court—Objection sustained.
Mr. Lewis—I would not want to prove by this witness as a fact what Miss Kasprzak told her father, but I do want to prove as a fact that she did tell him something, upon which he acted.

Q. Did you have any meeting of the board of directors of the company in August, 1922? A. Yes.

Q. At that meeting did you have any talk about Rubinstein's purchase of an automobile, when Rubinstein was present at the meeting? A. They were talking about signing over the automobile.

Q. From whom to whom? A. From Rubinstein to the company.

Q. Did you say why he should sign it over? A. Yes.

Q. Was anything said then about Rubinstein's owning forty shares of stock? A. No, sir.

Q. Up to that time had you heard any claim from Rubinstein that he owned forty shares? A. No, sir.

Q. How soon after did you hear any claim from

Rubinstein that he owned the forty shares of stock? A. After the meeting Mr. Rubinstein pulled out forty shares of stock and said that he is the boss.

Q. You say it was "after the meeting." Was it the same day or was it later? A. A couple of days after the meeting—I cannot recollect.

Q. Where? A. At the office.

Q. And was Frank Rea there then? A. Yes.

Q. And who else? A. Me, my daughter and a brother of mine.

Cross Examination by Mr. Ward:

Q. Mr. Kasprzak, how long have you been in this country? A. Eighteen years.

Q. Are you a citizen? A. Yes, sir.

Q. And before you went into this business with Mr. Rubinstein, you had been engaged in what business? A. No business at all.

Q. You had been employed, had you, up to the time you went in business with Mr. Rubinstein? A. I had been a laborer at the Wagaraw Silk Dyeing Company.

Q. And it was in 1916, was it not, that this company was formed? A. Yes.

Q. And all of the members of the company, excepting Mr. Rubinstein, were Polish, were they not? A. Yes, sir.

Q. When was it that the first effort was made of directors it is there that nobody can buy the stock A. I recall it was in 1918.

Q. Do you remember that John Harsche wanted to sell his stock? A. John Harsche was in the army that time.

Q. And he wanted to sell his stock to the com-

pany, didn't he? A. He gave full authority to Walzak.

Q. The company refused to buy his stock, didn't it? A. No.

Q. Was there not a meeting of the board of directors to consider whether or not the company would buy the stock of John Harsche? A. No meeting.

Q. Are you familiar with the minutes of your company? A. No, sir.

Q. Mr. Kasprzak, is it not true that John Harsche, through Mr. Walzak, at a meeting of the company, wanted to sell his shares back to the Stanley Silk Dyeing Company? A. At the board of directors it is there that nobody can buy stock except the company.

Q. (Question repeated.) Mr. Kasprzak, is it not true that John Harsche, through Mr. Walzak, at a meeting of the company, wanted to sell his shares back to the Stanley Silk Dyeing Company? A. Yes; for the company.

Q. And at the time that this was talked over by the members of the company it was at a directors' meeting, was it not? A. No.

Q. Don't yon know that there was a meeting of the board of directors of the company when it was talked over about buying this stock of John Harsche? A. Four members sold their shares to the company, and that was talked at the meeting.

Mr. McKee—I ask that that be stricken out as not responsive.

The Court—Strike it out and repeat the question.

Q. (Question repeated.) Don't you know that there was a meeting of the directors of the company when it was talked over about buying this stock of John Harsche? A. Yes, sir.

Q. (Showing witness.) Do you know this book? A. (Without aid of interpreter.) I don't know.

Q. You know what that book is, don't you? A. (Without aid of interpreter.) I know it is a book.

Q. You know it is a minute book of the company? A. (Without aid of interpreter.) I do not understand.

Q. Don't you know that this book that I hold in my hand is a minute book of your company? A. (Without aid of interpreter.) You hold it—

Q. Have you seen this book before? A. (Without aid of interpreter.) I see it now.

By The Court:

Q. What is it? A. (Through interpreter.) I don't know.

By Mr. Ward:

Q. Mr. Kasprzak, have you not seen that book before in the office of your company? A. (Without aid of interpreter.) Never seen it in the office.

(From this point the examination is continued with interpreter.)

Q. (Question repeated.) Mr. Kasprzak, have you not seen that book before in the office of your company? A. No, sir; I never seen it.

Q. Have you not seen this page 39, under date of July 30, 1917? A. No, sir; I never seen it.

Q. Do you remember whether or not there was a meeting of the board of directors of your company on July 30, 1917? A. Plenty of meetings, but I cannot recall the dates.

Q. Is it not true that on that date, July 30, 1917, the secretary received a special delivery from one of the stockholders of the company? A. I don't remember.

Q. Will it freshen your recollection if I read from page 39 of what purports to be the minute book of your company—do you think that will help you if I read from page 39 of the minute book of your company? A. Read it over.

Q. "The secretary received a special delivery from one of the shareholders saying that he had to go to the army"? A. Yes.

Q. "And wants to have his money for his shares"? A. Yes.

Q. "And this the secretary read to the board and has been accepted"? A. I cannot recall that.

Q. "The secretary asked John Harsche: 'What does mean? You don't need no money in the army'"? A. I didn't hear that.

Q. "The president, Mr. A. Rubinstein, is for this and asks the directors to help in some way." A. I do not recall.

Q. "John Lingelbach and S. Biezczad also ask for their money"? A. Yes.

Q. You remember that, don't you? A. Yes, sir.

Q. Now, you do remember that meeting, don't you? A. Yes.

Q. And you remember it was a meeting of the directors of the company?

Q. And you do remember that these people

wanted to sell their shares to the company? A. Yes, sir.

Q. And the company refused to buy the shares, didn't it? A. Wanted to buy and bought.

Q. See if this refreshes your recollection further: "Mr. Walzak says that when he wanted his money they did not want to give it to him"? A. There was no money at the office.

Q. Do you remember that Mr. Walzak said that? A. I remember when they all wanted money.

Q. Do you remember at this meeting that Mr. Walzak said that when he wanted to sell, they would not buy from him? A. Yes, sir.

Q. Then also I quote from the minute book: "And says that when we stand we stand together not to pay anyone"? A. No; it was passed to pay off.

Mr. Ward—I ask that that be stricken out.

The Court—Strike it out.

Q. (Question repeated.) Then also I quote from the minute book: "And says that when we stand we stand together not to pay anyone"?

Mr. Lewis—If you want that, we will admit it.

Mr. Ward—Your witness denies it.

Q. You remember that meeting to which I refer now, at which this was all talked over? A. Yes, sir.

Q. And you remember that at that meeting you were against the company buying the shares of Mr. Harsche? A. No, sir.

Q. Will this refresh your recollection, reading from the minutes of the company, page 40, meeting of July 30, 1917: "Mr. S. Kasprzak is against this to pay cash from the company's capital"? A. No, sir.

Q. Does it refresh your recollection to quote from the minutes further: "After a while of talk Mr. S. Kasprzak stood by this, to pay from the cash of the company. A vote was then taken to see what can be done, which did not pass, to pay John Harsche, by a vote of four to three." Can you remember that? A. Yes.

Q. And you were one of the four who voted against the company buying these shares of stock, were you not? A. Before that.

By The Court:

Q. At this meeting were you one of those who voted against buying Harsche's stock? A. I voted with it.

By Mr. Ward:

Q. Mr. Walzak had wanted to sell his shares of stock to the company before that, had he not? A. Yes, sir.

Q. And the company had refused to buy his shares, had it not? A. No, sir.

Q. Do you remember a meeting of May 28, 1917, when the secretary gave notice to the company that he received a letter from Mr. A. Walzak? A. I don't remember.

Q. Does it refresh your recollection that the minutes of the meeting of that date state: "The company takes this notice into effect, which the

secretary read. The president says there is not enough money in the cash drawer"? A. Yes.

Q. You remember that, do you? A. Yes.

Q. From the time this company was formed up to the year 1918, there were different members of the company who wanted to sell their stock, were there not? A. The same people.

Mr. Ward—May I ask to have the question repeated?

The Court—Repeat the question.

Q. (Question repeated.) From the time this company was formed up to the year 1918 there were different members of the company who wanted to sell their stock, were there not? A. They all wanted to sell it at once; at once they wanted to sell it.

Q. Aside from the forty shares that were sold in August, 1918,—before that—there were members of the company who wanted to sell their stock, were there not? A. They all came together; they all wanted to sell it.

Q. In May, 1917, and in July, 1917, were there not different members of the company who wanted to sell their stock back to the company? A. They all wanted to sell it together.

Q. Walzak came alone, didn't he? A. No, sir.

Q. I will ask you this: Don't you know that the minutes of your company show that from time to time before July, 1918, different members of the company wanted to sell their stock back to the company? A. I don't know anything about that.

Q. Don't you know that each time before that

members of the company wanted to sell their stock back to the company, prior to July, 1918, the company refused to buy the stock back? A. The company always wanted it and bought.

Q. Why didn't they buy it before July, 1918? A. Because they could not agree.

Q. Then, you mean they refused to buy before July, 1918? A. They wanted to buy, but they wanted too much money for it.

Q. What do you mean they could not agree? A. They wanted too much money.

Q. Who wanted too much money? A. All together.

Q. What do you mean by "all together"? A. The four that were bought back.

Q. Do you mean now the four who sold the forty shares? A. Yes.

Q. So that that was the reason the company would not buy the stock, was it,—because they could not agree? A. The company wanted to buy, but they wanted too much money.

Q. Is that the reason that they did not buy, because they could not agree upon the price? A. Yes.

Q. And they could not agree upon the price of the forty shares of stock that were afterwards sold on August 3, 1918? A. They were agreed afterward and bought.

Mr. Ward—I ask that that be stricken out.

The Court—Strike it out.

Q. (Question repeated.) And they could not agree upon the price of the forty shares of stock

that were afterwards sold on August 3, 1918? A. That was about the price, and different other fights there that we did not—

By The Court:

Q. Let me ask you this question: You say that you remember in July, 1918, that Harsche wanted to sell his stock? A. Yes.

Q. Why didn't you buy it then? A. Because they wanted to leave the company one by one and I suggested to buy them all out together.

Q. Why didn't you buy John Harsche's stock when he wanted to sell it? A. I could not buy it.

Q. Why didn't the company buy it? A. I don't know—the president—

Q. You remember, you say, an argument over it? A. Yes.

Q. Why were those who were opposed to buying, refusing to buy? A. We agreed, we went to him later and we bought.

Q. In July, 1917, I am talking about,—why didn't you agree then to buy? A. I don't recollect.

Q. You remember that there was an argument about it, don't you? A. Yes, sir; they went to the and that squashed.

Q. Why were they opposed to it? A. I don't know.

By Mr. Ward:

Q. Up to August, the 1st of August, 1918, the company had never bought back any of its stock from any of its stockholders, had it? A. Forty shares it had.

Mr. Ward—I ask that that be stricken out.
The Court—Strike it out.

Q. Up to August, 1, 1918, the company had never bought any stock back from any of its stockholders, had it? A. I know the company bought forty shares, but I don't know what month.

Mr. Ward—I ask that that be stricken out.
The Court—Strike it out.

By The Court:

Q. You came back from Europe July 24, 1922. Do you remember that? A. Yes.

Q. You remember that the company had bought shares of stock before that, don't you? A. Yes, sir.

Q. And don't you remember that that was in August, 1918? A. I do not recollect when.

Q. You do not know when they bought the stock —is that your answer? A. August or September —I do not remember which.

By Mr. Ward:

Q. You remember coming back from Europe, don't you? A. Yes.

Q. Before that time had the company ever bought any shares of stock back from the stockholders? A. No, only forty shares.

Q. When do you say the company bought the forty shares? A. I recollect 1918.

Q. And what part of 1918? A. I believe it is in August. I did not keep books of it.

Q. And before August, 1918, when you say this company bought the forty shares of stock, it had never bought any stock back from its stockholders, had it? A. None at all.

Q. Up to that time it had always refused to buy the stock back from the stockholders, had it not?

Mr. Lewis—He has already answered that. I know repetition is permissible in cross examination, but it is simply confusing the situation.

A. The company was always to buy the shares.

Q. In August, 1918, the directors of the company were planning to build a building, were they not? A. I believe so, I cannot remember.

Q. And the company had some money in the treasury at that time, hadn't it? A. Yes.

Q. And the company planned to use that money to build the buildings, didn't it? A. Yes.

Q. And you did build a building, didn't you? A. Yes, sir.

Q. And you used that money to build the building? A. Yes, sir.

Q. The members of the company did not want to use that money for any other purpose, did they? A. For building and repairing.

Q. All of these men who sold the forty shares that are in this suit, were Polish, were they not? A. Yes, sir.

Q. Did you know that they wanted to sell their forty shares? A. When they came to the office, then I found out.

Q. None of them were employed by the company, were they? A. No.

Q. Did they say why they wanted to sell their shares? A. They did not say anything to me.

Q. Did they say anything to anybody in your presence? A. I don't know.

Q. When they came to you and told you they wanted to sell their shares, didnt you ask them why? A. They wanted to sell their shares and that is all.

By The Court:

Q. John Harsche wrote you a letter and told you about it? A. John Harsche went to the navy and he says he needed the money.

By Mr. Ward:

Q. John Harsche kept on trying to sell the shares to the company, didn't he? A. Yes.

Q. And on August 27, 1917, did this happen at a meeting of the company: "The president asked one of the men of the board of directors what has to go to the army if he had anything to say before he goes"? A. I was not the officer.

Q. "He said the only thing he could say is to see what the company has to say," Harsche said— A. (Interrupting.) Rubinstein said to go to the lawyers everybody.

Q. Do you remember this: "The secretary tells this shareholder that the company cannot pay him his shares because the larger majority of the men were against this."? A. Never heard of anything.

Q. Do you remember this: "The only thing

that could be done would be to have the directors, the shareholders would want to pay the shares, could do so." A. I don't remember that.

Q. Is it not true that in August, 1917, the directors of the Stanley Silk Dyeing Company agreed that if any one of the directors wanted to buy stock, he could? A. We were buying new shares in 1917.

Q. (Question repeated.) Is it not true that in August, 1917, the directors of the Stanley Silk Dyeing Company agreed that if any one of the directors wanted to buy stock, could? A. I would like to find out: From the company or from a different person?

Q. From the shareholders that wanted to sell. A. It was overruled that anybody can buy it except the company of the stockholders.

Mr. Ward—I move to strike it out.
The Court—Strike it out.

Q. (Last two questions read together and repeated.) Is it not true that in August, 1917, the directors of the Stanley Silk Dyeing Company agreed that if any one of the directors wanted to buy stock from the shareholders who wanted to sell, he could? A. No, sir.

Q. When did you first learn that John Harsche, John Linglebach and Stanislaw Oltarzewski and Albert Walzak wanted to sell their stock?

Mr. Lewis—Objected to.
The Court—Objection sustained.

Q. You say that the company bought this stock

in 1918, the forty shares held by the men I have just named?

Mr. Lewis—Objected to.
The Court—Objection sustained.

Q. You recall that you have testified on your direct examination that the four men whom I have mentioned sold their stock in August, 1918?

Mr. Lewis—I object. That is the same question as has been overruled.
The Court—Objection sustained.

Q. You stated on your direct examination that you had some conversation with Mr. Rubinstein in reference to the purchase of the stock from Walzak, Oltarzewski, Linglebach and Harsche. When was it that you first had any talk with him about that? A. Mr. Rubinstein came to me and said that the company has got enough money to pay these stocks out and we won't have any trouble.

Q. When was that? A. A couple of weeks before paying them off.

Q. The money that he spoke about was the money that you were going to use for the building, was it not? A. There was money for a building and money for paying out the stockholders.

Q. How much money did you have altogether at that time? A. I don't know how much there was.

Q. You also stated on your direct examination that, as I recall it, you expected to get one-half of the forty shares? A. Yes, sir.

Q. Was that the arrangement that you had with Mr. Rubinstein, that he was to buy the forty shares, keep twenty for himself and give twenty to you? A. Before that there was no agreement.

Q. When Mr. Rubinstein came to you and told you that he expected to get these forty shares of stock, did you and he agree then that he was to get half of the forty shares and that you were to get half of the forty shares?

Mr. Lewis—I object. There is not a particle of evidence that Rubinstein came to this man and said that he was going to get the forty shares of stock.

The Court—Objection sustained.

Q. At the time the purchase of the forty shares of stock was discussed, did you agree with Mr. Rubinstein that when the forty shares were purchased, you were to get twenty and he was to get twenty? A. We did not have any agreement, only at the meeting he told me he would like to get the twenty shares.

Q. When he talked about the purchase of these forty shares, was there anything said as to what would become of the forty shares? A. He said: "We will sign them shares to the company so our stocks will be more valuable."

Q. You remember the directors' meeting that was held after these forty shares were purchased? A. Yes.

Q. At that time he was present? A. Yes.

Q. Before that had the directors of the company ever agreed that the company would pur-

chase these shares? A. It was voted that the company has got to buy the shares.

Q. When? A. When they were leaving the meeting and after the stocks were bought, that the company were to buy the stocks.

Q. You now are referring to the meeting after the stock was bought, are you not? A. Yes.

Q. And before that meeting the board of directors had never, at any meeting, authorized the buying of that stock, had they? A. They only says they want to sell them shares to the company—

Mr. Ward—I ask that that be stricken out.

The Court—Strike it out.

Q. (Question repeated.) And before that meeting the board of directors had never, at any meeting, authorized the buying of that stock, had they? A. I don't remember.

Q. Before you went to Europe, didn't you and Mr. Rubinstein discuss his buying the car? A. No, sir.

Q. Is it not so that you agreed that he was to buy a car and you were to take $1200 to cover your trip to Europe? A. No, sir.

Q. Did you at that time get an advance of $1200 from the company? A. No.

Q. Later on you borrowed $1500 from the company, didn't you? A. Loaned $1500.

Q. Did you use that money for the purchase of the ten shares of stock from Biezczad? A. Yes, sir.

Q. And those were the ten shares that were

put in your daughter's name, were they not? A. I did not buy; the daughter did.

Q. Those are the ten shares of stock that Biezczad held? A. Yes, sir.

Q. You remember sending a registered letter or letters to the shareholders of the company calling a meeting, don't you? A. I didn't send any letters.

Q. Do you remember after your return from Europe that you called a meeting of the company, a directors' meeting of the company? A. The secretary called it.

By The Court:

Q. Did you tell the secretary to call it? A. Yes.

By Mr. Ward:

Q. Had you consulted with Mr. Smit before that? A. No.

Q. Well, at that meeting you attempted to reduce Mr. Rubinstein's salary, didn't you? A. That was not said at the meeting.

Q. Do you remember at that time telling Mr. Rubinstein that you wanted to be the boss from that time on? A. I wanted to throw him off as the president.

Q. Do you remember at that time that there was some talk about those forty shares that had been sold by Walzak and Harsche and the other two? A. There was no talk at that meeting.

Q. When was the first time, after you returned from Europe, that you had any talk with Mr. Rubinstein about the forty shares? A. A couple of days

after the meeting Mr. Rubinstein pulled out the papers and he say: "I am the boss of the company; I have got forty shares."

Q. Do you remember Mr. Rea being there? A. Yes.

Q. At the time that Mr. Rubinstein pulled out these forty shares and said that he was the boss, and while Mr. Rea was there, did you make any claim at that time that those shares belonged to the company? A. Yes; I says: "They belong to the company, and you cannot have those forty shares."

Q. Did you ever tell your lawyer, Mr. Smit, before you were served with papers in this case, that those forty shares belonged to the company? A. I know it myself, and there is a contract—

The Court—Strike it out.

By The Court:

Q. Answer the question: Did you tell Mr. Smit? A. Yes.

By Mr. Ward:

Q. When did you tell him? A. After the meeting.

Q. Before this case was begun? A. Yes.

Q. Do you remember Mr. Bluestein coming to the office of the Stanley Silk Dyeing Company with Mr. Rubinstein? A. Yes.

Q. At that time your daughter and your brother and you were present, were you not? A. And two witnesses, yes.

Q. Mr. Bluestein had these forty shares, didn't he? A. I did not see the forty shares at all.

Q. Didn't he have the forty shares in his hand and didn't he attempt to give them to you? A. No.

Q. Didn't he attempt to give them to your daughter Veronica? A. No.

Q. Didn't he attempt to give them to your brother William? A. No.

Q. Didn't you see these forty shares that day at all? A. No.

Q. Was not that what was talked about there at that time? A. Mr. Bluestein just looked over one book there and that was all.

Q. Didn't Mr. Bluestein show you these shares and tell you he wanted them transferred on the transfer book? A. No, sir.

Q. Didn't you tell Mr. Bluestein to talk to your daughter? A. No, sir.

Q. Didn't Mr. Bluestein then offer her the shares and ask her to put them—

Mr. Lewis—I object to this.

The Court—Objection sustained.

Q. Is it not so that at that time your daughter stated to Mr. Bluestein that she would put these forty shares down on the book as of that date?

Mr. Lewis—Objected to as not proper cross examination.

The Court—Objection overruled.

A. No, sir.

Q. Is it not so that at that time Mr. Bluestein said: "No," that he wanted them put on the stock transfer books as of the date when Mr. Rea had been called there to have them transferred?

Mr. Lewis—I object. I have not brought out anything about any conversation at which Mr. Bluestein was present.

The Court—Objection overruled.

A. Mr. Bluestein never said nothing.

Q. You testified to something about the repayment of this $7,200 in 1918 or 1919. Do you mean the repayment of the money that had been used to purchase these forty shares of stock? A. I don't know anything about the $7,200.

Q. Your daughter kept the books, didn't she? A. Yes.

Q. Didn't your daughter tell you that Mr. Rubinstein had paid back to the company $7,200, the amount that had been used for the purchase of this stock? A. No.

By Mr. Lewis:

Q. Mr. Kasprzak, you have just said your daughter did not tell you about the return of the $7,200. Did you have any particular time in mind? A. In 1922 she did tell me that he put in $7,200.

Q. Had she ever told you so before? A. No, sir.

By Mr. Ward:

Q. Did you find out when the $7200 had been paid by some Mr. Rubinstein?

Mr. Lewis—I am going to show by the books when that was paid back.

VERONICA KASPRZAK, a witness heretofore sworn on the part of the defendant, resumes the stand.

Direct Examination (resumed) by Mr. Lewis:

Q. Have you with you now D-4, D-5, D-6, D-7, D-8 and D-9, being the checks and notes of the company given to Walzak, Linglebach and Oltarzewski? A. Yes, Judge.

Q. Have you also the note and check of the company that was given to John Harsche? A. Yes; I have.

Q. Please produce them. A. (Witness does so.)

Q. Please look at these checks and notes that I have just mentioned and tell me in whose handwriting the body of the checks and notes is? A. They were all in my handwriting.

Q. How did you come to fill them in? A. Mr. Rubinstein came to the office and told me to make out the checks.

By The Court:

Q. Rubinstein? A. Yes.

By Mr. Lewis:

Q. Please pick out the check and note that was given to John Harsche? A. John Harsche did not get a note.

Q. He only got a check? A. Yes.

Q. You now produce the check? A. Yes.

Q. Is this the signature of the Stanley Silk Dyeing Company upon it? A. Yes.

Q. Was it duly returned to the company from the bank? A. Yes, sir.

Q. Bearing the endorsements which are now upon it? A. Yes, sir.

Mr. Lewis—I offer in evidence check of the Stanley Silk Dyeing Company drawn on the Hamilton Trust Company, dated August 5, 1918, payable to the order of John Harsche, for $2,160.

(Marked Exhibit D-13.)

Q. I ask you to turn to Exhibit D-11, the cash book of the company. Are there entries in that cash book which show the payment to the company of money by Rubinstein in the year 1918 and 1919? A. Yes, sir; I believe there are.

Q. Please turn to those entries? A. Here is one.

Q. Please read it. A. "October 21, 1918, A. Rubinstein paid back a loan $3,500."

Q. In whose handwriting is that entry? A. This is in my handwriting, except what is written in green ink.

Q. The words "paid back a loan," whose handwriting is that in? A. It looks like my handwriting.

Q. How long had you been with the company when you made that entry? A. Since July previous.

By The Court:

Q. You went there in July, 1916? A. No.

Q. 1917 was it? A. No; I started to work in 1918.

By Mr. Lewis:

Q. How did you come to make that entry in the book? A. Mr. Rubinstein told me to.

Q. Is there entry in any book that you have before you concerning the payment of the money other than the checks and notes? A. Yes, sir; there is.

Q. Will you please turn to such entries? A. Right here.

Q. What is the first entry? A. Which first entry?

Q. What is the first entry which concerns these moneys that were paid by the checks you have just referred to in your testimony? A. August 5, J. Linglebach, $2450; August 5, J. Harsche, $2160; August 5, S. Oltarzewski, $2100; August 5, A. Walzak, $350.

Q. Whose handwriting is that made in? A. Mine.

Q. All of it? A. All of it except what is in green ink.

Q. Please read what is in green ink. A. "Alex Rubinstein" and extended in green figures to this b column, these same figures.

Q. Was the bracket around Linglebach, Harsche, Oltarzewski and Walzak, placed there by you? A. Yes; it appears this way.

Q. Were the words "a loan" on the outside made by you? A. Yes; I believe so.

Q. Are you familiar with the handwriting which appears here in green ink? A. Yes; I recognize it as the writing of Morris Cohn.

Q. Who is Morris Cohn? A. He was at the time accountant doing accounting in this company.

Q. For whom? A. For the Stanley Silk Dyeing Company.

Q. Who employed him? A. Mr. Rubinstein.

Q. Can you tell us whether that writing in green ink is the handwriting of the man you have just mentioned, Morris Cohn? A. Yes, it is.

Q. Going again to the cash book, to the next entry showing a payment of money to the company by Mr. Rubinstein—the first one in October, you have testified to the one in October? A. November 23, 1918, A. Rubinstein paid back loan $2000.

Q. Now, whose handwriting is that entry of the payment that you have just read? A. That looks like my handwriting.

Q. How did you come to make it? A. Also by Mr. Rubinstein's direction.

Q. Is there any part of that entry which is not in your handwriting? A. Only the green.

Q. Turn to the next entry and read us the next entry of a payment of money by Mr. Rubinstein which refers to this transaction? A. On May 3, 1919, "A. Rubinstein returned loan $1700."

Q. In whose handwriting is that? A. It is in my handwriting except what is written here at the side of it.

Q. What is that written opposite it? A. It is a figure "9."

Q. Are the words "returned loan" in your handwriting? A. Yes; it does appear.

Q. And this entry of figure "9" is in your handwriting? A. Yes.

Q. By whose direction did you make that entry? A. By Mr. Rubinstein's direction.

Q. Now, are there any entries in any other books of the company which refer to this transaction—I mean, in the account books of the company? A. No; I do not believe there are any made by me.

Q. Are there any entries at all in the books of the company? A. Are there any entries?

Q. Which effect this transaction. A. There may be; I don't know.

Q. Don't you know whether there are any entries in the journal which affect this transaction? A. I don't know if there is or not.

By The Court:

Q. Do you mean you have never had the curiosity to look over the books to find out? A. Not until the last year; not until recently.

Q. At any time. You have looked over the books, have you not, to find out whether there is any entry? A. Yes; I have.

Q. Cannot you tell Judge Lewis what he wants to know? A. Yes; I believe there are some entries in the journal.

By Mr. Lewis:

Q. Why didn't you say so? A. Only whatever is written—

Q. (Interrupting.) Where are they? A. Not in this book. There are some in the books of 1918.

Q. Are those books here? A. They are in the satchel. There are some entries, $3500 and $2000 in green ink in the ledger, I believe.

Mr. Lewis—I will take it all back. I

thought there was a ledger or a journal like that cash book. There does not appear to be.

Q. Is there a journal entry there referring to this transaction? Did you keep the ledger or journal? A. No, I did not.

Q. Who did? A. The accountant, Morris Cohn.

Q. Anybody else? A. And Frank Rea.

Q. You never kept them? A. No, I did not.

Q. Have you any entry in your handwriting in the journal or ledger? A. In the journal I have.

Q. Are there many of them? A. Yes; there are several.

Q. When were they made? A. They were made from the time I worked there.

Q. By whose direction? A. Mr. Rubinstein's.

Q. Are there any entries there which refer to this transaction? A. Made by me?

Q. Made by you. A. No; there is not.

Q. Are there any entries made by anyone else? A. I do not believe in this book.

Q. In which book? A. In this journal.

Q. Which book are they in? A. In the ledger.

Q. Have you got that there? A. It is right there.

Q. Where is it? A. There are the same entries, the checks, $2450, $2160, $2100 and $350.

Q. Whose handwriting is that in? A. That is in Morris Cohn's handwriting.

Q. Where is your cash book? A. (Indicating.) Right here.

Q. That is made by Morris Cohn in the green ink? A. Yes.

By The Court:

Q. Where is the ledger? A. Here (indicating.)

Q. Page 14 of the ledger is headed "Loan Account"? A. Yes.

Q. In whose handwriting is "loan account"? A. In the bookkeeper's that worked previous to me.

By Mr. Lewis:

Q. Do you remember your father going to Europe? A. Yes; I do.

Q. Did you at that time make any investigations of the affairs of the company and Rubinstein's relation to it, which you afterwards told your father? A. Why, I did not make any investigations: I noted several affairs that I did not think were very proper.

Q. Well, what did you notice? A. I noticed that there was a lot of petty cash money used by Mr. Rubinstein, that was never accounted for.

Q. Did you notice anything else that you thought was wrong, that you reported to your father? A. There was oftentimes checks Mr. Rubinstein brought to the company for a couple of hundred dollars short, and he would tell me that one has a claim, but I never heard of the claim.

Q. Did you find anything out about the automobile transaction that you thought was wrong? A. That was after my father went to Europe.

Q. I am talking about that time, the time your father was away to Europe and before his return? A. Yes, I did.

Q. Was your discovery of the petty cash which you spoke of made during your father's absence in Europe? A. Yes, it was.

Q. Now, such discoveries as you made, did you report them to your father when he came back? A. Yes, I did, upon his return.

Q. Was it after his return that you bought the Biezczad stock? A. Yes, it was.

Q. Was it before the meeting of the board of directors in August? A. Yes, it was before.

Q. Were you present at that meeting? A. Yes, I was.

Q. Did Rubinstein produce any forty shares of stock or the certificates for them at that meeting? A. No, he did not.

Q. Did he make any claim that he owned forty shares of stock? A. No, he did not.

Q. Was it announced at that meeting in his presence that you had purchased the ten shares of Biezczad? A. Yes, at that meeting I informed them that I had bought the stock.

Q. Do you remember when it was that you first heard that Rubinstein claimed to own forty shares of stock that had been purchased from Harsche and the others? A. Yes; it was the Friday following the meeting we had; that was August 18th, I believe.

Q. Where were you when you heard it? A. In the office.

Q. Who was present in the office? A. There were present Frank Rea, Mr. Rubinstein, my father my uncle and myself.

Q. Had you sent for Frank Rea to come to the office that day? A. Yes; I did. That morning I called him on the 'phone and asked him whether he could come at his convenience to the shop.

Q. Tell us now all that was said by Mr. Rubin-

stein and your father and anyone else, if anyone said anything, about the forty shares of stock? A. Well, when Mr. Rea came and we were all present there, I believe my father asked Mr. Rea what he thought about the automobile transaction that Mr. Rubinstein used the company's funds to buy an automobile and had the bill of sale made in his name, and Frank Rea did not make any reply, but Mr. Rubinstein flashed some papers out of his pocket which appeared to be, as I recognized, certificates of the company, and he said: "What do I care, I am boss; you thought you had me, but I got you."

Q. Go ahead. What else occurred? Who said anything then? A. I asked: "What do you mean you are boss?" He said: "You will find out later," and he says, "I got some shares you don't know anything about."

Q. What did your father say, anything? A. My father said: "What kind of shares?" He said: "I bought the four stockholders out."

Q. What did your father say? A. My father said: "You bought the stockholders out from the company—bought the stockholders out?"

Q. Had you heard anything about forty shares before that time? A. Had I heard anything about it?

Q. Yes, anything about the purchase of forty shares by Rubinstein or any claim of Rubinstein before that time that he owned forty shares? A. No; I did not hear any claim that he owned shares until that day.

Q. Mr. Rea says he was asked to make a transfer of those shares that day, forty shares to Mr. Rubinstein; is that so? A. No; he did not.

Q. When was the talk had about transfer? A.

The first time I heard anyone wanted to transfer was some time in October; I believe it was Saturday, October 9th, when Mr. Bluestein and Mr. Rubinstein came to the office and they asked to look at the books of the company. I called my uncle in and he showed him the books of the company.

Q. What books were referred to? A. He asked for a certificate book and a ledger.

Q. Were there any stock books or books that dealt with stock? A. No; there was only just the two.

Q. Now, had you, before Mr. Bluestein came, made any entries at all concerning your ten shares of stock in any book of the company? A. Yes, sir; I had.

Q. Have you got the book there? A. Yes, sir; I have.

Q. Just turn to it and read what entry was made? A. I had written this (indicating.)

Q. Just read the entry? A. "Kasprzak, Veronica—9"—page 9 I believe this stands for.

Q. You are referring to the index? A. Yes.

Q. Tell us what is written there about ten shares? A. August 5, 1922, Veronica Kasprzak, 10 shares from Andrew Biezczad.

Q. Was that the date that you got the stock from Biezczad? A. Yes; it was.

Q. When was the entry made in that book? A. It was made on October 1st of that year.

Q. Was there any other entry made about that time in that book concerning the transfer of shares? A. Yes; there was.

Q. What was that entry? A. There was some shares that my father had acquired previous to that that were not entered in this book.

Q. For how much? How many shares? A. For eight and thirty.

Q. When was the entry made concerning them in that book? A. That was also made on October 1st.

Q. Now, when Mr. Bluestein came and asked to have this transfer entry made on the book, was there anything said that you heard or understood at that time relative to the forty shares? A. No; there was not.

Q. Did he make a demand for an entry at that time? A. He said he wanted to enter some shares that Mr. Rubinstein had, that should be entered in the book.

Cross Examination by Mr. Ward:

Q. How old are you? A. I am twenty-two years of age now.

Q. You have been working for this company how long? A. Since July 1, 1918.

Q. July 1, 1918; how old were you when you went to work for the company? A. Seventeen years old.

Q. Did you sign an affidavit in this case, signed by your father and uncle as well? A. Yes; I believe I have.

Q. Did you swear in that affidavit: "Said Veronica will be twenty-two years of age next January"? A. Yes.

Q. "They admit that she is a grammar school graduate"? A. Yes.

Q. "And deny that she has had any business experience with the exception of acting as bookkeeper"? A. That is true.

Q. "And say that in that respect she entered the business of the company when she was sixteen years of age"? A. I was seventeen, I believe, then.

Q. That is not true, that you were sixteen? A. I was to have been seventeen the following January.

Q. It is not true that you entered the employ of this concern six years ago instead of four? A. It is five years ago.

Q. In answer to His Honor's question, when you said four, as I understand it, that was a mistake? A. No; possibly the year makes a difference, because it was two weeks after New Years that my birthday came.

Q. You understood what His Honor asked you when he asked you how long you were employed there and you said four years? A. Five years I say.

Q. Miss Kasprzak, you took the place of the regular bookkeeper of the concern, did you not, when you went to work in the company? A. I don't know what you refer to as the regular bookkeeper.

Q. In answer to His Honor's question you said that the writing in one book was in the handwriting of the person who kept the books before you went there? A. Yes.

Q. Was that person a regular bookkeeper? A. I don't know.

Q. You occupy the position that was filled by that person? A. Yes; I do.

Q. And the books were all in your care after that and kept by you? A. Some of them were kept by me.

Q. You are experienced in books, are you not?

A. I am quite a deal more experienced now than then.

Q. Ever since you have been in that office you have had particular charge of the company's books? A. No; I have not.

Q. Do you remember swearing to that in your affidavit? A. I had charge of the books under Mr. Rubinstein's directions.

Q. You remember making this affidavit? A. I remember making an affidavit.

Q. Is this true: "That she entered the business of the company when she was sixteen years of age and has been there ever since in particular charge of the books, and thereby acquired a familiarity with the books of the company"? A. That is a fact.

Q. "The names of the customers"? A. Yes.

Q. "General office management of the company"? A. Yes; I have acquired that.

Q. You never became suspicious until your father went away to Europe? A. Not until after he went away.

Q. Yet you were there all that time in charge of the office? A. Yes; I was in charge of the office.

Q. Do you remember when your father went away, before your father went away, there was some discussion between your father and Mr. Rubinstein with reference to salary? A. No; there was no discussion.

Q. You remember— A. (Interrupting.) There was no discussion.

Q. Do you remember, in your presence, there was a discussion in which Mr. Rubinstein said that

if your father went away he should not receive his salary while he was gone? A. No.

Q. He was paid salary while he was gone? A. Yes.

Q. Do you remember a discussion just before your father went away, in your presence, when Mr. Rubinstein asked your father if he would not put in $5000 and he, Mr. Rubinstein, would put in $5000, and they would increase the plant? A. No.

Q. You remember no such discussion? A. There was a discussion, but nothing in reference to $5000.

Q. There was a discussion with reference to increasing the facilities of the plant? A. There was not.

Q. You just said there was— A. (Interrputing.) Some discussion, but nothing referring to $5000.

Q. There was not some discussion with reference to increasing the facility of the plant? A. I cannot remember exactly; I would not say.

Q. Was it not discussed that they would add a piece dyeing branch to their establishment? A. Mr. Rubinstein had often said that he would like to do that.

Q. And talked to your father about it in your presence, had he not? A. No; he often spoke to me about it. I don't know that he spoke to my father about it.

Q. Didn't you call up, in behalf of your father and Mr. Rubinstein, the machinery people and inquire about machinery? A. No; never.

Q. You never did? A. Never did.

Q. Didn't you call up the Van Vlanderen Machinery Company on the 'phone with reference to machinery? A. When was that?

Q. Before your father went to Europe. A. How long before?

Q. Did you ever do it? A. Not that I remember.

By The Court:

Q. Then what difference does it make what time it was? A. Well, I could not—I remember 1918, when I first started to work there, there was some talk about the Van Vlanderen Machine Company then. I do not remember whether I ever called them or not. I might have.

By Mr. Ward:

Q. Was not Mr. Cooney from the Morris Machine Company there at your plant with reference to installing machinery? A. I don't know.

Q. You don't know or you don't recollect? A. I don't know whether he was there or not.

Q. You won't say he was not there and talked to you personally? A. No; he did not talk to me personally.

Q. Now, then, do you remember before your father went to Europe—is your recollection now refreshed as to that—that he refused to put in $5000, and said he was going to Europe? A. I do not believe that there was any request made that my father invest $5000.

Q. Do you recollect that Mr. Rubinstein and your father discussed the fact that your father would continue to be paid his salary while he was gone and Mr. Rubinstein would buy an automobile, and they would adjust the matter when they came back? A. The only conversation that I know was Mr. Rubinstein said that it was not very busy just at present

and he would advise that my father go to Europe and visit some of the dye plants in Germany with reference—

Q. (Interrupting.) I don't like to interrupt you. Do you recall the incident I just asked you about? A. What was it?

Q. Whether you remember that it was discussed between your father and Mr. Rubinstein that Mr. Rubinstein would get the automobile which they had been talking about, in his own name, and your father would get his salary while he was gone, and the matter would be adjusted when he returned? A. No; that was not talked about.

Q. That was not talked about? A. No; that was not.

Q. There was no concealment on the part of Mr. Rubinstein that he was going to buy the automobile? A. Yes, there was concealment.

Q. Was it not kept at the plant and the company's money paid for it? A. Yes.

Q. You were familiar with that? A. I was familiar that the company paid for the car.

Q. In reference to these books, you have had these books under your control and supervision ever since you have been there? A. Yes; I have.

Q. And you are thoroughly familiar with them? A. Yes; now I am.

Q. Is there any doubt about your handwriting in these books? A. Not about my handwriting; I recognize it.

Q. When you say that you believed it to be your handwriting, was there any doubt in your mind as to whether it was or not? A. I did not recall making that entry just—

Q. (Interrupting.) Is there any doubt in your mind it is in your handwriting? A. Well, it looks a trifle different than the other.

Q. It looks a trifle different? A. Yes.

Q. You believe it is your handwriting? A. Yes, I do believe so; it is in the same ink.

Q. What was the first entry of any amount made in these books with reference to this transaction of the forty shares? A. When I made out the checks to the stockholders.

Q. At that time the company merely paid $7050, didn't it? A. $7050 and notes.

Q. And notes? A. Yes.

Q. How was that $7050 entered in the book? A. It was entered to these different people in their names.

Q. Didn't you debit Rubinstein's loan account with it? A. I did not.

Q. Was it debited to Rubinstein's loan account? A. It appears that way now.

Q. That book was open to everybody including yourself, was it not? A. No; it was not.

Q. Was it not in your possession? A. The ledger—

Q. (Interrupting.) Was it not in your possession? A. Not the ledger.

Q. Where was it? A. It was, I believe, in Mr. Cohn's possession, or Mr. Rubinstein.

Q. Was it not in the office of the company? A. No; I don't think it was.

Q. Were there any entries made in it by you —in that very book? A. There were not.

Q. Will you turn to that book? Tell us what you call this book? A. That is the ledger.

Q. Turn to the page with reference to this transaction? A. Here.

Q. You know what "loan account" means, don't you? A. Yes; I do now.

Q. And you know now that Mr. Rubinstein's loan account was debited with $7200? A. That what?

Q. That Mr. Rubinstein's loan account was debited with the amount of $7200? A. I don't know whether it was or not. Do I know now, do you mean?

Q. Do you know now? A. Yes; I see it now.

Q. How long have you known it—since the last few moments when His Honor asked you the question? A. No; I know it since I began to make investigation of the books.

Q. The book was in your control? A. Yes, it was.

Q. How long had it been in your control before that? A. I could not say just when.

Q. When was it that you started to make the investigation? A. After I became a stockholder of the company.

Q. That was after your father came back? A. Yes; it was.

Q. Then, you had not started to make any investigation before that? A. Not in reference to the forty shares. I had no knowledge in reference to that watever.

Q. How long after your father came back was it that you started to make investigation with reference to the forty shares? A. The first time that Mr. Rubinstein presented any claim of ownership of shares.

Q. When was that? A. August 18, 1922.

Q. So, on August 18, 1922, Mr. Rubinstein did make his claim with reference to forty shares of stock? A. He said—

Q. (Interrupting.) He did make some claim? A. He said: "I got some shares."

Q. In the keeping of these books, were you not interested in the amount of money that was owing to the company? A. I was not then.

Q. You were keeping the books? A. Yes, I was.

Q. Didn't you know who the different persons were who owed the company money? A. No; I didn't have any interest in that part.

Q. You were familiar with the business from the time you went in its employ? A. No; not from the time I went in. I gradually became familiar.

Q. You swore to that in your affidavit? A. I didn't know anybody when I went in the firm; I eventually became familiar.

By The Court:

Q. Do I understand you to say that you made the entries in the cash book of the loan of Mr. Rubinstein? A. I made the entries as to the loan, yes.

Q. Were you not curious to know what the loan was for and why it was made? A. No; I was not; Mr. Rubinstein told me to write it that way and I did.

By Mr. Ward:

Q. You drew the checks at the time, didn't you? A. What?

Q. You drew these checks at that time? A. I made the checks out to these different people.

Q. You knew then that these men were selling stock in the company? A. Yes; I did.

Q. You knew then that they were selling their stock? A. Yes; I did.

Q. You knew that the money of the company was going somewheres, didn't you? A. It was going to these people.

Q. You knew you entered that money in the book as a loan to Mr. Rubinstein, didn't you? A. No; I did not.

Q. Why, you knew what a loan was? A. I knew I put it as a loan, but I did not put it to A. Rubinstein.

Q. Just turn to your book. A. Right here.

Q. On page 17 of the cash book, the four names are bracketed, are they not? A. Yes.

Q. And then outside of the bracket you have the words "a loan"? A. I have.

By The Court:

Q. A loan, to whom did you think it was? A. I did not know what it was.

Q. You knew what it was, Miss Kasprzak. If the transaction was a purchase by the company of these shares of stock from these men, it was not a loan of money to them? A. I didn't know.

Q. You knew the company was not lending Harsche, Linglebach, Oltarzewski and Walzak the amount of money for which these checks were drawn? A. I didn't know. I just put it there as it was told to me.

Q. When you drew the checks to these four men, didn't you know it was for the purchase of their stock? A. I don't remember whether I did or not. I knew they were—

By Mr. Ward:

Q. You just said that you knew that these men— A. (Interrupting) Yes; I apparently knew that it was for the purchase of stock.

Q. Then you did know it was for the purchase of their stock, didn't you? A. Yes; I believe I had known.

Q. Why did you put "a loan" down there? A. Mr. Rubinstein told me to put it.

By the Court:

Q. You knew then that it was not a loan, didn't you, to anybody? A. I don't know whether I thought about it any more than I did just as I was told.

By Mr. Ward:

Q. Will you turn to that part of your book which discloses a payment of $3500 in October, 1918? A. Yes.

Q. That is marked in your book. Will you indicate where it is? A. (Indicating) Right here.

Q. "October 21, A. Rubinstein paid back a loan $3500." What does this "14" mean? A. I don't know. I take it to mean—now, do you mean?

Q. Don't you know that it refers to a page? A. Yes; I do now.

Q. Why did you say: "I don't know"? A. Yes; I do know now.

Q. So that right under your own entry in the cash book you find the figures "14" which you know refer to the ledger? A. Yes; I know they refer to the ledger.

Q. When was that "14" put in there? A. I could not say. Possibly when Mr. Cohn came or had the book.

Q. Immediately after this transaction? A. I would not say immediately. Mr. Cohn used to come every few months.

Q. Were the entries dated? A. Yes.

Q. Did you keep the ledger at that time? A. No; I did not.

Q. Have you ever kept any part of the ledger? A. No; I have not.

Q. Are there any entries in the ledger in your handwriting? A. There are not.

Q. Now, Miss Kasprzak, when you entered that return of loan, you knew what that meant? A. I knew he returned a loan.

Q. You knew that Mr. Rubinstein was paying back money that he borrowed from the company, didn't you? A. That is what it looked to me.

Q. You knew it was part of the $7050 or $7200, didn't you? A. No; I did not.

Q. Was there any loan that you knew of? A. No, I thought possibly Mr. Rubinstein was returning a loan that he had.

Q. How did you know it was a loan? A. I knew it was a loan because he told me to put down "paid back a loan."

Q. Is it not true that all checks were written by you? A. Yes—not all, but most of them.

Q. You therefore had knowledge of what loans were made? A. Not from when I first started to work there. That was in 1918.

Q. This was the only loan that you had knowledge of? A. I never knew it was a loan to A. Rubinstein.

By the Court:

Q. Didn't it excite any comment in your mind that Mr. Rubinstein was paying back a loan that you didn't know about? A. It didn't. There was always large sums he told me to put in the books. Mr. Rubinstein always made the deposits.

Q. That was customary? A. Yes, sir.

Q. He gave you $3500 and told you it was payment of a loan. Were you not astonished that he had borrowed $3500 from the company that you didn't know about? A. No; I was not.

Q. You were suspicious of him at that time? A. No; I was not.

Q. This was October, 1922? A. This was 1918.

Q. This payment back? A. Yes.

Q. I thought you said it was 1922? A. No.

By Mr. Ward:

Q. That was only two months after he told you to enter $7200 as a loan, was it not? A. He did not tell me to enter $7200 as a loan.

Q. That is the total of the amount that was paid by these four checks that you entered as a loan? A. He just told me to make that bracket and put down "a loan."

Q. These four checks total $7,050, don't they? A. Yes, I believe so.

Q. And you knew that there were notes that

had been made by you as well? A. Yes; because I made the notes.

Q. You knew that they amounted to $150, didn't you? A. Yes.

Q. And you knew that those notes, together with the checks that had been given, amounted to $7200, altogether, didn't you? A. Yes; I did.

Q. You knew that he was paying back $7200; you knew he was paying back the amount of those checks togethere with the amount of the notes? A. I never checked up what amount he turned in. He never turned it in in one lump sum.

Q. He made three payments, one in October, 1918, one November 23, 1918, and one May 3, 1919? A. Yes.

Q. Amounting to $7200 altogether? A. Yes; I suppose they were.

Q. As the person who was in active management and control of that office, didn't you total up these amounts? A. No, I did not.

Q. Didn't you want to find out what it was that he had paid back? A. No; I was not interested.

Q. Were you not keeping the books? A. I was.

Q. And the payment of these big sums of money by this man excited no curiosity on your part? A. No; they did not.

Q. You are thoroughly familiar with business matters, are you not? A. Yes, at present I am —I could not say "thoroughly."

Q. You made out the income tax report for your company, didn't you? A. Never.

Q. You never made that out? A. I never made it out.

Q. Did you see it? A. I don't remember seeing it.

Q. Who made it out? A. When?

Q. Any time since you have been in the office? A. This last year Mr. Hastings did.

Q. Mr. Hastings? A. Yes.

Q. That is since this case was started? A. Yes.

Q. Before that who made it out? A. I could not say; I do not really know.

Q. You surely know who made out the income tax report? A. The accountants I believe.

Q. What accountants? A. Frank Rea or Morris Cohn.

Q. Did you ever examine that report? A. No; I never did.

Q. Don't you know, as a matter of fact, that the income tax report did not have in the $7200 worth of stock as stock of the company? A. I don't know. I never saw the income tax report.

Q. But had these shares as outstanding shares? A. I don't know.

Q. Who made out the financial statement of the company? A. The accountants.

Q. Who gave them the figures? A. They got them from the books.

Q. Didn't you cooperate and assist? A. Did I what?

Q. Cooperate with the accountants or assist in making up the figures? A. No, I did not.

Q. Giving him whatever information he desired? A. They never asked me for information.

Q. Didn't you yourself make the figures from these books that are kept in your handwriting or under your supervision? A. Didn't I what?

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Q. Make the statements? A. No, I never made any statements.

Q. Did you ever see one made? A. No, I did not.

Q. You know what they are? A. Yes; I have seen them recently. I have seen them submitted.

Q. You have seen them? A. Yes.

Q. You have seen these financial statements? A. Yes, I have seen them in the office.

Q. And you know in these financial statements these forty shares of stock were always set out as outstanding shares? A. No, I do not.

Q. It was never stated in these reports that these forty shares belonged to the company, was it? A. It might have been, but I have not seen it.

Q. Whereabouts are these statements kept—the copies? A. Mr. Rubinstein always saw them.

Q. Since he has been away where are they kept? A. I never had any statements.

Q. Do you know where the copies of these statements are now? A. Yes; I do.

Q. Where? A. They are in the safe.

Q. Under your control?

Mr. Lewis—When you say "financial statements" what do you refer to?

Mr. Ward—I am referring to statements given for the purpose of obtaining credit of creditors.

Q. Since this case have you not often looked at these financial statements? A. No, I have not.

Q. So, your investigation did not go that far?

A. I have not looked at the statements; I do not understand them, in fact.

Q. You made your own trial balance, didn't you? A. No; I did not.

Q. You did not do it? A. No.

Q. Did you see it? A. No; I have not seen that.

Q. You, a bookkeeper and in active management of this office, have never seen your trial balances? A. I never made any trial balance.

Q. Have you ever seen a trial balance? A. I have seen them—

Q. (Interrupting.) What did you mean when you said— A. I have seen them.

Q. You have seen the trial balances? A. I have seen them when they were sent to the office.

Q. And all of these show that these forty shares are outstanding, don't they? A. I don't know; I never inspected them.

Q. Your father came back in August, didn't he? A. July, I believe.

Q. Has your father ever paid to the company the salary that he drew while he was in Europe? A. That he drew?

Q. Yes. A. He didn't draw any salary out; his salary was paid to me in the pay roll.

Q. Has that money ever been paid back to the company? A. Was what paid back?

Q. The salary that you drew out in behalf of your father? A. Why, no.

Q. How long was he away? A. Ten weeks, I believe.

Q. When the discussion with reference to the automobile that Mr. Rubinstein had bought, arose, Mr. Rubinstein immediately turned it over to the company, didn't he? A. Yes, sir; we demanded it.

Q. You have answered the question. He turned it over to the company, didn't he? A. Yes.

Q. That was because of the demand that was made? A. Certainly.

Q. Before that demand was made your father borrowed $1500, didn't he, from the company? A. Before the demand was made?

Q. Yes. A. I don't remember. I know he borrowed $1500—

Q. And there was no trouble between your father and Mr. Rubinstein until after he borrowed $1500, was there? A. There was no trouble, active trouble, until I became a stockholder.

Q. How long before you became a stockholder did your father return from Europe? A. Possibly two weeks.

Q. So, then, during those two weeks there was no trouble? A. Why, there was only little arguments about the car.

Q. Don't you know that there was never a word said about this car until your father had gotten Mr. Rubinstein to consent to his drawing out $1500 as a loan? A. That is out of order.

Q. Don't you know that that is true? A. That is not true.

Q. Then, despite the fact that there was trouble, disputes, about the automobile, Mr. Rubinstein consented to your father drawing out $1500? A. Consented what?

Q. Did Mr. Rubinstein consent to your father drawing out $1500 as a personal loan to him? A. My father, loan to the company, from the company?

Q. (Question repeated by stenographer.) Did Mr. Rubinstein consent to your father drawing

out $1500 as a personal loan to him? A. Yes; he signed the check to him.

Q. After that you purchased the stock of Biezczad, didn't you? A. Yes.

Q. Ten shares? A. Ten shares.

Q. For how much? A. $4500.

(At this point recess is taken until two o'clock in the afternoon. After recess witness resumes the stand and cross-examination continues.)

Q. You had the stock book there this morning, didn't you? A. Yes.

Q. You transferred these ten shares of stock on this stock transfer book? A. Yes, I did.

Q. When did you do that? A. October 1st.

Q. How did you come to do that? A. I asked Mr. Smit.

Q. You did ask Mr. Smit? A. Yes.

Q. When? A. A week or so before October 1st, I believe; I would not be positive about it.

Q. Was that before or after this trouble had started? A. That was after.

Q. So that up to the time you acquired this stock, although there was some little talk about the automobile, there was no trouble? A. What was that?

Q. Up to the time you acquired this stock, these ten shares of stock, although there was some talk about the automobile, there was no real trouble? A. There was not.

Q. Why didn't you transfer the stock as soon as you got it? A. I never knew there was any importance in having it transferred.

Q. Who gave you authority to put that transfer on the transfer book? A. I asked Mr. Smit and he said it should be entered in the book.

Q. So that up to that time, up to the time that this trouble started and you asked Mr. Smit, there was no thought on the part of anyone that it was necessary to have the stock transferred on the stock transfer book, was there? A. Before October—

Q. Was there any thought— A. Beg pardon?

Q. Before you had this trouble in October, before that time there was no thought so far as you knew, on the part of any of the stockholders, that is was necessary to have the stock transferred on the stock transfer book? A. No; I did not know whether it was necessary or not.

Q. You said this morning that you did not assist in getting up these balance sheets. You also stated that Mr. Cohn was the auditor at one time? A. Yes.

Q. And he is the gentleman sitting here in court? A. Yes, sir.

Q. Is it not true that you gave the information upon which or with which he got up these balance sheets? A.. No; it is not true.

Q. Is it not true that you had possession of a book or a bound volume which contained these balance sheets, these monthly balance sheets? A. No; I never had it.

Q. Was not that in your possession and was not that given by you—trial balances—was not that given by you to him as he required from time to time? A. No; I never gave Mr. Cohn anything.

Q. Did you ever talk to him about these balance sheets? A. No; I never did.

Q. And Mr. Rea—he was an accountant—I believe you saw him here the other day, did you ever give him any information? A. Why, no; any information that was given was given by them to me; I never gave them any information whatever.

Q. Did you ever give them any explanation as to the different entries that you had made in the books? A. What kind of explanation; what kind of entries?

Q. Information as to why you had made certain entries in a certain way? A. No; I do not believe so.

Q. Did you ever give them any information with reference to accounts receivable? A. No; I did not.

Q. Didn't you personally tell Mr. Cohn how to put in the ledger the loan account of Mr. Rubinstein? A. Why, no; indeed not.

Q. Did you ever speak to him about that? A. A. No; I did not.

Q. Do you know how he got the information because of which he debited Mr. Rubinstein's loan account with $7200? A. I do not.

Q. Do you know how he got the information with reference to the credits? A. I do not.

Q. I mean Mr. Cohn, now? A. I do not.

Q. Did you ever give him that information? A. No, I did not.

Q. When these different sums were paid back by Mr. Rubinstein, the different sums that you have mentioned, did you ever speak to your father about it? A. No, I did not.

Q. Did you ever speak to anybody about it? A. No, sir.

Q. Did you ever speak to Mr. Rubinstein about it? A. No, sir.

Q. Why not? A. I don't know why. I didn't do it.

Q. You were managing the office? A. No; I was not managing the office. I did as I was told.

Q. You were keeping the books? A. Yes, I was.

Q. You were around the mill? A. Beg pardon?

Q. You were around the mill? A. Yes; I was.

Q. You were making entries in these books without consulting Mr. Rubinstein? A. No, I did not.

Q. Do you mean to say that there was not a single entry made in these books that you did not consult Mr. Rubinstein about? A. Yes; I have made entries that I was familiar with on the books.

Q. At that time? A. At what time?

Q. In the spring of 1919. You were familiar with the books then, were you not? A. Not very familiar, no.

Q. Didn't you swear in your affidavit that was presented here signed by you in December, that from the time you entered that office you were familiar with the management of the office? A. I eventually became familiar, but when I entered the office I did not know the first thing about bookkeeping.

Q. In May, 1919, you had been there about two years? A. No; about a year.

Q. You went there in 1917? A. 1918, July 1st.

Q. When your attention was called to the fact that you testified that you had been there six years, didn't you correct that this morning and say—

Mr. Lewis—I object. Her attention was not called to any such thing.

Mr. Ward—Question withdrawn.

Q. At the time that these checks were made to these four men—you know, of course, the checks to which I refer, do you not? A. Yes.

Q. Did you not at that time know that your father had to sign the checks? A. Yes; I did.

Q. Didn't you talk to him about it? A. About what?

Q. About the checks? A. What about them?

Q. What they were for. A. Why, yes; I knew they were to buy the shareholders out.

Q. Didn't you talk to him about it? A. No, sir, I did not.

Q. Didn't you talk to him about the entries or the entries you made in the book, with reference to these four checks— A. I had no reason to talk—

Q. (Interrupting) Whether you had reason or not, did you or did you not? A. No; I did not.

By the Court:

Q. Who told you to draw the checks? A. Mr. Rubinstein did.

By Mr. Ward:

Q. Do you know who gave Mr. Hastings the

information with reference to the statement that was made in your affidavit in this case, that was presented in this case in December last? A. Mr. Hastings got it from the books.

Q. Did you examine it? A. Did I examine it?

Q. Yes; after it was made. A. I may have; I do not remember.

Q. You swore to the correctness of it, didn't you? A. Yes; I know—

Q. (Interrupting) You examined it before you swore to the correctness of it, didn't you? A. There are so many papers I do not just remember what it was.

Q. Didn't you examine this statement which was attached to your joint affidavit and about which you swore in your affidavit?

Mr. Lewis—Let her see the statement.
(Paper is shown witness.)

A. Yes; I have. I have looked at these papers.

Q. I indicate to you the item "Capital stock outstanding as per ledger, $16,500." Did you consider that that was outstanding, all of it? A. At the time when I—

Q. At the time you swore to this affidavit. A. No, it was not outstanding to the best of my knowledge.

Q. Yet you let that go in the statement, didn't you? A. "As per ledger" it states there.

Q. And all the other statements there were issued before that time had that? A. They may have; I don't know.

Q. Didn't you ever examine them to see? A. No; I never did.

Q. You have examined them since then, you have said? A. I don't remember whether I have or not; I may have.

Q. Didn't you say this morning that you have examined them since? A. I don't know; I might have; I can't say.

Q. Have you or not examined them since? A. Which statements? Made by whom?

Q. Statements made to obtain credit. A. Beg pardon?

Q. Any statements, financial statements, made by the Stanley Silk Company? A. do not believe I have seen statements; I have seen some trial balances recently.

Q. Have you ever seen any statements? A. Why, I don't know just what you mean by statements.

Q. Financial statements or balance sheets such as I showed you a moment ago, that was attached to your affidavit? A. No; I have never seen them.

Q. Have you never seen them? A. I may have seen them, but I have never inspected them.

Q. You knew the purpose of these statements, didn't you? A. No; I did not.

Q. You did not know for what purpose these statements were drawn up at the time? A. No; I did not.

Q. Did you ever see your father sign them? A. No; I did not.

Q. You knew he signed them? A. Yes; I knew he had signed a lot of papers.

Q. You knew he signed them with Mr. Rubin-

stein? A. I don't know; I never seen them.

Q. You said something this morning about petty cash? A. Yes.

Q. Is it not true that that petty cash has been carried on in the same way for five years? A. Yes; it has.

Q. And when your father was there and when he was not there? A. Yes.

Redirect Examination by Mr. Lewis:

Q. You said that you had charge of the books, in answer to a question Mr. Ward put this morning. Exactly what charge had you of the books? A. I had charge of the books? I had all the books of the office and whatever entries were necessary to put in that I knew how to put in, I put them in.

Q. What books were in the office that you made such entries in? A. The ordinary day book, record book, cash book, purchase journal, journal, the customers' ledger, accounts payable ledger.

Q. Did you have charge of the ledger or journals? A. Did I charge of it?

Q. Yes. A. I do not believe I had charge of it.

Q. Do you think you had charge of the general ledger? A. Yes; I saw them in the office.

By the Court:

Q. These books were in the office with the other books? A. Yes; they were.

By Mr. Lewis:

Q. Did you make any entries in them?

The Court—She has testified on that.

By Mr. Ward:

Q. But you were familiar with all of the books of the company, were you not? A. No; I was not.

Q. Didn't you swear that you were sixteen years of age when you entered the employ of the company and so forth, and that you have been there ever since, in practical charge of the office and thereby acquired a familiarity with the books of the company? A. Yes; I have acquired famil iarity.

Q. All the books that you have mentioned that you made entries in were books of original entry? A. What?

Q. Books of original entry, were they not? A. I don't know; they may be.

JOHN J. HASTINGS, a witness heretofore sworn on the part of the defendants, recalled and further examined as follows:

Direct Examination by Mr. Lewis:

Q. You are an accountant? A. Yes.

Q. Where is your place of business? A. Paterson, New Jersey.

Mr. Ward—Mr. Hastings' qualifications are admitted.

Q. Have you examined the books of the Stanley Silk Dyeing Company? A. Yes, sir.

Q. Have you made such examination of them that you can tell us how many dividends have been declared by the Stanley Silk Dyeing Company? A. Yes, sir.

Q. How many? A. One.

Q. Declared or paid, do you refer to now?

Mr. Ward—We object unless the witness can speak of his own knowledge. If it is in the minutes, the minutes are the best evidence.

The Court—Objection overruled.

A. Declared and paid.

By the Court:

Q. How many were declared and not paid? A. None that I found any record of.

By Mr. Lewis:

Q. What record do you refer to? A. Minute book as to the declaration of dividends and cash book as to the payment of them.

Q. What was the date of the payment of the dividend? A. November 2, 1918.

Q. And what were the amounts that were paid and to whom? A. A. S. Kasprzak, $837.50; A. Rubinstein, $837.50; A. Biezczad, $250; W. Kasprzak, $125.

Q. Did you find any other moneys, other than salary, had been paid to Mr. Rubinstein and Stanley Kasprzak? A. I do not understand the question.

Q. Did you find that any other moneys than for salaries had been paid by the company to Mr.

Rubinstein and Mr. Stanley Kasprzak? A. Yes, sir; dividends.

Q. Outside of dividends? A. Salaries.

Q. And outside of salaries? A. Payments on account of back salaries.

Q. Do the books show a payment of something in the neighborhood of $5000 to Mr. Kasprzak, Mr. Stanley Kasprzak? A. Yes.

Q. Do they show a payment of about that sum to Mr. Rubinstein? A. Yes; a difference of $60.

Q. Give us the amount that was paid to each? A. A. Rubinstein, $5,270 on July 10, 1919.

Q. And S. Kasprzak? A. $5,350, July 10, 1919.

Q. Did you find any subsequent payments to them? A. Yes.

Q. Just state them with their dates. A. May I ask: Payments of cash?

Q. Yes. A. Payments to A. Rubinstein, January 31, 1921, $400 cash. May 6, 1921, $2750. May 6, 1921, to Stanley Kasprzak, $2750. August 5, 1922, $1500, to S. Kasprzak.

Q. Do you find that there were any credits put to the account of or to the credit of Stanley Kasprzak—or Rubinstein, which appear on the books? A. Credits to their loan account.

Q. Is there an account—please explain that loan account, stating what it is, what credits appear in it, and to whom and the dates. A. Credit to A. Rubinstein's account, December 22, 1918, $3500; December 22, 1918, $1770; December 31, 1919, $3900; December 31, 1919, $6000; November 10, 1920, $400; December 30, 1920, $2760; December 31, 1921, $2750.

Now S. Kasprzak's loans payable account: December 22, 1918, $3500; December 22, 1918, $1930;

December 31, 1919, $3900; December 30, 1920, $2760; December 31, 1921, $2740.

Q. I will ask you this now: You have told us that at the time the payment of five thousand and some odd hundred dollars was paid to Mr. Rubinstein, a like amount plus $60 was paid to Mr. Kasprzak. Do the books show the reason for that difference? A. Nothing other than as an adjustment of salary difference of $5.

Q. $5 per what? A. Per week.

Q. Is there any difference at all in the other amounts that were paid to Mr. Rubinstein and the amounts which were paid to Mr. Kasprzak, which are just mentioned? A. The amounts which I have just mentioned are credits and you say "payments"?

Q. I mean credits. A. Well, there was a difference of $6000 in one item.

Q. Was there any difference in any others? A. There is a difference of $60 and a difference of $6000.

Q. That is all? A. That is all.

Q. Otherwise their credits are alike; is that right? A. Yes.

Q. Now, then, can you explain, can you tell us, whether the books show whence the difference arose in that $6000? A. Yes.

Q. Please explain. A. On page 55 of the journal there is an entry debiting labor $6000 and crediting loans payable. That loans payable credit is this side of here (indicating) that I just mentioned. The explanatory note under the journal entry is as follows: "Amount paid by A. Rubinstein from his personal account for bonus due V. J. and W. Kasprzak. This amount is paid to com-

pensate them for Sundays, holidays and Saturday afternoons and evenings for which they received no compensation.

Q. Do the books show that any such payment was made to V. J. and W. Kasprzak? A. No.

Q. How is that sum of $6000 subsequently treated in the books? A. On page 56 of the journal there is an entry charging or reducing the surplus account by $6000 and crediting the loans payable, A. Rubinstein, $6000. Thus that loans payable, which appears as a credit, is wiped out by this entry, under date of January 1, 1920, debit loans payable, A. Rubinstein, crediting capital stock $6000.

Q. Do the books then show any charge against capital stock to balance the $6000? A. The books show this credit or increase of the capital stock by $6000.

Q. Does it show to whom that capital stock was issued, or do the books show that? A. The financial books have not entry, but the stock certificate book has an entry of the same date, January 1, 1920, Alexander Rubinstein, certificate No. 15, for thirty shares. S. Kasprzak, certificate No. 16, for thirty shares.

Q. Does that take care of and distribute that credit of $6000 between Rubinstein and Stanley Kasprzak? A. That credit increases the capital stock and to me shows that the company received nothing for it.

Q. It balances the books, does it? A. Yes; the books would be balanced.

Q. And do the sixty shares of capital stock have any relation to that $6000 that you spoke of,

in order to balance the books? A. Yes; the same entry.

Q. From August, 1918, to September, or, say up to this time, you are familiar with the books, are you? A. Yes, sir.

Q. Is there any other difference in the drawing of money from the company by Rubinstein and by Stanley Kasprzak, other than you have explained? A. No.

Q. And when I ask you: "Other than you explained" please state what you understand me to mean—your understanding of my meaning when I say "other than you have explained," do you understand what I refer to when I say "other than you have explained"? A. I understand you to mean with regard to salaries, dividends, loans payable and the accounts that affected Kasprzak or Rubinstein.

Cross Examination by Mr. McKee:

Q. You say this payment of dividend was made November 2, 1918? A. It was paid.

Q. When was that declared? A. The dividend was declared on October 28, 1918.

Q. October 28, 1918. At that date can you tell us how many shares were owned by Mr. Stanley Kasprzak? You may refresh your memory from the stock book or your records. A. The stockholders in the concern received twenty-five per cent. on their shares and Kasprzak and Rubinstein got the same amount.

Q. Did you get up this statement that was handed to us by Judge Lewis as to the holdings? A. No.

Q. According to that, at that date, Stanley Kasprzak held seventeen shares, did he not—according to this statement? A. Yes; I see seventeen shares.

Q. And Mr. Rubinstein held only ten shares? A. Ten shares.

Q. Can you explain—is there anything to show, as to what they received an equal amount of money in that dividend? A. Yes.

Q. Will you kindly explain why that is, or how that should happen? A. Certainly. Back in October, 1919—

Q. (Interrupting) I am talking about the date of payment, November 2, 1918. That dividend was paid on November 2, 1918? A. 1918.

Q. Is there anything to show, I mean prior to that date, as to why they should receive the same amount? I understand you to say that the resolution was that each stockholder was to receive twenty-five per cent. of his holdings? A. Twenty-five per cent. of his holdings.

Q. And Kasprzak and Rubinstein were paid an equal amount, $837.50? A. Which would show they had thirty-three and a half shares.

Q. Does that show that they had thirty-three and a half shares? They only had twenty-seven altogether, at that date, according to the records? A. According to the minute book they had a dividend of twenty-five per cent. and they each received the same amount.

Q. What does the stock book show that they held at that time? A. The stock book shows—I will have to examine the stock book and tell you—may I see that statement?

Q. (Question repeated) What does the stock

book show they held at that time? A. I don't know.

By the Court:

Q. You have the stock book here in front of you? A. This is a draft of the stock book.

By Mr. McKee:

Q. It shows that Stanislaw held seventeen shares? A. Yes.

Q. And Rubinstein ten shares? A. Ten, yes.

Q. You say this is a copy of the stock book? A. Yes.

Q. You merely take the figures of $837.50 from the cash book as having been paid, and from that say that each held thirty-three and a half shares? A. Well, the cash book shows the same amount. I multiplied the amount of the dividend, twenty-five per cent by four, to arrive at the par value of the stock.

Q. But the reason you arrive at that is that you take that as a matter of fact without going back to the stock book to find out exactly what each held, and you multiplied by four, and then state that each held so many shares of stock; is that the way you arrive at it? A. That is the way I arrive at it now.

Q. That is now a fact. Of course to the books they did not own thirty shares at that time, did they? A. The stock certificate book shows exactly what they got.

Q. Is it not a fact, as you stated before, that this dividend was twenty-five per cent. on the stock held by each, that was not true, is it, that

payment of $837.50— A. (Interrupting) I have the cash book and minute book conflicting with the stock certificate record; I cannot say which is correct.

By the Court:

Q. What the Senator is asking you is: According to the books of the company did they each own an equal number of shares at that time? A. According to the stock certificate book they did not. According to the cash record and minute book they did.

By Mr. McKee:

Q. How does the minute book show they did? A. Well, the minute book shows twenty-five per cent. dividend and the cash book shows $837.50.

Q. Is not the proof of the holdings in the company the stock book? A. Yes, the stock book, surely.

Q. Is not that the only book by which you can say as to the number of shares held by a man? A. No.

Q. How else can you say? A. Why, the cash book, if a dividend is paid for a greater or less amount.

By the Court:

Q. There may be an error in the payment of the dividend? A. There may be a mistake in the stock book.

Q. And there may be a mistake in the divi-

dend? A. There may be a mistake in the dividend .

By Mr. McKee:

Q. There further might be an agreement between the parties to divide it up and share equally, might there not? A. There might be, but I know nothing of that.

Q. But the only evidence in a company as to the ownership of stock in that company is the stock book, is it not?

Mr. Lewis—Isn't that calling for a conclusion?

The Court—I don't think so. The best evidence of ownership of stock is possession of the certificates.

Q. As indicated by the stock book of this company, isn't that true? A. As indicated on the stock book of the company.

Q. This payment you say of July 10, 1919, of $5270, to Mr. Rubinstein, and $5330 to Mr. Kasprzak, that was for what; is there any indication on the book as to what that was for? A. $5270 to Rubinstein and $5330 was credited to their loan account and charged against surplus.

Q. What was that for, do you know? A. There is nothing to indicate what it is for.

Q. Was it not back salary? A. There is nothing to indicate it was. It was not until the following year that they charged it to back salary account.

Q. When they did charge it, it was for back

salary? A. But they did not charge the close of 1918.

Q. This is July 10, 1919. A. Distinguishing between the actual payment and the actual credit?

Q. Yes; the actual entry. A. Well, there are two entries; one the payment of the amount and one crediting the other account before they got paid.

Q. Eventually was not this item of July 10, 1919, $5270 to Rubinstein, and $5330 to Stanley Kasprzak, entered up to back salaries? A. No, sir.

Q. And they stand—how do they stand on the books? A. They have been credited to their loan account and when the payment was made to them, then they have been charged against their loan account.

Q. Then that entry of loan of $5270 was entered against Mr. Rubinstein and they were credited with the payment of that loan? A. No; the first entry was a debit to surplus, charging the surplus account and crediting the loans payable account.

Q. Why were they charged up to surplus, if there was no payment of back salary? A. I should say lacking knowledge of how to treat it.

Q. If they were dividends, the other stockholders would get some benefit of it? A. Undoubtedly.

Q. Is there any evidence—just think a moment—in the way of the books, that these two payments were back salaries? A. I can only state what the books reveal, and the books reveal the entry to surplus.

Q. There is no entry of the payment to them? A. Later they received that amount.

Q. They received the money as a loan? A. They received the money as shown; they received cash. When this entry was first put on, they charged the surplus account, setting up a liability of the company, and when they received the money they eliminated the liability of the company and that gave them the cash.

Q. Wasn't there a charge made against the company for the increased salaries or back salary of these two men? A. No; not these particular items. It was first handled in that way by a charge to surplus. In all later years, 1919, 1920 and 1921, like items were charged against back salary.

Q. All of these items charged against these two men that you refer to, don't they refer to back salaries? A. Eliminating that item, they do.

Q. And eventually, don't they balance, with regard to the back salaries for the whole amount? A. The back salaries, yes.

By the Court:

Q. Was there a salary account on the books? A. At the close of each year.

Q. At the close of the year 1918? A. At the close of the year 1918 there was a salary account, but they charged—

Q. That item did not appear on the salary account that year? A. Not 1918, 1919, 1920 and 1921 they put it in the salary account.

By Mr. McKee:

Q. Was not that on account of the fact that

the books for 1918 were closed at the time and they could not be changed; was not that the reason it was entered against surplus? A. I did not make the entry; I cannot tell you.

Q. From your expert position, is it not your knowledge or opinion; isn't that the way you would think it was done? A. No; I cannot tell you—

Q. Why do you think it was done that way? A. I am not in a position to say.

Q. It doesn't appear that it was actually loaned money and repaid to the company? A. Repaid to the company?

Q. Yes. A. It was irregularly charged to the surplus account and credited to their other money which they withdrew.

Q. It was not credited to their loan account, was it? A. It was credited to their loan and they received the money.

Q. Therefore, it must have been an indebtedness of the company of some kind, and therefore they would have received the money; isn't that so? A. There is nothing to show that there was an indebtedness of the company.

Q. From the entries in the book it shows an indebtedness on the part of the company, does it not? A. There is nothing on the books of the company to indicate a liability of the company to these two men for salaries in this particular year, other than the credit to their loan account and the charge against surplus.

By the Court:

Q. Eliminating all of this bookkeeping techni-

cality, isn't the situation this: That five thousand odd dollars was taken from the surplus and paid to each? A. That is the sum and substance of the whole thing.

By Mr. McKee:

Q. Have you examined the income tax return for 1918? A. It was not available.

Q. You have not seen it? A. No.

Q. You made out this statement, did you not, which was attached to the affidavit filed in this case? A. Yes.

Q. And in your examination of the books you have found, have you not, the fact that these forty shares in dispute have always been charged as outstanding stock? A. The ledger shows the outstanding stock.

Q. You so reported? A. And I particularly ear-marked my report, as you will note, "as per ledger."

Q. That shows capital stock outstanding. The stock certificate book also shows it as outstanding, does it not? A. Also shows it outstanding.

Q. You did not ear-mark on your report "as per ledger and stock certificate book"? A. As per ledger.

Q. You have examined the other reports of the company from 1919 on? A. May I ask you: "Income tax reports"?

Q. Yes. A. I never had access to the income tax reports.

Q. Not any of them? Were there any other statements that you have examined of the company's, that were issued by them, statements of financial standing? A. No.

Q. You have not seen any statement except the statements you have made up yourself? A. No.

Q. Who gave you your information as to those figures? A. The books.

Q. The books themselves. You got no information at all from anyone connected with the company? A. I would ask questions for verification.

Q. From whom? A. From Miss Kasprzak.

Q. She gave you the information readily that you required? A. No.

Q. She gave you the information? A. I would have to ask her—from her lack of knowledge of the general ledger, I would have to ask her to get me out the original paper on which the entry was made.

Q. She would get them? A. She would get them.

Q. It was not necessary for you to call in any other person to get information from? A. No.

Q. You have never applied to Mr. Rubinstein for any information? A. No.

Q. That was not necessary. Excepting you required you received from Miss Kasprzak? A. There were many questions I wished to ask Mr. Rubinstein.

Q. All the information you required you received from Miss Kasprzak? A. All the information I was able to get I got from the books and from Miss Kasprzak.

Q. You consulted with Mr. Rea while you were going over these books, didn't you? A. I asked Mr. Rea to explain some irregularities.

Q. But you knew that he had made the reports, the income tax reports, didn't you? A. I knew

that Mr. Rea had something to do with it, but not—

Q. (Interrupting) You never asked him for copies of those reports, did you? A. No.

Q. Why not? A. Because I didn't need them.

Q. All the information that you required was obtained without that? A. Was in the general ledger.

By Mr. Lewis:

Q. Tell us what your general conversation with Mr. Rea was? A. I cannot recall it definitely now.

Mr. Lewis—There is something I forgot to ask this witness about that should have been asked on direct examination.

The Court—All right, if it is an oversight.

Q. Can you tell us what the books show as to the amount or amounts of money on hand from day to day, or from week to week, in the company, from, I will say, the beginning of July up to September? A. The cash balance, as appears in the cash book July 31, 1918, was $21,675.67; the cash balance at the close of August, 1918, was $18,639.97.

Q. Now, the next one; give us the following months for about six months? A. The cash balance at the close of September, 1918, was $20,884.98; the cash balance November 1, 1918, was $25,073.61; end of November or December 1st was $23,536.76.

Q. Follow on down to May. A. January 1st,

$23,740.69; February 1st, $24,819.57; March 1st, $26,664.92; April 1st, $29,688.04; May 1st, $14,512.42; June 1st, $15,273.06.

Q. You cannot give us the daily balance. You can only give the monthly balance, do I understand you? A. What particular day would you have?

Q. You would have to analyze it? A. Yes.

Q. Do you know when they began to build their mill? A. No.

By Mr. McKee:

Q. According to the books, what did the mill and extra equipment cost that was built about that time? A. I am not in a position to say that.

Q. The books are there. Look in the building account in the ledger and tell us that. A. Well, here is July 2, 1918.

Q. I want the new building. A. Here are various charges to the building account.

Q. When? A. During the year 1918.

Q. What are they? A. $16,722.34.

Q. How about equipment? A. The book value of the machinery and tools December 31, 1918, was $17,596.34.

Q. Now, after that. A. December 31, 1920, $20,325.38.

Q. Was that the total value? A. That is the total value of machinery and equipment at that date.

Q. Have you any other financial statement there with you except the one made by yourself from the books? A. No.

Q. For a different period? A. No.

Q. The one you have is the one that appears in the affidavit I have shown you? A. Yes; that is all.

Defendants Rest.

REBUTTAL

MORRIS COHN, sworn on the part of the complainant in rebuttal testifies as follows:

Direct Examination by Mr. McKee:

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

Q. Where you you reside? A. Paterson, New Jersey.

Q. Your place of business is where? A. 152 Market Street, Paterson, N. J.

Q. How long have you been a public accountant? A. About fifteen years.

Q. Did you at any time have charge of the books of the Stanley Silk Dyeing Company? A. Yes.

Q. When and for how long? A. During 1918 and the beginning of 1919.

Q. What part of the work did you do and how often did you go there? A. I balanced their books monthly and I came there every month.

Q. Who kept the day books, journal, cash book, as far as you know? A. When I first came there, that was the beginning of 1918, some young man kept the books, and a little while afterwards the young lady took charge of them.

By the Court:

Q. Miss Kasprzak? A. Miss Kasprzak.

By Mr. McKee:

Q. This young lady here? A. This young lady here.

Q. In making your entries from the journal and cash book to the ledger did you ever consult her as to the items that had been entered by her? A. Yes, sir.

Q. Was there anyone else from whom you received information regarding these different items? A. No one else.

Q. Your work was entirely between yourself and Miss Kasprzak? A. Yes.

Q. Referring to the cash book, Exhibit D-11, on page 17 of that record, I call your attention to an entry written in green ink: "Alex Rubinstein" and "14" on each side, and ask you in whose handwriting that is? A. The entries in green ink are mine.

Q. And placed there when? A. The first one was placed on August 3, 1918, for $150.

Q. I am calling your attention to an entry on August 5, 1918, and ask you what that is? A. This entry purports to be one made on August 5th to Alex Rubinstein, for $2450.

Q. I ask you if that entry in the green ink is in your handwriting? A. The entry here, the entry is in black ink.

Q. I mean the memorandum in green ink. A. The memorandum is my handwriting, yes, sir.

Q. And in reference to that item, the first item you have just read of August 5, 1918, what did you do with that item which you found there? A. I

posted it to folio 14 in the general ledger apparently.

Q. I call your attention to the ledger Exhibit D-11B, and ask you what you did with that item, this first item of August 5th? A. The item of August 5th for $2450 is posted to the debit side of loan account and charged to Rubinstein.

Q. I call your attention to the second item of August 5th, J. Harsche, for the sum of $2160 and ask you what you did with that? A. The second item is the same date, August 5th, charged to J. Harsche, $2160, and also debited to loan account on August 5th to Rubinstein.

Q. I call your attention to the account of S. Oltarzewski for $2100, and ask you what you did with that? A. This item was also charged to Rubinstein's account as a loan item.

Q. And Walzak for $350? A. So was this.

Q. Charged to Mr. Rubinstein? A. Charged to Mr. Rubinstein's loan account.

Q. I call your attention to an entry made on the side of a bracket enclosing these four items, which refers to "a loan" in Exhibit D-11, and ask you how you came to charge those items to the debit side of the loan account of Mr. Rubinstein? A. Well, when I came there at the end of the month, I always noticed certain statements in the cash book, either on the debit side or credit side, without any explanation. Of course, I had to consult Miss Kasprzak in reference to them and she usually explained as to their nature, where they are to be charged or where they are to be credited. In regard to these items she explained it was a loan account, apparently indicated it was a loan

account, Rubinstein payable, and they were charged accordingly.

Q. Did you say anything to her about the charge to the Rubinstein account? A. Nothing was said except that I asked her what those items were and she said they are to be charged to Mr. Rubinstein's account.

Q. You so charged them? A. Yes, sir.

By the Court:

Q. Did you also enter the credit items on the ledger Exhibit D-11? A. Any particular items?

Q. Any of them. A. I might have done that.

Q. Can't you tell, looking at the handwriting, whether you did or not? A. Well, I entered these credit items that I have a reference to the receivable cash book pages from where the entries were made.

Q. Why did you enter them up in the ledger as you have entered them? A. They must have been explained.

Q. Not what must have been; what was done? A. They were entered on the debit side of the cash book as a receipt item of Stanley Kasprzak, indicating a loan to be credited to Stanley's account. It was therefore credited.

Q. I am asking about Rubinstein? A. That is the next item on the credit side of the loan account.

Q. All right. A. The second item on the credit side of the loan account, credit to Rubinstein, is October 21, for $3500, credited to Rubinstein.

Q. Why did you credit it to Rubinstein in this

particular account in the ledger on page 14? A. Well, it was entered on the cash book as follows: "October 21, A. Rubinstein paid back a loan $3500." Of course that was evident it was a credit to Rubinstein's account.

Q. Then you credited it to that account without any advice from anybody? A. Advice was not necessary.

Q. I do not care whether it was necessary or not. I asked you whether you credited it without any advice from anybody? A. Yes, sir.

By Mr. McKee:

Q. Go right on to the next one? A. Next one, page 14, cash book, dated November 23, 1918. "A Rubinstein paid back loan $2000." I also credited this accordingly to A. Rubinstein's account.

By the Court:

Q. Without any instructions? A. Without any instructions.

By Mr. McKee:

Q. I call your attention to the item of November 23, 1918, in which the entry in the cash book is "A. Rubinstein paid back loan $2000." I ask you in whose handwriting that is? A. It seems to be Miss Kasprzak's handwriting.

The Court—Didn't she say that both these items were in her handwriting?

Mr. McKee—That is true, I had forgotten about that.

Q. In 1919, you were the accountant in charge

of the books, were you not? A. Only at the beginning of 1919, about two months.

Q. Do you remember the item of $5270 and the item of $5330—the back salary items of Mr. Rubinstein and Mr. Stanislaw Kasprzak? A. I cannot recall the entry unless I am shown the journal or cash book.

Q. I call your attention to pages 34 and 35 Exhibit D-12, and ask you if those items were entered by you and what they represent. I refer to page 34, to an item of $3500? A. The items on page 34 is dated December 22, 1918, for $3500; charged to labor in general ledger, folio 26, and credited to Rubinstein, Alex Rubinstein, $3500, explaining that the charge represents additional salary, as per agreement, to be loaned to the business at six per cent. per annum.

Q. I call your attention to the item on page 35 of the same exhibit and ask you regarding this item of $3500? A. This represents also an additional charge to labor and credited as a loan account of Stanley Kasprzak for additional salary as per agreement to be loaned to the business at six per cent. per annum. This is also dated December 22, 1918.

Q. I call your attention to the next item on page 35 and ask you what that item is? A. This represents a charge to surplus for $3600 and a credit to A. Rubinstein, as a loan, $1770 and S. Kasprzak, $1830.

Q. I ask you why was that charged to surplus and not to another account? A. If I recall correctly, the reason for that entry was that they were to be charged with additional salary, in other words, the business was to be charged with addi-

tional salary, and because the books were closed, we could not reopen the labor account and charge it to that; so it was therefore charged to surplus, thereby reducing the profits for the year, reducing surplus, and crediting their respective accounts. That was the only reason for the entry.

Q. Had they been charged to labor, they would eventually have found their way to the surplus account? A. It would have affected the surplus account.

Q. This is a direct way of doing it? A. This is a direct charge of the expense of the preceding year.

Q. You have, I believe, had charge of making up the tax returns for the company as well as the individuals for that year, for 1918? A. I made up the returns for the company as well as the individuals.

Q. In the individual returns did you include these items in their income? A. I think I did.

Q. As income? A. They were included as salary received from the corporation.

Q. Did you make a copy of these returns? A. I did.

Q. How long did you continue to make the returns for the company as well as the individual? A. The last return I made was as of December 31, 1918.

Q. To whom did you deliver the copies that you made? A. I think I gave the copies to Mr. Rubinstein or to Mr. Frank Rea; I am not quite sure.

Q. The copy of the return that you made for the company, to whom did you deliver those copies? A. Well, in answer to that question, it is

necessary to give a little explanation. I never did give them copies immediately after the returns were filed, except that a year or two afterwards, the Department required some additional information, so they called at the office for the copies and I gave them to Mr. Rubinstein.

Q. At the time you had charge of the books in making your returns what did you return as to the outstanding stock, do you recall? A. I can not recall.

Q. As far as you recall, referring to Exhibits C-1, C-2, C-3, C-4, C-5, C-6 and C-7, referring to these shares of stock, were they ever returned as being owned by the company?

Mr. Lewis—I object, if you are asking about the returns.

The Court—Objection sustained, and for the further reason he says he cannot recall.

Cross Examination by Mr. Lewis:

Q. Will you please read into the minutes the entry in the journal which you have just referred to concerning additional salary, the whole entry? A. Have you reference to the $3500 item?

Q. Additional salary. A. This is dated December 22, 1918, labor, $3500, charged to labor, $3500; credit to Alex Rubinstein.

Q. I am asking you to read the item as it is exactly, nothing else. A. "$3500, folio 26, labor, surplus, to Alex Rubinstein, folio 19, $3500, to charge him with additional salary as per agreement, to be loaned to the business at six per cent. per annum."

Q. Now, read the one on page 35 of the journal? A. "December 22, 1918. $3500; folio 26; labor, surplus, to loan account, folio 9, $3500, Stanley Kasprzak for additional salary as per agreement to be loaned to the business at six per cent. per annum.

Q. Do you recall when you made that entry as to whether you inquired what agreement was referred to? A. I did inquire.

Q. Did you ask Mr. Kasprzak? A. I cannot recall whether I did or not.

Q. Did you ask Mr. Rubinstein? A. I cannot say whether I did or not, but I presume I must have done so or I would not have made the entry.

Q. There was an agreement between Mr. Rubinstein and Mr. Kasprzak that you referred to? A. That is what they said, that there was an agreement, that they should draw salary something like seven, eight hundred a year.

Q. Agreement between Rubinstein and— A. (Interrupting) Kasprzak.

Q. That was the method by which it was to be entered? A. To be charged on the books.

Q. What relation, if any, had the entry $3500 in these accounts to the subsequent entry of $3600 surplus, to loans paid A. Rubinstein $1770 and S. Kasprzak, $1830? A. If I recall correctly, they wanted to credit each one of these two partners with a certain amount of money represented as loans, and i norder to do that they had to charge surplus and of course credit their receivable accounts with loans. In order to make it an even amount, in order to close the account, they had to credit it in amounts as it was $1770 and $1830. I cannot recall exactly what the nature of the case was.

Q. Well, the difference is $60? A. Something like $60—it is $60.

Q. You have no recollection, I do not suppose, of a check that was made just about that time by the company to Mr. Kasprzak for over $5000 and another check to Mr. Rubinstein, for over $5000, a difference of $60 existing between them? A. I cannot recall that. I think it was after I left the company.

Q. You took charge of the books, as I understand it, in January, 1919, was it? A. I think it was the first two months of 1919.

The Court—You mean the first time he took charge of them?

Mr. Lewis—The first time he took charge.

The Court—I understand him to say he took charge in 1918.

Q. When did you take charge of the books? A. January, 1918.

Q. Why were these entries that you made in the posting in green ink, in relation to these particular transactions? A. No particular reason; all the entries were made in green ink.

Q. I do not think the posting of them is? A. Yes, sir.

Q. Let us turn to the cash book. There are figures in the posting column of the cash book that are in black ink? A. There are.

Q. And a few entries in green. I do not know whether it is important at all, but I want to know why you made the difference? A. Those in black ink were the postings made by Miss Kasprzak,

and I used habitually green ink; so all the postings I made are naturally in green ink.

Q. The postings which appear here in green ink are from the journals and the ledger? A. Whatever postings I made, whether cash book, journal or ledger, are made in green ink. All the black ones were made by Miss Kasprzak.

Q. This (indicating) is the journal, is it not? A. This is the ledger.

Q. Exhibit D-11B is the ledger? A. Yes.

Q. Where would the posting, for instance, of the item of Miller & Katz, $1928.59—where would that appear in D-11B? A. That posting applies to a customer.

Q. Where would it appear in D-11B? A. It would not appear in this ledger at all. This is the general ledger. This would appear in the customer's ledger. If you want to turn to the customer's ledger you will find this posting.

Q. When you speak of Miss Kasprzak's posting, you do not speak of her posting anything to the general ledger? A. Well, she did not do posting to the general ledger.

Q. You did that posting to the general ledger? A. I did.

Q. Turn to that loan account. A. (Witness does so.)

Q. Where in the general ledger does this posting of the amount paid to Harsche, Walzak and the rest of them appear? A. Do you refer to these items?

Q. These items. A. Here they are.

By the Court:

Q. Do they appear anywhere else in the led-

ger than on page 14? A. They do not; not to my knowledge. Here is a cash book entry $2450, charged—

Q. The question is: "Do they appear anywhere else except in this exhbit on page 14?" A. Not to my knowledge.

Q. And the cash book shows that that entry was posted on page 14 of the ledger? A. Yes, sir.

By Mr. Lewis:

Q. As I understand, this entry here in the cash book in green ink, reading "Alex Rubinstein" was made by you? A. Yes, sir.

Q. Have you seen that entry since you made it? A. No, sir.

Q. Until today I mean? A. The first time I saw it in five years.

Q. I suppose your inquiries concerning it that you say you made at the time it was made, are rather vague as to the time and place, are they not? A. I do not get that question.

Q. I say that the inquiries that you say you made about it before you made the entry, are rather vague as to the time and place? A. Well, I made inquiries at the time I made the entry.

Q. But I say that would be rather vague in your mind as to when and where? A. Well, I know where they were made—in the office of the Stanley Silk Dyeing Company. That was the only place I could inquire.

Q. Did you see Mr. Rubinstein down there at the office? A. Very seldom I saw him.

Q. Do you recall how old Miss Kasprzak was at the time these entries were made?

The Court—Suppose he does or does not. She has told us how old she is.

By Mr. McKee:

Q. Where did you work on these books? A. At the office of the Stanley Silk Dyeing Company.

Q. Did you ever take them outside of the Stanley Silk Dyeing Company? A. No, sir.

Q. Who had charge of them when you were there? A. Miss Kasprzak.

Q. And they were kept in the safe? A. Yes.

Q. And where was the key? A. When I asked for the books she usually went to the safe and took them out.

ALEXANDER RUBINSTEIN, the complainant, sworn as a witness in his own behalf, testifies as follows:

Direct Examination by Mr. Ward:

Q. You are the complainant? A. Yes, sir.

Q. You are a resident of Paterson? A. Yes, sir.

Q. And have been for how long? A. Over eighteen years.

Q. Do you recall the time this company was formed? A. Yes, sir.

Q. That was when? A. That was in 1916, in October, I believe.

Q. How many persons composed the company at that time? A. Yes.

Q. Including yourself and including Stanislaw Kasprzak? A. Yes, sir.

Q. When was it first brought to your attention that any member of the company desired to sell his stock? A. After the first annual meeting.

Q. Who at that time desired to dispose of the stock? A. John Harsche, Walzak and Oltarzewski.

Q. Was the question of the company buying this stock ever taken up at a directors' meeting of the company? A. It was threshed over every meeting.

Q. Did the company ever buy this stock? A. No, sir.

Q. Go right down to the year 1918, the month of August. Before that time, before August, 1918, had the company ever purchased any stock from shareholders? A. No, sir.

Q. And who, if anybody, up to that time, had offered any of their stock to the company? A. My best recollection, I believe there were two. The biggest kickers were John Harsche and Andrew Walzak.

Q. When the question of the company buying this stock was taken up by the company from time to time, what did the directors do? A. They refused to buy any stock.

Q. Do you recall a meeting on July 30, 1917, at which time the question of the company buying the stock was taken up? A. Well, I cannot recall every meeting.

Q. Are you familiar with the minutes of the company? A. No, sir.

Q. You have seen them and read them? A. What meetings?

Q. The minutes are under date of July 30, 1917.

Mr. Lewis—I object.

The Court—What are you going to do now—read something from the minutes and ask him if it is true?

Mr. Ward—Yes, sir.

The Court—I cannot allow it.

Q. Mr. Rubinstein, I show you this book and ask you if you recognize that as the minute book of the company? A. Yes, sir.

Q. In whose writing were the minutes kept? A. Well, mostly—

Q. I am now referring to the year 1917 and to this particular minute of the July, 1917? A. I am not able to say who wrote the minutes. I know that Andrew Biezczad was the secretary and had everything in his possession.

Q. After the minutes were written, did you sign them or not? A. At the next meeting.

Q. Did you read them over before you signed them? A. They were read before me.

Q. Did you read them? A. I did not. They were read before me and presented to sign them.

Q. I show you these minutes of July 30, 1917, and ask you if they were read to you? A. I believe so.

Q. You signed it? A. I did; yes.

By the Court:

Q. Cannot you say whether it was or was not read to you? A. Yes; it was read to me; otherwise I would not sign it.

Q. Were the facts that were read to you true? A. Yes, sir.

Q. As occurrences at that particular meeting? A. Yes, sir.

Q. And after it was read to you you signed your name? A. Yes, sir.

By Mr. Ward:

Q. Now, I ask you to read this and refresh your recollection, starting from the point—

The Court—What are you going to ask him? He has said that everything in there is true.

Q. Your company prospered, did it not? A. Yes, sir.

Q. Something has been said about an entry in the cash book of a loan to you of $5270, July 19, 1919, and the sum of $5330, being a loan to Mr. Kasprzak. Do you recall that? A. I do not think this was a loan. This was—

Q. (Interrupting) What was that? A. This was salary I believe—either salary or labor or something of that sort.

Q. How do you account for the difference between the amount that Mr. Kasprzak got and the amount that you received? A. I cannot recall this, how this was divided, I cannot tell.

Q. At the time this company was formed how many shares of stock did you hold? A. Ten.

Q. How many did Mr. Kasprzak hold? A. I believe fifteen.

Q. After that did you acquire any more stock? A. Yes, sir.

Q. When? A. I cannot tell the date, but I did.

Q. Do you remember whether Mr. Kasprzak acquired any stock after that? A. Yes, sir.

Q. How many shares? A. I believe first he bought two.

Q. That was in January, 1917? A. I cannot tell the date.

Q. Prior to August, 1918, and just shortly before the first of August, 1918, the date when you agreed with reference to these four men. Harsche, Lingelbach, Walzak and Oltarzewski, with reference to their stock— A. (Interrupting) Yes.

Q. What? A . As soon as we opened the meetings they would start talking about dividends.

Q. Do you remember what meeting? A. Nearly every meeting.

Q. I beg pardon? A. Nearly every meeting, without exception, they wanted to have dividends and as we could not pay at that time dividends, we started the business that was only one year; this was the trouble between the shareholders, most of them; the result was—

Q. What did all of this talk result in? A. This one offered for sale and the other one offered for sale, either to pay them dividends or we should buy them out.

Q. Shortly before the first of August, 1918, do you recall any question that arose at any meeting about selling stock? A. Yes, sir; I recall.

Q. What was that? A. They asked for dividends and I showed them that we had spoiled quite some silk, and if this should happen another time, then we are not able to exist the way it is; we must look out for this, it should not happen any more, and in that way we have to have suf-

ficient funds in a case something should happen like that to pay the customers.

Q. You say when the dividends were refused they wanted to sell their stock? A. Yes.

Q. What did the company do with reference to that? A. The company entirely refused to buy any stock.

Q. After that do you know whether these men did anything in regard to a certain Mr. Frank Smit? A. Yes, sir.

Q. Did you receive any communication from Mr. Smit? A. Yes, sir.

Q. Had you done any business with Mr. Smit before that? A. Well, he organized the corporation.

Q. You personally, had you done any business with Mr. Smit? A. Yes.

Q. What was it? A. Mr. Smit made quite a few searches for me.

Q. As a result of the communication which you received from Mr. Smit, did you go to see him? A. Yes.

Q. Did you ever see these men there? A. At that time I did not see them—

Q. (Interrupting) Please answer the question: Did you ever see these men there? A. No, sir.

Q. Did you receive any communication from anyone else? A. Yes.

Q. As a result of what you saw or heard at Mr. Smit's office, did you have any talk with Mr. Kasprzak? A. Yes.

Q. What did you say to Mr. Kasprzak and what did he say to you? A. After I had been up to Mr. Smit's office I came back and I told Mr.

Kasprzak that these people wanted to sell their stock; I had a letter from Mr. Smit.

Q. At the last meeting before that, when this question of the silk came up, when you say they wanted dividends and you explained why dividends could not be paid at that time, was there anything said at that time by the directors with reference to anyone else purchasing this stock? A. Yes.

Q. What was that? A. I believe that John Harsche was the one. He threw his shares on the desk and he says he wanted his money.

Q. What did the directors do with reference to any one purchasing it? A. There was trouble up until about twelve o'clock at night, talking over these things, and it was decided that the company could not pay any dividends or buy any stock; he must have patience for a certain time, when the company will be able.

Q. I show you a minute in the minute book of August 27, 1917, I show you a signature on page 42? A. Yes.

Q. Is that your signature? A. Yes.

Q. Is that minute the minute of that meeting? A. Yes.

Q. Was that read to you? A. Yes, sir.

Q. Before it was signed by you? A. Yes, sir.

Q. Is what is said in that minute true? A. Yes, sir.

Q. Now, Mr. Rubinstein, when these directors decided that they could not declare a dividend and that the company could not purchase the stock, at that time what, if anything, was decided with reference to these men selling the stock elsewhere?

Mr. Lewis—May I ask that you fix the date on that?

Mr. Ward—Yes; I will do that.

Q. In the minute of August 27, 1917, it states: "The only thing that could be done would be that if the directors or shareholders would want to buy the shares, could do so." Was that true? A. Yes, sir.

Q. And it was at that time that Harsche wanted to sell his shares? A. Yes, sir.

Q. You were relating what you told Mr. Kasprzak about Mr. Smit? A. Yes.

Q. When you told Mr. Kasprzak that these men wanted to sell their shares, what did he say, if anything? A. He says there is no money in the company. If you want, you could buy it.

Q. After that did you hear from Mr. Benson? A. Yes.

Q. Did you go to see Mr. Benson? A. Yes.

Q. How often did you go to see Mr. Benson? A. I cannot tell how many times, but several times, more than two or three times, I believe.

Q. Did you ever report to Mr. Kasprzak what Mr. Benson had told you, what you talked about? A. Yes.

Q. What did Mr. Benson tell you? A. Mr. Benson told me—

Q. I only want you to tell His Honor, if you will, what you reported to Mr. Kasprzak, do you understand? A. Yes.

By the Court:

Q. What you told Mr. Kasprzak that Mr. Benson said. A. Yes, I did.

Q. What did you tell him that Benson told you? A. The first time when I go to see Mr. Benson he asked me why I did not pay dividends, and I told him the same thing that came up in the meetings and all the directors refused to pay dividends—

Q. That is what you told Benson? A. I told Mr. Kasprzak after.

Q. The question is what did you tell Mr. Kasprzak that Mr. Benson said? A. When I came back from Mr. Benson I told Mr. Kasprzak that the four share-holders were demanding dividends.

Q. He knew that? A. He knew that, yes.

Q. That is what you told Mr. Benson? A. Yes; and Mr. Benson told me: "What is the trouble between you directors there?" That is what Mr. Benson told me.

By Mr. Ward:

Q. Did you tell Mr. Kasprzak anything that had been talked about? A. The first time I don't think he told me any more, but the second time when Mr. Benson called me up again he said—

By the Court:

Q. You are not to tell what Mr. Benson told you directly. You are to tell what you told Mr. Kasprzak? A. Everything Mr. Benson told me I told Mr. Kasprzak.

Q. Tell us what you said to Mr. Kasprzak? A. I cannot repeat every word, but everything Mr. Benson told me I told Mr. Kasprzak.

Q. Just tell us as much as you can remember. A. Mr. Benson told me whether there isn't any-

body to buy them out. I told him: "No. In the first place we haven't got any money just at the present time to bu ythem out;" then I had another call from Mr. Benson and he asked me whether I would not buy him out. I says: "I have to talk it over with Mr. Kasprzak and then I will let you know."

By Mr. Ward:

Q. Did you talk it over with Mr. Kasprzak? A. Yes; I did.

Q. Can you tell us about how long after that was before the stock was taken over by you? A. I believe about two months.

Q. About two months before? A. About.

Q. What did you tell Mr. Kasprzak when this suggestion was made to you that you take the stock; what did you say to Mr. Kasprzak? A. I asked Mr. Kasprzak, as we have a little money for a new building, whether he will allow me to borrow this and I will buy him out and I will pay back in the nearest future and Mr. Kasprzak agreed to sign the check.

Q. Before that time had there been any agreement with reference to the price that was to be paid for the stock, before the checks were signed? A. Well, the checks were signed—

Q. Do not attempt to answer unless you understand. A. I did not get it.

Q. You just said that you had this talk with Mr. Kasprzak and the checks were signed? A. This is a mistake—not the first time it wasn't signed.

(At this point adjournment is taken until

Tuesday, June 19, 1923, at ten o'clock in the forenoon.)

Court met pursuant to adjournment this 19th day of June, 1923, at ten o'clock in the forenoon.

Appearances as heretofore.

ALEXANDER RUBINSTEIN, the complainant, resumes the stand.

Direct Examination (continued) by Mr. Ward:

Q. You testified yesterday that you had this conversation with Mr. Benson that you related to Mr. Kasprzak at another time. Was there any arrangement entered into between you and Mr. Benson and these four men with reference to the price that was to be paid for this stock, which you afterwards sold to Mr. Kasprzak? A. Yes, sir.

Q. Will you tell us what that was? A. When I came back from Mr. Benson I told Mr. Kasprzak that Mr. Benson told me: "Is there anyone else that could buy the shares from these four people, which the company could not buy out?" I says: "I don't know. I have to talk with Mr. Kasprzak about it." And I went back to Mr. Kasprzak and I told him that if he would like to buy the shares. Mr. Kasprzak told me that he did not care for any papers; he is in business for money.

Q. Go on. A. So I asked Mr. Kasprzak I would buy the shares, but I have not got the cash; if I could take it out from the company for a

short time until I will be able to pay it back. Mr. Kasprzak said to me: "If you want to buy it, go ahead and buy it."

Q. Well, had you reached any agreement as to the price to be paid? A. At that time we did not reach a certain agreement price, but then when I was sure that I could get the money, I started to talk about the price, what they asked for it.

Q. What was the price? A. The price was set $1.75 for every dollar they put in.

Q. The par value of the stock was $100 a share, was it not? A. Yes, sir.

Q. Was that agreed upon between you? A. It was agreeable to me, but then when I came back and I was sure I am going to get the money, they wanted ten per cent. more. So Mr. Benson split that in half and I paid him at $1.80 actual for the stock.

Q. What was ten per cent. more? A. They wanted more money for the stock.

Q. More money for the stock? A. Yes.

Q. So that each share of stock that you purchased you paid $180 for it? A. Yes, sir.

Q. When you got the stock, under what circumstances did you get it; what happened when you got the stock? A. Well, when we were talking about this ten per cent., we had quite some talk there; it took us a long while. I said that I cannot afford it; I myself had not got any more money that I could pay. Mr. Benson made the suggestion: "Give them a note for this little amount."

Q. What little amount? A. Five per cent. Then I said, "I have to go down and talk to Mr.

Kasprzak again about these notes," because they refused to take my notes.

Q. Who refused to take your notes? A. The shareholders; I told him: "I will give you my notes for ten per cent.," and they refused to take my notes.

Q. What did you do then? A. I went down to the shop and I asked Mr. Kasprzak: "Better allow me to make little notes, too" and he will sign it. He asked me: "How much is it?" I told him: "It is five per cent. it is a small amount," because one of the shareholders I have to pay in cash, simply because he is in the army. That is John Harsche. He refused to take any note at all; so him I have to pay in full; and the rest of them they are willing to take full provided I give the company's note. I say I have to go down and talk it over with Mr. Kasprzak and he will agree to it, and we gave the five per cent. note—I gave the five per cent. notes.

Q. I show you three notes that have been offered in evidence and marked Exhibit D-5, D-7, and D-9, and ask you if those were the notes that were given at that time? A. Yes, sir.

Q. When was it that this stock was turned over to you? A. It was an early day of August, 1918.

Q. Do you remember the exact date? A. If I am not mistaken I will say it was the 3rd, very early in August.

Q. Why were these notes dated August 5th, do you know? A. Just the way I said. The stock was written out already, and they stopped in the middle on account of these notes, because they wanted ten per cent. more, and there was the argument whether they would take my notes or I

have to get the company's notes. So it was put away again until I get the notes, and then I gave them the notes.

Q. Well, on the occasion when the writing was put on the back of the stock certificates, do you remember when that was? A. Well, just the way I say; Mr. Benson started to write out the stock—

Q. (Interrupting) Tell His Honor about that. Tell us what happened when he started to write out the stock? A. We had the trouble about the five per cent. more to give them, and I didn't have any notes; I was not prepared for it; I was willing to give mine, but they refused to take it. So we had to lay this off, and the stock was left there in Mr. Benson's office until I got the notes or I got the cash to pay the five per cent. I did not want to let them go about five per cent.

Q. At the time that this stock was actually turned over to you by Mr. Benson, was Mr. Stanley Kasprzak there? A. No, sir.

Q. He has testified that he accompanied you to Mr. Benson's office and that he was present in behalf of the company and that the stock was bought for the company. Is that true or not? A. No, sir.

By the Court:

Q. You say that the closing of the transaction started on the 3rd of August? A. I beg your pardon. It started early in July.

Q. The settlement? A. The settlement.

Q. The settlement started on the 3rd of August at Mr. Benson's office and was finished up the 5th of August, when you gave the notes of the com-

pany? A. The notes I believe I got a day or two days while the stock was up in Mr. Benson's office.

Q. But you got them on the 5th of August? A. I believe so.

Q. You say Mr. Kasprzak was not at Mr. Benson's office either day? A. No, sir.

Q. He was not there the 3rd of August? A. No, sir.

Q. Nor on the 5th of August? A. No, sir.

Q. What was the total amount of the purchase price of the forty shares of stock? A. $7200.

By Mr. Ward:

Q. I show you four checks that have also been produced in behalf of the defendant, marked Exhibits D-4, D-6, D-8 and D-13, dated August 5, 1918, and I ask you if those were the checks that were given also? A. Yes, sir; the same time as the notes.

Q. Were they made out the same time as the notes? A. I believe; yes, they were made out at the same time.

Q. And Mr. Kasprzak signed them as shown by the signature? A. Yes, sir.

Q. They were in the handwriting of Miss Kasprzak, were they not?

Mr. Ward—I believe that we can agree that these checks total $7050.

The Court—If you cannot agree, I can add them.

Mr. Ward—And that the notes amounted to $150.

Q. After you got the stock from Mr. Benson what did you do with it? A. I came down to the shop and I said: "Mr. Kasprzak, are you willing to buy some of this. I know that you got money and your money is not so tied up. Could you buy some of that stock?" He said: "We will go down to Mr. Biezczad."

Q. Who was that? A. That was the secretary of the company at that time.

Q. Was he the man that owned the ten shares of stock that were afterwards sold to Veronica Kasprzak? A. Yes, and we took the machine, and the boy from there was driving the machine.

Q. What was the boy's name? A. Joe Kasprzak. He was driving the machine and we went down to Mr. Biezczad. We told him that I bought the shares and I took the money from the company and I know that I got to pay him back, and asked whether Mr. Biezczad would buy some of it. He refused, so the same time Mr. Kasprzak said; "If he don't want to buy any, why should I buy any? I will not buy any either."

Q. This young man, Joseph Kasprzak, whom you have mentioned, how old is he? A. I believe he is between twenty and twenty-one.

Q. Do you know? A. Exactly I don't know.

Q. (Indicating) This is the young man sitting here in the front row? A. Yes.

Q. The second from the end on the left? A. Yes.

Q. Do you know whether he occupies any position in the company now? A. From my knowledge he was a driver for a few years in the company.

Q. What relation is he to Stanley Kasprzak? A. A son of Stanley Kasprzak.

Q. Do you know whether or not he is employed by the company now or working for the company? A. Yes, sir.

Q. Mr. Rubinstein, did you know how this $7200 was entered on the books of the company? A. I don't know.

Q. At that time? A. I don't know. Veronica Kasprzak took care of that.

Q. Are you familiar with the keeping of books; do you know how to keep books? A. No, sir; I never did.

Q. Have you ever kept any set of books? A. No, sir; I always had a bookkeeper.

Q. Miss Kasprzak has stated that you told her how to make the entry in the cash book with reference to these four checks; is that true or not? A. No, sir. She took this up with the accountants; I never gave her instructions how to enter, because I do not know or understand bookkeeping. I have never been a bookkeeper.

Q. I show you page 17 of Exhibit D-1, and ask you if it was under your direction that the words opposite the four names under date of August 5th, "A loan",—whether those words were put there under your instructions or not? A. Well, as far as I know, the girl was present by him that time and she knew all about it; I didn't have to tell her anything.

Q. Did you tell her? A. I did not.

Q. After you had this conversation with Mr. Kasprzak in reference to his buying some of the stock and after you had gone to the secretary, what

did you do with the stock then? A. I took it home and put it away in my drawer.

Q. Did you know that it was necessary for you to have this stock transferred on a stock transfer book? A. No, sir.

Q. Did you know what a stock transfer book was? A. No, sir; I never saw it.

Q. I show you Exhibit C-1 to C-7 and I indicate on the back of these different certificates the words in writing, "I", "Alexander Rubinstein" and again "Alexander Rubinstein," written in one kind of ink, which appears on all of these certificates, and I ask you when those words were put on the certain certificates? A. These were put in when we agreed on $1.75 for every share and then that was—I believe, if I am not mistaken, the man Walzak was the talker for all, and he agreed for that, and then someone else came in, one of the rest of the stockholders, and they had a talk between them, and they told me they wanted $1.85.

By the Court:

Q. Who wrote that writing? A. John Benson.

Q. Whereabouts? A. In his office.

Q. On the 3rd of August or on the 5th of August? A. I cannot tell—I believe this was before that—this was before.

Q. Before the 3rd of August? A. I cannot remember that date, whether it was just the third, but I know Mr. Benson was writing out this and he stopped and put it away because we had trouble about the five per cent.

Q. At any rate, was the writing in the certificates when you got the certificates after the trans-

action had been closed? A. When I got the certificates I remember he gave me the certificates and he said, "I did not sign it", and he took them back and put his name on. That was the last.

Q. When you got the certificates after the transaction was finally closed by the giving of the checks and the notes, was that writing to which Mr. Ward has referred on the certificates? A. Yes, sir.

Q. Or on the assignment rather? A. Yes, sir.

By Mr. Ward:

Q. As I understand you then, at some time before you got the certificates and at the time when $1.75 was agreed on for each dollar, as you have stated, Mr. Benson wrote in these words "I", "Alexander Rubinstein" and "Alexander Rubinstein" in each one of the certificates?

Mr. Lewis—I object to that.

The Court—I think it is an unnecessary question, because he has already said the writing was in it when he got it. It must necessarily have been written before he got it.

Mr. Ward—I withdraw the question.

Q. Do you know when each one of these certificates was signed by the person who holds them? A. I saw them sign three and the fourth one I did not see.

By the Court:

Q. It was Harsche that you did not see sign?

A. Yes; I had to wait until authority came—when he came back.

Q. When did Harsche come back; how long after August 5th? A. Just a few days.

Q. After August 5th? A. After August 3rd.

Q. Was he back there on the 5th of August? A. I cannot say exactly.

Q. Do you know whether you got the certificate signed by him on the 5th of August or not? A. I had it signed the 3rd of August by John Benson.

Q. By Harsche? A. Harsche, I did not see when he signed it.

Q. You say you had to wait until Harsche came back from the army? A. Yes.

Q. I want to know whether he was back by the 5th of August when you gave the checks and notes? A. I believe his check was taken by John Benson himself.

Q. Did you get Harsche's certificate of stock with the rest of them? A. No, sir; it was kept by John Benson until the finish.

Q. Then you did not take away Harsche's certificate on the 5th of August with the rest of them? A. Not Harsche's.

By Mr. Ward:

Q. During all of these negotiations, during the time that you reported to Mr. Kasprzak the price of the stock, the price you were paying, and discussed with him the checks and the notes, was it ever agreed or talked between you and him, or you and the company, that the company was buying that stock? A. It was talked so many

times, but never agreed that the company could buy anything? In fact, it is in the minutes.

Q. And the minutes to which you refer are the minutes we spoke about yesterday, May, June, July and August, 1918, that I showed you yesterday?

Mr. Lewis—Are you not giving wrong dates. 1917 minutes you spoke about before.

Q. 1917—the minutes that you saw which contained the statement that the company would not buy these shares were he minutes I showed you yesterday? A. Yes.

Q. At the time this stock was bought by you from these men, was there anything said by anyone that would lead these men to believe or think that the company was buying the stock? A. Not what I know.

Q. You continued in this business all right up to 1922? A. Yes, sir.

Q. And in the summer of 1922 did Mr. Kasprzak go abroad? A. Yes, sir.

Q. Had you ever had any trouble up to that time? A. No, sir.

Q. Had you ever up to that time, given any directions to Miss Kasprzak as to the keeping of the books or how to make entries with reference to your account or with reference to the account about this sum of money, $7200? A. No, sir.

Q. Did you know how it was entered in the books? A. No, sir.

Q. Did you repay this $7200? A. Yes, sir.

Q. How did you repay it? A. In three payments.

By the Court:

Q. What were they? A. One time I paid $3500; that was about two months; a little more than two months after I got the money I paid $3500.

Q. How did you pay it? A. I paid it—there was a check of $2700; some amount was in cash and the balance was a check of my own.

Q. Whose check for $2700 was it? A. I got that check from William Rosenblatt and I signed and I endorsed it and added it on to the amount to make $3500.

Q. How much was the check? A. I cannot remember exactly the amount; I believe around $300, more than that.

Q. $500 was cash? A. Four hundred and some dollars was in cash, I believe so.

Q. Where is your check?

Mr. McKee—We have them all here.

The Court I thought it might be wise to put in proof of the payments, unless it is admitted.

Mr. Lewis—I will have to cross examine on that.

Mr. Ward—Our accountant informs us that we have some of the checks, but some we have not. I might say we have Mr. S. Rosenblatt here who knows about the $2700. and we have the bank here.

By Mr. Ward:

Q. I show you a deposit slip for a deposit to

the account of the Stanley Silk Dyeing Company in the Hamilton Trust Company of Paterson, New Jersey, dated October 19, 1918, showing a deposit of bills $440.62; checks $2,769.97, and $291.41, making $3500 altogether, and I ask you if that was the deposit slip with reference to the $3500, about which you have testified? A. Yes; this is my own handwriting.

Q. That is in your handwriting? A. Yes, sir.

Q. Have you got the bank book with the deposit in? A. Right here (indicating) $3500.

The Court—You had better offer in evidence the original deposit slip, which it is admitted is produced by the representative of the Hamilton Trust Company. Let the record show that this original deposit slip, which it is admitted is produced by a representative of the Hamilton Trust Company, is produced in court.

(Deposit slip is marked Exhibit C-11.)

Mr. Ward—I offer in evidence bank book of the Stanley Silk Dyeing Company, showing deposit on October 19, 1918, in the Hamilton Trust Company.

(Marked Exhibit C-12.)

By the Court:

Q. When you made that payment did you call the attention of any of the officers of the Stanley Silk Dyeing Company to the payment? A. Mr. Kasprzak, Stanley Kasprzak.

Q. What did you tell him? A. I told him I got so much money to put in on my loan. He says: "All right, put it in."

Q. Did you say anything to Miss Kasprzak

about it? A. Why, we talked in the office, and she marked it in the book.

Q. Did you tell her how to enter it up? A. I did not say how. I did not understand how. I just told her: "Paid back so much money."

By Mr. Ward:

Q. I also call your attention to an entry in the bank book of $2000 under date of November 23, 1918, and I ask you what that was? A. This was the second payment against that loan.

By the Court:

Q. How was that paid? A. I do not quite remember. I believe it must have been one check, because I have no record of it.

Q. Whose check? A. My own. I cannot find any record of it and I have not got the check; whether I gave the check of somebody or I paid my own, because I could not find any record of that check. I traced it.

By Mr. Ward:

Q. I show you a deposit slip deposited for the account of the Stanley Silk Dyeing Company in the Hamilton Trust Company, Paterson, New Jersey, November 23, 1918, check $1742.92, $257.08, amounting to $2000, and ask you if that is the deposit slip that was used at the time you made that deposit of $2000 in partial payment of the loan? A. Yes, sir. Now it reminds me that I had a check for $1742.92, and I had my own check for $257.08. In order to fill up the $2000

I gave my own check for $257.08; I am most sure it is my own check.

Mr. Ward—I offer the deposit slip in evidence.

(Marked Exhibit C-13.)

Q. I show you check, November 23, 1918, made to A. Rubinstein, for $257.08 and signed by you and ask you if that was the check? A. Yes, sir; positively.

Q. That is the check that is referred to in the deposit slip that has just been marked in evidence? A. Yes, sir.

Mr. Ward—I offer it in evidence.

(Marked Exhibit C-14.)

Q. Will you explain the endorsement on the back of that check? A. "A. Rubinstein."

Q. Why was it not Stanley Silk Dyeing Company? A. It was made "A. Rubinstein," and I endorsed it and deposited it.

By The Court:

Q. It is your own check? A. Yes, sir; this is mine.

Q. Did the check come back to you from the bank with your cancelled vouchers? A. Yes, sir.

By Mr. Ward:

Q. It is marked, is it not "paid 11/23/18." You see the marking on the check—"paid 11/23/18"? A. Yes, sir.

Q. What conversation, if any, did you have with Mr. Kasprzak about the repayment of that $2000? A. When I came into the office I said: "Mr. Kasprzak, I am going to pay back $2000 today." He says: "All right. How much is yet due?" I told him "about $1700."

Q. Did you give any instructions to Veronica Kasprzak how that was to be entered? A. She posted this I suppose on the book.

Q. Was she there when you told Mr. Kasprzak? A. All the time there, yes, sir.

Q. Whereabouts was the office in the Stanley Silk Dyeing Company? A. In the shop.

Q. Can you describe in a brief way with reference to the shop just where the office is situated? A. Yes.

Q. These conversations all took place in the office, did they? A. Yes.

Q. I show you the bank book before referred to, Exhibit C-12, and indicate an item entered under date of May 3, 1919, $1700, and ask you what that is? A. That was paid back to my loan.

Q. Was that the balance of it? A. The balance of it, yes, sir.

Q. I show you a deposit slip in the Hamilton Trust Company, May 3, 1919, check $1322.82, $1092.00, $336.23, and ask you if that is the deposit slip of the item of May 3, 1919? A. Yes, sir.

Q. Was it deposited by you? A. Yes, sir.

Mr. Ward—I offer it in evidence.

(Deposit slip is marked Exhibit C-15.)

Q. Do you recall how that was made up, what

the particular items were? A. I believe here is one check of mine $266.22 and $10—I cannot tell you—maybe it was cash or somehow.

Q. It says "check"? A. Maybe it was a check. This (indicating) was my own check, and this (indicating) is a check I endorsed my name to the company.

Q. You are now referring to the check for $1322,82? A. This made up $1700.

Q. Your check at the time was $336.22. I ask you if that is your check? A. Yes, sir.

Mr. Ward—I offer that in evidence.
(Check is marked Exhibit C-16.)

Q. When you made this deposit of $1700 to the account of the Stanley Silk Dyeing Company, at that time did you say anything to Mr. Kasprzak about it? A. Yes, sir. I told him: "Now I am all through and the stock is all paid for." He says: "That is good."

By The Court:

Q. Did you pay any interest on the loan? A. No, sir.

Q. Did you pay any interest on the loan? A. No, sir.

Q. Why not? A. I was not asked for it.

By Mr. Ward:

Q. Did either one of you ever pay any interest on any loans? A. No, sir; except a mortgage.

Q. Did you thereafter purchase any other stock? A. No, sir.

Q. Did you afterwards acquire any stock, you and Mr. Kasprzak? A. No, sir.

Q. Now, Mr. Rubinstein, listen carefully to the question. If you do not understand me tell me. Was there not a time afterwards when you and Mr. Kasprzak each got thirty shares of stock from the company? A. Yes, sir.

Q. When was that? A. I don't remember the date; I believe some time in 1919.

Q. Was anything paid by either one of you for that? A. We did not pay, no, sir.

Q. How did you get it? A. Well, I am not—I cannot explain this—I think the accountant will explain this, or the bookkeeper.

Mr. Ward—There is no dispute about it, is there?

Mr. Lewis—I proved they got thirty shares apiece.

Q. Everything went smoothly in your company until the year 1922, did it not? A. Yes, sir.

Q. In 1922 was there any proposition made by you to Mr. Kasprzak with reference to the plant? A. Yes, sir.

Q. What was it briefly? A. I made a proposition to Mr. Kasprzak to build piece-dyeing.

Q. Did that require any addional capital? A. And in order to build I asked Mr. Kasprzak, in order to put his shoulder on the wheel, to bring in some more money.

Q. How much? A. I figured $5000 for the stock.

Q. What did he say? A. Mr. Kasprzak refused entirely.

Q. What did he say at the time? A. He said: "I would rather go to Europe and have a good time, but I would not put any more money in this."

Q. Was there any discussion about an automobile at that time? A. No, sir.

Q. About that time? A. No, sir.

Q. Well, when did you have any discussion? A. Before he went to Europe, about two days before.

Q. What was said about an automobile? A. I asked Mr. Kasprzak that he is not entitled to salary for the time being absent. Mr. Kasprzak told me: "You give my salary the way you give to the girl, and if you want you can take out—you want to buy an automobile, I understand, you can take it out, and when I get back we will straighten this out."

Q. Was his salary paid to him during the time he was gone? A. Yes.

Q. Did you buy an automobile? A. Yes.

Q. In whose name ? A. My own.

Q. Where did you get the cash? A. In the company.

Q. Do you remember when he returned? A. Yes.

Q. After his return were things pleasant between you? A. Later we had trouble.

Q. When did you first have trouble? A. The first trouble arose after Mr. Kasprzak borrowed $1500 and called a meeting, and that meeting trouble arose.

Q. You say he borrowed $1500; how long after his return was that; how long after he came back

from Europe was that? A. I believe about two weeks.

Q. Did you agree to his borrowing this $1500? A. Yes; he called me down to the office. I came down and I asked him why he wants that money. He says he is in a position he has to pay off a mortgage immediately and he wanted me to help him out, and as I borrowed money he is entitled some times to borrow money, and I agreed to it, and gave him $1500.

Q. From the time of his return two weeks before, up to that time, had you had any trouble with him? A. No, sir.

Q. Or with any member of the company? A. No, sir.

Q. After he had gotten the $1500 what was the next thing that happened? A. The next thing I had a registered letter, there had been called a meeting.

Q. Had there been any complaint made by anyone to you of any petty cash disbursements? A. I do not get you.

Q. Had there been any complaint ever made to you, Mr. Rubinstein, about irregularities in your petty cash disbursements—your petty cash disbursements? A. No, sir.

Q. Had you ever been guilty of any irregular conduct? A. No, sir.

Q. In the conduct of your affairs with this company? A. No, sir; not what I know of.

Q. Had you ever heard that charge until you heard it here in court the other day; had that ever been said about you by anyone until you heard Miss Veronica Kasprzak say it yesterday in court? A. I would like you to put it plainer, so I would be able—

Q. You heard Miss Kasprzak yesterday in court say that she noticed things that she did not think were right in your petty cash. Mr. Rubinstein, you sat here in court yesterday? A. Yes.

Q. You heard Miss Kasprzak say that when her father was in Europe she noticed certain things that she did not think were right and proper in your petty cash account? A. Yes.

Q. You heard that? A. Yes, sir.

Q. Was that ever said about you before yesterday in court? A. No, sir.

Q. By anyone? A. No, sir.

Q. Before you bought your car, had the company owned an automobile before you got your automobile, did the company ever own an automobile? A. A Reo truck.

Q. Was there a Dodge car there? A. The Dodge is in my own name. This was marked to myself for the service.

Q. You say that the Dodge car was in your own name. Who paid for the Dodge car? A. The company.

Q. And that had been taken and bought in your own name? A. Yes, sir.

Q. And the second car that you had there was the same way, was it not? A. The same car was supposed to be paid for my own money.

Q. I show you registered envelope No. 2665, under the word registered "133372" and ask you if that was the envelope that you got, that you referred to as the registered letter? A. Yes.

Q. I show you Exhibit C-10 for identification and ask you if that envelope contained that paper? A. This is the second letter.

Q. I show you an envelope of the Stanley Silk Dyeing Company with the word "registered' and under the word "registered" the number "1262," and ask you if that is the registered letter you referred to? A. Yes, sir.

Q. I show you a letter on the letterhead of the Stanley Silk Dyeing Company, dated August 12, 1922, and ask you if that was the letter that was in the envelope? A. Yes, sir.

Mr. Ward—I offer these in evidence,

(Marked Exhibit C-17-a and Exhibit C-17-b.)

Q. Did you know what that meeting was about? A. No, sir.

Q. Did you attend the meeting? A. Yes, sir.

Q. Was Mr. Stanley Kasprzak present? A. Yes, sir.

Q. What transpired? Tell us briefly what happened or transpired at that meeting? A. I asked Mr. Kasprzak what is the reason he sent me a registered letter and what is the reason he called a meeting, because a meeting was never called by him. He says: "Well, you will find out right away in the meeting."

Q. Go on and tell His Honor what transpired? A. Then I was informed Mr. Kasprzak—I understood Mr. Kasprzak—lately I found out it is the daughter of Mr. Kasprzak, bought ten shares of Mr. Biezczad, and wanted to transfer those ten shares on the books of the company. So at that time arose the question I got forty, I believe more than that, and none of them transferred, so I asked

the girl: "Who told you this has to be on the book? What kind of a book is it?" She says: "There is a book in the box"—they had a box in the safe where they kept the books of the company—the corporation books. She says they put it in there in that book. I asked her: "Who told you that?" She told me Mr. Smit told her that. I says: "If this is the case, call up Frank Rea and let him transfer them all." They said: "All right," and they called up Frank Rea to transfer all the shares.

Q. Judge Lewis has suggested that I ask you the date of this meeting? A. The first meeting? I cannot tell you the date.

By The Court:

Q. Notice says August 15th. That is the date in the notice. A. August 15th, I believe it was that date.

By Mr. Ward:

Q. Go on; continue and tell what happened there? A. And after this Mr. Kasprzak told me: "From today on I will be the boss. You were boss six years. Now, I want to be boss." I asked him: "What do you mean by you want to be boss? Were you not boss up until now? Did anybody disturb you from being boss?" He says: "Now I want to be boss." I says: "Just tell me what you mean by it?" He says: "Your salary is not going to be $100 any more nor $150. Your salary is going to be $50 a week." I says: "I cannot agree to it and you cannot make my price at this time because you never made it before. Did you ever make my price before?" I asked him. He says from now on he is

going to do it; I am going to be paid $50 a week. That time he started to talk about this and I could not agree to it and I left the meeting.

Q. You say that you said to the Kasprzaks that if her ten shares were to be put on some book, that you wanted your shares put on a book too? A. Yes.

Q. What did they say to that? A. "All right," and they did call up Frank Rea for that purpose.

Q. They were going to call up Mr. Rea for that purpose? A. Yes.

Q. Did they at that time make any claims on you that the forty shares that you had were the company's shares? A. No, sir; not at the meeting.

Q. Before that meeting had you known that Miss Kasprzak owned those ten shares? A. No, sir.

Q. Before that meeting had you any information that there was any such thing as a stock transfer book, such as this, that you had to have your stock put on? A. I couldn't remember; I know there is supposed to be some books, but nothing that I can remember and know what it is until Mr. Bluestein, I believe, asked me whether there was such a book.

Q. That was afterwards? A. Yes, sir. I said then I did not know. Then we will have to ask the girl. I believe Mr. Bluestein went over to the girl to find out if there is such a book.

Q. You say you left the meeting? A. Yes.

Q. How much salary were you receiving at that time? A. $100 a week regular and $50 a week back salary.

Q. How much was Mr. Kasprzak receiving? A. The same thing.

Q. After you left the meeting, what was the next thing that happened? A. Why, I forgot to say that there was talk in the meeting; after this $50 Mr. Kasprzak raised the question for the machine.

Q. Tell us about that? A. Mr. Kasprzak asked me why I bought the machine in my name. I told him: "Didn't you agree that way? You says I could get the machine and when you came back you will straighten it out?" Mr. Kasprzak said that I ought to buy the machine in the company's name. I said: "All right, I will transfer it to the company," which I did. That was only a few weeks, about two or three weeks since I had the machine; I transferred it immediately to the company, but I said: "If I transfer the machine to the company I want you to bring back the $1500 and the salary that you got from the time you were absent." He says: "We will see that later. You bring back the machine." So I transferred the machine, but his money was never returned.

Q. Did he ever return the $1500 that you know? A. Not that I know.

Q. Did he ever make any accounting for the salary that he received while he was away; did he ever turn back to the company the salary that he received while he was away? A. No, sir.

Q. After that what was the next thing that happened? A. The next thing was the shares. Mr. Rea came down to transfer the shares of stock. So, Veronica Kasprzak, she presented her ten shares, and so I did mine, and at the same time Mr. Kas-

przak said: "No. Your shares I would not let you transfer." He jumped in; he said: "Your shares I would not let you transfer." Frank Rea asked him why. He says: "I don't want it. I want you to transfer this. That is what you were called for." So Frank said: "If you would not let him transfer this, I cannot transfer these." So this was the end of it.

By The Court:

Q. Frank Rea said: "If you won't let these forty shares be transferred—" A. I said this—

Q. Listen to my question. Frank Rea said to Mr. Kasprzak: "If you won't let these forty shares be transferred, then I won't transfer the ten shares" —is that it? A. Pardon me. This is a mistake. I mean to say I said to Mr. Frank Rea if they would not let me transfer mine, do not transfer the others. That is what I meant to say.

By Mr. Ward:

Q. Now, was either the ten or the forty shares put on the stock transfer book at that time? A. I cannot tell. I did not see the stock book.

Q. Was any claim made by Mr. Kasprzak or Miss Kasprzak at the time, or anyone else, that these forty shares belonged to the company? A. No, sir; they all simply said they would not allow the transfer, in the presence of Frank Rea.

Q. How long after the meeting of August 15th was it that Mr. Frank Rea came down there when this occurred that you have just related? A. Well, I believe the meeting was about Monday night and

Frank Rea was there—the next day they called him up—he said in two days, either Friday or Thursday—I am not sure.

Mr. Lewis—We can agree on the dates.

Q. Did anything else occur of any importance up to the time— A. I want to make a correction. I said Tuesday; I meant Thursday or Friday.

Q. You said Thursday or Friday. A. Did I?

Q. What was the next thing that happened? A. After these shares it quieted down until I got another registered letter.

Q. (Showing witness.) Is this the registered letter? A. Yes.

Q. I show you an envelope registered, underneath which is the number "13372," with the notice marked C-10 for identification. Was that what you received? A. Yes.

Mr. Ward—I offer the envelope and the notice in evidence.

(The paper heretofore marked C-10 for identification is marked Exhibit C-10. Envelope is marked Exhibit C-18.)

Q. That was the notice of the annual meeting on the 21st day of October, was it not? That was a notice to you that the annual meeting would be held on the 21st day of October? A. Yes, sir.

Q. Up to that time had your stock been transferred on the transfer book; up to the time you received this notice had your stock ever been put on the book? A. No, sir.

Q. Do you know whether or not Miss Veronica Kasprzak's stock had been put on the book? A. I do not know.

Q. When you received that letter what did you do? A. I went to see a lawyer.

Q. Who? A. Mr. Bluestein.

Q. Did you and Mr. Bluestein go anywhere? A. Mr. Bluestein told me he cannot—

Q. Not what was said. What did you do. Did you go anywhere? A. With Mr. Bluestein?

Q. Yes. A. We went I believe, to Frank Rea shares—this I do not know exactly; I believe Mr. shares—this I do not know exactly; I beleive Mr. Bluestein will be more capable to explain it.

Q. At the time that you had your interview with Mr. Frank Smit and with Mr. Bluestein in Mr. Smit's office, when you went to see him the first time, was there any claim made that the forty shares of stock that were held by you, belonged to the company? A. I remember the lawyer, Frank Smit, told me: "Why not sell them a part of your shares in order to staighten it? Then you won't have any trouble."

Q. Listen to my question and answer my question: At the time that you and Mr. Bluestein went to see Mr. Frank Smit, about which you have just spoken to us or told us, was there any claim made by Mr. Frank Smit that the forty shares of stock you had really had been bought for the company and belonged to the company? A. No, sir. Mr. Frank Smit knows all about it, like me.

Q. Did you thereafter go to see Mr. Kasprzak? A. Yes.

Q. Where? A. Down to the office.

Q. With whom? A. Mr. Bluestein.

Q. Tell His Honor briefly what happened there. A. When we came to the office Mr. Bluestein said to the girl that he wants to see the books.

By The Court:

Q. Said to whom? A. To Veronica Kasprzak.

By Mr. Ward:

Q. Wanted to see what? A. He wanted to see a certain book—I don't know what kind—and the girl says he should wait a little, and she called in William Kasprzak and several men—I cannot remember all the names—and then she said: "Now, what do you want?" Mr. Bluestein said: "I want to transfer these shares." She said: "What shares?" Mr. Bluestein said: "The forty shares of stock." Veronica Kasprzak said that she was willing to transfer them from that date.

Q. From what date? A. From that date. I don't remember the date what it was. Mr. Bluestein said: "Why not transfer them on the day when they were presented to you when Frank Rea was here?" She said she would not do that.

Q. Do you know whether or not the time when Mr. Bluestein asked her to transfer these shares that when she said she would do it as of that date, whether that was less than twenty days from the time of the meeting? A. That was either nine or ten days from the meeting. I remember the remark what Mr. Bluestein says: "If you transfer them from today, it won't do me any good. I want them

from the day when they were presented when Frank Rea was here."

Q. When Mr. Bluestein was talking with the Kasprzaks at that time about the stock, where was the stock? A. The stock Mr. Bluestein had in his hands.

Q. In his hands? A. Yes, sir.

Q. What did he do with it? A. He showed it first to Stanley Kasprzak to transfer it and he refused it. He showed it to William Kasprzak and they all referred to the girl, and then she has done the talking.

Q. At that time when Miss Kasprzak said that she would put these forty shares of stock on the stock transfer book—

Mr. Lewis—I object to that.

Q. What stock was it that he had in his hands? A. Forty shares.

Q. The forty shares that this suit is about? A. Yes, sir.

Q. Now, when Miss Kasprzak said she would transfer those forty shares as of that date, did Mr. Stanley Kasprzak, or she, or anyone, make any claim that this stock, these forty shares, belonged to the company?

Mr. Lewis—I object to the question because it does not appear anywhere that Miss Kasprzak said that she would transfer the forty shares as of that date.

The Court—Objection overruled.

A. No.

Q. Did anything else happen there that you recall? A. Well, I cannot remember about it.

Q. Up to the time that the answer was filed by Stanley Kasprzak and the others in this case, did you ever know that they claimed that this stock had been bought by you for the company and was owned by the company? A. No, sir; never talked to me about it.

Q. Before you went with Mr. Bluestein, to consult with Mr. Bluestein about this, did you consult with any other lawyer? A. No, sir.

Q. Did you see Frank Smit about it at all? A. Yes, sir.

Q. Listen to the question. Don't answer unless you are sure. When did you see Mr. Frank Smit? A. I cannot remember.

Q. I show you Exhibit C-17 and ask you if it was before or after you received that that you saw Mr. Smit? A. After that I saw Mr. Smit.

Q. How long after that? A. Well, in a few days after.

Q. This is dated August 12, 1922? A. Yes.

By The Court:

Q. You said when you saw Mr. Smit Mr. Smit said: "Why don't you transfer some of these shares to Kasprzak?" A. Mr. Bluestein was with me at that time.

Q. Was that the time you went to Smit's the first time? A. No; I was once before to see Mr. Smit; I do not remember exactly what time it was.

Q. When was the second time? A. The second time was with Mr. Bluestein.

Q. Was it before or after you had gone to the office to have these shares transferred? Did you go to see Smit the second time with Mr. Bluestein before or after you had been to the company's office with Mr. Bluestein to have the shares transferred? A. We went there before to get an order to see the books.

Q. Then you say Mr. Smit said: "Why don't you transfer some of these shares to Kasprzak?" A. He says: "Why don't you sell some shares to make it even? Then you won't have any trouble."

Q. You said you had no trouble over these shares until after Mr. Bluestein had requested the transfer; that no question had been raised about your ownership of your shares—did you get that? You said that the first time that there had been any question about the ownership of the shares was after you and Mr. Bluestein had been to the company's office to have the shares transferred. A. No, sir. Pardon me. The trouble was they refused to sign—they refused to transfer the shares.

Q. There had been no question about the ownership of the shares? A. No, sir.

Q. Up until after Mr. Bluestein and you had been to the company's office? A. Yes.

Q. To get them transferred? A. Yes.

Q. The had not questioned your right to the shares at that time? A. No.

Q. Why was it that Mr. Smit suggested to you before that, that you give some of the shares to Mr. Kasprzak? A. Mr. Smit suggested that I should sell some shares.

Q. To avoid trouble? A. To avoid trouble.

Q. There had not been any question about

trouble? A. I do not know what they meant. They must have known something.

By Mr. Ward:

Q. When you went to see Mr. Smit, had you already had this talk with Stanley Kasprzak in which he said he was going to be the boss from then on? A. Certainly; it was after the first week.

Q. And the trouble about the automobile? A. Yes; and the trouble about the automobile.

Q. What reason had you for suggesting that you change from skein dyeing to piece dyeing before Mr. Kasprzak went to Europe?

Mr. Lewis—I object as immaterial.

Mr. Ward—Simply to show why he wanted this $5000 from Mr. Kasprzak.

The Court—Objection sustained.

Q. How many times did you and Mr. Smit visit Mr. Bluestein's office regarding this trouble? A. I think two times; I believe two times.

Q. There was testimony here yesterday with reference to a dividend that was declared of $837.50: Do you remember that? A. (No answer.)

Q. Do you remember November 2, 1918, when the company declared a dividend and when all the members of the company received certain amounts? A. (No answer.)

Q. Do you remember that there was a dividend paid them? A. Yes.

By The Court:

Q. That dividend amounted in your case to the

the sum of $837.50 and the dividend that Mr. Stanley Kasprzak received amounted to $837.50, the same amount? A. Yes.

Q. How do you explain that? A. I cannot get what it was.

By The Court:

Q. You owned forty shares more of stock than he did? A. We never went by shares. We always went by friendship. We divided everything. If I got $10 outside of the business it was divided between me and Mr. Kasprzak. Everything was divided. If I got $10, he worked inside and I am outside, no matter how many shares I got more or less, it is a fact when Mr. Kasprzak had more shares he divided also with me; Mr. Kasprzak had seventeen shares and I had ten and he divided with me.

Q. There wasn't any dividend paid before November 2nd? A. Whatever it was, it was divided between me and him.

Q. There were no profits of the company divided before that? A. May I explain this?

Q. That is what I am asking you for. A. When I began this company, I went to see Mr. Kasprzak and I told him: "If you go in business with me, even if I had only a piece of bread I will divide with you; you are going to stay with me as long as I live." He was employed in another business and I always divided. If I had anything I always gave halves of everything. I was not particular if he gets over a few dollars or I get more, so it was with him; the friendship was continued in a good way. Whatever I drew, whatever he took, it was simply

made up half and half. The only reason why that Mr. Kasprzak would take more money, when it was to take, he liked to take, I liked to please him. I did not care if I had a little less. I never cared for that. I like to please him, because he was the inside man, he was doing the work inside.

By Mr. Ward:

Q. Your salaries, were they the same or not? A. Just the same.

Q. Do you know why you both received the same amount at that time, November 2, 1918? A. There was simply no reason for that because we used to divide everything between ourselves.

Q. Now, July 10, 1919, you drew from the company the sum of $5270 and Mr. Stanley Kasprzak drew from the company the sum of $5330. Why was his sum larger at that time than yours? A. Mr. Stanley told me that he is entitled to a few dollars, as I remember it, in salary. He asked me about it. I thought I might as well give it to him; there is no use to talk about it.

Q. And that was back salary, was it not? Those two sums were back salary? A. Yes, sir.

Cross Examination by Mr. Lewis:

Q. What was the date of your first visit to John Benson's office? A. Well, I cannot remember exactly the date, I do not know just exactly the dates, but I know—as far as I know, I believe it was some time in the end of June, towards the beginning of July, somehow like that.

Q. Prior to that time you had had trouble with Walzak and some of the other stockholders that you subsequently bought out, had you not? A.

No, sir; I never had any trouble; they had trouble between them, but not for myself; they cannot say that they ever had anything with me; never with me anything; none of them.

Q. You barred them out of the shop, didn't you? A. Not me. Excuse me.

Q. Who did? A. Mr. Kasprzak did.

Q. Stanley? A. I did not see it; I heard about it.

Q. Stanley Kasprzak? A. Stanley Kasprzak.

Q. He barred them out of the shop? A. What do you mean, "barred out"?

Q. Kept them out? A. I heard that. Oltarzewski once told me that, but I did not see it.

Q. They went to lawyer Smit first about that, didn't they? A. Yes, sir.

Q. And wanted to get into the shop, didn't they? They wanted some way to get into the mill? A. This I do not know.

Q. Yes, you do. A. I do not. Excuse me.

Q. You knew that there was trouble of that kind on, you say? A. Yes.

Q. And you sided with Stanley Kasprzak in that, didn't you? A. How do you mean "sided"?

Q. There were two sides to that thing, — the fellows that sold out and those that did not sell out in interest? A. Yes.

Q. And you sided with Stanley Kasprzak. You stood by him in the quarrel, didn't you? A. Yes.

Q. When you went to John Benson's first, why did you go there? A. Because I had a letter.

Q. From whom? A. John Benson.

Q. Where is it? A. I have not got it. The girl gave me a letter when I got in the office. She

said: "Here is a letter from John Benson," so I went to see him.

Q. And what did John Benson say to you? A. "What is the trouble there between you four stockholders?"

Q. Did you finally come to an agreement with John Benson or any of the other shareholders to buy out their stock? A. Yes.

Q. Was it at the first, second or some subsequent visit to John Benson's office that you made the agreement? A. The first time there was nothing. I only told him: "The company has not got any money and these troubles were taken up in the meetings, pretty near every meeting and the consent of the rest of the stockholders is not to buy any." That is what I told John Benson.

By the Court:

Q. At these meetings of the company how had Stanley Kasprzak voted? A. Stanley Kasprzak voted not to buy.

By Mr. Lewis:

Q. You went to John Benson's office with Stanley Kasprzak on one or more occasions, didn't you? A. What do you mean by "occasions"?

Q. Times. A. Yes.

Q. How many times did you and he go to Benson's office? A. To be very clear, I believe about four or five times.

Q. Did you meet Walzak or any of the other holders of the forty shares there? A. Yes, I met Mr.—— this fellow— I forget his name—Mr. Walzak, this gentleman sitting there.

Q. Did you meet anyone else? A. And if I am not mistaken, there was with him Mr. Oltarzewski.

Q. Did you discuss the question of price? A. Not the first time.

Q. When did you take up the question of price? A. When it was proposed to me to buy them out.

Q. I ask you when that was, about? A. I cannot remember the date.

Q. Was it the second visit? A. It might be the second or third, but I cannot—

Q. (Interrupting) You cannot tell? A. I cannot tell the date.

Q. Was Stanley Kasprzak there? A. No, sir.

Q. That was one of the times he was not there? A. No times he was in there. Pardon me, Stanley Kasprzak was not one time there.

Q. Not once? A. Not at all.

By the Court:

Q. I thought you said that Stanley Kasprzak accompanied you to Benson's office four or five times? A. I was, but not with Stanley Kasprzak.

Q. With whom did you go? A. Myself.

By Mr. Lewis:

Q. Then, did Stanley Kasprzak know anything at all about the meetings between you and the holders of the forty shares at Benson's office? A. Yes, sir.

Q. Because you told him; is that it? A. That is it; yes, sir.

Q. Did you consult with him? A. Yes, sir. Consult means to talk it over?

Q. Yes. A. Yes, sir; I did.

Q. Now, you finally agreed upon a price, didn't you? A. Yes.

Q. Agreed to pay a price; you finally agreed to pay a price? A. Yes.

Q. You said that was $175 a share? A. Yes, sir.

Q. Now, when was that agreement made? A. I should give the date?

Q. Can you? A. I cannot.

By the Court:

Q. How long before August 2nd? A. Maybe about two weeks.

By Mr. Lewis:

Q. About two weeks? A. Yes.

Q. Whom did you make the agreement with? A. I believe it was Mr. Walzak and the other fellow. They were there; they were the talkers for the other two, because one was in the army and one was in Brooklyn, and so they were doing the talking for them.

Q. You told them, did you not, that you wanted to buy the stock for the company? A. No, sir; I was talking that the company cannot buy any stock, and this was the decision of the meeting. They know it just the same like me, that the company would not buy, and that is why they went to the lawyer about it. If the company would buy and they would agree in the office, but the company refused.

Q. You say then that you said nothing about the company's buying the stock, to them? You say that nothing was said about the company's buying the stock to them at Benson's office? A. I cannot hardly get it.

By the Court:

Q. Judge Lewis wants to know whether anything was said to Walzak and Oltarzewski at Benson's office that the company could or could not buy the stock? A. We talked it over with Benson. Yes, sir; it was said that the company cannot buy. They want a dividend.

Q. Did you tell that to Oltarzewski and Walzak? A. Yes, sir.

By Mr. Lewis:

Q. How then, if the company could not buy, did you think that you could buy? If you thought that the company could not buy the stock, why did you think you could buy it? A. Why I could buy it?

Q. Yes. A. Why I—

By the Court:

Q. If the company did not have the money to buy the stock, how did the company have the money to lend you to buy the stock? A. (No answer.)

By Mr. Lewis:

Q. Did you say the company could not buy it because it did not have the money? A. I did

not say so. Pardon me. They needed money because the company needed the money.

Q. If the company had had the money they would have had a right to buy it, you think? A. I don't know that.

Q. But that was the reason you gave for the company's not buying it? A. Because the company has to put up a building and machinery, and there was no such thing about right—I don't know. This was the reason: Because the company has got to keep every cent in order to put up a building and machinery, in order to go ahead. This is the reason.

Q. Had you told Stanley Kasprzak before that time, or was it after that time, that you would like him to buy some of the shares with you? A. When I heard the proposition by Benson, I came down and told it to Mr. Kasprzak, that there is the proposition—we could buy them out; if the company cannot, we could buy them out. Mr. Kasprzak refused.

Q. Had you then agreed upon a price? A. No, sir; the price was set later.

Q. The price was set later? A. Yes.

Q. So that when the price was agreed upon, you considered Kasprzak out of it altogether? A. How could I consider it when Mr. Kasprzak refused?

Q. When the price was agreed upon between you and the other stockholders— A. Pardon me—

Q. You considered Stanley Kasprzak out of the bargain altogether, did you? A. Pardon me. What do you mean "out of the bargain"?

Th Court—Not in it.

Q. You did not consider him at all, did you? A. Do you mean in the shares? Of course I did not consider him anything in the shares. That is mine.

Q. That was the last you thought of Stanley Kasprzak as having any right to buy that stock? A. He hasn't any right?

Q. I say: That was the last thought you gave to any right of Stanley Kasprzak to buy the stock? A. Will you please put that plain to me, that I could answer it? I am willing to answer everything, but give it to me so I could answer. I cannot get it.

Q. How long have you been in this country? A. Eighteen years.

Q. What was your first business here? A. First of all I was working in the mill.

Q. Then after that what did you do? A. I went in business.

Q. What business? A. First off my business was the fur business.

Q. Did you handle that personally and make sales and purchases? A. Yes.

Q. How long did you stay in that business? A. For one year, for one season.

Q. For yourself? A. I had a partner.

Q. You had a partner? A. Yes.

Q. What became of the partner? A. My partner is in Los Angeles. He got sick—tuberculosis.

Q. Then when you went out of the fur business, what did you do? A. I believe I went to work again.

Q. After that what did you do? A. I had a store again.

Q. You had a store? A. Yes, sir.

Q. What sort of a store? A. Just opposite No. 4 school.

Q. What did you sell? A. Everything, groceries, candies and soda water and all that sort, like a fellow comes over here for the first few years.

Q. Did you run it alone? A. Yes.

Q. Did you keep any books? A. No, sir.

Q. Checks? A. No.

Q. No check accounts? A. No.

Q. No accounts of any kind? A. No; a small business.

Q. What did you do after that? A. After that, because I didn't have any business, I went back to work. That was the time—

Q. (Interrupting) How much of the time were you back to work? I am talking about when you were in business? What did you do after you gave up the store? A. I went in the silk business. After I was working a little while I went in the silk business.

Q. For yourself? A. With a partner.

Q. Who is the partner? A. The partner is Lipschitz. He is in the silk business, in the same business.

Q. You are out and he is in? A. Yes.

Q. Then what did you do? A. When I sold this business with my partner I looked up this place and I bought this dye-house.

Q. You had become acquainted with the silk trade in Paterson by that time, had you? A. Yes, sir.

Q. You could speak English? A. Well, the way I speak.

Q. The other men could not speak English except Walzak? A. What men?

Q. The four shareholders of the forty shares? A. Some of them speak pretty good.

Q. But you always talked to them in Polish, didn't you? A. I was talking Polish.

Q. You talked to Stanley in Polish, didn't you? A. Yes, sir.

Q. And William? A. Yes, sir.

Q. You are now in the real estate business, are you not? A. Yes, sir.

Q. And are carrying that on where; where are you in business; where is your real estate office? A. My real estate office?

Q. Yes. A. 160 Market street. That is the registered office. I have not got any office.

Q. Are you incorporated? A. Yes, sir.

Q. Have you got some stockholders in it—other stockholders with yourself? A. Me and my partner and the two wives.

Q. Now, then, to go back, I ask you if after you made the agreement with Stanley Kasprzak, after he refused to participate in the purchase of the stock, you considered him out of the thing? You considered him out of the thing, didn't you? A. Yes, sir.

Q. And you were acting for yourself alone, were you not? A. I kept him as a partner just the same, whether he has more shares or less.

By the Court:

Q. In the deal for the purchase of the forty shares— A. Yes.

Q. (Continuing) He was not in on that? A. No, sir.

By Mr. Lewis:

Q. You were having meetings of the directors at that time, were you not? A. Yes, sir.

Q. Do you remember a meeting that you had in July, 1918? A. If I see it maybe I remember it. I cannot remember every meeting.

Q. I show you the minute book, Exhibit D-1, and ask you if that is your signature under the minutes? A. Yes, sir.

Q. I will ask you if you now remember this transaction which is recorded in the minutes of July 29, 1918: "The secretary asks the president if he heard anything from the shareholders who have sold these shares? He said 'Yes' and he told the secretary he was called by lawyer Benson on the 20th of July with S. Oltarzewski and A. Walzak and also with S. Kasprzak. During this time they made an agreement, S. Kasprzak and A. Rubinstein made the agreement with A. Walzak and S. Oltarzewski to pay eighty per cent., seventy-five per cent. to be paid now and five per cent. to be paid in year's time, with a note of agreement." Do you remember that? A. Yes. Does it say here that I was with Stanley Kasprzak? Can I read that?

Q. Surely. A. Please read it to me.

Q. There it is. A. (After inspecting exhibit) Well, I cannot see how this is, because I do not know that Mr. Kasprzak was ever with me to buy the shares. Who wrote this, I would like to know? Whose writing is this?

By the Court:

Q. You signed it? A. I signed it. It was

read to me. That is right. I do not know whenever Kasprzak was with me.

By Mr. Lewis:

Q. I asked you if you recalled that incident? A. I cannot remember.

Q. Do you recall the meeting at which this report was made? A. I cannot tell.

Q. Since you have seen these minutes of this meeting of July 29th, are you quite sure that you arranged with Stanley Kasprzak that you should buy the stock alone before July 29th? A. Whether I am sure?

Q. Yes. A. What do you mean, sure?

Q. I ask you again: You say that before you agreed with Walzak and the others to buy their stock, you had a talk with Stanley Kasprzak and asked him to join with you in buying, and you say he refused? Isn't that right? Isn't that what you testified to? A. That I told him to buy some, yes.

Q. You say he refused, don't you? A. Yes.

Q. Before the agreement was made between you and the other holders of the forty shares? A. Whether I can tell whether it was before or later?

By the Court:

Q. You said it was two weeks before August 5th that Stanley Kasprzak told you he would not go in on the purchase? A. Yes; I believe so; that I talked to him and he said he would not buy.

Q. And you say the minutes of this meeting of

July 29, 1918, do not remind you that you went to Benson's office with Kasprzak? Is that what you say? A. With Kasprzak?

Q. The minutes say you did go with Kasprzak? A. The minutes say so.

Q. You signed the minutes? A. Yes.

Q. Does it remind you that you are mistaken? A. I do not think—it doesn't remind me anything that I went with Kasprzak to Mr. Benson about the shares. It does not remind me anything.

Q. Do the minutes remind you that Mr. Kasprzak said at the meeting of July 29, 1918, that you and he had made an agreement with Walzak and the others to pay eighty per cent. for their stock? A. It must be some misunderstanding, the way I think; we were talking in Polish and when they translated this over into English, there must have occurred some mistake here.

Q. Do these minutes remind you that Kasprzak did say at the meeting that you and he agreed at Benson's office to buy the stock? A. He had agreed with me to buy the stock?

Q. He said so at this meeting? A. I cannot hardly remind that.

Q. Why did you sign it? A. The secretary wrote the minutes—

Q. You said that the minutes were always read over to you and that when you signed them they were true? A. I believed so.

By Mr. Lewis:

Q. Now, at this talk that you had with Stanley Kasprzak that you spoke of, when he said he would let you get the shares, was there any talk

between you about the value of those shares at that time—how much they were worth? A. How much they were worth?

Q. Yes. A. I cannot remember about that; I do not remember anything like that, that I talked to him about the value, what they are worth.

Q. He had a right, as an individual with the others, to buy that stock at the book value, if it were offered? A. We never talked what the shares is worth. We never figured that.

By the Court:

Q. Judge Lewis asks you whether Stanley Kasprzak did not have a right to buy the stock if he wanted to? A. Why, he had the same right as I had.

By Mr. Lewis:

Q. And the other stockholders were bound, were they not, to offer it to you and all the other stockholders of the company at the book value before they sold to anyone else; isn't that right? A. This is something new to me; I never heard about book value.

By the Court:

Q. Was there not an agreement between the stockholders that if anybody wanted to sell his stock, he had to offer it to the other stockholders first?

Mr. McKee—We object to that.

The Court—I am asking whether there was an agreement?

A. I believe there was some agreement, but I didn't have that agreement in my possession that I could tell what it was.

By Mr. Lewis:

Q. I show you now D-3 for identification and ask you if your name is signed to it? A. Yes; here.

Q. Well, did you have any talk then with Stanley Kasprzak about the value of the stock at the time that you were buying from these men—the book value? A. No, sir.

Q. Did you know what it was worth? A. No, sir.

Q. Did you have any idea what it was worth? A. Well, I believe the business was a good business; it does not make any difference whether I know it more or less; the cheapest I could buy it I would buy it.

Q. You told these men that you were bargaining with, that the company did not have any money? A. I did not say the company did not have any money. I told them the company cannot buy it; they have to save every dollar for a building.

Q. And you bargained as well as you could on the price, didn't you? A. Yes.

Q. And the final fine touch you put on was when you got them to—

Mr. McKee—I object to the use of the words "fine touch."

The Court—Objection sustained.

Q. Were you at the organization meeting of

the company when the company was organized? A. Yes, sir.

Q. And do you recall that a copy of D-3 for identification was the first thing that was put in the minutes of the company?

Mr. McKee—I object to that as irrelevant and incompetent and immaterial.

Mr. Ward—That is the agreement that was excluded.

The Court—Objection sustained .

Mr. Lewis—Your Honor will permit me to make my formal offer of this eventually.

The Court—Oh, yes.

Q. Did you know at the time that you say you made this arrangement with Stanley Kasprzak that he should not buy the stock, but that you should—did you know that that stock was worth $600 a share? A. $600?

Q. Yes; that the book value of the stock was $600 a share? A. I didn't know it.

Q. You did not know it? A. No.

Q. Did you think it was worth $7,200? A. I thought so; otherwise I would not buy it.

Q. What did you base that on; what did you base that idea on; that it was worth $7200? A. What I base it on?

Q. Yes; why you thought it was worth $7200? A. Well, you know a business if you see it; if you are progressing a little; I did not care if I will pay $7200 or $8000 or $10,000. You know, in order to keep peace and harmony in the business, if they would want me, I would pay more at that time, because I could not stand the trouble it was

at every meetnig and every other day that these men would come around and make trouble. They had trouble in the office. When I got there Mr. Kasprzak tell me they had trouble. "What was it?" "They want to come in for dividends." They were coming around to make trouble; and he had trouble in the shop. That was really to make peace, to go on with the business. That was my aim to buy out the shares.

Q. And you talked with Stanley Kasprzak about that, didn't you? A. About value; no, sir.

Q. No; about buying out the shares? A. Yes, sir.

Q. And at the time that that talk was had you had only ten shares of stock in that company, didn't you? A. Yes, sir.

Q. And Stanley Kasprzak had seventeen shares, didn't he? A. Yes, sir.

Q. And his brother William had five? A. Yes, sir.

Q. And Biezczad had ten? A. Who?

Q. Biezczad. You were in the minority, were you? A. Biezczad had ten.

Q. That is what I said. You were in the minority, were you not? A. (No answer.)

Q. You were in the minority; your stock was in the minority, was it not? A. Yes.

Q. And you want us to believe now that Kasprzak voluntarily gave up the control that his family had in that company, to you, do you? A. What do you mean, gave up the control?

By the Court:

Q. By letting you buy the forty shares? A.

He did not want to invest any more. That is all.

Q. He was willing—you want us to believe that he was willing that you should own more shares of stock in the company than he did? A. Certainly.

By Mr. Lewis:

Q. Now, you testified that after you bought the stock you went to Biezczad's house and Joe Kasprzak drove you there with Stanley Kasprzak? A. Yes.

Q. And you told him about having bought the stock; you told Biezczad about buying the stock? A. That I bought the stock, yes.

Q. Did Biezczad say anything? A. He refused to buy.

Q. You asked Biezczad if he wanted to buy some? A. Yes, sir.

Q. And he refused to buy any of it? A. Yes, sir.

Q. Was Stanley Kasprzak there? A. Yes, sir.

Q. Did he ask Biezczad to buy? A. He was doing the talking; yes, sir.

Q. He was doing the talking? A. Yes.

Q. And why did he want Biezczad to buy some? A. That I could return the money to the business.

Q. What? A. I would return the money sooner to the business; that was the reason.

Q. How many days after you got the stock was it that you went to Biezczad's house? A. Either the same night or the next night.

Q. The same night or the next night? A. The next night, yes.

Q. That would be about the 7th of August? A. About that, yes.

Q. Now, I am going to ask you, in view of the fact that you went to Biezczad's house on the 7th of August, whether you recall the meeting of the directors that was held on August 26th? A. Yes, sir.

Q. Now, I call your attention that at that meeting the minutes show this: "The president A. Rubinstein gave statement to the company." The company was A. Rubinstein, S. Kasprzak and A. Biezczad, was it not? A. Yes, sir.

Q. At that meeting? A. Yes, sir.

Q. "That he has paid the four shareholders their money for their forty shares amounting to $7200, which the value of forty shares is $4000; on these four shares they receive a percentage of eighty per cent. amounting to $3200; this makes the whole loan sum of $7200 on these shares; the money has been paid the four shareholders on the 5th of August, 1918. The following men who have given this up is as follows: John Harsche, Mr. John Linglebach, Mr. S. Oltarzewski, Mr. A. Walzak. The secretary, Mr. A. Biezczad, asked Mr. A. Rubinstein: 'Who paid these men for their shares?' Superintendent S. Kasprzak stated to the secretary that they were paid with the company's money. Now, in this matter president A. Rubinstein stated to the company that he would like to have the shares divided between myself and Mr. S. Kasprzak; one-half or twenty shares I, Mr. A. Rubinstein, would take, and the remaining twenty shares to go to S. Kasprzak. On this statement the secretary asked whether Mr. S. Kasprzak agreed to this. He, in answer

to the statement, stated that he isn't." Do you remember that? A. Yes.

Q. You do? A. Yes, sir.

Q. Do you still think, in view of that statement, that you had gone to Biezczad's office on the 7th of August and offered these shares to him? A. Yes.

Q. And had told him that you had purchased them? A. Yes; and Mr. Biezczad asked at the meeting who paid that money, whether I paid it myself, or we paid it the two, or what it was, and Mr. Kasprzak answered him that.

Q. Now, you say that Mr. Kasprzak said that he was satisfied, or that he was not satisfied? A. What satisfied?

Q. That word that is changed in the minutes —that word that is erased in the minutes?

Mr. McKee—I object to that.

Mr. Lewis—Question withdrawn.

Q. Now, you say, as I recall, that when you had your talk about the purchase of the stock with Stanley Kasprzak, Veronica Kasprzak was there? Do you say that Veronica Kasprzak heard you agree with Stanley Kasprzak— A. (Interrupting) Yes; she was always in the office.

Q. You say that Veronica Kasprzak heard the agreement between you and her father? A. No agreement—

Q. (Interrupting) The agreement between you and her father that you should borrow the money from the company and pay for the stock? A. We did not have such agreement.

Q. What? A. We never had such agreement.

What do you mean by agreement? I do not understand.

Q. I think you don't understand me. You borrowed the money from the company to pay for the stock? A. Yes, sir.

Q. And I understood you to say that you had an agreement with her father, with Stanley Kasprzak, in Veronica's presence? A. Agreement?

Q. That you should borrow the money from the company? A. I don't know the meaning of "agreement."

By the Court:

Q. How did you get the money from the company? A. I go down and ask Mr. Kasprzak whether I could have for a short time the money, and he agreed.

Q. That is the agreement? That was in Veronica's presence? A. Yes.

By Mr. Lewis:

Q. Veronica heard that? A. Yes, sir.

Q. And that was the reason you say that she put down on the cash book when the money was paid, the words "a loan"—is that right? A. I said "to put down"? I never give any orders for the books. I never did give any orders for the books.

By the Court:

Q. Judge Lewis asks if that was the reason she wrote on the books, opposite the names of Walzak, Linglebach, Harsche and Oltarzewski,

the words "a loan." Don't you remember the words "a loan" are written in the book? A. Yes.

Q. Was it because she heard Stanley Kasprzak consent to let you have the money from the company? A. Yes. Now I understand it.

By Mr. Lewis:

Q. That is so, is it? A. Yes.

Q. You say you never gave her any directions about the books? A. How to write in the books?

Q. Yes. A. No, sir; I could not tell her to put this in the book, put this and that in the book. I never done it because I do not know it myself; I am sorry I do not know it; I wish I would.

Q. Who was in the office and knew anything about keeping the books? A. She was the only one.

Q. The only one? A. Yes.

Q. Do you remember making an affidavit on an application for a receiver for this company? A. Yes, sir.

Q. Do you remember that in that affidavit you swore to this: "As a matter of fact the said Kasprzaks, defendants, have absolutely no knowledge of the business of the said company, nor have they had any experience as general managers of the same." Do you remember swearing to that? A. Yes, sir.

Q. "The said defendant, Stanley Kasprzak, is a dyer"? A. Yes.

Q. "Illiterate, speaks very little English and any conversation with him must be through the medium of his daughter Veronica Kasprzak act-

ing as interpreter". Did you swear to that? A. Yes, sir.

Q. "Veronica Kasprzak, the bookkeeper is a girl of twenty-two years of age, a grammar school graduate, having no business experience with the exception of acting as bookkeeper of said concern." Do you remember swearing to that? A. Yes, sir.

Q. "Whatever knowledge of bookkeeping she now has she has gained from the accountant employed by the company"; is that right? A. Yes, sir.

Q. Now, at the time these entries were made, she had only been employed by the company for two or three months; is that so? A. About.

Q. One month? A. I don't know exactly—a month or two months. Pardon me, she knows it.

Q. Who had charge of making the deposits in the company? A. Deposits by me.

Q. Eh? A. I made deposits.

Q. All deposits? A. All deposits except lately the girl made a few.

Q. You made out the slips? A. Sometimes.

Q. I show you the deposit slips that have been offered in evidence, Exhibits C-11, C-13 and C-15, and ask you if those are in your handwriting? A. Yes, sir.

Q. You made the deposits personally? A. Yes, sir.

Q. Now, then, Miss Kasprzak would not know anything about these deposits until you told her, would she? A. Yes, sir.

Q. How would she know? A. When I go down I call Mr. Kasprzak at the office; I tell him I made deposits for the company, so much and so much, and she put it in the book.

By the Court:

Q. Where was the deposit book kept? A. In the safe; sometimes I carried it around with me in the pocket, lately—

Q. At this time, in 1918 or 1919? A. I must have had it with me in my pocket.

Q. Did you show the deposit book to Miss Kasprzak to show the deposits that had been made? A. I gave her the deposit book; she puts it in the book.

By Mr. Lewis:

Q. Now, when you, as you say you did, borrowed this $7200 from the company to buy out these forty shares, why didn't you have the check of the company drawn to yourself for $7200 and than pay the shareholders with your own check? A. I did not think that that made any difference; I know it was a loan and I have returned it.

Q. You had it in your mind at that time, you say, that you were going to own the shares and not the company? A. Yes. What difference does it make? I cannot see. I know it is borrowed and I have to pay it back.

By the Court:

Q. In 1918 and 1919 was there a monthly statement of the business made up and given to you? A. A statement?

Q. Made up by Mr. Cohn? A. Not to me; that was given to the girl.

Q. Didn't you see it every month? A. Some times I have; yes.

Q. It was there in the office? A. I think so;

yes, sir—that statement from the first day of the business, I believe.

Q. Is it made out every month? A. Every month, but there is one thing I do not understand, what this means—a statement for creditors, or does it mean a trial balance?

Q. I mean a statement for you and Kasprzak and the other stockholders who were interested in the company? A. I do not think—

Q. How did you know how much money was taken in every month and how much was paid out? A. This is the slip I get from the girl every month; every month I am getting that slip to collect.

Q. That shows the accounts due the company? A. Yes, sir.

Q. How did you and Kasprzak know how much money was taken in every month? A. Why, this is in the check book. If I want to know how much money, then I look at the check book.

Q. There was not any statement made of how much money was collected each month, what bills were payable? A. Yes, maybe two or three weeks, like that, or ten days or a month—that the accountant sends this in.

Q. Was there not a statement made up of the bills payable, notes payable, accounts payable, each month? A. This girl has a book—

Q. I want to know if that statement was made out each month and given to you and Kasprzak? A. No, sir; not given.

Q. Was there not any statement made up each month which would show that you owed the company $7200? A. I don't know that.

Q. Was there any statement made up each

month which would show the payment by you of, first $3500 and then $2000 and then $1700? A. I believe the accountant shows that. I cannot tell.

Mr. McKee—The trial balance will show that, if your Honor please. That was made each month.

By Mr. Lewis:

Q. I call your attention to the minutes of the meeting held on October 28, 1919, at which it is said that Stanley Kasprzak, A. Rubinstein, A. Biezczad and W. Kasprzak were present. Do you remember that meeting? A. Yes, sir.

Q. I ask you if you recall this occurrence at the meeting; "President A. Rubinstein requests the dividends which were decided in the year 1917 has come into effect, this date, October 28, 1918, that all stockholders in the concern receive twenty-five per cent. of their shares, which was satisfactory to all." Do you remember that? A. Yes, sir.

Q. Now, why was it that you did not take twenty-five per cent on those forty shares? A. I refused to sign the minutes of that meeting and I did not sign for a few weeks, and I believe for a few months later, for a month or more I refused that the company could not pay twenty-five per cent.; if there is money it should be kept for the building. And then when they agreed again for ten per cent. I thought a little amount would not break the company and then I signed these, and they made different minutes. You will see further that they made a different minute

up it should be paid ten per cent., or something like that.

Q. Just turn to the minutes and point out what you mean by making a different minute? A. I could not agree to pay out twenty-five per cent. in dividends.

Q. I ask you to turn to the minutes and point out which minute changed it? A. I wish somebody should read it. I remember that meeting.

By the Court:

Q. The next meeting is October 27, 1919. "Motion made and seconded that a resolution made on October 28, 1918, be cancelled, and no dividends be declared until further notice." A. That is it; I remember that meeting.

Q. But the twenty-five per cent. was paid which had been declared in 1918, was it not? A. Not twenty-five per cent. Was it twenty-five per cent? I know I refused the twenty-five per cent. to pay it.

By Mr. Lewis:

Q. You took a check for $837.50, didn't you, in October, 1918? A. Yes.

Q. And Stanley Kasprzak got a check for $837.50 at the same time, did he not? A. I believe so.

Q. These two sums amount to twenty-five per cent. on all the stock held by you and Stanley Kasprzak at that time, if he had half of the forty and you had half of the forty; isn't that right? A. He never had half of the forty. If he would

have, he would have them now, too. He never had half of the forty.

Q. Do you remember how many shares of stock, outside of the forty shares, you had in October, 1918? A. I believe the books ought to show this. I cannot tell.

Q. I ask you if you remember? A. Just the date I cannot remember how many shares I held just that date.

Q. You held ten shares outside of the forty, didn't you? A. Ten outside of the forty?

Q. Yes. A. Ten I know of.

Q. And Stanley Kasprzak held seventeen outside of the forty, didn't he, at that time? A. Yes.

Q. Now, William held five at that time? A. Yes, sir.

Q. And Biezczad held ten, didn't he? A. Yes.

Q. And that made forty-two shares, didn't it? A. Yes, sir.

Q. Adding to those forty-two shares the other forty shares would make eighty-two shares, would it not? A. Yes.

Q. And the total amount of the dividend distributed in 1918 was twenty-five per cent., on the par value of the outstanding stock, was it not? A. I don't know what it means. That is it—the money that I drew never got anything to do with the shares.

By the Court:

Q. Do you know the total amount that was paid for dividends to all the stockholders in October or November, 1918? A. That is what I said; I cannot recall.

Q. Do you know what the total amount was that was paid in dividends? A. I know there was paid a certain amount but how much I cannot tell; I don't know what the total was.

The Court—What do the books show the total amount to be?
Mr. Lewis—$2050.

By Mr. Lewis:

Q. Do you recall that in October, 1918, dividends were paid under the resolution that you have just read in the minute book? A. I believe there was some paid.

Q. And it was a twenty-five per cent., dividend, was it not? A. I cannot tell that; I was against that twenty-five per cent.

Q. But not against taking the check, were you; you were not against taking the check; you took the check for the dividend, didn't you? A. If it was agreed to it.

Q. I show you check on the Hamilton Trust Company drawn by the Stanley Silk Dyeing Company for $837.50, to the order of S. Kasprzak, November 2, 1918, and ask you if that is your signature to the check as president of the company? A. Yes, sir; it is mine.

Mr. Lewis—I offer that in evidence.
Mr. Ward—We have no objection.
(Marked Exhibit D-14.)

Q. I show you check dated November 2, 1918, drawn on the Hamilton Trust Company by the Stanley Silk Dyeing Company to the order of A.

Rubinstein, for $837.50, and I ask you if it does not bear your signature as president? A. Yes, sir.

Q. And the check is endorsed "A. Rubinstein"? A. Yes, sir.

Q. And you drew the money on it, didn't you? A. Yes, sir.

By the Court:

Q. That was a dividend payment by that check? A. I believe so.

By Mr. Lewis:

Q. I show you a check dated November 2, 1918, on the Hamilton Trust Company drawn by the Stanley Silk Dyeing Company to the order of A. Biezczad, for $250, and ask you if that is not your signature as president? A. Yes, sir.

Q. I show you another check bearing the same date, drawn on the same bank by the Stanley Silk Dyeing Company to the order of W. Kasprzak, for $125, and ask you if that is not your signature as president? A. Yes, sir.

Q. And all of these checks that I have just referred to were paid at the bank? A. Yes.

Mr. Lewis—I offer in evidence a check to the order of A. Rubinstein.

(Marked Exhibit D-15.)

Mr. Lewis—I also offer in evidence the check to the order of Biezczad.

(Marked Exhibit D-16.)

Mr. Lewis—I also offer in evidence the check to the order of W. Kasprzak.

(Marked Exhibit D-17.)

Q. Now, you know that the total amount paid out for dividends was $2050, and that was twenty-five per cent. on eighty-two shares of stock, was it not? A. Yes, sir.

Q. And those eighty-two shares included the forty? A. Yes, sir.

Q. Now, how do you account for the fact that dividends were divided between you and Stanley Kasprzak under those circumstances, if you bought the forty shares? A. Well, we did not go by shares, me and him; we didn't go by shares; we always divided everything between ourselves; we never looked at the shares; whatever we all had drawn out we divided between us.

Q. But so far as Biezczad was concerned and William Kasprzak was concerned, you went by shares? A. Those people went by shares.

Q. That is the best explanation you can make of that, is it? A. That is the truth.

(At this point recess is taken until two o'clock in the afternoon. After recess witness resumes the stand and cross examination continues.)

Q. When was this understanding that you said you had with Kasprzak about you both being equal—

Mr. Ward—I object to that. That was not as I understood what he said. He said they were to divide equally the profits.

Mr. Lewis—Question withdrawn.

Q. You testified just before recess that all

things were divided equally between you and Stanley Kasprzak, didn't you? A. We did divide everything equally.

Q. Was that in pursuance of any agreement? A. No, sir; no agreement.

Q. You simply gave it to him? A. Yes, sir.

The Court—This witness makes a distinction between a written and oral understanding.

Q. Did you have any talk with him about it? A. Yes.

Q. About his being equal? A. I told him: "Anything that I am going to take out, salary or otherwise, things that I am going to take out, you can take just as much."

Q. When was that? A. Oh, I always used to tell him that way; he was particular about it. May I make an explanation on that? When he had $60 coming more than I had, he asked for it; I gave it to him; but when he got more he never said anything. I will explain just how it is: These dividends did not go by shares at all—no man's number of shares, because if it should go by shares, he was entitled to more than I. If I should consider that he should draw dividends on twenty shares and seventeen shares, that makes thirty-seven shares and he would be entitled to more than I have, but we simply divided; whatever I took I gave it to him just the same.

Q. Why would he have more than you if you had forty shares more? A. I held forty shares more.

Q. Why would he have been entitled to more

than you under those circumstances? A. If he should have half of whatever I got he would have twenty and twenty and seventeen makes thirty-seven and I would have twenty and ten, that makes thirty. That shows we were not equal. The only thing I let him draw in salary and otherwise equal—

By the Court:

Q. When this dividend was paid you had fifty shares and he had seventeen, you say? A. Yes, sir.

Q. Yet you divided the dividends equally? A. Yes, sir.

Q. The profits equally? A. Yes, sir.

Q. Between the two of you? A. Yes, in order it should be quiet and harmony in the business.

By Mr. Lewis:

Q. Did you adjust the stock holding afterwards? Did you adjust the stock holding afterwards so that—do you know what "adjust" is? Did you arrange or fix the stock holdings afterwards so that you and he would be equal outside of the forty shares? A. I do not exactly know what you mean.

Q. I show you what purports to be the stock certificate book of the Stanley Silk Dyeing Company. Do you recognize it? A. Yes.

Mr. Lewis—I would like to offer it in evidence.

Mr. Ward—No objection.

(Marked Exhibit D-19.)

Q. I now call your attention to a stub marked certificate No. 13 for fifteen shares issued to Alexander Rubinstein, dated October 27, 1919, and ask if the signature for the receipt to that certificate is yours? A. Yes.

Q. I call your attention to stub on certificate No. 14 for eight shares issued to Stanley Kasprzak, dated October 27, 1919. Do you remember that he got those eight shares at the same time that you got the fifteen? A. Yes, sir.

Q. When did you make this arrangement with Stanley Kasprzak about your getting fifteen more shares and his getting eight more shares? A. We had coming back salary from the company. I was against it, to draw out the back salary; it should stay in the business because it is better it is in the business than we get it outside. Stanley Kasprzak refused that; he wants the money. So I said: "Let us take shares for that stock. This is just as good as money." He refused, but in the end he agreed to take about half of what I will take and the balance I suppose he must have got the money in cash.

Q. You suppose? A. I think so; otherwise he has got it coming.

Q. What makes you suppose? A. Otherwise he would ask for it.

Q. The result of that issue of stock, outside of the forty shares, was to give you twenty-five shares and give him twenty-five shares; was it not? A. Pardon me, it was no such thing mentioned.

Q. I say that was the result? A. The result, I do not know how this happened, but it was not mentioned; it was not talked about at all.

Q. Before the issue of these shares you held ten, didn't you, outside of the forty? A. Yes, sir.

Q. And he held seventeen, didn't he? A. Yes, sir.

Q. Outside of the forty? A. Yes.

Q. And your fifteen gave you twenty-five, didn't it? A. Yes.

Q. And his eight gave him twenty-five, didn't it? A. Yes, sir.

Q. And made you equal? A. Yes, sir.

Q. Now, you say the reason of that was that he wanted to draw his back salary out? A. Yes.

Q. And you objected to it and wanted him to take stock instead of back salary? A. Yes.

Q. Is that your explanation of that, is it? A. Yes, sir.

Q. Now, I call your attention to Exhibit D-12, the journal of the company, and ask you if you have seen this entry before, a credit of $2300 to loans payable; capital stock account appears $2300 for 2300 shares of the capital stock issued during October, 1919. A. I see that book; I know it is the company's book, but I never looked what is in it.

Q. Do you know how much back salary was due on the back salary account? A. Not exactly. I know I got coming back salary. This is what the bookkeeper figures up; I supposed it was right.

Q. But you took out these shares and paid for them by this entry in the books, didn't you? A. I think so.

Q. Now, it did not affect the back salary at all, did it? That was on the books all right, was it

not? A. I don't know that. That is for the bookkeeper, whoever kept that book is able to explain that.

Q. Who did keep that book at that time? A. It was in the girl's possession.

Q. Who kept this book at that time? A. Who kept it?

Q. Yes. A. Who is doing the writing in the book?

Q. Yes. A. I cannot tell you exactly who was doing it; either Mr. Morris Cohn or Frank Rea, either one of the two.

Q. Miss Kasprzak never made any entries in this book, did she? A. That I cannot say.

By the Court:

Q. Didn't you later draw out from the company $5000 for back salary? A. Yes; I did.

Q. When was that? A. I don't remember the date, but I know I did.

Mr. McKee—July 19, 1919.

The Court—This new stock was issued October, 1919.

Q. Now, the basis of the entry which I last showed you was a supposed loan account, was it not, by you and Kasprzak to the company? A. A loan?

Q. A supposed loan, was it not? That is the way the books were handled, was it not? A. That we loaned it to the company?

Q. That you loaned $1,150 apiece to the company. Is not that the way that stock was paid for, on the books? A. I do not know how this

was paid for, but I know it was for back salary.

Q. Did you see this entry in the general ledger under "loans payable" December 31, 1919, $2300? A. I did not give any directions to anybody about any entry in the books. I do not know how about that. This is the girl's. She gave the directions to enter on the book; they took it from the girl.

Q. And also the journal entry, which you do not understand? A. You can take my honest word that I never had this book—I do not know about the books—I cannot understand the books at all. This is up to the bookkeeper.

Q. But the result of that transaction, outside of the forty shares, was to make you and Kasprzak equal with twenty-five shares apiece, was it not? A. There was nothing said such things like equal.

Q. It happened; that is what was the result; that was the result, was it not? A. What happened?

The Court—The witness has already testified on that.

Q. Now, you say that you always divided equally with Stanley Kasprzak anything that you took out of the company? You say you divided equally between you and Stanley Kasprzak whatever money you took out of the company? A. I did.

Q. I want to ask you whether the entry on page 56 of D-12, "'To services on account of loans payable, $6000", reminds you of any transaction

under which stock was issued? A. What transaction was this?

Q. Do you remember the issue of the sixty shares of stock, thirty to you and thirty to Stanley Kasprzak? A. Yes, sir; I do.

Q. And it was about the first of January, was it not, 1920? A. Maybe it was that time, but I know it was issued.

Q. The entry here is December 31, 1919? A. I did not write that; I cannot tell.

Q. You do not remember anything about that credit in the account of $3000 to Stanley Kasprzzak and $9000 to you; do you remember that? A. $9000 to me?

Q. Yes. A. What is in the books I cannot tell you; I never had a chance to check up these books. This is up entirely to the bookkeeper to explain. I cannot explain because I cannot understand. What I remember, I will tell you.

Q. You put no money, did you, into the company for that $6000? A. Actual money?

Q. Yes? A. No, sir.

Q. You did not put any $6000 into the company so as to have bonuses paid to Veronica and William Kasprzak, did you? A. Did I put in the money?

Q. Yes. A. No, sir. Mr. Stanley had that money to pay out.

Q. What do you mean by that—Mr. Stanley had that money to pay out? A. This I believe was for these people to pay out; they were working overtime; that is the way I think; they were working on Sunday; that was their money which it was for Mr. Stanley to pay them out.

Q. You mean that Stanley Kasprzak put $3000 into the company? A. I don't know.

Q. Or $6000? A. I don't know.

Q. You don't know? A. I don't know.

Q. You do not know anything about any bonuses that were paid? A. Paying—

Q. You don't know anything about any bonuses being paid? A. Yes; I know that bonuses are supposed—

Q. What do you know? A. That bonuses are supposed to be paid to them I know.

Q. Supposd to be? A. Yes.

By the Court:

Q. Do you know whether it was paid or not? A. I believe it was.

Q. Where did the money come from? A. From the company.

By Mr. Lewis:

Q. Do you know that the books of the company show that you loaned the company $6000 for that purpose? A. I loaned money? I never did loan money to the company.

Q. Do you know that the books show that? A. I don't know; I never loaned the company any money. I don't know what the books show.

Q. Do you remember in the beginning of January, 1919, going to Stanley Kasprzak's house with Frank Rea? A. Going to Stanley Kasprzak's house with Frank Rea?

Q. Yes; do you remember? A. No, sir.

Q. You do not remember that? A. I do not.

Q. Do you remember getting him to come down

to the office on that day, on January 1, 1919? A. January 1, 1919?

Q. Yes. A. I cannot tell you; I cannot tell you that.

Q. On January 5th, 1922; do you remember that? A. What?

Q. Do you remember your getting Stanley Kasprzak down to the office on January 1, 1920 —going up to his house with Frank Rea and getting him to come down? A. What house do you mean—Frank Rea's house or Stanley's house?

By the Court:

Q. Do you remember going anywhere and getting him to come down to the office of the company? A. I remember we were down once to Frank Rea's house.

By Mr. Lewis:

Q. Whose house? A. Frank Rea's house.

Q. Did you get Stanley Kasprzak to go along? A. Yes, and so the girl was along and my wife.

Q. What was your wife doing there? A. We simply went down, the four of us, or five, I think.

Q. What did you go down for? A. I suppose a visit or something. I think it was the time Frank Rea built a new house and we were down there to visit him.

Q. Did you get William Kasprzak to go, too? A. I don't think so.

Q. I show you page 84 of the minute book Exhibit D-1, and ask you if you know Stanley Kasprzak's signature? A. Yes.

Q. And you see this minute up here is dated January 2, 1920? A. Yes.

Q. I ask you to read that minute and tell me if you remember the transaction? A. I think I remember that meeting; yes.

Q. Whose handwriting is that minute in? A. I believe it is Frank Rea's, if I am not mistaken.

Q. Do you remember now, as it appears here: "Motion was made and seconded that the loan of $6000 made by A. Rubinstein to the Stanley Silk Dyeing Company to complete the yearly salary and bonus as appears on the financial books of the company, be transferred to the capital stock account." Do you remember that? A. I remember it was a meeting, but what it is in here I cannot explain.

Q. Was the meeting in the office of the Stanley Silk Dyeing Company or was it in Frank Rea's house? A. We never had a meeting outside of the office.

Q. Never? A. No, sir.

Q. Do you remember that it was then further agreed that the shares should be made out as follows: Thirty shares to A. Rubinstein and thirty shares to S. Kasprzak? A. Yes; we got the shares.

Q. And that the said S. Kasprzak was to pay the said A. Rubinstein $3000 for said shares. Do you remember that? A. I remember, but I cannot tell the details of it.

Q. Is that your signature to the receipt underneath? A. Yes.

Q. That receipt reading: "The said S. Kasprzak has paid to A. Rubinstein $3000 and receipt

is hereby acknowledged"? A. Yes, sir; I got shares for that.

Q. Who got shares? A. I got shares.

Q. You got shares for the $6000 loan, didn't you? A. I cannot explain the books in any way; I wish the bookkeeper should explain it.

Q. Why was it that you took out $5000 for back salary in July, 1919, if the company was so short of money then? A. The Company was not short of money. If the company would be short I would not take any money from the company.

Q. Well, you say that in October you objected to the payment of the back salary and suggested the issuance of these shares instead? A. Yes.

Q. Do you remember the directors' meeting that was called in August, 1922? A. I called a directors' meeting?

Q. No. Do you remember the meeting you attended? A. Yes, I do.

Q. You say that the subject of the automobile was discussed at that meeting, don't you? A. What subject?

Q. They talked about the automobile you had bought, at that meeting? A. At that meeting Stanley Kasprzak said why I bought it in my name; I should buy it in the company's name.

Q. Up to that time you and the Kasprzaks had been apparently on good terms, friendly? A. Friendly, yes.

Q. And you explained the situation by saying that before Stanley Kasprzak went to Europe you talked about the continuance of his salary and said it could continue if you could have an automobile? A. That was a day or two days before

he left, but before he said—before he said he would not draw any salary—that was a month before. He said that he would not draw any salary while he is gone; he did not care for the salary; he wanted to go to Europe; but a day or two days before he left he came in the office. He said: "I would like if you should give the girl the salary as usual every two weeks." I told him: "You ain't entitled to that salary, because only while you are working you are entitled to salary." He says: "Well, you pay the salary, and you want to buy an automobile, go ahead and buy it and I will come back and we will straighten this out."

By the Court:

Q. Then, you changed your mind at that time about sharing everything equally with him whether he was entitled to it or not? A. Well, I did not exactly change my mind. I just made a remark. I did not exactly change my mind; I just remarked it to him.

By Mr. Lewis:

Q. Do I understand you now that there was no agreement that he was to draw salary when he was away; is that what you say—there was no agreement when he left—there was no agreement on your part that his salary should continue? A. His salary?

Q. Yes. A. What do you mean by agreement —written up agreement?

By the Court:

Q. Any understanding? A. Yes, it was. When

I took him to the pier in New York before he went into the cabin, he even told me that again. He says: "You give the girl the usual salary and we will straighten this out when I come back."

Q. Did you consent; did you say yes? A. I said yes; yes, sir.

By Mr. Lewis:

Q. It was also understood then that you were to have an automobile paid for by the company? A. Yes, sir.

Q. And that it was to be yours and not the company's? A. Well, we did not talk about that, whether it will be mine or the company's; we just said I should buy it.

Q. Well, Miss Kasprzak spoke to you at some time about your getting the automobile in your name instead of in the company's name, didn't she? A. She did not.

Q. Do you remember her showing you this postal card which I now show you from the State of New Jersey, Department of Motor Vehicle Registration? A. Who showed me that?

Q. Miss Kasprzak. A. She never did.

Q. Do you remember her showing you this postal card from the Department of Motor Vehicle Registration of the state of New Jersey? A. Miss Kasprzak showed me that?

Q. Did Miss Kasprzak show you that? A. I never seen that; I don't know who showed me that.

Q. When you had the meetings was there any postal card shown you? A. At that meeting?

Q. Yes. A. No, sir.

Q. When you had the meeting, was it not

charged against you at the meeting that you had bought an automobile with the company's money and took the bill of sale in your own name?

Mr. Ward—I do not think he understands "charged against."

Q. Didn't they say to you at the meeting that you had bought an automobile and taken the bill of sale in your own name? A. Mr. Kasprzak said that I should buy it for the company, not for me. I answered: "Didn't you tell me I should buy it for me?"

Q. You had bought another automobile also had you not? A. What do you mean, another automobile?

Q. You bought another automobile, didn't you? A. At the same time?

Q. No, not at the same time; at different times. You bought a Dodge, didn't you? A. Yes.

Q. And you bought a Haynes, didn't you? A. Yes.

Q. You paid for them both with the company's money, didn't you? A. Yes.

Q. You took the title to both of them in your own name, didn't you? A. Yes, sir.

Q. And was not that the subject of the trouble that occurred at the meeting of August, 1922? A. No, sir. I would not buy anything if Mr. Kasprzak would not agree to it.

Q. Didn't you say you had a quarrel about it there? A. Mr. Kasprzak—why didn't I buy it for the company?

Q. Yes. A. Yes.

Q. You did not have any forty shares of stock

in your pocket, did you? A. At that meeting; no, sir.

Q. You learned at that meeting, didn't you that Miss Kasprzak had bought Biezczad's ten shares? A. Yes; at that meeting.

Q. And as I understand, you went with Mr. Rea to the office on the Friday after the meeting and asked to have your forty shares transferred on the book; is that right? A. At what office do you mean?

Q. At the office of the company. A. Yes, sir; when Mr. Rea was there.

Q. You had your shares with you? A. Yes, sir.

Q. And Mr. Rea refused to have anything to do with it, didn't he? Mr. Rea refused to have anything to do with making any transfer? A. No, sir; I said to Mr. Rea if they would not let him post mine, I did not want him to post hers; I said that to Mr. Rea.

Q. I say: He refused to transfer your shares, didn't he? A. Who refused?

Q. Rea. A. He wanted to transfer them, but they didn't let him; they didn't let him.

Q. Was that the reason they were not transferred; was that the reason they were not transferred, because they would not let him? A. They would not let him; yes.

Q. Well, they would let him transfer the ten, would they not? They would have let him transfer the ten shares that Veronica Kasprzak had? A. Yes.

Q. Why didn't he transfer them? A. I did not permit him. I said if mine would not be transferred I would not let hers be transferred.

Redirect Examination by Mr. Ward:

Q. Mr. Rubinstein, you were asked on cross examination if Mr. Kasprzak, when he had control of the company, permitted you to get control of the company. As a matter of fact, when you bought these forty shares Mr. Kasprzak did not have control of the company, did he? A. No, sir.

Q. He only had seventeen shares, didn't he? A. Yes, sir.

Q. And there were outstanding forty shares—

Mr. Lewis—I object to the leading questions.

Q. Were there or not at that time outstanding—

The Court—Do not the books show that there were seventeen shares outstanding in the name of Stanley Kasprzak, ten in Bieczad and five in William Kasprzak.

Q. At the time that you got the fifteen shares and he got the eight shares, there were still outstanding shares, were there not? His brother had— A. (Interrupting) Five shares.

Q. You were asked about the fact that you were in the real estate business. What is the extent of your connection with that business?

The Court—Is that material to this issue?

Q. You speak Polish, do you? A. Yes, sir.

Q. And at the time these minutes were kept, in 1919, did you read English very well? A. About like today.

Q. At the time that this salary of five thousand and some odd dollars was credited to you, this back salary, and credited to Mr. Kasprzak, was it drawn out by you; was the money actually drawn out by you at that time? A. Yes, sir; we got checks, $5000 each.

Q. You were asked about a transfer of thirty shares to yourself and thirty shares to Mr. Kasprzak, and you were shown a minute or receipt in a minute book dated January 2, 1920— A. Whether I was shown?

Q. No, you were shown that in the minute book.

The Court—The receipt for $3000.

A. I was not shown.

Q. Yes; you were. A. Just now; yes.

Q. Did you ever receive that $3000 from Mr. Kasprzak? A. No, sir.

Q. Then, this Dodge car that has been referred to, how long before you bought the other Dodge car was that Dodge car bought? A. Two years and a few months.

Q. It was in your name all the time? A. Yes, sir.

Q. Was there ever any dispute about this Dodge car? A. No, sir.

ABRAM BLUESTEIN, sworn as a witness on the part of the complainant in rebuttal, testifies as follows:

Direct Examination by Mr. Ward:

Q. You are an attorney and counsellor-at-law of the state of New Jersey? A. Yes, sir.

Q. You have been an attorney how long? A. Ten years.

Q. Counsellor how long? A. Two years.

Q. Did you act for Mr. Rubinstein in taking this matter up with Mr. Smit? A. I did.

Q. In August, 1922? A. Yes, I did.

Q. How many times did you go to Mr. Smit's office? A. I think I was with Mr. Rubinstein twice and three or four times alone.

Q. On the occasion of your first visit to Mr. Smit's office, do you recall what the conversation you had with him was? A. It was—

Q. Do you recall it? A. Yes.

Q. Relate what was said there?

Mr. Lewis—I object to that.

The Court—Objection sustained.

Q. As a result of what was said and done there did you and Mr. Rubinstein go anywhere? A. We went to the factory.

Q. Who was at the factory when you got there? A. Veronica Kasprzak.

Q. Did any others come in? A. She refused to talk to me until she had called in Stanley Kasprzak, William Kasprzak and three or four employees of the plant.

Q. What was said and done at that time? A. I asked for the books of the company. That was the first conversation before she had called anybody in and she said to me that she would refuse to talk to me unless she had witnesses present, so that everybody could see and hear everything that was going on, and then she called these people in.

Q. And then what transpired? A. I asked for the minute book and transfer book of the company, and, if I am not mistaken, William Kasprzak had the keys in his possession and he went to a box that he had in the safe there and he opened it and brought the books out. I examined the transfer book, and then I turned around to her and I said: "Why isn't the forty shares of Rubinstein transferred on the books of the company?"

Q. Was there any other transfer on the transfer book that you noticed? A. I do not recall; there were other transfers, but I do not know what they were.

Q. Do you know whether or not the ten shares that she had purchased of Biezczad were on the transfer book at that time? A. That I do not recall.

Q. What reply did she make to you? A. She said to me she would refuse to transfer them. As she said that, I turned around to Stanley Kasprzak and I said: "I tender you these forty shares and ask you to transfer them as of the date of the original tender." Those were my exact words. He pointed to Veronica Kasprzak and said: "You will have to take it up with her." I then turned to William Kasprzak and I said the same words to

him: "I want these shares transferred as of the original date," and he referred me to her. Then I turned to her and I used the same words. I said I wanted them transferred as of the date of the original tender. She turned to me and said: "No, I will transfer them as of today." I said: "No; that won't help us; we want them transferred as of the original date."

Q. Do you recall the date of this incident? A. No.

Q. Do you know within how many days it was of the time that the annual meeting was to have been held? A. I know it was not within the time; it was outside of the time so that they could not be used at the annual meeting.

Q. The forty shares of stock that you tendered to them, are they or not, or were they or not, the forty share I now hand to you? A. Yes.

Q. Exhibit C-1, C-2, C-3, C-4, C-5, C-6, and C-7? A. Yes.

Q. Was there anything further said there that time? A. No. We simply got up and went out.

Q. Was there any inquiry made by Stanley Kasprzak or William Kasprzak or Veronica Kasprzak?

The Court—The witness has said there was nothing further said that day.

Q. Did you again visit Mr. Smit after that? A. Yes.

Q. Did you, on the occasion of your visit to Mr. Frank Smit, have any conversation with him with reference to this trouble? A. I did.

Q. Was there any suggestion made by Mr. Frank Smit that the matter be settled?

Mr. Lewis—I object.
The Court—Objection sustained.

Q. Did you ever again visit the Stanley Silk Dyeing plant, that you recall? A. I think I did for pay, so that there would not be any argument about it, if I am not mistaken.

Q. Nothing of importance? A. No.

Q. Up to the time that this suit was started and answer was filed in behalf of the Kasprzaks, did you ever hear from any source that the claim was made that these forty shares were really company stock?

Mr. Lewis—Objected to.
The Court—Objection overruled.

A. No; no one ever made the claim.

Cross Examination by Mr. Lewis:

Q. When you went to the office on the occasion that you have testified to, to ask for a transfer of the forty shares, did you have any other stock with you? A. No, sir.

Q. Did you have the thirty shares? A. No, sir.

Q. Or fifteen shares? A. No, sir.

Q. Was there any talk about that? A. No, sir.

Q. Did you see the transfer book so-called, with writing in it? A. To be frank with you, the book

that is tendered here now I do not believe was shown to me. Running through my mind there was a different book altogether than that book that was presented here in court, shown me.

Q. (Question repeated.) Did you see the transfer book so-called, with writing in it? A. It all depends what transfer book you have reference to.

By the Court:

Q. Any transfer book. A. There was some book which they called the transfer book.

By Mr. Lewis:

Q. There was no transfer book, was there, strictly speaking? A. No.

Q. What you saw was in the nature of a stock ledger, was it? A. Well, there was some book.

Mr. Lewis—I offer the stock ledger in evidence.

Mr. Ward—No objection.

(Book is marked Exhibit D-18.)

Q. I show you Exhibit D-18 and ask you whether that is the book you saw? A. From my recollection I would say no; that they did not show me that.

Q. Did they show you the stock certificate book? A. I believe they did, yes, and then they had—

Q. What else? A. They had, I believe, a light covered book, a white covered book.

Q. Was that the minute book? A. Yes; that

was the minute book and that is what they showed me.

Q. That is all you saw? A. That is all they said they had, sir.

Q. Now, you say that when you asked them to transfer the forty shares, they at first refused? A. No; they all referred me to Veronica Kasprzak.

Q. And she refused? A. She refused.

Q. Then you say that she then said that she would transfer them as of another date than the date on which you presented them? A. No. I said she said she would transfer them as of that date that I was in the office there.

Q. Transfer them as of that day? A. Yes.

Q. The day that you were in the office? A. Yes.

Q. Had litigation started over these shares at that time when you visited them? A. No, sir.

Q. What was the date of the annual meeting, do you recall? A. Some time in September or October, I think.

Q. And you are not sure of that date? A. No.

The Court—What was the date of the annual meeting?

Mr. Lewis—October 21, 1922.

Q. How long before that? A. Well, I don't know.

By the Court:

Q. It was within twenty days? A. It was within the time.

By Mr. Lewis:

Q. Had Frank Rea or Rubinstein told you before your visit that they had asked to have this transfer made and that they were refused? A. Yes, sir.

Q. Didn't it strike you as quite remarkable that they should have changed their minds between the time that Frank Rea and Rubinstein had asked for a transfer and they were refused, and the time of your visit? A. It only seemed to me as the remark of a smart girl that she thought she was putting one over.

Q. What do you mean by "putting one ever"? A. I mean, that this stock would not be transferred within the time that it could be used at the annual meeting.

Mr. Ward—We rest.

Mr. Lewis—There are some things that we ought to answer, but we have no interpreter now. My impression is that they have been contradicted, some of them, on direct. I will put Miss Kasprzak on the stand in reference to some of the matters.

VERONICA KASPRZAK, already sworn as a witness on the part of the defendants, recalled in rebuttal and further examined as follows:

Direct Examination by Mr. Lewis:

Q. Did Mr. Bluestein ask you to transfer forty shares of stock in October—

Mr. McKee—She denied that on direct. She was asked that on direct and denied it.

Mr. Lewis—If you admit that she denied it, that is all I want.

Q. Were you present at any meeting at which your father and Rubinstein agreed that your father should permit Rubinstein to buy the stock for himself, the forty shares of stock, for himself? A. No; I was not present at any meeting whatsoever until I became a stockholder.

By the Court:

Q. Judge Lewis is not referring, as I understand it, to a meeting of the company. He means a meeting of two persons? A. No; I have never heard any such discussion.

By Mr. Lewis:

Q. Did you give a letter from John Benson to Mr. Rubinstein? A. When was that?

Q. At any time after July 1, 1916? A. No.

Q. Did you before that? A. I did not work in the company before that time.

Q. Just answer the question: Did you give him any such letter? A. No, Judge.

Q. When did you write in the cash book opposite the brackets "a loan"? A. At the same time that I made the other entries.

Q. Were you present at any time about the month of May, 1919, at any conversation between Rubinstein and your father, when Rubinstein told your father that the loan was now all paid up, or words to that effect? A. No, sir.

Q. Did you overhear any such remarks at any time? A. No, sir.

Q. Did you make any entries in any of the books until recently or until the last few years, of your own initiative? A. No, Judge.

Q. Who told you, when you made them, what entries to make? A. Mr. Rubinstein or the accountant.

By the Court:

Q. You do not mean to say, Miss Kasprzak, that if any customer paid a bill or you got a check through the mail, you did not enter it in the cash book? A. Well, not until recently.

Q. Do you mean "recently"? A. Within the last year or two.

Q. At no time during the year 1918 or 1919, did you make an entry in the cash book upon receipt or payment of a bill? A. 1918 I do not believe I did, until about 1919 when I got more familiar with it.

Q. If you paid out any money during that time, do you mean you did not enter it in the cash book until you were told? A. Until I was shown; then I did.

By Mr. Lewis:

Q. Had you ever kept books before you went there in July, 1918? A. No, sir.

Q. Or ever made entries in a book? A. No, sir.

Q. Do you make any entries in the general ledger now? A. No, sir.

Q. Have you ever? A. No, sir.

Veronica Kasprzak—cross

Cross Examination by Mr. Ward:

Q. During the year 1918, before you went to work there regularly and before the regular bookkeeper was discharged or left, you were there for two or three months, were you not, under the direction of that man? A. No, sir; I was not.

Q. Weren't you there daily? A. No, sir.

Q. Almost daily? A. No, sir.

Q. Were you there at all? A. I used to come down to the shop occasionally, yes.

Q. You knew that you were going to work in July, didn't you, as bookkeeper for this concern? A. No, sir; I did not know whether I was going to work there or not.

Q. You knew before you actually went there that you were going to work there? A. I often spoke to my father that I would like to go there.

Q. In July, when this man left, you knew that you were going to work there as bookkeeper, didn't you? A. I did not know for sure; I thought I would.

Q. Didn't you come there for the purpose of becoming familiar with books and see what this man was doing? A. No, sir.

Q. And what your duties would be? A. No, sir.

Q. You never inquired of him at any time what his duties were and what you would have to do? A. Which bookkeeper?

Q. The bookkeeper whose place you took. A. If I inquired of him?

Q. Did you ever inquire of him what his duties were and what you would have to do when you took his place? A. No; I did not .

Q. So that when you went there in July, you had not the slightest idea what you had to do? A. No; I did not.

Q. Although you knew you were going to get his position? A. Yes; I expected to.

Q. Although you knew you would have to do the work this man was doing? A. Yes.

Q. And although you were visiting the plant right along before July? A. I did go occasionally.

By Mr. Lewis:

Q. How often would you go to the plant before July, 1918? A. I used to take my father's lunch and I would go in the office and speak to the bookkeeper and the finisher and my brother, but not for any particular purpose.

By Mr. Ward:

Q. Didn't you, from the time you started in July, 1918, have charge of the customer's ledger? A. When was that?

Q. From July, 1918, when you went to work there? A. Yes.

Q. Are not all of the entries in that ledger made in your handwriting? A. In what ledger?

Q. In that customers' ledger? A. No; not all.

Q. Most of them? A. No; not most of them, either.

Q. Have you got that ledger here? A. The customers' ledger?

Q. Yes. A. The loose leaf sheet I understand?

Q. The customers' ledger. A. I don't believe I have it here.

Q. Is it not true that all of these items that are in the cash book that are checked up by you in the dark colored ink, were entered by you in the customers' ledger—all of them that were checked with a pencil and not in green ink? A. No; I never did any checking.

By Mr. Lewis:

Q. How about entries? A. I made entries. This (indicating) is where I started from July 1st. I do not believe I had this right, so the accountant crossed out some of the things on this page and showed me how to do it on the other side. Here (indicating) is where I started.

By Mr. McKee:

Q. Are these your figures? A. All these, except that; that is the bookkeeper that was—

By the Court:

Q. That is, the portion you indicate is not in your handwriting? A. No.

By Mr. Ward:

Q. You testified that you never made any entries in the journal. This is the journal, is it not? A. This is the journal.

Q. Exhibit D-12? A. Yes.

Q. Did you never make any entry in this book? A. Did I testify to that?

Q. You testified that you never made an entry in this journal, as I understand? A. It must be an error. I testified, I believe, that I made some entries.

JOSEPH KASPRZAK, sworn as a witness on the part of the defendants in rebuttal, testifies as follows:

Direct Examination by Mr. Lewis:

Q. You are the son of Stanley Kasprzak? A. Yes, sir.

Q. Did you drive or take Rubinstein with your father to Biezczad's house at any time that you recall in the summer of 1918? A. No, sir.

Q. How old are you now? A. Twenty-one.

Cross Examination by Mr. McKee:

Q. When were you twenty-one? A. May 14th.

Q. May last? A. Yes, sir.

Q. All of this trouble that has happened between your father and Mr. Rubinstein, has happened since you and your sister have arrived at the age of twenty-one? A. I was not twenty-one years old when it happened.

Q. You consulted with your father about this trouble, didn't you? A. About which trouble?

Q. About the trouble down in the mill. A. What trouble do you mean?

Q. Wasn't there any trouble?

Mr. Lewis—I object as not proper cross examination. I have not asked him anything about any trouble at the mill. I have only asked him one question.

The Court—He is trying to show bias probably. Objection overruled.

A. Yes; I knew there were disagreements.

Q. You helped your sister and told your father what Mr. Rubinstein had done while he was away to Europe, didn't you? A. No, sir.

Q. Didn't you tell him about losing money? A. No, sir.

Q. Didn't you tell him it was time to get rid of Rubinstein? A. No, sir.

Q. You deny having any talk with him in that regard? A. No, sir.

STANLEY KASPRZAK, already sworn, recalled in rebuttal.

Mr. Lewis—I have a few questions to ask of this witness and I think I can get along with him without an interpreter.

Mr. McKee—I do not see how we can get along with this witness without the interpreter.

Mr. Lewis—We have no interpreter here, and I would ask to have the case go over so that I can put this testimony in.

The Court—I do not think the witness ought to be examined without an interpreter, and I cannot let the case go off to another day.

(Witness leaves stand.)

Mr. Lewis—I now offer in evidence D-3 for identification.

Mr. McKee—We object.

The Court—Objection sustained.

Mr. Lewis—I also offer that part of the minutes which contains a copy of D-3. I

suppose the whole of the minutes are in. I would like to have it noted that a copy is in the minutes.

Mr. McKee—To which we object.

The Court—Well, the minute book is already in.

Mr. McKee—Only the part to which attention has been called.

The Court—No; the whole minute book is in.

Case Closed.

Exhibit C-1

EXHIBITS

EXHIBIT C-1

Incorporated under the laws of
New Jersey

No. 4 Shares 10

Stanley Silk Dyeing Company
Capital Stock $50,000.

This certifies that John Harsche is the owner of Ten Shares of the Capital Stock of

Stanley Silk Dyeing Company

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon the surrender of this Certificate properly endorsed.

(L. S.)

In witness whereof, the said Corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this Fourth day of October A.D. 1916.

A. Rubinstein,
President

S. Kasprzak,
Treasurer

Endorsed:

For Value Received, I hereby sell, assign and transfer unto Alexander Rubinstein Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint Alexander Rubinstein to transfer the said Stock on the books of the within named Corporation with full power of sustitution in the premises.

Dated August 3, 1918.

In presence of
John O. Benson.

John Harsche.

Exhibits C-2, C-3, C-4, C-5, C-7, C-8

EXHIBIT C-2

Stock Certificate No. 5 to John Lingelbach in same form as above for ten shares, dated October 4, 1916. Endorsed with transfer signed by him in same form as above and dated August 3, 1918.

EXHIBIT C-3

Stock Certificate No. 7 to Albert Walzak in same form as above for two shares, dated October 4, 1916. Endorsed with transfer signed by him in same form as above and dated August 3, 1918.

EXHIBIT C-4

Stock Certificate No. 8 to Stanislaw Oltarzewski in same form as above for twelve shares, dated December 9, 1916. Endorsed with transfer signed by him in same form as above and dated August 3, 1918.

EXHIBIT C-5

Stock Certificate No. 10 to John Harsche in same form as above for two shares, dated January 6, 1917. Endorsed with transfer signed by him in same form as above and dated August 3, 1918.

EXHIBIT C-7

Stock Certificate No. 12 to John Lingelbach in same form as above for one share, dated January 22, 1917. Endorsed with transfer signed by him in same form as above and dated August 3, 1918.

EXHIBIT C-8

Stock Certificate No. 11 to John Lingelbach in

same form as above for three shares, dated January 15, 1917. Endorsed with transfer signed by him in same form as above and dated August 3, 1918.

EXHIBIT C-10

To Alexander Rubinstein:

The annual meeting of the stockholders of the Stanley Silk Dyeing Company will be held on the twenty-first day of October, 1922, at eight o'clock in the evening at the principal office of the company, No. 188 Putnam Street, in the City of Paterson, in the County of Passaic and State of New Jersey, for the purpose of electing a Board of Directors and for the transaction of such other business as may properly come before the meeting; that the poll at said election shall be opened at five o'clock in the afternoon of that day and remain open until nine o'clock in the evening of that day.

Dated October 10, 1922.

W. Kasprzak,
Secretary.

EXHIBIT D-1

(The following are pertinent extracts from the minute book. They are copied verb. et lit.)

(Agreement appearing on page 9.)

This agreement made this Twenty-eighth day of October, Nineteen hundred and sixteen,

Between Stanley Kasprzak of the City of Paterson in the county of Passaic and State of New Jersey, of the first part

And Alexander Rubinstein, of the same place, party of the second part;

Exhibit D-1

And Stanley Silk Dyeing Company, a corporation organized under the laws of the State of New Jersey and having its principal office in said city of Paterson, of the third part;

Witnessed: That in consideration of the mutual covenants, promises and agreements herein contained and in consideration of the sum of One Dollar paid to said parties of the first and second parts by said party of the third part, hereby mutually covenant, promise and agree as follows:

First: Said party of the first part agrees to work for said company as Superintendent of the workers, employees and servant of the said company and to supervise the machinery and instrumentalities and in general to take charge of all the personal property of the company used in and in connection with this business of dyeing Silk.

Second: Said party of the first part agrees to be engaged in and work for said company in manner aforesaid for a period of time beginning the first day of November, Nineteen hundred and Sixteen and ending the first day of November, Nineteen hundred and twenty-one:

Third: Said party of the second part hereby agrees to enter the services of said corporation as a soliciting agents for it in its business and continue to act as such for said company for the period of Five years beginning November 1st 1916 and ending the First day of November, Nineteen hundred and twenty-one, Subject to general control of the directors, and that he will during said period of time, devote the whole of his time and attension and energies to the performance of his duties as soliciting agent and shall not either directly or indirectly

alone or in partnership, be connected with or concerned in another dyeing business during said period of time within twenty-five miles of said city of Paterson, in addition to the foregoing said party of the second part will superintend the office of the company, keep proper books of account, do and perform all clerical work to be done, and shall make due and correct entries of all orders received or if orders are in writing, he shall, immediately upon receipt of such written orders, file the same in the principal office of the company, and he shall make due and correct entries of all his transactions and dealings of and in relation to the said business, and shall serve the said company diligently and according to his best abilities in all respects:

Fourth: Said party of the third part hereby agrees to employ said party of the first and second parts during said period of time as hereinbefore agreed upon, beginning November 1st, 1916 and to pay each of them for his services at least Thirty dollars a week until the first day of May, Nineteen hundred and Seventeen, and thereafter any sum not exceeding fifty dollars, the amount of which, except as hereinbefore limited, shall be determined upon by the directors and said payments for services shall continue to be made to each only as long as each is actually engaged in carrying out his agreements herein set forth.

Fifth: It is mutually agreed by the party of the second and third parts that the reasonable expenses of said soliciting agent, incurred in connection with the performance of his duties under and pursuant hereto, shall be paid for by the said company, and the said company shall from week to week pay to

said soliciting agent the said expenses in addition to the fixed salary.

Sixth: It is mutually agreed by said parties of the second and third parts that said party of the second part shall fix charges and rates to be charged by said party of the third part for work done or materials furnished by said company as long as he continues to carry out his promises and agreements herein contained.

Seventh: For the due performance of this contract each of said parties of the first part binds himself unto the party of the third part and the party of the third part binds itself until each of the other parties hereto in the penal sum of Five thousand dollars which shall be recoverable as liquidated damages between them under or by virtue hereof.

In witness whereof the parties have hereunto set their hands and seals the day and year first aforesaid and in witness whereof the party of the third part has hereunto set its corporate seal and caused these presents to be signed by its presdent and attested by its secretary .

April 30, 1917.
Page 31.

A. Walzak questions A. Rubinstein why he was not present to produce the books, Mr. Rubinstein answers, that he did not have any time and that he was not officially notified, Mr. J. Harsche also questioned in the same matter Mr. S. Kasprzak and Mr. A. Rubinstein, the answer was unsatisfactory to the commission and also the board of directors, A. Walzak, resigned from the commission and board of directors, and gave notice to the company that

he wants his share to be paid out. A. Rubinstein answers to A. Walzak that he should give his shares and he will pay him out to-night, A. Walzak answers to A. Rubinstein, that according to the by-laws he got time 30 days or to the next regular meeting of the board of directors. A. Rubinstein is satisfied and gave order to the secretary to record in the minutes. John Harsche resigned from the commission and also from commission of the board of directors and wants his money what he put in here. A. Rubinstein gives order to the secretary to record in the minutes S. Oltarzewski gave notice to the company and is thankful that he was taken in on the same rights as the incorporators but he wants his money also returned as he does not want any more dealings with the company. A. Rubinstein did not give any answer to Mr. Oltarzewski's question. A. Bieszczad gave notice that he wants his money returned what he put in here as he does not want any trouble on account of his money as he was the first to go in this business but he is disappointed and points out that Mr. Kasprzak, Mr. Rubinstein does not treat the directors rightfully. John Lingelbach questions Stanley Kasprzak & A. Rubinstein that they do not keep the by-laws which they were satisfied and agreed to work according, but now they want to have there own rules and not according to the Company by-laws he points out that the board must have the control of the books if A. Rubinstein & S. Kasprzak likes it or not, secretary A. Bieszczad questions A. Rubinstein & S. Kasprzak if they are able to pay the shares out which notice was given to them A. Rubinstein answers that one share holder he can pay out but all he can not as the company has

Exhibit D-1

not got the money as required for the shares. John Harsche, A. Walzak leaving the meetingroom, S. Oltarzewski points out that he was for the commission and for control of all the books and fiinance and he is not for it and will stand for it if anybody likes it or not secretary A. Bieszczad questions S. Kasprzak what they attend to do A. Rubinstein answers that he can do anything but advise to all to stay together.

The meeting was adjourned.

A. Rubinstein.

July 30, 1917.

Page 39.

The secretary received a special delivery from one of the shareholders saying that he has to go to the army and wants to have his money for his shares and this the secretary read to the board and has been accepted. The secretary asks John Harsche what does mean, you don't need no money in the army. The president A. Rubinstein is for this and asks the directors to help in some way. J. Lingelbach & S. Oltarzewski also ask for there money. Mr. Walzak says that when he wanted his money they did not want to give it to him and he is against this, and says that when we stand we stand together not to pay anyone. The president says he is for this and states that he hasn't any money but is willing to give $50.00 and the secretary stands to give $100.00. The cashier is against that to pay John Harsche. John Harsche says that he would not ask for his money if their wasn't any war but that there is ware he is not sure of his life and he can not leave his money because this is business

Exhibit D-1

Mr. S. Kasprzak guarantees this with his shares, president waivers the board of directors to pay his shares from the cash of the company and states that the business will go ahead as it is, and Mr. Kasprzak is against this to pay cash from the company's capital. After a while of talk Mr. S. Kasprzak stood by this to pay from the cash of the company, vote was then taken to see what can be done which did not pass to pay John Harsche by a vote of 4 to 3. The secretary asks John Harsche what he is going to do he said that he cant do nothing now because there is to many against, then he said the only thing he can do is go to the lawyer and see what he can do for him. He gives his shares to the secretary to keep for him then leaves the office. Now the secretary asks the board of directors what they are going to do then come the disputes about this matter. Towards the end Mr. Rubinstein leaves everything the way it is now and says that when their is so many against the only thing he can do is to stand by the shareholders.

The secretary asks the president how is the business the president says it is perfect and states that there is $4000. in the bank and almost that amount outside. The cashier also states that the business is perfect.

The meeting was adjourned.

A. Rubinstein.

August 27, 1917.

Page 41

The president asks one of the men of the board of directors what has to go to the army if he has anything to say before he goes, he said the only

thing he could say is to see what the company has to say. The secretary tells this shareholder that the company cannot pay him his shares because the larger majority of men were against this; the only thing that could be done would be that if the directors or shareholders would want to buy the shares could do so and if all the money could not be paid then the remaining sum could be paid from the cash of the company, and none of the directors answered to this and that was ended.

The president says that the sum for 12 shares cannot be paid because the money is needed for the use of the business and asks the aid of the directors. The secretary asks John Harsche what is he going to do, he said he will remain, but asks for a loan of about $100 or $150. The president says that two shares must be given to the company on the understanding that when he comes back and gives back that sum of money he loan from the company then he will receive his shares back. Vote was taken on this matter and it was passed to give him the money. Mr. Harsche gives Mr. Walzak his shares to keep for him and also gave him his vote. By this understanding all the directors were satisfied.

The meeting was adjourned.

A. Rubinstein.

September 24, 1917.

Page 43.

The persedent tells the board that he thinks that he cannot give the loan to Mr. Harsche because the pump is broke and does not how much it will cost and the money in the cash drawer is needed for business proposition.

Exhibit D-1

October 22, 1917. (Annual Meeting of Stockholders)
Page 45.

The secretary gives waiver of notice to the board of directores that the time has come to put a bond on the treasurer for $5000.00 which was decided upon to be held at the yearly meeting. Upon motion duly made and seconded John Harsche states that the president should be under bond instead of the treasurer and A. Walzak second the motion. But Mr. S. Kasprzak rejects this motion and states that the bond be on him instead of Mr. A. Rubinstein. Upon motion duly made and seconded vote was taken on two, which should decide what one should be on bond, upon motion duly made and seconded vote was taken which stood even, and it was decided that the treasurer be on bond as shown in the by-laws

Upon motion duly made and seconded, John Lingelbach states that if it would not be satisfactory if one of the directors could have a chance for a position in the office of the company. The person he points out is A. Walzak for the position as bookkeeper. Under many disputes motion was duly made to leave this matter over for a while.

November 26, 1917.
Page 50.

The secretary gives notice to the board that the president couldn't have the stock figured out before the eleventh of November as he could not get a man that could do that kind of work in due time. And the meeting couldn't be held on that date so it was canceled to the regular meeting which falls

Exhibit D-1

in the same month. The superintendent tells the board that the time has come to decide what should be done with the dividends. The secretary asks the board what they decide to do with this, then the following director S. Oltrazewski stated that this dividend should be divided equally between all the shareholders, and upon motion made, John Lingelbach second the motion. The secretary asks following directors, S. Kasprzak and A. Rubinstein what they think of this and they say that they think it is improper to do this and stated that the sum should remain in the business as it is. Through this many disputes accrued which at the end, ended in a way that all dividends should be divided. Upon motion made president Mr. A. Rubinstein gave motion to take 10% of that sum, secretary Mr. A. Bieszczad went for a 20%, and director Mr. A. Walzak which took for a 25% which was seconded by director Mr. John Lingelbach. Upon this motion vote was taken by the board for the 10%, which was only one vote, the second vote was taken on the 20% which was also one vote, the third vote was taken on the 25% which was past by four votes. Under the distinguished effects it was said, that the shareholder is permitted to receive his 25%, dividend, but only 10%, as the money is needed all the time. Director A. Walzak made a motion that a shareholder could get his 10% any time during the period of a half year if needed, but the secretary A. Bieszczad said to have this motion for one year instead of a half year upon motion made vote was taken which passed to have the yearly effect 10% schedule.

The meeting was adjourned.

A. Rubinstein

Exhibit D-1

December 10, 1917.
Page 53.

The president A. Rubinstein asks the secretary why is this special meeting for, the secretary said that this meeting was called by the directors for the purpose of having the right understanding of the stock that was taken.

Upon motion duly made, the president, called the special meeting to order.

The commissioners asked the president for the inventory sheet which he is supposed to have, then the president explain them that he hasn't any on account that the accounter told him he doesnt need any.

The board of directors did not accept the stock on account that the president couldn't explain thoroughly to satisfy the board. A resolution has been possessed that a new stock account should be taken and two directors should be present and give accounts of the stock to the board. The following directors are to be present when the stock is taken Director A. Bieszczad and Director A. Walzak.

The meeting was adjourned.

A. Rubinstein

January 28, 1918.
Page 56.

The secretary asks the president if he has entered the dividends into the general business stock ledger, he stated that he has not, because the manager forbid him to do so on account that when that is entered it means that, that will have to be paid and a dividend of twenty-five percent is a sum to extravagant to be given. During this, disputes

occured in a disagreeable way as to the mere acts the manager has used in the line of dividends which did not satisfy the board and in other words he has not applied to the rules of the by-law which caused several of the directors to leave and the meeting was put over to the next meeting.

The meeting was adjourned.

February 11, 1918.

Page 58.

The president asks the secretary why is the special meeting for, the secretary said that he ought to know. Then the secretary told him that this meeting is called by the directors in order that they get the right understanding of the last meeting and what is meant not to have the annual dividends entered. The other object was that all the directors weren't in to get anyway of completeing there task.

Minutes of the last meeting were read and motion was duly made and seconded, only on one thing and that was that the manager did not receive his regular salary as he was supposed to under the contract which was formed by the directors, in this way he did not permit the dividends to be entered into the general business stock ledger.

The secretary asks the president and manager whether both of them stood for not to have the dividends entered. The president in compliance with the request of the secretary said that he had know intention of holding back the entering of the dividends, it was the manager, as, he told me that he wasn't treated right in his salary. Then he was asked, by, how much of a sum, then he gave an

account of himself and the president, but the directors were not satisfied with his statement and his showing, by which the secretary after gave one of the directors to read the contract of the company to the president and the manager which they could understand that all of the directors stand by the law required.

John Harsche gives a notice to the board of directors that he wants to sell his shares as he has to go to the armory. The company tells him that we haven't money. The only way he could be paid would be if any of the directors or shareholders would want to take the shares, Director A. Walzak wants to sell his shares and also John Lingelbach and S. Oltarzewski. There were debates which resulted in a way that Director John Harsche asks permission of the company that if he finds a man that would buy his shares if he could present him around the factory. This he asked and was permitted at any time.

February 25, 1918.
Page 62.

Under these accounts there has been another fact, and that is the dividends of twenty-five percent are to be entered into the general business stock ledger.

March 25, 1918.
Page 65.

The secretary asks the president A. Rubinstein whether he is going to enter the 25% dividend into the general business stock ledger or not. Then came disagreements which in the end superintend-

ent S. Kasprzak stated to the board that he is willing to have the 25% dividend entered into the book with the understanding that the shareholders would not draw the dividends, under this statement the board is satisfied. Then the secretary asks the president what he thinks of this, he stated that he is against the entering of the 25% what he wants is to enter 10% which the board does not agree with, has the laws that were passed cannot be broken. Then the secretary stated to the board that if the 25% can't be entered nothing at all shall be entered. Director S. Oltarzewski seconds the statement. This has been left over to the next meeting.

April 29, 1918.
Page 67.

The secretary asks the president what should be done with the dividends. Then the president stated that he will try to pay each shareholder his 10% dividend before the year is over has the entering of the dividends would be much trouble and that this way it will be easier. Then the secretary states to the board that the remaining 15% be left over to the yearly meeting to decide what should be done. Adjourning this the secretary asks the board if they have anything to say of these statements, they seemed not to have anything to say.

June 24th, 1918.
Page 71.

President A. Rubinstein and superintendent S. Kasprzak state to the company that the vote is taken away from director A. Walzak and director

S. Oltarzewski has they are against the business. director J. Lingelbach is against this and asks that they agree with each other and have them present at the meetings just the same. President A. Rubinstein manager S. Kasprzak stated that they are opposed to this then director J. Lingelbach stated if it is that way then he leaves the meeting. director S. Kasprzak stated to him that he remain, has he has his own vote, then director John Lingelbach stated that he cannot be present at the meetings if the other two directors cannot be present.

July 29, 1918.
Page 74.

The secretary asks the president if he heard anything from the shareholders whom have sold there shares, he said yes, he told the secretary that he was called by Lawyer Benson on the 20th of July with S. Oltarzewski, A. Walzak and also with S. Kasprzak. During this time they made an agreement, S. Kasprzak and A. Rubinstein made the agreement with A. Walzak and S. Oltarzewski to pay 80%, 75% to be paid now and 5% to be paid in a year's time with a note of agreement.

A. Rubinstein.

August 26, 1918.
Page 77.

The president A. Rubinstein gave statement to the company that he has paid four shareholders their money for their forty shares amounting to $7200 which the value of forty shares is $4000. on these shares they receive a percentage of eighty percent amounting to $3200. This makes the full

loansome $7200 on their shares. The money has been paid the four shareholders on the 5th of August 1918, the four men whom have given themselves up as follows, Mr. John Harsche, Mr. Lingelbach, Mr. S. Oltarzewski, Mr. A. Walzak. The secretary Mr. A. Bieszczad asks Mr. A. Rubinstein who paid these men their money for the shares. Superintendent Mr. S. Kasprzak stated to the secretary that they were paid with the company's money. Now in this matter president Mr. A. Rubinstein stated to the company that he would like to have the shares divided between myself and Mr. S. Kasprzak one half or twenty shares to go to Mr. S. Kasprzak. On this statement the secretary asked whether Mr. S. Kasprzak agreed to this, he, in answer to the statement, stated that he 'isnt."

EXHIBIT D-2

Stanley Silk Dyeing Company
Entries from Stock Certificate Book

Date	William Kasprzak	Stanislaw Kasprzak	Alexander Rubinstein	Andrew Bieszczad	John Harsche	John Lingelbach	Albert Walzak	Stanislaw Oltarzewski
Oct. 4 1916	5	15	10	10	10	10	2	
Dec. 9 1917								12
Jan. 6		2			2			
Jan. 15						3		
Jan. 22 1919						1		
Oct. 27 1920		8	15					
Jan. 1		30	30					
	5	55	55	10	12	14	2	12

EXHIBIT D-3

(For identification. Offered, but not admitted.)

This agreement made this Twenty-eighth day of October, Nineteen hundred and sixteen between the undersigned stockholders of the Stanley Silk Dyeing Company.

Witnesseth that in consideration of the mutual covenants, promises and agreements herein contained and the execution of this agreement by the other parties hereto, that if during the period of

time from and after the date hereof and ending the twenty-eighth day of October, Nineteen hundred and Twenty-one, any of them desire to sell or otherwise dispose of his share or stock held by him, he will give notice in writing of such intention to all the other parties hereto and all said parties shall jointly have the option and right to purchase the same within twenty days after receipt of said notice for the "Book Value" thereof at the time said notice is given, to wit, that proportionate value of the net assets of said corporation which the number of shares proposed to be sold or disposed of bears to the entire issued capital stock of said corporation.

In determining the value of the net assets of said corporation the good will of the business shall be excluded and not taken into consideration. All material and stock, finished, partly finished, and raw, shall be valued at the actual cost thereof with suitable allowance for depreciation. All machinery, equipments, fixtures and furnishings, accounts, claims, notes, choses in action, bills receivable, shall be valued at their true money value. From the total value of such tangible property shall be deducted the total amount of indebtedness of the corporation.

It is further mutually agreed that any of the said parties to whom notice of the desire to sell is given shall be unwilling to join in a purchase under said option, said option may be exercised by that part or the remainder of such parties as may desire so to do, and who shall make such purchase under such option jointly, but each and every party shall be entitled to participate in such purchase if he desires so to do;

Exhibit D-3

Should all of said parties, having an option to buy the shares or stock offered for sale as aforesaid, refuse, neglect or omit to exercise the option given them to purchase the same or shall refuse, neglect or omit so to do for a period of twenty days from and after having received notice of such option that then the party desiring to sell or dispose of his shares or stock shall be at liberty and is hereby given the privilege of selling or disposing his shares or stock to any person upon any condition or terms and in any manner he sees fit.

All stock purchased under this agreement shall be owned jointly by the parties participating in such purchase and shall be voted by them as if held by them severally according to their holdings.

In witness whereof the parties have hereunto set their hands and seals the day and year first above written.

Stanley Kasprzak	(L. S.)
Alexander Rubinstein	(L. S.)
Andrew Bieszczad	(L. S.)
John Harsche	(L. S.)
John Lingelbach	(L. S.)
Albert Walzak	(L. S.)

Exhibits D-4, D-5

EXHIBIT D-4

Stanley Silk Dyeing Company

No. 774. Paterson, N. J., Aug. 5, 1918.

The Hamilton Trust Company
of Paterson, New Jersey

Pay to the order of Albert Walzak ($350.00) three hundred fifty dollars.

Stanley Silk Dyeing Company
A. Rubinstein S. Kasprzak
President Treasurer

Endorsed:
Albert Walzak.

Above check certified as follows:
Certified August 5, 1918.
The Hamilton Trust Co.
Paterson, N. J.
L. Wentink, Teller.

EXHIBIT D-5

New Jersey

$10.00 Paterson, N. J., Aug. 5, 1918.

Three months after date we promise to pay to the order of Albert Walzak ten dollars at the Hamilton Trust Company, Paterson, N. J.

Value received. Stanley S. D. Co.
Due Nov. 5/18. A. Rubinstein S. Kasprzak.

Endorsed:
Albert Walczak.

Exhibits D-6, D-7

EXHIBIT D-6

Stanley Silk Dyeing Company

No. 771. Paterson, N. J., Aug. 5, 1918.

The Hamilton Trust Company
of Paterson, New Jersey

Pay to the order of John Lingelbach ($2450.00) two thousand four hundred fifty dollars.

Stanley Silk Dyeing Company

A. Rubinstein, President — S. Kasprzak, Treasurer

Endorsed:

John Lingelbach.

Above check was certified as follows:

Certified August 5, 1918.
The Hamilton Trust Co.
Paterson, N. J.
L. Wentink, Teller.

EXHIBIT D-7

New Jersey

$70.00. Paterson, N. J., Aug. 5, 1918.

Three months after date we promise to pay to the order of John Lingelbach seventy dollars at the Hamilton Trust Company, Paterson, N. J.

Value received. Stanley S. D. Co.

Due Nov. 6. A. Rubinstein, S. Kasprzak.

Endorsed:

John Lingelbach.

Exhibits D-8, D-9

EXHIBIT D-8

Stanley Silk Dyeing Company

No. 773. Paterson, N. J., Aug. 5, 1918.

The Hamilton Trust Company
of Paterson, New Jersey

Pay to the order of Stanislaw Oltarzewski ($2100.00) two thousand one hundred dollars.

Stanley Silk Dyeing Company
A. Rubinstein, President
S. Kasprzak, Treasurer

Endorsed:

Stanislaw Oltarzewski.

Above check was certified as follows:

Certified August 5, 1918.
The Hamilton Trust Co.
Paterson, N. J.
L. Wentink, Teller.

EXHIBIT D-9

New Jersey

$60.00 Paterson, N. J., Aug. 5, 1918.

Three months after date we promise to pay to the order of Stanislaw Oltarzewski sixty dollars at the Hamilton Trust Company, Paterson, N. J.

Value received. Stanley S. D. Co.

Due Nov. 5. A. Rubinstein, S. Kasprzak.

Endorsed:

Stanislaw Oltarzewski.

Exhibits D-13, D-14

EXHIBIT D-13

Stanley Silk Dyeing Company

No. 772. Paterson, N. J., Aug. 5, 1918.

The Hamilton Trust Company
of Paterson, New Jersey

Pay to the order of John Harsche ($2160.00) two thousand one hundred sixty dollars.

Stanley Silk Dyeing Company
A. Rubinstein President
S. Kasprzak Treasurer

Endorsed:
John Harsche.

Above check was certified as follows:
Certified August 5, 1918.
The Hamilton Trust Co.
Paterson, N. J.
L. Wentink, Teller.

EXHIBIT D-14

Stanley Silk Dyeing Company

No. 903. Paterson, N. J., Nov. 2, 1918.

The Hamilton Trust Company
of Paterson, New Jersey

Pay to the order of S. Kasprzak ($837.50) eight hundred thirty seven dollars fifty cents.

Stanley Silk Dyeing Company
A. Rubinstein President
S. Kasprzak Treasurer

Endorsed:
S. Kasprzak.

Exhibits D-15, D-16

EXHIBIT D-15

Stanley Silk Dyeing Company

No. 905. Paterson, N. J., Nov. 2, 1918.

The Hamilton Trust Company
of Paterson, New Jersey

Pay to the order of A. Rubinstein ($837.50) eight hundred thirty seven dollars fifty cents.

Stanley Silk Dyeing Company

A. Rubinstein President S. Kasprzak Treasurer

Endorsed:

A. Rubinstein.

EXHIBIT D-16

Stanley Silk Dyeing Company

No. 906. Paterson, N. J., Nov. 2, 1918.

The Hamilton Trust Company
of Paterson, New Jersey

Pay to the order of A. Bieszczad ($250.00) two hundred fifty dollars.

Stanley Silk Dyeing Company

A. Rubinstein President S. Kasprzak Treasurer

Endorsed:

A. Bieszczad.

Exhibit D-17

EXHIBIT D-17

Stanley Silk Dyeing Company

No. 907. Paterson, N. J., Nov. 2, 1918.

The Hamilton Trust Company

of Paterson, New Jersey

Pay to the order of W. Kasprzak ($125.00) one hundred twenty five dollars.

Stanley Silk Dyeing Company

A. Rubinstein S. Kasprzak 10

President Treasurer

Endorsed:

W. Kasprzak.

Exhibit D-1

EXHIBIT D-1

January 29, 1917
Page 28
motion was made and second that there should be a day book in the office as to the expense at petti cash in the office, the motion was carried and the president was authorized to get a day book and instale it in the office.

April 30, 1917
Page 31
A. Rubinstein stopped the reading of the minutes and asked the board of directors, if all vote for the commission to control all the Companys Books every month, the following directors answer is to A. Rubinstein question, W. Kasprzak, John Lingelbach, S. Oltarzewski, John Harsche, A. Bieszczad, A. Walzak, the minutes were competent and excepted as they were without amendments. The commission reports before the board that the books were not examined, the report is that one day the commission were ready but Mr. S. Kasprzak forgot to inform Mr. Rubinstein, so the commission was told to come the next day, the next day the commission did not find Mr. Rubinstein or Mr. Kasprzak.

June 25, 1917
Page 38
The secretary tells the board that he is supposed to have all the documents concerning the company which to this time Mr. Rubinstein holds.

Exhibit D-1

October 29, 1917
Page 49
The commissioners who control the books state that everything is perfectly controlled.

April 29, 1918
Page 68
Then the president stated that he will try to pay each shareholder his 10% dividend before the year is over has the entering of the dividends would be much trouble and that this way it will be easier. The commissioners who control the books give statement that the books are kept in order.

May 27, 1918
Page 69
The commissioners who control the books ask the president for the seeing of the companys books to have them looked over. The president A. Rubenstein states that the books are at the editors. further the president states that there is no satisfaction here and the bookkeeper he does not trust which he then said that he has given them to the public accounter to be sure of his own interests.

July 29, 1918
Page 75
The commissioners who control the books give know statement has there is know commissioners.

September 30, 1918
Page 79
The secretary gives statement to the company that the assignment of paying off the 10% dividend

before the yearly meeting is held, as that was the rule made in November 1917.
The president gives statement to the company to leave this over to the yearly meeting.

October 27, 1919
Page 83
Motion made & seconded that 15 additional shares be issued to A. Rubenstein & 8 additional shares to S. Kasprzak at the par value of said share namely $100.00.

By Laws of the
Stanley Silk Dyeing Company
Article IV—Officers

Page 20 of the Minute Book
Section 8. Powers and Duties of Treasurer. The treasurer shall have custody of all the funds and securities of the company which may have come into his hands; when necessary or proper he shall endorse on behalf of the company, for collection, checks, notes and other obligations, and shall deposit the same to the credit of the company in such bank or banks or depositary as the board of directors or the executive committee may designate; he shall sign all receipts and vouchers for payments made to the company, jointly with such other officer as may be designated by the board of directors or the executive committee; he shall sign all checks made by the company, and shall pay out and dispose of the same under the direction of the board, or of the executive committee, he shall sign with the president, or such

other person or persons as may be designated for the purpose by the board of directors, or the executive committee, all bills of exchange and promissory notes of the company; he may sign, with the president or a vice president all certificates of shares in the capital stock; whenever required by the board of directors or by the executive committee; he shall render a statement of his cash account; he shall enter regularly, in books of the company to be kept for the purpose, full and accurate accounts of all moneys received and paid by him on account of the company; he shall, at all reasonable times, exhibit his books and accounts to any director of the company upon application at the office of the company during business hours; and he shall perform all acts incident to the position of treasurer, subject to the control of the board of directors and executive committee and the president.

He shall give a bond for the faithful discharge of his duties in such sum as the board of directors or the executive committee may require.

New Jersey Court of Errors and Appeals

Between Alexander Rubinstein, Complainant-Respondent, and William Kasprzak, et als., Defendants-Appellants.	from Chancery On Appeal

Brief for Complainant-Respondent

The Defendants-Appellants seek to reverse a decree in favor of the Complainant-Respondent, Alexander Rubinstein, advised by Vice Chancellor Fielder. The bill was filed to require the Defendants, or some of them, to transfer upon the books of the Defendant, the Stanley Silk Dyeing Company, forty shares of stock of the Company which Complainant claimed belonged to him, the certificates of which were in his name, but which the Defendants by their proper officers refused to transfer.

The Defendants by their answer denied the Complainant's claim of ownership, but on the contrary alleged that the Complainant purchased the stock in question for the Defendant, the Stanley Silk Dyeing Company. No affirmative relief, however, was asked by the Defendant. The practical effect therefore of the position of the Defendants being that while the certificates of stock would be naturally in the Complainant's name, nevertheless they made no demand for any relief which would place the stock back in the treasury or distribute it amongst the other stockholders.

The dispute relative to the forty shares arose under the following circumstances:

The Company originally consisted of eight stockholders; four of these desired to dispose of their stock and sever their connections with the Company. These four, viz., Albert Walzak, John Lingelbach, Stanley Oltarzewski and John Harsche eventually visited the office of lawyer John O. Benson, on the 3rd day of August, 1919, and they each executed an assignment of their stock to the complainant, Alexander Rubinstein. These certificates of stock were offered in evidence and marked Exhibit C-1 to 7 inclusive (p. 38-39).

These shares of stock were transferred in Mr. Benson's office. No question was ever raised as to the title of this stock until the same was offered for registration by Mr. Rubinstein four years later, and then the transfer of the same was refused by the Secretary, Veronica Kasprzak. This occurred on the seventeenth day of August, 1922. After this the Complainant again visited the office of the Company accompanied by his lawyer, Abram I. Bluestein, and against demanded that the stock be registered on the books of the Company. This time, Miss Kasprzak, one of the defendants, took the position that she would not transfer the stock except as of that particular day, the effect of this position being that the Complainant would have been unable to have voted his stock at the Annual Meeting, which had just been called. The Company was a close corporation, and the control of the Company depended upon which group possessed the forty shares.

Upon the refusal of the Secretary to make this transfer, the Complainant filed his bill enjoining

the Defendants from proceeding with the Annual Meeting until the title of the stock was settled. The trial of the case took several days and resulted in a decree in favor of the Complainant.

The evidence clearly showed that for over a year before Complainant bought the stock, it had been repeatedly offered to the Company, or its stockholders, all of whom refused to buy it.

The single question involved is: Did the Complainant Rubinstein buy this stock for himself, or for the Company. The solution of this question is purely one of fact. The price paid for the stock was $180.00 a share, so that the purchase price involved $7200. This money was paid by Complainant Rubinstein, and the books show that at the time of the purchase he borrowed money from the corporation and eventually paid it back. He bought this stock after the four dissatisfied stockholders who owned the same had for a year been trying to get rid of it. The facts will disclose that the Company was not in a position to buy the stock, and had refused it. The secretary and bookkeeper of the Company, Miss Kasprzak, was fully familiar with the financial end of the transaction. She was a stockholder herself, and the daughter of one stockholder and the niece of another stockholder; in fact she and her father and uncle holding all the shares not held by Rubinstein, the Complainant, and the disputed shares, there can be no serious question but that the defendants were fully familiar with the transaction.

This stock, as the evidence discloses, was purchased in the early days of August, 1918, and no attempt was ever made by the defendants to challenge the title of the complainant until October,

1922, or four years and three months after its purchase. During all of this time the defendants must have been cognizant of the fact that the Complainant's money had paid for this stock and equally cognizant of the fact that during all those years no attempt had ever been made to compel the complainant to transfer the stock to the Company, or divide the same with the other stockholders.

POINT I.

THE EVIDENCE CLEARLY SHOWS THAT COMPLAINANT BOUGHT AND PAID FOR THE STOCK FOR HIS OWN USE AND WITH THE KNOWLEDGE AND CONSENT OF THE DEFENDANTS.

Under this point we shall summarize the evidence presented by the respective parties and will point out that the evidence justified the decree.

JOHN O. BENSON, the first witness for the Complainant whose testimony begins at page 37, identified the certificates of stock, which were offered in evidence and marked Exhibits C-1 to C-7. His recollection as to the details of the transaction was rather poor, as he had explained, due to the fact that more than four years had elapsed (p. 41 at bottom).

On cross examination he said that the only instructions he got with reference to the transfer of the stock was from a Mr. Walzak. He said:

> I knew him. I did not know Mr. Rubinstein, only just by sight, I think, at that time. Q. Walzak represented the as-

signors, he spoke for the assignors? A. I think he did; yes. Q. And Mr. Rubinstein was on the other side of the transaction? A. Yes. (p. 45, l. 7-17.)

It thus appears that Mr. Benson, the lawyer, did not represent the complainant, who had no lawyer to represent him. If Defendants contend that the Complainant had started out to indulge in sharp practice or trickery to obtain the title of this stock, he surely would not have entered upon this transaction without his lawyer.

FRANK REA, whose testimony begins at page 45, an expert accountant, was employed as an accountant for the Stanley Silk Dyeing Co., and had been their accountant for some years (p. 46, l. 1-10). He said that on August 17th, 1922, while at the office of the Company, the Complainant tendered the certificates of stock (Exhibits C-1 to C-7) and asked that they be entered on the stock book in his name (p. 46, l. 15-35). He did not do so, however, because Stanley Kasprzak, the Treasurer, and one of the Defendants, made a dispute over the stock. He said at that time all of the officers of theCompany were present (p. 47, l. 18). The objection Mr. Kasprzak made was that twenty of these forty shares belonged to the Complainant and twenty to him, Kasprzak (p. 48, l. 5-10). This witness was a disinterested witness, in fact had not known the Complainant until Mr. Kasprzak had introduced him, witness being a friend of Kasprzak's (p. 49 at bottom and p. 50, l. 1-5). This concluded the formal proofs and Complainant rested.

THE DEFENCE.

ANDREW BIEZCZAD, whose testimony begins at page 54, was secretary of the Company. He testified that the meetings were transacted in the Polish language; that he took down the minutes in Polish and had his son Walter Biezczad translate them (p. 59, l. 35-40; p. 60, l. 1-10) after which they were signed by Mr. Rubinstein as president of the Company. This witness could not give any information as to the meaning of the minutes in English (p. 63, l. 30-40).

WALTER BIEZCZAD, who was a son of the previous witness, testified that his father brought the minutes to him in the Polish language which he read to witness, and witness translated them into English and entered them on the minute book (p. 66 at bottom; p. 67, l. 25-35). His attention was drawn to a quotation from the minutes which is as follows:

> President A. Rubinstein stated to the Company that he would like to have the shares divided between myself and Mr. S. Kasprzak one half or twenty shares to go to Mr. S. Kasprzak. On this statement the secretary asked whether Mr. S. Kasprzak agreed to this, he, in answer to the statement, stated that he "isn't." (p. 70, l. 15-25.)

There was considerable dispute as to whether the word at the end of this quotation was "is" or "isn't". This is dealt with in the Vice Chancellor's opinion. The significance, however, lies not in the word terminating this quotation, but the

conceded fact that after the complainant had purchased the forty shares of stock that the proposition was made by him with S. Kasprzak, one of the defendants, at a regular meeting of the Board of Directors to divide this stock, twenty shares to each. The significance lies in this, that at that meeting there was no pretense made that the stock belonged to the Company. If the contention now advanced by the Defendants had been the truth, would not S. Kasprzak at the meeting in question have stated in reply to the complainant's proposition that the stock belonged to the Company, and it was not the Complainant's to divide?

ANDREW BIEZCZAD was then re-called, for the purpose evidently of destroying the force of this testimony which appeared in the minutes, and he testified that at the meeting in question the announcement was made that the stock had been bought for $7200, and that when witness asked who had bought the stock that Rubinstein, the Complainant, made no answer, but that S. Kasprzak had answered that the Company had bought the stock; that then Mr. Rubinstein had stated that he desired to divide the stock between himself and Mr. Kasprzak and that Mr. Kasprzak had answered "Yes" to this proposal. (p. 75, l. 1-15.) This was at the meeting of August 28, 1918.

While witness had perhaps been recalled for the purpose of destroying the fact of the entry in the minutes, nevertheless his testimony in a sense further supports the complainant's contention that the stock never was intended for the Company. Had the Company intended to buy this stock something would have appeared in the minutes direct-

ing its purchase, but instead of that, what does appear, according to this witness, was that the stock had already been purchased by the Complainant who made the announcement at the meeting that he had acquired title. Had Complainant intended to buy the stock for the Company would he have proposed to S. Kasprzak to buy the other half from him? If it had been the intention of the directors that the Complainant should buy the stock for the Company would they have sat silent when the proposal was made that Complainant and S. Kasprzak divide the stock?

Witness ceased to be secretary after October 28th, 1918 (p. 75, l. 30) at which time Stanislaw Kasprzak, a brother of Stanley Kasprzak, was elected secretary and he turned the book over to him, and the ten shares of stock that this witness held, he transferred to Veronica Kasprzak, daughter of Stanley Kasprzak (p. 76, l. 15 to bottom).

As we have pointed out the question as to whether the word "is" or "isn't" terminated the quotation quoted above is in the light of the other evidence of the case immaterial, yet as the question as to whether or not the minutes were altered so as to make the word "is" read "isn't", it would be well to consider the testimony of this witness on the subject. This meeting was held August 26th, 1918 (p. 82, l. 25). He ceased to be secretary in October, 1918; he had sold his ten shares of stock to Miss Kasprzak, so that for years he had had absolutely no interest in the Company, and could not have anticipated a law suit, yet he produces the alleged English translation of his minutes from which he claimed that they had been copied on the minute book (p. 82 a

bottom). He explained that he had carried this rough memorandum around in his pocket (p. 83, l. 1-10), although he hadn't kept the Polish notes. He explained that after the minutes had been signed on the minute book he tore up the Polish notes and threw them in the fire (p. 83, l. 23), yet he preserved his son's English translation and carried it around in his pocket. This was too much for the Court who asked:

> Q. Have you been carrying that around in your pocketbook for four years? A. I have a little safe home and I kept this in my safe. (p. 83, l. 37.)

Counsel then took him in hand and asked:

> Q. Didn't you testify a moment ago that you had carried this in your pocketbook for four years? A. I don't recollect saying that. By the Court: Q. As a matter of fact you had this copy made by your son in October, 1918, didn't you? A. Yes. Q. Where has it been since then? A. I have a safe home and I keep this copy in the safe. Q. When did you take it out of the safe? A. I took it out when I was notified to come to Court. Q. When was that? A. Last week, on Friday. Q. And you had not taken it out of the safe between October, 1918, and last week? A. I took it out every now and then, looking it over, and made sure I had it. (p. 84, l. 20-40.)

His excuse for preserving these notes was that he would have evidence in case something was added or erased (p. 87 at top). If this was the case, why didn't he save his Polish notes? In answer to the Court's question he said that the

first time he knew that there was any change in the minutes was that day in Court (p. 87, l. 15). The Court asked: Q. Is to-day the first time that you knew that there was a change? A. The first time that I have seen that this word was different. Then when asked by counsel Mr. McKee: Q. Is this the first time that you have heard of it being changed? He answered, I must state the truth. My counsel called me to the office. Then he pointed out this word and asked me if that was referring to the minutes. Q. How long was that? A. Last Thursday. Q. And did you have this with you last Thursday? A. No. (Evidently referring to the English notes.) Q. Did you ever show this to your lawyer? A. No, sir. (p. 87, l. 15-30.)

The importance of the above is that it shows conclusively that this witness, Andrew Biezczad, was absolutely unreliable. His story as to the reason for preserving the rough English notes of the meeting is incredible, in view of the fact that he destroyed the Polish notes which he took, and had ceased to have any interest in the Company for over four years, between the time he resigned as secretary and the institution of the law suit, and in addition thereto had sold what stock he had in the Company to Miss Kasprzak. The Court was justified in rejecting his evidence as to the alleged alteration in the minutes, but aside from that, counsel for complainant contends that the alleged alteration makes little difference in the light of the remaining evidence in the case with respect to the Defendants' contention that they bought the stock.

WALTER BIEZCZAD was again recalled and submitted to a further cross examination as to the alleged altered minutes. There was a sharp contradiction between his testimony and that of his father Andrew Biezczad, in which the witness had said that there was nothing written after the word "He," which would mean that entire word "isn't" had been written in after. His father's testimony was that the word "is" was written in, and altered to "isn't". (See the last line of Exhibit D-1 on page 432.)

FRANK REA, who was recalled by Defendants, was asked on direct examination as to a number of conversations he was alleged to have had with the Kasprzaks which were of no particular importance. Witness, however, did not recall the conversations. On cross examination he was asked

> Q. Were you ever requested by any of the Kasprzaks to cancel these forty shares of stock? A. No, sir. Q. Were you ever asked to retire this book? A. No, sir. Q. Referring to the same Exhibits (C-1 to C-7), to make them Treasury stock? A. No. Q. You made out the income tax reports, I believe? A. Yes, sir. Q. And the reports were submitted to them? A. Copies were submitted also. Q. And the matters were discussed with Kasprzak and Rubinstein and others of the Company? A. Yes, sir. Q. Did you ever report these certificates of stock in the returns made by you as treasury stock? A. No, sir. Q. Did you ever report these forty shares of retired stock? A. No, sir. Q. How did you

report them? A. I reported them as outstanding. Q. Outstanding stock? A. Yes, sir, the balance sheets will show it. Q. And that was as late as when? A. 1921, the last one I made. (p. 103, l. 20-40; p. 104, l. 1-15.)

It appears that these income tax reports were signed by the president Mr. Rubinstein, the Complainant and Stanley Kasprzak, the treasurer (p. 105, l. 20-25), the holders of nearly the entire stock.

WILLIAM KASPRZAK testified that he had been the secretary of the Company from 1918 to date (p. 107, at top). This witness talked through an interpreter, but the Court directed it to be noted that he had answered a number of questions in English (See Court's note, page 111 at top). In order to avoid cross examination as to what took place at the meetings previous to his becoming secretary he testified that he had slept throughout those meetings (p. 113, l. 20-25). He said although elected secretary he didn't know what he had to do. He was asked: Q. Did you know what the other man, Biezczad, did as secretary? A. I see the most of the time the other man read what you call minutes. Myself I am sleeping I am tired from work. (p. 114, at bottom.) This witness said that the book together with other books were kept in the safe, and that he carried the keys with him, and that when the complainant wanted to get a look at the book he had to go out to the boiler house where he would be and get the keys from him; that he had carried the keys from the time he became secretary (p. 115, l. 10-bottom).

JAMES J. HASTINGS, an accountant, testified that the Kasprzaks had turned over the minute book and other books to him in November, 1922, at which time he called attention to the alleged alteration of the word "isn't" (p. 122, l. 20-25). The only importance of this is, that if this witness is to be believed, the attention of the defendants was called to this alleged alteration for months before the first day of the trial, and yet no explanation was asked of the Secretary in whose handwriting the minutes had appeared, until a week before, and he had not in fact seen this alleged alteration until the very day of the trial. The books during all that time had been in the possession of the Defendants.

ALBERT WALZAK, whose testimony begins at page 124, next testified. He was one of the four men who had transferred the stock to Mr. Rubinstein. This witness on direct examination testified generally that he and the other three men sold their stock as related by Mr. Benson, but that they sold it or intended to sell it to the Company. He detailed no conversation to indicate that such was his intention, or the intention of the other three stockholders who sold their shares. His answers to Defendants' counsel were in the nature of conclusions.

On cross examination he testified more in detail, with the result that the value of his testimony on direct examination was completely destroyed. He was asked in connection with his intention to sell out to the Company and not to Rubinstein as follows:

Q. Did you hear the others offer to sell out? A. I do not recollect. Q. What did

you say at that time; what were your words? A. I cannot tell exactly the words what I say at that time. Q. Do you remember any of the words that were spoken? A. I say I want to sell my stock; I want to get out of here. Q. Do you remember what was said by anyone else? A. I do not recollect. Q. So that you have no recollection of anything that was said by anyone else? A. It didn't interest me. It only interested me what I said. Q. All that you remember then, that was said at that time, was that you wanted to sell out and get out? A. That is what it was. Q. You don't remember any other part of any other conversation or any other words? A. Oh! there was a lot of discussion there, but I cannot remember those words what everybody has been saying. (p. 134, l. 15 to bottom.)

He again repeated at page 135 that they were to sell to the Company. His statement was stricken out and counsel for Complainant demanded the conversation and then followed this significant testimony:

> By the Court: Mr. Ward wants the conversation. What was said? A. The conversation? Mr. Ward: Q. Yes. A. Well, it was about the price, that the Company has not got money, they cannot pay us that much. Q. That the Company did not have the money? A. It did not have so much money. (p. 135, l. 15-25.)

Later on in the course of the Court's examination it developed that one of the reasons why the

witness wanted to withdraw from the Company was that they wanted to put what money they were making back into the Company to improve the plant, whereas he wanted dividends declared. Witness then explained in answer to the Court's question that he wanted the profits entered on the books as dividends but not paid out, and that the reason that they did not want same paid out was that they were short of cash. The Court's questions being:

> Q. But you did not actually want it paid out? A. No. Q. Why not? A. We did not want to actually take it. Q. Why not? A. Because they were short of cash. Q. When was this they were short of cash? A. That was in 1918. Q. What time in 1918? A. Well, in January or February some time. (p. 139, l. 1-10.)

This is very important for it shows that in the early part of 1918 the very year in which this stock was supposed to be bought for the benefit of the company, the company was without funds to buy it, or rather did not feel justified in expending money for the purchase of this stock. It appeared by the witness's testimony that he and the other dissatisfied stockholders retained Mr. Benson, the lawyer, with a view of arranging for the disposition of their stock, and that after they did this that Mr. Benson sent for Mr. Rubinstein (p. 140, l. 1-10); that in addition to this that they had gone to their lawyer's office for the purpose of disposing of their stock; this lawyer was Mr. Frank Smit (p. 140 at bottom). The Vice Chancellor at page 143 again took the witness in hand and asked him when the meeting was had

at which there had been dissatisfaction expressed, and he said in March or April, 1918. When the Court asked him who had spoken for the company about the buying of the stock, he could give no answer, but he finally said he couldn't recollect. He could give no information at all, although he was a director and at the meeting as well as the other dissatisfied stockholders who were also present at the meeting. He admitted under cross examination that in order for the company to buy stock it would have to be brought before the meeting of the directors (p. 146-147), and his attention was called to a previous effort of one of the stockholders to sell out and the matter being discussed at a meeting in July, 1917. This witness admitted on other occasions he had offered to sell his stock to the company and that the company had refused it (p. 157, l. 30). He qualified this in his next question and answer by stating: "That I don't know." (See testimony at page 157 l. 30 to bottom and page 158 l. 1-10.)

JOHN LINGLEBACH, whose testimony begins at page 158, was one of the four stockholders who sold out his share of stock to complainant. In answer to the question as to whom he had sold to, he said to the company (p. 159, l. 25). He, however, had very little to do with the transaction. He went down to Mr. Benson, the lawyer's office, to receive his check. Evidently he had been told by the other dissatisfied members to come there, as he only made one single visit there. His testimony throws very little light on the transaction.

STANLEY OLTARZEWSKI, one of the stockholders who sold out, whose testimony begins at page 164, said he had delivered his certificate in blank to Mr. Benson (p. 164, l. 20-30). He testified as to the check given to him for the stock which was made by the Stanley Silk Dyeing Co. The checks given for the stock were offered in evidence and will be discussed later. He was asked on cross examination if he and the other dissatisfied stockholders had not gone to lawyer Frank Smit's office to try to get the company to buy their shares, and he admitted having this meeting. He was asked:

> Q. And they (meaning the company) would not buy your shares, would they? A. I don't remember. Q. Why you don't remember that the company refused to buy your shares that time? A. I remember now that the company said at one meeting that they would, and the next meeting they refused to buy it; they would not buy it. (p. 167, l. 10-20.)

It was after this that witness went to lawyer Frank Smit's office, quite evidently for the purpose of trying to have his stock disposed of. (P. 168, l. 10-20.)

He reluctantly admitted that they did speak to the lawyer about selling the shares, and that he had advised them that the best way was to settle their difficulties and to sell the shares of stock (p. 169, l. 1-10). By the Court:

> Q. Did you employ Mr. Benson to arrange the sale of your shares for you? A. We did not hire him, but he says that he

would take care of the matter. Q. Who paid Mr. Benson? A. We did.

The most important part of this witness's testimony is his admission that Mr. Frank Smit was the attorney for the company, and that when they talked to Mr. Smit about the shares he sent them to Mr. Benson because he would not have anything to do with it (p. 168, l. 20-23). This is very important, for Frank Smit, being attorney for the company, evidently did not want to handle the transaction and referred them to another lawyer, for fear that a situation might arise in which their interests or position would be adverse to that of the company. This is very significant and clearly shows that the company had no interest in the purchase of the stock at the time these men disposed of it to the complainant.

FRANK SMIT, whose testimony begins at page 173, admitted on direct examination that he was attorney for the Stanley Silk Dyeing Co., (p. 173, l. 9). His direct examination was short and was to the effect that shortly before the case was commenced the complainant had visited him and told him of the trouble between himself and Kasprzak and the company, and that he desired to have the thing fixed up so that he would have a fifty-fifty interest, and one more share than the rest (p. 174, l. 1-15). On cross examination he admitted that Walzak, one of the four men who had sold their stock, came to see him in reference to his difficulties in 1918, and that he advised him to sell his stock (p. 176, l. 25-35). When witness was reluctant to handle the transaction, Walzak said to him, "Well, if you won't take it we will go to

Mr. Benson'' (p. 178 at top). Witness's excuse for his refusal to handle the transaction was his personal friendship for Mr. Kasprzak (p. 175 at bottom).

If this is true, however, what was there that was adverse to Stanley Kasprzak's interest in the fact that these men were selling out their stock to the company, if their story is to be believed? His testimony does disclose, however, that the Kasprzaks were in constant communication with him, and he reluctantly admitted that he drew the notice of the annual meeting for the election of the Board of Directors, which had been for the purpose of attempting to oust Mr. Rubinstein. (We respectfully call attention to his entire testimony at page 182 to 184 inclusive.) After a long course of examination he admitted making the suggestion that the complainant assign twenty of the forty shares to Mr. Stanley Kasprzak (p. 189, l. 1-7).

This is significant in view of the fact that the testimony of this witness at page 182 and 184 shows that he was in close communication with the Kasprzak family and was also counsel for the company, yet apparently he did not know that the company was making a claim for this stock, otherwise he would not have made the suggestion that Rubinstein sell half the stock to Kasprzak. It needs no argument to point out to the Court that if Rubinstein, the complainant, held this stock for the company, he held it for the benefit of all of the stockholders and not for merely one of them, and that thereby an attempt to sell one-half of the stock to Stanley Kasprzak would have been a wrong done to the company. It shows

conclusively that either Mr. Smit knew that this stock belonged to Rubinstein, the complainant entirely, or at least he was ignorant of any claim being made that the company was interested in this stock, and yet this was the lawyer and friend of the defendants.

STANLEY KASPRZAK was the next witness, he testified that when the four dissatisfied stockholders sold out Rubinstein bought in the forty shares for the benefit of the company. He said, "We made the contract, and the company bought and the company paid for." Q. "Did you and Rubinstein talk over the way in which the shares should be bought?" A. "No, sir." (p. 206, l. 15-25.) He said that Rubinstein, the complainant, had had a conversation with him to the effect that they should pay off these four dissatisfied stockholders and not bother with them any more. He did not remember the date of the conversation but he did remember, however, that it took place at the shop.

Nothing further was said or done as far as he knew until the meeting of the Board of Directors took place, and then something was said about the purchase of the shares. He said that when the statement was read off from the minutes that the shares had been bought that Mr. Biezczad asked who had paid for the shares and who bought them, and witness answered, "The company bought and the company pay." (p. 207, l. 20-35.) Yet this witness admitted that at this meeting Rubinstein had said that he would give witness one-half the shares and keep the other half for himself. The Vice Chancellor then asked:

Q. What did you say to that? A. I say I am satisfied. Q. You were satisfied with what? A. With twenty shares. Q. That is, with twenty of the forty shares that had been bought from these men? A. We bought forty shares; so twenty shares for Mr. Rubinstein and twenty shares for me out of the forty. (p. 208, l. 1-15.)

He was further asked as to conversation about the desirability of him and the complainant dividing the forty shares and he said: Q. "What did Mr. Rubinstein say to you? A. Right the next day after the meeting I asked Mr. Rubinstein to make out new shares, to write out new shares, a new certificate." (p. 209, l. 1-7.) He said Rubinstein the next day said his lawyer had advised him against doing it (p. 209, l. 10), giving as a reason that two other shareholders were liable to make trouble in the future (p. 209, l. 10-12). From that time—Aug. 1918, until Aug. 1922, or a period of four years, there never was a word spoken between him and the complainant about these shares, although according to witness the complainant was supposed to have bought the stock for the company.

Witness stated that without the forty shares he held more stock than Rubinstein, the complainant. He said Rubinstein had thought that he, Rubinstein, ought to be made an equal holder of shares. In the course of his explanation as to how it was done he used this significant language, "I didn't mean to buy any more shares." (P. 211, l. 1-6.) He was asked with reference to the payment for this stock and he testified:

Q. Did you afterwards hear that Rubin-

> stein had turned back the $7200 that was paid for the stock of the company? A. No, sir; positively no. Q. I asked if you heard afterwards that Rubinstein had paid back the $7200? A. Yes. Q. When did you first hear it? A. August 19th or 18th—I cannot recall which—1922, when I came back from the other side, from Europe, that he had paid that money into the company. (P. 218, l. 23 to bottom.)

On cross examination this witness testified that he had been in the country eighteen years. Witness reluctantly admitted that John Harsche, one of the four dissatisfied stockholders had tried to sell his stock to the company, and that it was refused (p . 223 at bottom p. 224, l. 20-25), and also that two of the other dissatisfied stockholders, John Lingelbach and S. Biezczad also wanted to sell their stock and that the company refused to buy (see testimony at page 226, l. 28 to bottom; page 227, l. 48).

In this last quotation witness frankly admitted that the reason the company did not buy was because "There was no money at the office" (p. 227, l. 8). This was in June, 1917. Again witness admitted reluctantly at page 228 at top, that in July, 1917, the company could not buy the stock because there was no cash in the treasury. The vote against buying John Harsche's stock was four to three (p. 228, l. 1-13). Walzak, the fourth of the dissatisfied stockholders, wanted to sell his stock before this, that is before July, 1918, but the company would not buy (p. 228, l. 2-5).

We propose to discuss this phase of the case later in the consideration of the minutes of the

company, but we may say here in passing, that the evidence of Stanley Kasprzak clearly shows that, reading from page 224 to page 233 inclusive, for more than one year previous to the Summer of 1918, these four dissatisfied stockholders had been endeavoring to dispose of their stock and the company would not and could not buy it.

The testimony of Stanley Kasprzak, however, clearly shows that there had been no formal agreement made to buy this stock on behalf of the company. The very fact that the sale was incidentally reported by Mr. Rubinstein at the meeting, and he discussed at this meeting that they should divide the stock, and the other members of the Board of Directors remaining silent, shows conclusively that nobody at that time thought or believed, or intended that these forty shares of stock should be bought for the company. At that time there was absolutely no reason why the company should have wanted to buy this stock for themselves. These four dissatisfied stockholders represented a hopeless minority, and as appears from the evidence the company needed the cash for other purposes, hence, they could not possibly have wanted to take $7200 of cash out of their treasury simply for the purpose of satisfying these four workmen who held small blocks of stock.

He made the astonishing statement that he did not know that Mr. Rubinstein, the complainant, had paid back the $7200 that he had taken out of the firm to pay for the stock. This, notwithstanding the fact that the corporation was a very small concern, and that $7200 represented a large sum to it, and the fact that Veronica Kasprzak, his own daughter, living at home with him, was

the book-keeper of the concern. This was a statement astonishing as it was incredible.

VERONICA KASPRZAK, whose testimony begins at page 243, was the daughter of Stanley Kasprzak and niece of William Kasprzak, and herself a stockholder in the company. She identified the books and that the entries in same were in her own handwriting, and that on October 21, 1918, Alexander Rubinstein paid back a loan of $3500 (p. 244, l. 20-23). She said Mr. Rubinstein told her to make this entry. This loan was paid back in two items as appears from entries in cash book. Miss Kasprzak advances the very lame excuse that although she was acting as the bookkeper yet she did not know the meaning of the term "Loan account" or "Loans" until "Now", presumably meaning the time of the trial (p. 260, l. 1-15; p. 261, l. 10-20).

Under cross examination by the Vice Chancellor she was equally vague as to what the meaning of a loan was:

> The Court:
>
> Q. You knew then that it was not a loan, didn't you, to anybody? A. I don't know whether I thought about it any more than I did just as I was told. (P. 263, l. 15-20.)

This answer typifies her whole attitude—a pretended ignorance. She, however, carries out this thought very poorly as shown by the following:

> Q. Now, Miss Kasprzak, when you entered that return, you knew what that meant? A. I knew he returned a loan.
> Q. You knew that Mr. Rubinstein was

Rubinstein refused to vote dividends on the stock, paying back money that he borrowed from the company, didn't you? A. That is what it looked to me. Q. You knew it was part of the $7050 or $7200, didn't you? A. No; I did not. Q. Was there any loan that you knew of? A. No, I thought possibly Mr. Rubinstein was returning a loan that he had. (P. 264, l. 20-25.) Q. Is it not true that all checks were written by you? A. Yes—not all, but most of them. Q. You therefore had knowledge of what loans were made? A. Not from when I first started to work there. That was in 1918. (P. 264 at bottom.) By the Court: Q. Didn't it excite any comment in your mind that Mr. Rubinstein was paying back a loan that you didn't know about? A. I didn't. There was always large sums of money he told me to put in the books. Mr. Rubinstein always made the deposits. Q. That was customary? A. Yes, sir. Q. He gave you $3500 and told you it was payment of a loan. Were you not astonished that he had borrowed $3500 from the company that you didn't know about? A. No; I was not. (P. 265, l. 5-15.)

See the remainder of her cross examination at page 266.

THE COMPLAINANT IN REBUTTAL

ALEXANDER RUBINSTEIN, whose testimony begins at page 308, testified in substance

that he acquired the stock under the following circumstances:

The four men, viz., John Harsche, Albert Walzak, John Lingelbach, S. Oltarzewski, evidently were dissatisfied with the fact that they were not getting sufficient dividends and as witness remarked that "as soon as we opened the meetings they would start talking about dividends"; that this occurred at nearly every meeting and this made trouble, and that at one time or other they were all offering their stock for sale (p. 312, l. 5-25).

Shortly before the 1st of August, 1918, there was a discussion as usual by these four, asking for dividends; that witness showed them a lot of spoiled silk and explained in substance that it would make it too difficult to pay dividends; that they wanted to sell their stock and the company refused to buy it. (P 312 at bottom and p. 313 at top.) The next thing he knew a communication was received by him from lawyer Smit, as a result of which he had a talk with Mr. Kasprzak (p. 313 at bottom).

At the meeting when the question of the spoiled silk came up John Harsche, one of the dissatisfied stockholders, threw his shares on the desk and said he wanted his money and they discussed it until twelve o'clock that night, and then it was declared that the company could not pay any dividends **or buy the stock**, and that he, Harsche, must have patience (p. 314 entire). Witness had learned from Mr. Smit that these men had wanted to sell their shares, and that Kasprzak replied that if he, Rubinstein, wanted the stock he could buy it (p. 315, l. 10-17). Then he heard from

Mr. Benson who was the first witness who testified in the cause, and that he had inquired from him why the company refused to pay dividends, and he told Mr. Benson that the diretcors had refused to pay same. The interview that he had with Mr. Benson he reported to Mr. Kasprzak (p. 316, l. 30-35. Witness then asked Kasprzak if he could take the money out of the company for the purpose of buying the shares in his own behalf and pay the money back, and that Kasprzak consented (p. 318 and p. 319).

He then explained in detail the arrangement he had to purchase the forty shares of stock for $7200. He explained that he borrowed $7050 cash, represented by four checks and notes for $150.00 (p. 322 at bottom). Of course when he paid this money back there was $7200 cash entered on the book (p. 322). He said he knew nothing about book-keeping, that Miss Kasprzak was the book-keeper and familiar with the books, and he denied that he gave her any instructions as to how to enter the items (p. 324, l. 10-20). He was asked by the Court as to how he had paid this $7200 and he answered that he had paid $3500 in one payment, made up of a check of $2700 paid to him by a man named Willian Rosenblatt, and the rest in cash (page 329, l. 1-20).

There was exhibited to the Court a deposit slip made out by Mr. Rubinstein which showed that this check and cash were deposited by Mr. Rubinstein to the account of the Stanley Silk Dyeing Co. The slip was put in evidence and marked Exhibit C-11; that thereupon witness told Stanley Kasprzak what he had done (page 330 entire). His second payment was made November 23, 1918,

Rubinstein from outside sources and $257.08 his own check. This deposit slip was offered in evidence and marked Exhibit C-13 (p. 332). His personal check for $257.08, which was the outsider's check referred to, was offered in evidence and marked Exhibit C-14.

The third payment was made on the 3rd day of May, 1919, for the sum of $1700. The deposit slip was in the witness's hand-writing (p. 333 l. 20-40); that the slip was put in evidence and marked Exhibit C-15.

Nothing could be gained by going over in detail any more of this evidence, nor to show the Court how on cross examination all this important testimony was repeated over and over again.

THE MINUTES STRONGLY CORROBORATE THE POSITION OF COMPLAINANT.

These minutes reveal in substance, a constant desire on the part of these four dissatisfied stockholders to get out of the company and dispose of their stock. At the meeting which took place April 30, 1917, Walzak and Harsche both expressed dissatisfaction and A. Walzak resigned from the Board of Directors and gave notice to the company "that he wants his share to be paid out" (p. 420-421). John Harsche resigned and "wants his money what he put in here" (p. 421, l. 10). S. Oltarzewski "gave notice to the company and is thankful that he was taken in on the same rights as the incorporators but he wants his money also returned as he does not want any more dealings with the company" (p. 421, l. 12-15). A. Biezczad "gave notice that he wants his

money returned what he put in here as he does not want any trouble on account of his money as he was the first to go in the business, but he is disappointed." (P. 421, l. 16-21.)

> A. Bieszczad questions A. Rubinstein & A. Kasprzak if they are able to pay the shares out which notice was given to them. A. Rubinstein answers that one shareholder he can pay out but all he cannot as the company has not got the money as required for the shares. John Harsche, A. Walzak leaving the meeting room.
>
> (P. 421, l. 33-40; p. 422, l. 1-5.)

At meeting on July 30, 1917, a special delivery letter was sent by John Harsche to the directors saying that he had to go in the army and wanted his money for his shares. John Lingelbach and S. Oltarzewski also asked for their money.

> The president says he is for this and states that he hasn't any money but is willing to give $50.00 and the secretary stands to give $100.00.
>
> (P. 422, l. 28-30.)

It appeared that the directors finally failed to give any of these dissatisfied stockholders their money and John Harsche then said:

> The only thing we can do is to go to a lawyer and see what he can do for him.

He gave his shares to the secretary to keep for him and left the office (p. 423).

At the August 27th, 1917, meeting discussions were had with reference to John Harsche who was going in the army. These minutes read as follows:

> The secretary tells this shareholder that the company cannot pay him his shares because the larger majority of men were against this; the only thing that could be be done would be that **if the directors or shareholders would want to buy the shares could do so** and if all the money could not be paid then the remaining sum could be paid from the cash of the company, and none of the directors answered to this and that was ended.
>
> (P. 424, l. 1-10.)

The president then pointed out that the money couldn't be paid out of the company because the company needed the money for its business (p. 424, l. 15).

This shows clearly that none of the directors wanted to buy this stock when it was discussed at open meeting and suggested that some director buy it; this was only eleven months before the stock was actually sold to the complainant.

The September 24th, 1917, minutes appear at page 424 and 425 of the State of case. (P. 43 of minutes.) It appears in said minutes that John Harsche wanted a small loan because he was going in the army but the same could not be given to him because a pump had broken and they needed the money to fix the pump. This shows conclusively that at the end of September, 1917, a broken pump was sufficient to prevent the company from giving a loan of $100.00 to John Harsche on his shares of stock, or buying the same.

At the meeting on November 26, 1917 (Minute book p. 50—State of Case 426), Kasprzak and

and was for the amount of $2000 made up as follows: $1742.92 check, which had been given to Mr. the dispute being between these two gentlemen and the four dissatisfied stockholders, who afterwards sold out to Rubinstein.

February 11, 1918, page 51 of minutes and 429 of case, the following appears:

> John Harsche gives a notice to the board of directors that he wants to sell his shares as he has to go to the army. The company tells him that we haven't the money. The only way he could be paid would be if one of the directors or shareholders would want to take the shares, director A. Walzak wants to sell his shares and also John Lingelbach and S. Oltarzewski. There were debates which in a way that Director John Harsche asks permission of the company that if he finds a man that would buy his shares if he could present him around the factory. This he asked and was permitted at any time. (P. 429, l. 1-20.)

Thus, in the middle of February, 1918, or five and one half months before complainant bought the stock, these four dissatisfied stockholders were offering their stock to the company and the company was refusing to buy it, and they were told at this meeting that their only salvation lay in getting some of the other directors or stockholders to buy them out, the very thing that the complainant did do. Thes minutes show that not only the company didn't want the stock but that that the company couldn't afford to buy it if it wanted, and that it was perfectly willing that

they sell to any other director or stockholder, or in fact any outsider that Harsche could find. Nowhere is it said that the stock must be bought for the company.

The March 25th, 1918, minutes show more disagreement with respect to dividends as does the meeting April 29th, 1918 (p. 430).

In the July 29th, 1918, minutes, at page 434 of the state of case, the secretary asked the president if he had heard anything from the shareholders who had sold their shares and he said yes, and that he was called by Lawyer Benson on the 20th day of July with S. Oltarzewski, A. Walzak and S. Kasprzak (p. 431).

At the August 26th, 1918, meeting, complainant stated that he had bought the stock and at that time wanted Stanley Kasprzak to take half of it off his hands, and Kasprzak refused (p. 431). Thus it is shown conclusively an effort on the part of these four dissatisfied stockholders to get rid of their stock, during all of which time the company was indifferent as to buying it, in fact could not, because of lack of funds, and that complainant, Rubinstein, had in fact bought same.

During the four years that Rubinstein held the stock not one attempt was made on the part of the defendants to compel him to surrender these forty shares of stock to the company. During all of these years the stock was reported in the income tax returns of the company as outstanding stock; during all of these years one of the stockholders Veronica Kasprzak at least and in every probability all of the other stockholders knew that if this was not in fact the stock of the company that

Rubinstein, the complainant was merely holding the same as trustee, with the company owing him $7200; during all of which time not one penny of interest had been paid on this money.

Is it reasonable that this complainant would have borrowed and paid back $7200 in order to take the stock of the four dissatisfied stockholders, and then be content to allow the company to have the use of his $7200, without making an effort to have the payment returned to him, or even collect legal interest on his money? The four years of interest would have amounted to about $1300, which the company owed him, if the defendants' contention is true. Yet, nowhere in the evidence does it appear that he asked for this interest or any part of the principal. This course of conduct was incomprehensible if Rubinstein was holding the stock for the company; it would be perfectly comprehensible if Rubinstein had bought the stock for himself, as he says he did.

It is therefore respectfully submitted that the certificates of stock standing in the name of the complainant, the fact that he held them with the knowledge of the defendants for four years, the fact that he paid for them and never received his money back from the company, the fact that he avers positively that he bought the stock in his own behalf against the vague and uncertain testimony of the defendants, shows conclusively that the complainant is entitled to the decree which was made in his favor by the Vice Chancellor.

It is therefore respectfully submitted that the decree should be affirmed by this Court.

March term, 1924.

Respectfully submitted.

WARD & McGINNIS, and
WOOD McKEE,
Solicitors for and of counsel
with Complainant-Respondent.

33 MAR.1.1924

N. J. Court of Errors and Appeals

Between Alexander Rubinstein, Complainant-Respondent, and William Kasprzak, et als., Defendants-Appellants.	On Appeal from Chancery

BRIEF FOR DEFENDANTS

The bill was filed for the purpose of obtaining a decree that the defendants, or some of them, be ordered and directed to transfer upon the books of the defendant, Stanley Silk Dyeing Company, certain shares of stock alleged to belong to the complainant. The number of shares with which this litigation is concerned is forty, which the complainant alleges were assigned to him by Albert Walzak, John Lingelbach, Stanley Olterzewski and John Harsche on or about August 5th, A. D. 1918, for the sum of $7200 paid by the checks and notes, and out of the funds of the defendant company, and in manner following:

Albert Walzak, 2 shares $350 and note for $10—Ex. D-4 & 5. (c., p. 132)

John Lingelbach, 14 shares $2450 and note for $70—Ex. D-6 & 7. (c., p. 160)

Stanley Olterzewski, 12 shares $2100 and note for $60—Ex. D-8 & 9. (c., p. 165)

John Harsche, 12 shares $2160 (no note)—Ex. D-13. (c., p. 244)

The certificates for these shares were delivered

to complainant at the office of Lawyer John Benson on or about August 5, 1918. Since that time, and until about the middle of August, 1922, no one, other than the complainant, ever saw these shares. Complainant says he bought these shares for himself; defendants say that he bought them for the company. The dispute as to this fact is the principal issue in this cause.

THE PARTIES

The parties consist of the complainant, Alexander Rubinstein, and of the defendants, William Kasprzak, Stanley Kasprzak, Veronica Kasprzak and The Stanley Silk Dyeing Company.

The complainant speaks both English and Polish. He has been in this country eighteen years. He first worked in a mill; then went into the fur business; then he had a grocery store; then he went into the silk business; and at the present time he is in the real estate business. (c., p. 359-360) When he went into the Stanley Silk Dyeing Company he borrowed some of the money to pay for his shares from Mrs. Kasprzak. (c., p. 204, l. 21-23) The contract between him and the company, made when it was organized on October 28th, 1916, appears on page 9 of the minute book. (c., p. 417) By it he agreed to act as its soliciting agent and to "superintend the office of the company, keep proper books of account, do and perform all clerical work to be done, and shall make due and correct entries of all orders received * * * and he shall make due and correct entries of all his transactions and dealings of and in relation to the said business." He has always been President of the

Company, and the manager of its financial affairs. He impressed the learned Vice Chancellar as being the "soliciting agent," only.

Stanley Kasprzak has lived in Paterson eighteen years and has always been engaged as a silk dyer. The above mentioned contract was made with him as well as Rubinstein. In it he agrees "to work for said company as superintendent of the workers, employees and servants of the said company and to supervise the machinery and instrumentalities and in general to take care of all the personal property of the company used in this business of dyeing silk." He is a Pole, speaks very little English and reads and writes none. He has always been Treasurer of the company. His real function was that of Superintendent and Manager of the factory only.

William Kasprzak speaks no English (c., p. 108, l. 29) and works in the dye shop and as engineer.

Veronica Kasprzak is twenty-two years of age. She graduated from the Public Grammar School in 1914, stayed at home for a time and then went to work as a mender (c., p. 215, l. 14) and in the early part of July, 1918, went to work in the office of the Stanley Silk Dyeing Company when she was sixteen or seventeen years of age. She had had no experience as a bookkeeper and made such entries in the books as Mr. Rubinstein directed her to make and made all the book entries of importance in this case within ten months after entering into the company's employment—the first one within four weeks. She was the daughter of Stanley Kasprzak.

Stanley Silk Dyeing Company, the defendant corporation.—The stockholders of the company as

shown from the Stock Certificate Book. The Stock Certificate Book shows that certificates of stock were regularly issued to all the stockholders from October 4, 1916, to January 1, 1920, and none to Rubinstein of the said forty shares. The following table conveniently shows the record of the stock issues during that period and is testified to by Frank Rea (c., p. 433)

Stanley Silk Dyeing Company

Entries from Stock Certificate Book

Date	William Kasprzak	Stanislaw Kasprzak	Alexander Rubinstein	Andrew Bieszczad	John Harsche	John Lingelbach	Albert Walzak	Stanislaw Olszewski
Oct. 4	5	15	10	10	10	10	2	
1916								
Dec. 9								12
1917								
Jan. 6		2			2			
Jan. 15						3		
Jan. 22						1		
1919								
Oct. 27		8	15					
1920								
Jan. 1		30	30					
	5	55	55	10	12	14	2	12

From the foregoing it will be seen that the record of the stock holdings of the stockholders of the company correctly appears except as to the

transfers from Walzak, Oltarzewski, Harsche, Lingelbach ~~and Bieszczad~~, made in August, 1918. Frank Rea, the accountant, (c., p. 46, l. 21-35) says he was requested for the first time to make out new certificates for these shares on August 17th, 1922, and that he refused to do so because there was a dispute.

QUESTIONS INVOLVED

1.

The first question involved is a question of fact which may be stated as follows: Did Rubinstein borrow the $7200 from the defendant corporation with the understanding between him and Stanley Kasprzak, the treasurer of the company, that the money was to be used to purchase the said forty shares to his own use; or, that he was to purchase them to the use of and for the company. The board of directors never authorized the loan or the purchase.

2.

If it was first understood that the said shares were to be purchased for the company, did the board of directors subsequently agree that Rubinstein should hold them to his own use.

3.

Did any or all of the stockholders agree that Rubinstein having used the moneys of the company to purchase the said shares should hold them to his own use.

4.

As a matter of law:—did Rubinstein, being an officer and director of the company, and having borrowed the funds from the company with which to purchase the stock, hold such funds and the said shares when purchased as a trustee for the company under a trust enforceable against him by the company; or by any non-essenting stockholder thereof.

The Court of Chancery, upon the pleadings and proofs, adjudged and decreed that the said forty shares of stock belonged to the complainant Alexander Rubinstein and that the company should transfer them to Rubinstein upon its books. It is as to this adjudication and decree, and as to all the parts of said decree incident thereto that the appellants allege error.

ARGUMENT

POINT I.

THE COMPLAINANT, IN AUGUST, 1918, BOUGHT THE FORTY SHARES FOR THE COMPANY AND FRAUDULENTLY CONTRIVED TO HAVE HIS NAME WRITTEN IN THE ASSIGNMENT ON THE BACK OF THE CERTIFICATES AND PLANNED TO MAKE IT APPEAR THAT HE BOUGHT THEM FOR HIMSELF AND SUBSEQUENTLY, IN AUGUST, 1922, SO CLAIMED.

STANLEY KASPRZAK'S VERSION OF THE TRANSACTION.

Stanley Kasprzak (c., p. 206, l. 18) says: Q. Who bought those forty shares? A. We made the contract, and the company bought and the company paid for * * * Q. Was there any agreement or talk at any time anywhere between you and Rubinstein that the shares should be bought by the company? A. Yes. Q. What was said between you and Rubinstein about that? A. Rubinstein said that we should pay off and do not bother any more with them. * * * Q. Was there anything said about using the company's money to buy the shares? A. Yes, sir, (c., p. 207, l. 13) Q. Now, what was said by Bieszczad at that time? A. After the minutes were read, he asked me who paid for the shares and who bought the shares and who paid for them. Q. What did you say? A. I say the company buy and the company pay. Q. Did Mr. Rubinstein hear that? A. Yes, sir. (c., p. 207, l. 26-33)

ALEXANDER RUBINSTEIN'S VERSION

Complainant (c., p. 317, l. 16-23) says: Q . What did you tell Mr. Kasprzak when this suggestion was made to you that you take the stock; what did you say to Mr. Kasprzak? A. I asked Mr. Kasprzak, as we have a little money for a new building, whether he will allow me to borrow this and

I will buy him out and I will pay back in the nearest future and Mr. Kasprzak agreed to sign the check. Again (c., p. 318, l. 22; p. 319, l. 3) A. When I came back from Mr. Benson I told Mr. Kasprzak that Mr. Benson told me: "Is there anyone else that could buy the shares from these four people, which the company could not buy out?" I says: "I don't know. I have to talk with Mr. Kasprzak about it." And I went back to Mr. Kasprzak and I told him that if he would like to buy the shares. Mr. Kasprak told me that he did not care for any papers; he is in business for money. Q. Go on. A. So I asked Mr. Kasprzak I would buy the shares, but I have not got the cash; if I could take it out from the company for a short time until I will be able to pay it back. Mr. Kasprzak said to me: "If you want to buy it, go ahead and buy it." Again (c., p. 358, l. 13-20)—Q. Had you told Stanley Kasprzak before that time, or was it after that time, that you would like him to buy some of the shares with you? A. When I heard the proposition by Benson, I came down and told it to Mr. Kasprzak, that there is the proposition—we could buy them out. Mr. Kasprzak refused.

Upon the difference in these two stories arises the present controversy of fact. Those portions of the evidence relevant to this issue will be pointed out in a form as condensed as possible.

POINTS IN THE EVIDENCE CONCERNING THE SALE OF THE FORTY SHARES.

The Transaction Prior to August 5, 1918

The first evidence during the above period is found in the minute book and indicates that Walzak, Oltarzewski, Lingelbach and Harsche, who had bought shares but had no other interest in connection with the company, began to quarrel with those in active and controlling management, i. e., Rubinstein and Stanley Kasprzak. Bieszczad, being secretary, seemed to remain neutral although he sided at times with the Walzak people. A reading of the minutes from page 28 to page 73 Ex. D-1 (c., p. 420-431) makes this perfectly clear. The quarrel not only grew out of a demand for dividends but from expressed dissatisfaction with the management, its failure to keep the books properly and Rubinstein's failure to permit the committee of the board to examine them. Walzak was the first man who wanted to sell out, (Minutes, page 31, c., p. 420) but the quarrel seems to have been patched up in May 1917 as the minutes show they resolved to make a present to Mr. Rubinstein and Mr. Kasprzak. Subsequently, in July 1917, (Min. 39; c., p. 422) Harsche wrote to the secretary that he wanted the money for his stock as he was going into the army. He was present at the meeting and left his shares with the secretary, the shareholders having refused to buy out Harsche. Harsche was present at the next meeting of August (Min. 41; c., p. 423) and then it was agreed that he should receive a loan to be secured by his shares and he left them with Mr. Walzak, but at

the September meeting (Min. 43; c., p. 424) the president says the loan cannot be made because the pump is broken, though the books showed the company was prosperous and had set aside a large fund for building purposes. The minutes of October 1917 (Min. 45; c., p. 425) relate a discussion as to the treasurer giving bond and John Harsche said that the president should give the bond and not the treasurer; indicating that the stockholders regarded Rubinstein as the man who handled the finances. The matter of dividends comes up for the first time at the meeting of ~~March~~ Nov. 26, 1917, and a long discussion upon the subject is set forth on page 50 of the Minutes (c., p. 425) and it resulted in the declaration of a dividend of 25% of which 10% should be shortly payable; this is important as showing the company had funds. The learned Vice Chancellor lays stress upon the fact that the company had uniformily officially decided that the company was not in funds as a corroboration of Rubinstein. (c., p. 27, l. 19-22) At the December meeting (Min. 53; c., p. 427) the president failed to produce the account of the stock that had been taken and made an excuse which was not satisfactory to the board so that they appointed a new committee to make an inventory. At the following meeting Walzak and the rest complained because Rubinstein had not entered the dividends in the ledger and as the minutes say (page 56; c., p. 427, l. 35; p. 428, l. 1-8) "During this, disputes occurred in a disagreeable way * * * which caused several of the directors to leave." At the next meeting, February 1918 (Min. 58; c., p. 428) the president, as he had done at other meetings, asked why it was called. He was told it was

called so that they could get a proper explanation as to the entry of the annual dividends. Previously he had laid the blame on the accountants to whom he had given the books. The minutes clearly show his control of the books. At the present meeting he laid the blame on Stanley Kasprzak saying he didn't want the dividends entered until his salary had been paid. At the same meeting Harsche again gave notice that he wanted to sell his stock and is told that the company has no money which was not so. Thereupon Walzak, Lingelbach and Oltarzewski say they want to sell their shares. Harsche then asks if he can sell to an outsider if he can find one who will buy and is given permission to do so. At the February meeting the entry of the dividend of 25% was again brought up. At the April meeting, (Min. 67; c., p. 430), the question of dividends being raised again, the president said that he would try to pay each shareholder his 10% dividend before the year was over as the entering of the dividends would be much trouble and this way it "will be easier." In the meeting of June 24, 1918 appears further dispute. Lingelbach seems to be the only outsider present at this meeting and Rubinstein and Stanley Kasprzak state to the directors that the vote is taken from Walzak and Olterzewski because they are against the business whereupon Lingelbach said that under those circumstances he would leave the meeting, which he did. (Min. 71; c., p. 431.)

Rubinstein testified positively that Stanley Kasprzak was not present at Benson's office when the

agreement was being made for the purchase of the stock. (c., p. 355, l. 15-25)

From June 24, 1918, to July 29, 1918, there had been no meeting of the directors. At the meeting of May all the directors were present except Harsche; Lingelbach appeared at the meeting of June but at the meeting of July Stanley Kasprzak, Alexander and Andrew Bieszczad were the only ones present. The minutes of the meeting appear on page 74 (c., p. 431) of the minute book and there the following entry is made.

> "The secretary asks the president if he heard anything from the shareholders whom have sold their shares, he said yes, he told the secretary that he was called by Lawyer Benson on the 20th of July with S. Oltarzewski, A. Walzak and also with S. Kasprzak. During this time they made an agreement, S. Kasprzak and A. Rubinstein made the agreement with A. Walzak and S. Oltarzewski to pay 80%, 75% to be paid now and 5% to be paid in a year's time with a note of agreement."

The foregoing minute was signed by Rubinstein and it is evident from it that the agreement with the purchasers had been consummated between the meeting of June 24th and that of July 29th, 1918. Yet see Rubinstein's testimony (c., p. 309, l. 15-21) wherein he says that prior to the month of August, 1918 the only two persons who had offered their stock were Harsche and Walzak.

He says (c., p. 317, l. 1-15) that he talked with Benson about two months before the stock was

bought and told Stanley Kasprzak of what Benson had said and that Kasprzak refused to buy and told him to go ahead and buy for himself. (c., p. 318, l. 28—p. 319, l. 3) He says that at the time of Kasprzak's refusal no price had been agreed upon. They asked $175 per share but when he had gotten Kasprzak's refusal he went back to Benson and they wanted 10% more and the price was then split and fixed at ~~$1.80~~ $1.80. Of course, **this story is absolutely contradicted by the minute above quoted** which shows that the agreement was made at the price mentioned by Rubinstein and Stanley Kasprzak together. On his cross examination (c., p. 354, l. 28-29) he first says that he went to Benson's office four or five times. On page 355, l. 15-25 of case, he says that Stanley Kasprzak was never in Benson's office with him. At page (c., p. 363, l. 1-2), after reading the above minute, he says "I do not know whenever Kasprzak was with me." Stanley Kasprzak (c., p. 206, l. 17) says that he was at Benson's office with Rubinstein. Walzak (c., p. 147, l. 33—p. 148, l. 1-2) says: "Q. Then did you see Mr. Benson personally? A. Several times up at Benson's. Q. Alone? A. I don't know how many times alone but the last agreement was made when Stanley Kasprzak, the treasurer, was with Mr. Rubinstein when we got the settlement." The important thing in the transaction was the making of the agreement,—therefore Stanley Kasprzak was present. But the execution of this agreement,—the mere formal delivery of the checks and the receipt of the certificates was left by him to the man in whom he confided and continued to confide for many years after. Stanley Oltarzewski (c., p. 170,

l. 1-8) says they brought down the stock to Mr. Benson's office after the agreement was made. He was asked: "Q. After you agreed, you did? What did you agree on—the price? A. Yes. Q. With whom did you have the argument about the price? A. Mr. Rubinstein and Mr. Kasprzak." Mr. Benson says: (c., p. 41, l. 10) "I could not say whether he was there or not."

The foregoing constitutes substantially all the evidence upon the important question as to whether Stanely Kasprzak participated in the making of the bargain for the purchase of the shares. **If he had refused to be interested, it was natural that he should not have attended at Mr. Benson's office and bargained with the vendors. If he were interested as a purchaser, it was natural that he should have been a party to the bargain and the overwhelming weight of the testimony indicates that he participated in the making of the agreement.**

Upon the question as to whether the forty shares were sold to the company by the owners the evidence of those owners is positive and direct; and they are disinterested. Albert Walzak (c., p. 128, l. 24-26) says that the agreement made between himself and Rubinstein and the others at the meeting was "that we should sell our stock to the company" and that that agreement was carried out. John Lingelbach (c., p. 159, l. 24-25) says he sold his shares to the company. Stanley Oltarzewski (c., p. 164, l. 16-17) says that he sold his shares to the company. Mr. Benson says he has no recollection of the transaction but that the name Alex-

ander Rubinstein written in the assignment on the back of the certificates is in his handwriting. He "believes" that the name was inserted before the transfer (c., p. 37, l. 29-30) but doesn't remember whether the money was paid in his office. He doesn't remember the order in which the owners signed the assignments (c., p. 39, l. 35; p. 40, l. 1-4); but has no recollection of the matter (c., p. 40, l. 16-17); he thinks that the assignee's name was filled in before they were signed, though the whole transaction is hazy to him; he does not remember the fact that the name of the assignee was inserted in the assignment (c., p. 41, l. 35; p. 42, l. 1-10). Walzak (c., p. 131, l. 18-19) says the certificate was signed and delivered in blank and that he didn't authorize Mr. Benson to fill in the blank assignment (c., p. 131, l. 35; p. 132, l. 1-2); John Lingelbach (c., p. 163, l. 21) took the certificate out of his pocket to sign; saw no writing over his signature (c., p. 160, l. 1-2); and gave no authority to put in Rubinstein's name (c., p. 160, l. 3-5). S. Oltarzewski (c., p., 164, l. 23-24) says that there was nothing written but his signature when he signed the assignment and he gave no authority to anyone to write over his signature. (c., p. 165, l. 1-2) The only interest Mr. Benson had in the matter was as the sellers' attorney to see that they got paid for the stock (c., p. 148, l. 12). He had the checks and turned them over to his clients (c., p. 149, l. 22) and when Walzak received the check he turned over the certificate to Mr. Benson and when he left the office Mr. Benson had not signed it (as a witness),—there was absolutely no writing over the signature. (c., p. 150, l. 32-35) Rubinstein (c., p. 322, l. 5-10) says, at the time

the stock was actually turned over to him by Mr. Benson, Stanley Kasprzak was not there and this agrees with the story of the other witnesses. **There is no doubt from the evidence of these disinterested witnesses that the name of Alexander Rubinstein was not filled in the certificates at the direction of the sellers and it is submitted that the name was filled in by Mr. Benson at the request of Mr. Rubinstein, who acted without authority.**

In considering the probabilities as to the transaction it is important to observe that by the contract between the stockholders, which is set forth on page 2 of the Minute Book (Ex. D-3) c., p. 433) it was agreed that until October 28, 1921, if any of the stockholders desired to sell or otherwise dispose of his shares or stock he would give notice in writing of such intention to all the other parties hereto and all said parties should jointly have the option and right to purchase the same. No notice in writing was given by these stockholders of an intention to sell, but the minutes show that they considered that the sale to the corporation itself would absolve them from any breach of contract. Therefore, they would naturally have had it understood that the sale was to the company.

Having testified that he had talked with Kasprzak about buying the stock before any agreement was made and that the latter refused to buy, he says that upon the close of the transaction after he got the stock "I came down to the shop and I said to Mr. Kasprzak, 'Are you willing to buy some of this? I know that you got money and your money is not so tied up. Could you buy some of that stock?' He said: 'We will go down to Mr.

Bieszczad'." c., p. 323, l. 2-22) and he further says they took a machine and were driven down by Joe Kasprzak. "He was driving the machine and we went down to Mr. Bieszczad. We told him that I bought the shares and I took the money from the company and I know that I got to pay him back, and asked whether Mr. Bieszczad would buy some of it. He refused, so the same time Mr. Kasprzak said: 'If he don't want to buy any, why should I buy any? I will not buy any either'." And then he says: "I took them and put them away in my drawer." (c., p. 325, l. 1-2) He says he went to Bieszczad's house the same night or the next night after he bought the stock (c., p. 369, l. 32-35), that Stanley Kasprzak did the talking and wanted Bieszczad to buy some of the stock so that Rubinstein could return the money to the business sooner. Joseph Kasprzak denies that he ever drove Rubinstein and his father to Bieszczad's house in the summer of 1918. (c., p. 412, l. 8-11) The evidence of Bieszczad shows that the first he knew about the agreement and the details of the transaction was at the meeting of August 26th, (c., p. 74-75) which will be hereafter considered, and the evidence of the minutes as to Bieszczad's question on the later date as to who bought the shares and who paid for the shares and S. Kasprzak's reply in Rubinstein's presence that the company bought and the company paid are entirely incompatible with the story of the complainant as to the visit to Bieszczad's house.

The foregoing resume practically brings the evidence concerning the sale down to August 5, 1918.

Evidence of events on and subsequent to August 5, 1918, which relate to the transaction.

Under this head, if chronological sequence were observed, the book entries of August 5th would be first taken up, but owing to the fact that the matter of book entries is a subject which includes not only the events prior to August 26th, but subsequent thereto as well, attention is first called to a meeting of the directors on August 26th, 1918 (Min. 77; c., p. 431). The important entry, copied literally, under that date is as follows:

> "The president A. Rubinstein gave statement to the company that he has paid four shareholders their money for their forty shares amounting to $7200 which the value of forty shares is $4000. on these shares they receive a percentage of eighty percent amounting to $3200. This makes the full loansome $7200 on their shares. The money has been paid the four shareholders on the 5th of August 1918, the four men whom have given themselves up as follows, Mr. John Harsche, Mr. Lingelbach, Mr. S. Oltarzewski, Mr. A. Walzak. The secretary Mr. A. Bieszczad asks Mr. A. Rubinstein who paid these men their money for the shares. Superintendent Mr. S. Kasprzak stated to the secretary that they were paid with the company's money. Now in this matter president Mr. A. Rubinstein stated to the company that he would like to have the shares divided between myself and Mr. S. Kasprzak one half or twenty shares to go to Mr. S. Kasprzak. On this statement

the secretary asked whether Mr. S. Kasprzak agreed to this, he, in answer to the statement, stated that he isn't."

Rubinstein signed this record. It is contradictory of most of his testimony in this case. It is incompatible with his statement that before the agreement was made with the four stockholders Stanley Kasprzak had refused to participate in the purchase of the stock; for, assuming that Stanley Kasprzak had so refused, Rubinstein would not have said at the meeting that he desired Stanley Kasprzak to take twenty shares and he keep twenty himself. Stanley Kasprzak would not have said that the forty shares were paid for with the company's money; he would have said that the money was loaned to Rubinstein in order that he might buy the shares. If Rubinstein's story as to Stanley Kasprzak's refusal were true he would have explained the latter's statement that they were paid for with the company's money and would have said that they were bought for himself individually. If Rubinstein had gone with Stanley Kasprzak to the house of Bieszczad on the night of August 5th or the night following and told Bieszczad that he had bought the shares and wanted Bieszczad to take some, Bieszczad would not have opened up the question as to who was the purchaser. If Rubinstein had bought the shares he would not have gone into the details of the price paid for the shares as that would be a matter of indifference to the company. He would not "have stated to the company that he would like to have the shares divided between myself and Mr. S. Kasprzak." If the facts had been as he

now testifies to them, he would have plainly declared at the meeting the substance of what he now testifies to have been the fact, i. e., that Stanley Kasprzak had refused to purchase the shares and had agreed that Rubinstein should borrow $7200 from the company on his own account in order to purchase the shares; that he had borrowed the money and bought them for himself. But he misrepresented the transaction and hid what he now says is the truth. This in itself is a badge of fraud.

An important though not a crucial question concerning the above quoted entry in the minutes is as to whether the final word "isn't" was originally written in the minute. It is obvious, upon the slightest inspection, that the handwriting is different from the rest of the entry: the ink is different, the letters blurred: the first curve of the letter "i" in the word is written with the same ink as the body of the minutes, but what follows is of a different color. Examining the word under a magnifying glass it will be observed that there is a dot under the first down stroke of the letter "n", which may originally have been a period, leaving the word "is" in the minute instead of "isnt". A mere inspection of the word under a magnifying glass convinces one that it has been tampered with. Walter Bieszczad (c., p. 67, l. 35-38) says that the word "isnt" is not in his handwriting and Andrew Bieszczad is positive that the word "isnt" was not in the minutes when signed by Rubinstein, (c., p. 73, l. 33-p. 74, l. 1-2) and that the words "He is" were where "isnt" is now, (c., p. 80, l. 8-17). This minute Bieszczad felt to be of import-

ance to himself and he preserved a copy of it which was produced at the hearing. Andrew Bieszczad says that he ceased to be secretary in October 1918 and turned the minute book over to the brother of Stanley Kasprzak (c., p. 76, l. 16-18) The brother, William Kasprzak, testifies (c., p. 108, l. 15-25) that Bieszczad delivered the minute book to him but that "Rubinstein informed him that the law was that the books must be at the office * * * I turned them over to Mr. Rubinstein," and they had been in Mr. Rubinstein's possession ever since. It is further to be noted that Bieszczad relates what occurred at the meeting and swears that Stanley Kasprzak accepted the proposition that the stock be divided between himself and Rubinstein (c., p. 75, l. 10-12) and Bieszczad has no interest in this controversy. Stanley Kasprzak swears to the same thing (c., p. 208, l. 1-4).

If the Court be convinced by the testimony that the word "isnt" has been changed, it will follow that the change would not have been made by the Kasprzaks: it would have been against their interests. It was to the interest of Rubinstein that the word should be changed.

The agreement that Rubinstein should take twenty shares and Kasprzak should take twenty shares was not carried out and Stanley Kasprzak explains why it was not carried out. He says (c., p. 209, l. 6):

> "Right the next day after the meeting I asked Mr. Rubinstein to make out new shares, a new certificate. Q. What did he say? A. Mr. Rubinstein said to me that he will ask his lawyer and the next day he

> said to me that the lawyer advised not to do it because besides we have two shareholders and they are liable to make trouble for us in the future because they have a contract with us; that the two shareholders have a contract with us and they are liable to make trouble in the future. Q. Do you know what contract? A. I remember * * * By the Court: Q. After Rubinstein had told you that his lawyer advised against transferring the shares what other conversation did you have with Rubinstein about the shares? A. Absolutely nothing until 1922. Q. When Rubinstein told you that his lawyer advised against the transfer of the shares, what reply did you make? A. Nothing at all."

Thus Stanley Kasprzak, unskilled in business, a practical dyer, knowing nothing of the financial side of business, saying, as Rubinstein says "that he did not care for any papers; he is in business for money" (c., p. 318, l. 30-31) relying upon the good faith of Rubinstein, assumed, naturally, that the stock would remain the property of the company. He relied upon Rubinstein's statement that the twenty shares could not be assigned to him because of the contract (which was evidently the contract found on page one of the minute book; Ex. D-3; c., p. 433. The learned Vice Chancellor regarded this contract as irrelevant and refused to admit it except for identification. It is submitted that it was relevant) and that for the same reason Rubinstein could get no interest in the shares; and so matters rested for four years without any

word or act on the part of either Rubinstein or Kasprzak that would indicate that Rubinstein had or claimed any interest in the forty shares of stock, other than the book entries which are now to be considered, and much was done to indicate that he made no claim to them.

THE BOOK ENTRIES

The whole strength of the complainant's case rests upon the following particulars:

1. When the entry of the payment to Walzak, Harsche, Lingelbach, and Oltarzewski was made in the Cash Book they were bracketed with the words "A Loan" in the handwriting of Veronica Kasprzak and that above the entry the name "Alex Rubinstein" was subsequently written by Cohn, the accountant.

2. That when the money so paid to the four stockholders was returned to the company it was paid by Rubinstein in three installments as follows, by deposits of the checks of others to his order in the account of the company in the Hamilton Trust Company. These deposits were made by him personally, out of the regular order, and not by his own checks to the order of defendant company. This obscured the return, for a check to the company would have to be endorsed by S. Kasprzak, the Treasurer (sec. 8 of By-laws).

October 21, 1918	$3500.00
November 23, 1918	2000.00
May 3, 1919	1700.00

These entries are credited to Rubinstein in the

Cash Book in the handwriting of Veronica Kasprzak, then about 17 years old and without experience, and there is added to Rubinstein's name in parentheses "return of loan."

3. These entries are carried into the Journal and General Ledger of the company, kept by Morris Cohn and Frank Rea, accountants.

It is submitted that these entries and payments were made by Rubinstein in pursuance of his plan to get control of the company and that to all intents and purposes they were secretly made and that the only persons who knew anything about them were Rubinstein, Veronica Kasprzak and the accountants, who as the contract and minutes show were under his control. Stanley Kasprzak knew nothing about them. He couldn't read or write in English and as Rubinstein swore, (c., p. 373, l. 24-30) "As a matter of fact the said Kasprzaks, defendants, have absolutely no knowledge of the business of said company * * * the said defendant Stanley Kasprzak is a dyer, illiterate, speaks very little English." William Kasprzak neither speaks nor writes English. He was a witness and his evidence indicates clearly his ignorance of anything connected with bookkeeping or the financial affairs of a business company.

Notwithstanding Rubinstein's description of Veronica Kasprzak in the affidavit referred to on (c., p. 374, l. 3-14) of the case a great effort was made at the hearing to magnify her qualifications as a bookkeeper. The uncontradicted evidence shows that in August 1918, when the entries were

made she had been in the employ of the company for not more than a month and never had any experience as a bookkeeper. It seems obvious that a young girl of seventeen, who had just left her work as a mender in a silk manufacturing concern, though she could read, and write a good hand, would have no knowledge of the reason for any entries she might be directed to make in books of account, nor would she have any initiative in such matters. To nearly all young people at that age life is a maze in which they merely follow a clew furnished by others. Besides, although she was a daughter of Stanley Kasprzak, she was the daughter of a man who knew nothing of the business of the company. His business was at the tubs, dyeing the silk and sending it out. He left the money end of affairs to Rubinstein. Again, she was not a stockholder or officer of the company and notice to her was not notice to the company, or to any of the shareholders or officers. It is unnecessary to cite authorities for this proposition. She swears that she knew nothing about the meaning of the entries in the books at the time she made them and that they were all made by her under the direction of Rubinstein (c., p. 216, l. 32-34). She never made any entries other than in the books of original entry; all the grouping books such as the Journal and Ledger, which show the significance and relation of original entries in the day books were and are kept by accountants. This clearly appears and is not denied.

A perusal of the minutes makes it clear that Rubinstein was the man who managed and controlled the bookkeeping. The following entries

show it: (Min. 28; c., p. 442) "Motion was made and second that there should be a Day Book in the office as to the expense of petty cash in the office, the motion was carried and the president was authorized to get a Day Book and install it in the office", (which he apparently never did). (Min. 31; c., p. 442) "A. Rubinstein stopped the reading of the minutes and asked the board of directors if all vote for the commission to control all the company's books every month"; the directors said they did. On the same page is the following, "The commission reports before the board that the books were not examined, the report is that one day the commission were ready but S. Kasprzak forgot to inform Mr. Rubinstein, so the commission was told to come the next day, the next day the commission did not find Mr. Rubinstein or Mr. Kasprzak * * * A. Walzak questions A. Rubinstein why he was not present to produce the books. Mr. Rubinstein answers that he did not have any time and that he was not officially notified * * * the answer was unsatisfactory to the commissioner" and Walzak resigned (Min. 31; c., p. 422, l. 2). There was a doubt as to the observance of the by-laws and certain resolutions were passed, among others that "the board must have full power of the finances and of the business books of the company" (Min. 38; c., p. 442). The secretary tells the board that he is supposed to have all the documents concerning the company which to this time Mr. Rubinstein holds (Min. 43; c., p. 424). The commissioners report that the books are in perfect order (Min. 47; c., p. 442). The four recalcitrants want Walzak made bookkeeper (Min. 49; c., p. 425). The commissioners

ask Rubinstein for the inventory sheet and he explains that "he hasn't any on account that the accounter told him he doesn't need any" (Min. 55; c., p. 427). Shows a lengthy discussion concerning the entry of dividends and the president's control of the entry. (Min. 63; c., p. 429) It is said "under those accounts there has been another fact, and that is that the dividends of twenty-five percent are to be entered in the general business stock ledger." The president is again asked "whether he is going to enter the twenty-five percent dividend into the general business stock ledger." The commissioners report that "the books are kept in order" (Min. 68; c., p. 442). The president states "that he will try to pay each shareholder his ten percent dividend before the year is over as the entering of the dividends would be much trouble and this way it would be easier." The commissioners report that the books are kept in order. (Min. 69; c., p. 442) "The commissioners who control the books asked the president for the seeing of the company's books to have them looked over. The president A. Rubinstein states that the books are at the editors, further the president states that there is no satisfaction here and the bookkeeper he does not trust him which he then says he has given them to the public accounter to be sure of his own interests. (c., p. 442). This was the period when the profits of the company were increasing through the tremendous business which came during the war. It was also about the time that they were thinking of buying out the four stockholders. (Min. 75; c., p. 442) The commissioner who control the books gave no statement as there is no commissioners." And from that time on

there never were any commissioners "to control the books". After that time, July 29th, 1918, to August 15th, 1922, the only meetings of the board of directors that were held or supposed to be held, were on August 26th, 1918, September 30th, 1918, and January 2, 1920, and, it is submitted that from the time they got rid of the four stockholders Rubinstein controlled the books and the finances of the company and manipulated the same so as to secure the control.

When Rubinstein paid into the company the amount that the company had paid for the stock he made his payments as secretly as he could. He didn't give his personal check in payment of the money as a man would do who was paying off a debt and was desirous of having it clear that payment had been made, but instead, he took the money and deposited it to the account of the Stanley Silk Dyeing Company. Then he says he told Stanley Kasprzak that he had "got so much money to pay in on my loan. He says: 'All right, put it in.' Q. Did you say anything to Miss Kasprzak? A. Why, we talked in the office and she marked it in the book. Q. Did you tell her how to enter it up? A. I did not tell her how. I did not understand how, I just tell her paid back so much money." (c., p. 330, l. 32; p. 331, l. 1-6) It is denied that he ever said anything about the repayment of the loan to either Stanley or Veronica Kasprzak. They deny it. If he had given a check to the company in payment of the money, he undoubtedly forsaw difficulties. He saw that Stanley Kasprzak would know all about it for under Section 8 of the By laws of the company (Min. 20;

c., p. 442) Stanley Kasprzak would have had to endorse the check. He says (c., p. 331, l. 17-21) that the second payment was made by the deposit of his own check in the company's account, but he fails to produce the check and isn't sure about it, he says. Take it all in all, he adopted a plan that would surely prevent Stanley Kasprzak from knowing anything about the repayment,—if repayment there really was, for the presumption would be that money deposited in the company's bank account was money of the company,—for Stanley could not read the books if he saw them and Rubinstein relied upon the ignorance of the young girl in the office as to what the payments at these various times were all about to prevent her from talking about it with her father any more than she would talk about any other of the numerous and large items of money paid into the company. It was a part of the plan to keep Stanley Kasprzak in the dark as to his claim of ownership of the forty shares and to make him believe that he was equal with him in the control of the company: to make him believe, as Rubinstein says on (c., p. 382, l. 9-13) "well, we did not go by shares, me and him; we didn't go by shares; we always divided everything between ourselves; we never looked at the shares; whatever we all had drawn out we divided between us." He well knew that any premature disclosure of his claim would have brought about an immediate quarrel.

The dividend of 25% directed to be paid on Oct. 28, 1918, after the 40 shares had been purchased.

The payment of this dividend indicates one of two things. Either that Rubinstein had resolved

that Stanley Kasprzak was the owner of twenty shares of the forty that had been purchased; or that he felt it was dangerous to disclose his own claim of ownership—and the latter position would only be taken by a man who knew that he was committing a fraud.

At the first meeting after August 26th, to wit, September 30th, 1918 (Min. 79; c., p. 442) you find this entry: "The secretary gives statement to the company that the assignment of paying off the 10% dividend before the yearly meeting is held, as that was the rule made in November 1917. The president gives statement to the company to leave this over to the yearly meeting." On October 21st, 1918, Rubinstein paid into the company $3500 called "return of loan." In the minutes of October 28th, 1918, you find the following, "The president A. Rubinstein on request of dividends which were decided in the year 1917 as come into effect this date October 28th, 1918, that all stockholders in the concern receive twenty-five percent on their shares which was satisfactory to all." At the same time he notified the company that he had paid $5000 on the mortgage of the company leaving $5000 due. But he says nothing about his return of $3500 to the company. The books show that in pursuance of the resolution the 25% dividend was paid by the checks of the company on November 2nd, 1918, as follows:

Stanley Kasprzak	$837.50
Alexander Rubinstein	837.50
Andrew Bieszczad	250.00
William Kasprzak	125.00

(c., p. 380-381) At the time the dividend was paid

the stock holdings outside of the forty shares were as follows:

Alexander Rubinstein	10
Stanley Kasprzak	17
Andrew Bieszczad	10
William Kasprzak	5
Total shares	42

With the forty shares there would be eighty-two shares having a par value of $8200. Twenty-five per cent. of $8200 is $2050, the total amount paid in dividends, and the distribution was made equally between Rubinstein and Stanley Kasprzak. If Rubinstein was the owner of the forty shares he would have had fifty shares and been entitled to a dividend of $1250, while Stanley Kasprzak would only have been entitled to $425. It is true that the payments to Rubinstein and Kasprzak of $837.50 were not in exact proportion to their holdings, but it was in exact proportion to their joint holdings, which including the 40 shares, if they had been equally divided between them, would have amounted to 67 shares entitling them to a dividend of $1675 a half of which would be $837.50 each. Rubinstein's explanation of this (c., p. 382, l. 10-15) is "Well, we did not go by shares, me and him; we didn't go by shares; we always divided everything between ourselves; we never looked at the shares; whatever we all drew out we divided between us" and (c., p. 383, l. 12-30) "I told him 'Anything that I am going to take out, salary or otherwise, things that I am going to take out, you can take just as much' * * * I always used to tell him that way" and he finally gives an explan-

ation of the division (c., p. 384, l. 16) as follows: his attention having been called to the equal division of the dividends and the profits by the Court, he admitted the equality of the division and said it was done **"in order it should be quiet and harmony in the business."** His own explanation of the transaction shows that if he had made any claim to a greater interest in the company than Stanley Kasprzak had, "quiet and harmony" would cease.

Issue of the 15 and 8 additional shares.

After the purchase of the forty shares Stanley Kasprzak says that Rubinstein said there could not be a division of the forty shares and that he should be equal with Kasprzak in the company (c. 188). Rubinstein said "It doesn't look nice that I should have more shares and he would prefer us to have equal parts—equal amount of shares. Q. How many times did he speak to you about that? A. Several times, I don't remember how many. Q. Did you finally agree with him that he should be equal with you? A. Not then. Q. When did you so agree if you did so agree? A. The second time he came to me and I agree to that, that we should have an equal amount of shares. Q. How long was that after the stock transfer of forty shares? A. I don't remember whether it was before or after; I don't remember." He got eight shares more and Rubinstein got fifteen. The certificates were issued on October 27th, 1919, and under the same date an entry of the transaction was made in the minute book (p. 83; c., p. 442) by Frank Rea who testified: (c., p. 98, l. 33; p. 99, l. 9). "Q. Were there any

meetings really held that are not put down here in the minutes as meetings? A. That I cannot answer because I do not know. Q. You don't know whether there were other meetings or not? A. I wrote down whatever they gave me and they were there and signed them. I merely acted the part of a clerk. Q. Who gave you the minutes? A. I believe Rubinstein gave me the minutes, but there were also present Miss Kasprzak and—I wont say every one—Stanislaw Kasprzak was there and Bill. Stanley Kasprzak (c., p. 213 l. 5) says there was no such meeting. The minute is signed by William Kasprzak, who signed as he was told to: he couldn't read. The minutes state "Motion made and seconded that fifteen additional shares be issued to Alexander Rubinstein and eight additional shares to Stanley Kasprzak at the par value of said shares namely $100." The result of this transaction was to give Stanley Kasprzak and Rubinstein twenty-five shares each of the capital stock outside of the forty. **At about the same time Rubinstein probably saw that any further declaration of dividends would complicate his position as pseudo owner of sixty-five shares as against Stanley Kasprzak's twenty-five.** Accordinly in the minute he had Rea enter and William Kasprzak, who could not read, sign, he provided "Motion made and seconded that a resolution made on October 28, 1918, be cancelled and no dividends be declared until further notice." There was no resolution of the kind in Oct. 1918. He evidently had in mind the resolution of Nov. 1917. The minutes do not show that anyone was present at this so-called meeting of October 27, 1919.

It is perfectly evident that if Rubinstein was the

bona fide owner of fifty shares he would have no need of the addional fifteen to give him control, but if he were fraudulently contriving to acquire or had acquired said forty shares fraudulently, the course he pursued was the very best that could be devised for keeping Stanley Kasprzak in the dark.

While Rubinstein admits the issuance of the stock and the resulting equality he says that the equality was not mentioned (c., p. 385 l. 32). He said that he and Kasprzak had back salary coming from the company. "I was against it, to draw out the back salary because it is better it is in the business than we got it outside. Stanley Kasprzak refused that, he wants the money so I say let us take shares for that stock. This is just as good as money. He refused, but in the end he agreed to take about half of what I took and the balance I suppose he must have got the money in cash." This preposterous explanation is completely refuted by the books. If Stanley Kasprzak had drawn $700 on account of his back salary it would have appeared in the loans payable account which is the account in which these back salaries were carried after 1918, but no such entry appears, nor does it appear that Stanley Kasprzak was paid $700. Besides, if Stanley Kasprzak wanted cash, what good would the stock in this close corporation have been to him; and why should Rubinstein have taken fifteen shares when if Kasprzak only wanted $700 seven shares would have been sufficient to make him equal in that respect with Kasprzak's withdrawal of cash.

Withdrawals of Cash

There were various large withdrawals in cash by Rubinstein and Stanley Kasprzak. On July 10, 1919, Rubinstein—$5270 and Stanley Kasprzak—$5350, at which time a difference of $80 was adjusted as the evidence shows. May 6, 1921—Rubinstein $2750 and Kasprzak $2750, and the credits to their loan accounts which were all of substantially the same sums except the item of December 31, 1919, which was for $6000 credited to Rubinstein and which was wiped out as he testifies by an issuance of thirty shares of capital stock to himself and of thirty shares of the capital stock to Stanley Kasprzak. The entry of $6000 he says was made to cover bonuses paid to Veronica and William Kasprzak. It is to be borne in mind that the entry was made at the time for making income tax returns and would increase the expenses of the company. However, he caused the minute to be written up by Frank Rea showing a resolution to issue the stock and then added to the minute his receipt for Stanley Kasprzak's $3000 which Rubinstein testifies was never paid to him. (C., p. 392, 393.)

It is submitted that the documentary evidence furnished by the minutes and by the books of account, together with the acts and conduct of Rubinstein during the time of the purchase and forever after up to August, 1922, show that he never believed that he had a valid claim to the forty shares and in all his actions with the company up to August 1922, acted toward Stanley Kasprzak upon the

basis of equal ownership of stock in the company; each therever after drawing equally.

Subsequent Events

By July, 1922, Veronica Kasprzak had acquired a knowledge of the business affairs of the company and as she has testified had become suspicious of the fairness and good faith of Rubinstein in his dealings with the company. She found trouble with the petty cash as did the directors who had tried to obviate it in the early history of the company by requiring the president to provide a book for the recording of the petty cash disbursements which were made by him. She found that the automobiles which had been purchased with the company's funds had been put in Rubinstein's name and when her father returned from Europe she disclosed her suspicions and her information to him and convinced Stanley Kasprzak that it would be well if Rubinstein's power in the company was ended. (c., p. 250 l. 3) Thereupon Stanley Kasprzak and his daughter **did a thing which no sane person would have done if they supposed for a moment that Rubinstein owned the forty shares of stock in addition to his other holdings.** In August, 1922, outside of the forty shares, the Kasprzak family (that is Stanley and William) owned sixty shares, Rubinstein owned fifty-five shares and Andrew Bieszczad was on the outside and his ten shares would give the majority to either side. Consequently, not knowing with whom Bieszczad would side in case of a quarrel with Rubinstein, Veronica Kasprzak with her father's consent and assistance bought Bieszczad's shares

and paid the large price of $4500 or $450 per share for them. (c., p. 250 l. 3-5) It is submitted that this action of theirs speaks louder that words as to their information, belief or knowledge of any claim of ownership, much less right of ownership, of Alexander Rubinstein to the forty shares in question and is convincing that they had no idea of any such right or claim.

Accordingly, the majority of the stock having been acquired, the meeting of Augnst 15th was called and the quarrel ensued which appears in part in the minutes and which has been set forth in the testimony in the cause (c., p. 339; p. 340). Rubinstein says that he spoke of his forty shares at this meeting but that statement is denied and in reading the testimony of the Kasprzaks and Frank Rea as to what occurred at the office on August 17th or 18th, 1922, it seems evident that the first disclosure made by Rubinstein as to his claim to own the forty shares of stock was then made. There is some evidence as to what subsequently occurred at the office with the Kasprzak's, Rubinstein and Mr. Bluestein, but it would be the height of absurdity to suppose that Veronica Kasprzak would have in any way admitted that Rubinstein was the owner of the forty shares then in controversy and which would have given him that control of the company which the Kasprzak's claimed to have themselves.

POINT II

ASSUMING THAT ALEXANDER RUBINSTEIN BORROWED THE $7200 FROM THE CORPORATION AND BOUGHT THE FORTY SHARES IN QUESTION, IN THE MANNER HE ALLEGES, HE BECAME A TRUSTEE FOR THE CORPORATION, OF BOTH THE MONEY AND THE STOCK, AND IS NOT ENTITLED TO HAVE THE SHARES TRANSFERRED TO HIMSELF.

It is a well recognized prinicple in the law of corporations that an officer or director of the company has no right to borrow its money.

Section 48 of The General Corporation Act expressly declares that "no loan of money shall be made to a stockholder or officer thereof."

The officers and directors of a corporation, being trustees of the assets of the company for its benefit and the benefit of its stockholders and creditors, would have no right, in the absence of authority from a statute or the articles of incorporation, to loan the assets of the corporation either to themselves or to anyone else, "the directors of a corporation occupy a fiduciary relation toward the shareholders and are treated by courts of equity as trustees for them." 10 Cyc., 787, and cases cited.

"And where a director, by means of his power as such, secures to himself any advantage over other shareholders or officers equity will treat the transaction as void or charge him as trustee for the benefit of the injured parties." 10 Cyc. 788. "The president's obligations as a fiduciary rest upon the

same footing as those of the directors", 10 Cyc., 919. "He will be compelled to account to the corporation for any personal profit made in dealing with the corporate porperty", 10 Cyc., 919.

The act of Rubinstein in taking the money out of the treasury of the company, in the manner he says he did, was wrongful. He took the money from the company intending, as he says, to convert it to his own use. By means of his joint power with Stanley Kasprzak, the treasurer, over the funds of the company, and without any pretense of authority from the board of directors, he caused those funds to be applied for his own personal benefit and advantage. Under such circumstances, aside from the point now being discussed, when he comes into a court of equity and asks its aid in the execution of his plan, he doesn't come with clean hands, and for that reason alone would be refused the aid of this court.

His relations to the money he borrowed are stated as follows by Mr. Pomeroy, 3 Pomeroy's Equity Jurisprudence, Sec. 1047, (3 ed.), "By the well settled doctrines of equity, a constructive trust arises whenever one party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it; as, for example, when money has been paid by accident, mistake of fact or fraud or has been acquired through a breach of trust, or violation of fiduciary duty, and the like."

Another form of the trust is said by Mr. Pomeroy to arise as follows: **3 Pom., Sec. 1049,** "Another im-

portant form of the trust arises from the acts of persons already possessing some fiduciary character or standing in some fiduciary relation. Whenever a trustee or other person in a fiduciary capacity, acting apparently within the scope of his powers, that is, having authority to do what he does, purchases property with trust funds and takes the title thereto in his own name without any declaration of trust, the trust arises with respect to such property in favor of the cestuique trust or their beneficiaries. Equity regards such a purchase as made in trust for the person beneficially interested, independently of any imputation of fraud and without requiring any proof of an intention to violate the existing fiduciary obligation * * * This doctrine is of wide application; it extends to trustees, executors and administators, directors of corporations", &c.

The principles above set forth have been applied in this State in many cases.

An early applicaiton of the doctrine was made by Chancellor Greene in **Stratton v. Dialogue, 16 N. J. E., 70.** The conclusion of the Chancellor is stated in the syllabus as follows:

> "Where real estate is in fact paid for with the funds of the company there is clearly a resulting trust in favor of the company, although the deed therefor is made absolute to a third party and purports upon its face to be for his own use and benefit. A party so taking the title becomes a trustee for the creditors and stockholders and the trust will be enforced for their benefit at the instance of the receiver."

In Hebberd v. Southwestern Land & Cattle Co., 55 N. J. E., 18, it appeared that the president of the company had borrowed $10,000 on the note of the company endorsed by himself. With this money he bought 897 head of cattle and subsequently attempted to sell the cattle to the bank by a bill of sale, which was in effect a chattel mortgage. The claim of the bank was held to be good and the Court said: (page 29):

> "But if the note was good in the hands of the bank against the cattle company, it clearly was unwarrantably made by Damon in abuse of his relation to that company. He had no right to the note and no right to the proceeds of its discount, and as he used those proceeds in the purchase of the Toms cattle, I perceive no reason why I should not adjudge that a trust was impressed on the cattle in behalf of the Southwestern Land & Cattle Company."

It is submitted that the foregoing authorities are sufficient to sustain the proposition that when Rubinstein borrowed or obtained the use of the moneys of the company through the breach of his duties as president of the company and in defiance of the statute he held such moneys and the proceeds thereof as a trustee ex maleficio. The trust attached not only to the money but to the stock, as well.

As is said (3 Pom., Sec. 1052) "The doctrine may be stated in its most general form, that whenever a trustee or person clothed with any fiduciary character takes advantage of the relation, and by reason

of it, acquires the title or use of the trust money or makes a profit or advantage to himself out of a trust and confidence, then a constructive trust has impressed upon such property, profits or proceeds in his hands in favor of the beneficiary."

It is said in **Fidelity Trust Co. v. Federal Trust Co., 87 N. J. E., 550-552,** quoting Chancellor Magie in **Ellicott v. Kuhl, 60 N. J. E., 333,**

> "It is now a well settled doctrine that the cestuique trust who can trace the trust funds into a particular property may assert a right to that property and its proceeds, if sold, if the proceeds remain traceable and are found in the hands of those who can assert no better right thereto." **First National Bank of Freehold v. Thompson, 61 N. J. Eq., 188; Bohle v. Hasselbrock, 64 N. J. Eq. 334; James v. Aller, 66 N. J. Eq. 69.**

As appears above, as well as in the following statement of Mr. Pomeroy, (3 Pom. Sec. 1058) "the beneficiary is entitled not only to the portion of the trust fund which has been used by the constructive trustee but, also, to the proceeds of such fund in whatever form it may be together with all the profit and advantage that may be derived from the transaction. He says: "The beneficiary, therefore, being the true owner, may always, by means of an equitable suit, compel the trustee to convey or assign the corpus of the trust property and to account for and pay over the rents, profits, issues and income which he has actually received, or, in general, which he might with the exercise of reasonable care and diligence have received."

As appears above, Rubinstein was not only trustee for the corporation, in respect of the present transaction, but he was also trustee for all its stockholders.

The fact that Rubinstein voluntarily paid back to the corporation the amount of its funds which had been used in the purchase of the stock would not avail him as a defence to a claim of the company or any of its stockholders that he was bound to turn over to the company the forty shares of stock in question.

Assuming that if the corporation and its stockholders had had notice that he had borrowed the money, had bought the stock with it and had paid back the loan and that the corporation, by its silence and failure to demand the benefits of the transaction, had thereby acquiesced with Rubinstein in the claim he made, and therefore, cannot now set up an equitable title to the stock, the facts which would entitle Rubinstein to assume that position do not appear to exist. Manifestly the president and treasurer of the company had no authority, ex officio, to authorize the use of the funds. There was no meeting of the board of directors which authorized them, and if the meeting of August 26th, 1918, be held to be a ratification, the action taken at that meeting could not be construed to amount to anything more than a ratification of the purchase of the shares for the company itself. Rubinstein's proposal that the shares be divided between him and Stanley Kasprzak was never carried out, even though it be assumed that Rubinstein, Kasprzak and Bieszczad,

who were the only persons present at that meeting, had authority to make such an arrangement. The fact that the money had been paid back was never reported to the directors of the company at any meeting.

But, assuming again, that the corporation had knowledge of the whole transaction and of the repayment by Rubinstein and had acquiesced therein, yet that acquiescence would be insufficient to give Rubinstein the right to a transfer. **He was not only a trustee for the corporation but for its stockholders as well.** William Kasprzak, one of the defendants, was and always had been a stockholder in the corporation and there is not a scrap of evidence in the case which shows that William Kasprzak ever knew, until 1922, that the funds of the company had been used in the purchase of the forty shares of stock, or that Rubinstein had ever claimed to have paid into the company the amount of the purchase price. His right to protest against the transaction, from beginning to end, was and is as great as that of any other stockholder of the company. Whatever may be argued in favor of the complainant based upon notice to or knowledge by the stockholders, cannot be applied to William Kasprzak.

The learned Vice Chancellor refused to take the view that the complainant held the forty shares as a constructive trustee, for the followiing reasons: (c., p. 30).

1. That the prohibition against making a loan from the company by a stockholder or officer of a

corporation, contained in sec. 48 of the corporation act, is to be limited by the context, so that the only effect of making such a loan is to render the borrower and the officers asenting liable to the creditors to the extent of the loan and interest.

It is respectfully submitted that this loses sight of the fact that without regard to the statute, the officers hold the funds of the company in trust for the corporation and its stockholders. Therefore, any use of such funds by an officer for his own benefit renders him a constructive trustee of such moneys and their proceeds for the company and its stockholders. He either has a right to use the funds entrusted to his care for his own private uses; or, else, he has no such right. If he has no such right, but nevertheless, appropriates such funds to his own use, with or without intent to defraud, he is thereby constituted a constructive trustee of the appropriated funds with all the incidents and liabilities of such a trust.

The view that an officer of a corporation has a right to appropriate its funds to his own private purposes, with or without intent to defraud, and thereupon render himself no more than a simple debtor of the company would result most disastrously.

2. The learned Vice Chancellor disregarded any rights in the corporate entity as against any such trustee and said, " 'the company' in this case is Stanley Kasprzak, William Kasprzak and Veronica Kasprzak and they, and not the artificial person, the corporation, will benefit by the position which they assume." Under the rule, which we are not now disputing, that after an unauthorized act of the

agents of a corporation has been ratified by the unanimous consent of the stockholders, it will be binding in equity to the same extent as if it had been fully authorized by the corporation, the statement is undoubtedly correct. But we differ with the conclusion that there has been an unanimous consent of the stockholders either to the loan or to the acquisition of the forty shares by Rubinstein. We have already referred to the circumstances under which the consent or ratification of Stanley Kasprzak and Veronica Kasprzak may be inferred. They are involved in the testimony concerning the transaction in which there is so much dispute. Of course, Veronica never consented. She was not in a position to consent. She was neither officer nor stockholder until four years after the loan and purchase were made. All she could be charged with is notice of the alleged ratification by Bieszczad. But it isn't pretended that she had any knowledge of it. But, be that as it may, there is no evidence that William Kasprzak, the illiterate fireman of the concern, unable to read, write or speak English, had notice or knowledge of the transaction, or that he ever consented to it, acquiesced in it or ratified it. The learned Vice Chancellor says that he "probably knew of it and did not disavow it until four years later." The evidence is clear that he knew nothing of it until "four years later." Again it is said in the opinion.

> "William Kasprzak was in the employ of the company and was at its place of business daily. While he was not at the meeting of August 26, 1918, at which the sale of the stock was reported, he was a director of the

company and knew that Walzak, Lingelbach, Oltarzewski and Harsche had been endeavoring to sell their stock and that having been directors, they ceased to hold such office and he, himself, had been negotiating with Rubinstein for the sale of his own stock. He attended the annual meeting October 28, 1918, at which he was elected director and secretary and as such secretary the minute book came into his possession. It does not seem probable that as an employee, stockholder, director and secretary and as a brother of Stanley Kasprzak, he was not familiar with the proceedings of the directors and the minute record thereof and did not know of the loan to Rubinstein, its purpose and its repayment. Under these circumstances, I do not consider it equitable for Stanley Kasprzak, William Kasprzak and Veronica Kasprzak to insist that Rubinstein holds this stock as trustee for the company."

It is true he was in the employ of the company and at its place of business daily; but it was as a fireman. It is true that he knew Walzak and the other stockholders holding the forty shares had been endeavoring to sell their stock and, having been directors they ceased to hold such office, but ferences pro and con might be drawn from such a situation and the burden was on Rubinstein, the trustee, to prove directly that William Kasprzak knew all about the matter. It is true that he had been trying to sell his stock to Rubinstein but his efforts were unsuccessful so that he might well infer that Walzak's efforts had been so, also.

It is true that at the meeting of October 28, 1918, he was elected a director and secretary and that as such secretary the minute book came into his possession; but, as has been shown, Rubinstein, who signed the minutes of that meeting, at once told him that he, Rubinstein, was the lawful custodian of the minute book and it was at once transferred to him.

It is respectfully submitted that it is not at all probable that, though he was an employee, that is the fireman,stockholder, director and secretary,and the brother of Stanley Kasprzak, that he was familiar with the proceedings of the directors and the minute record thereof and knew of the loan to Rubinstein, its purpose and its repayment. As appears, and it is not contradicted, he had the minute book in his possession but cursorily, that he never wrote anything in the minute book and that he could not read anything that was therein recorded. Besides, if he had read the minutes pertaining to the purchase of the forty shares of stock he would have found in the minute of July 29, 1918, that is was Rubinstein and Stanley Kasprzak who had made the agreement to buy the stock and in the minute of August 26, 1918, he would find that the stock had been paid for by the company's money and that no agreement had been reached as to how that stock was to be disposed of.

But, whatever may be the correct inference from the testimony above referred to as to William Kasprzak's knowledge, consent or acquiescence, it is respectfully submitted that if at any stage of the proceeding Rubinstein was chargeable as a trustee,

he could not discharge himself upon inferences of the character above set forth. If a trustee claim a discharge the burden is upon him to show by clear evidence not only the existence of the discharge but, as well, the existence of the facts upon which it rests.

> "In order that the release, confirmation, waiver or acquiesance may have any effect, the cestuique trust must have full knowledge of all the facts and circumstances of the case; he must also know the law and what his rights are and how they would be dealt with by the court." **2 Perry on Trusts (5th ed.) p. 851, cases cited.**

It is respectfully submitted that the decree below should be reversed with directions to enter a decree dismissing the bill of complaint.

William I. Lewis,
Solicitor of Defendants-Appellant.

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