NEW JERSEY

Court of Errors and Appeals

BETWEEN
ALEXANDER MURRAY ET ALS.,
Complainants,
Appellants and Respondents,
and
BEATTIE MANUFACTURING COMPANY ET ALS.,
Defendants,
Appellants and Respondents.

On Cross Appeals from Chancery.

Brief for Beattie Manufacturing Company and William H. Beattie.

PREFATORY STATEMENT.

On September 20, 1905, Alexander Murray and others exhibited their (amended) bill of complaint in the Court of Chancery against the Beatt ie Manufacturing Company, Robert Beattie and William H. Beattie—the individual defendants being respectively the president and the secretary and treasurer of the corporation. The object of the bill was to compel the declaration of a dividend to stockholders and the restoration of alleged excessive salaries paid to officers.

The cause was referred to Vice-Chancellor Stevenson, and heard by him in 1906. On June 27, 1910, the Vice-Chancellor reached the decision evi-

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denced by his "Memorandum of Conclusions" (case, p. 549 *et seq.*) He said at p. 566:

> "(5). The case under consideration is one where this Court, in my judgment, should intervene to compel the distribution of a large amount of the accumulation of profits which for a long period of time have existed as cash on deposit with bankers or in a trust company."

And at p. 570:

> "The amount of the dividend to be declared will, of course, depend upon present conditions. A substantial amount of cash, which I find is unreasonably withheld, can be distributed, not necessarily on the date of the decree in this cause, without affecting injuriously the interests of the corporation."

As to the claim that the salaries of the officers had been excessive, he said (p. 570):

> "6. The charge that the salaries of the managers (at one time, I think a brief period, $10,000 a year each, and recently $8,500 each) are excessive is not sustained, it seems to me, by a review of the facts which have already been considered in disposing of the more important issue in this cause. The question is whether the management of this corporation, as a whole, by the defendants, Robert and William H. Beattie, is worth the money which they have paid to themselves for such service. It is not denied that they have operated a large

> manufacturing business with very great success, and that they have marketed over half a million dollars worth of water rights, in the accomplishment of which business no doubt skill and energy and persistent negotiation must have been necessary. These men are not to be paid as if they were clerks. It appears that, practically, their whole time has been devoted to the business of the corporation, which has grown under their hands."

At p. 572 the concluding clause of the opinion reads:

> "The salaries of the Messrs. Beattie for the present will be fixed at the sum which they have actually been receiving during the last few years, viz., $8,500 each."

To enable the Vice Chancellor to ascertain "present conditions," further testimony was taken on both sides in 1911, and at its close an oral opinion was delivered (p. 364). Through inadvertence this oral opinion precedes, in the printed case, the "Memorandum of Conclusions" based on the original testimony. In this oral opinion the Vice-Chancellor said (p. 365):

> "Now, it is largely a business question how much money this corporation can safely now distribute, and, as I think I pointed out several times, the Court has to act in view of the conditions as they exist when the dividend is to be declared.
>
> "It was decided—whether correctly or not we do not now inquire, but it was de-

> cided by this Court that the situation as of November 30, 1905, was such that it was the duty of the directors to declare a very substantial dividend, distributing a very large amount of money to the stockholders. That was the decision of the Court. That decision binds this Court now. If there was any error in that decision it is for another Court to make the correction.
>
> "Now, has the situation changed very greatly since November 30, 1905? That is the question. And we have the means here of instituting a tolerably fair comparison of the ability of the corporation to pay dividends on November 30, 1905, and its ability to do that same thing on November 30, 1910." (The date November 30, is that of the close of the fiscal year of the corporation.)
>
> The oral opinion concludes (p. 368):
>
> "With these remarks explanatory of the considerations which will be controlling, I shall undertake to name the amount of the dividend, and, as I said, counsel will have it by Monday next."

Information as to the amount was furnished by letter to counsel and is embodied in the final decree made March 28, 1911 (p. 577), namely, a dividend of $60,000, in addition to the dividends theretofore declared—the fact being that dividends had been declared at the close of each fiscal year—was ordered to be paid in three equal instalments of $20,000 each, the first on April 1, 1911, the second on July 1, 1911, and the third on October 1, 1911, "with leave to complainants to apply to this Court

from time to time in the future to compel said defendant corporation to declare such dividends from time to time as, according to law, ought from time to time be declared" (p. 578, 579).

The decree dismisses the bill of complaint in so far as it prays relief with respect to the salaries of the individual defendants, of whom only William H. Beattie survives.

Pending the signing of the decree, application had been made for the allowance of counsel fees, and on that subject the Vice-Chancellor filed a memorandum (p. 573), the result of which appears in the decree. $5,000 was allowed complainants counsel, together with the costs of the suit, and $100 was allowed the counsel of the individual defendants, with so much of their costs as relate exclusively to the litigation of the issue with regard to salaries.

From this decree the Beattie Manufacturing Company and William H. Beattie have appealed, challenging, first, the ordering of any dividend at all; second, the amount of the dividend ordered as excessive; third, the allowance of costs and counsel fee to the complainants; and, fourth, the amount of the counsel fee awarded.

The surviving complainants (one complainant having died pending the suit) filed a cross appeal in which they challenged the limitation of the dividend ordered to $60,000, and the dismissal of the bill of complaint with respect to the salaries of the individual defendants.

ARGUMENT.

1.

As to Dividends.

The Vice-Chancellor, in his memorandum of conclusions reached on the decision of the principal cause, adopted much of the argument presented to him in behalf of the defendants—although I submit that in his final deliverance and in his decree, he departed from the principles declared as those proper for guidance. I will, however, re-present the argument made before him, as of course this Court must consider the case in all its aspects.

I.

The complainants have no statutory right to a dividend.

Claim of such a right was made under section 52 of the Corporation Act of 1875, which was the statute in force when the Beattie Manufacturing Company was organized in 1882. That section provides that all manufacturing corporations shall, in each year, after reserving for working capital a sum to be specified by the directors, not exceeding the amount of half of the capital stock, declare a dividend on the whole of their accumulated profits exceeding the amount so reserved as working capital.

(a.) *Section 52 of the Corporation Act of 1875 does not apply to the Beattie Manufacturing Company.*

That Company was not merely a manufacturing company. It was a large owner of land and of water power, not used for its manufactures, and, among the purposes stated in its certificate of incorporation (p. 369), is the purchase of real estate at Little Falls, and water power, and the improvement, renting and selling of said real estate. It is

a land company as well as a manufacturing company, and its surplus is made up, in great part, of the value of its land and water power, or the proceeds thereof.

The provisions requiring dividends by manufacturing companies was passed in 1866 (Nix. Dig., 4th Ed., p. 173, Sec. 32). Originally, manufacturing corporations were the only ones that could be incorporated under a general law, except that mining and inland navigation were included in the same Act (Nix. Dig., 4th Ed., p. 534). Such companies were a well known class and did not include land companies, also well known.

In the revision of 1875 (Rev., p. 175), this provision as to dividends by manufacturing corporations was embodied in the Corporation Act (Sec. 52); but, of course, by such revision its meaning was not changed. It was amended in 1891 so as to provide that real property and merchandise employed in the business of a manufacturing corporation should not be regarded as profits for the purpose of a dividend, unless expressly so ordered (Gen. Stat., 955, P. L. 227).

By the revision of 1896 of the Corporation Act (P. L., 277), a change as to the declaring of dividends was made and became applicable to all corporations created under the act. The provision was as follows:

> "47. The directors of every corporation created under this act shall, in January in each year, unless some specific day or days for that purpose be fixed in its charter or by-laws, and in that case then on the days so fixed, after reserving over and above its capital stock paid in, as a working capital for said corporation,

such sum, if any, as shall have been fixed by the stockholders, declare a dividend among its stockholders of the whole of its accummulated profits exceeding the amount so reserved, and pay the same to such stockholders on demand; provided, that the corporation may in its certificate of incorporation or in its by-laws give the directors power to fix the amount to be reserved as a working capital."

By amendment in 1901 (P. L., 245), and still extant, this section reads as follows:

"47. Unless otherwise provided in the original or amended certificate of incorporation, or in a by-law adopted by a vote of at least a majority of the stockholders, the directors of every corporation created under this act shall, in January of each year, after reserving over and above its capital stock paid in, as a working capital for said corporation, such sum, if any, as shall have been fixed by the stockholders, declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount so reserved, and pay the same to such stockholders on demand."

The result is this: The Beattie Manufacturing Company is not a manufacturing company under the statute in force in 1882 when it was formed, and its surplus is not one arising from the business of manufacturing; but chiefly from appreciation of its real estate and water rights. Down to the year

1896 the amount of dividends was in the discretion of the directors, there being no direction on the subject in the certificate or in the by-laws.

In *Park v. Grant Locomotive Works, 13 Stew., 114, 117*, Van Fleet V. C., said :

> "In cases where the power of the directors is without limitation, they are at liberty to exercise a very liberal discretion as to what disposition shall be made of the gains of the business ; their power over them is absolute so long as they act in the exercise of an honest judgment they may reserve of them whatever their judgment approves as necessary or judicious for repairs or improvements, and to meet contingencies, both present and prospective."

See also *N. Y. L. E. & W. R. Co.* v. *Nichols, 119 U. S., 296.*

In *Laurel Springs Land Co.* v. *Fougeray, 5 Dick., 756, 759*, Garrison, J., speaking for this Court, said

> "When the by-laws are silent upon the subject, the directors are invested with the discretionary power with regard to the time and manner of making distribution, and as long as they act in the exercise of an honest judgment, their authority is absolute."

Since 1896, assuming as I do, that the directors are controlled by the amendment of 1901 (P. L., 245), the amount to be distributed is determined by vote of the stockholders—which was had each year in the case in hand.

In *Lillard* v. *Oil, Paint & Drug Co., 4 Robb., 197*,

Emery, V. C., held that the power of stockholders to fix the reserve was absolute.

The statute prescribes no form in which this shall be done. Where the profits are found to be a certain sum, for example, $50,000, then a resolution that a dividend of $30,000 shall be paid and the residue shall be working capital, is the same as saying that $20,000 shall be added to surplus.

(b). *Section 47 of the Act of 1896 (as amended in 1901) applies to the Beattie Manufacturing Company.*

It was argued that section 47 applies only to corporations created under the Act of 1896; but this overlooks section 2 of the Act of 1896, which extends its provisions to all corporations so far as appropriate.

Of course, if my argument that the Beattie Manufacturing Company is not a *manufacturing company* within the Act of 1875 is sound, the effect of section 47 is merely to transfer power from the directors to the stockholders; and even assuming that it is a manufacturing company, within section 52 of the Act of 1875, I do not admit that the provision for dividends is a part of the contract between stockholders which cannot be changed by legislation. The case of *Pronick v. Spirits Distributing Co., 13 Dick., 97, 99,* (cited against this contention), was one where the attempt was made by common stockholders to reduce the dividends of preferred stockholders by amending the certificate, which provided for the preference. That certificate contained no provision for its own amendment, and it was held that the general power of amendment of certificates conferred by statute did not permit the stockholders to alter the contract made by the stock certificate. The amendment involved in the present case is not of any contract made by stockholders,

but of the statute under which the corporation was formed.

Furthermore, the declaring or reserving of dividends does not affect any contract of stockholders between themselves, nor take away any property from any stockholder. The fact that greater or less dividends may affect the legatees of income under the will of a stockholder cannot change the powers and discretion of the directors and stockholders.

The Courts deal with the question of distribution of dividends by determining the relative rights in the dividends and in the stock, of the legatees, not by controlling the action of the directors. It will not do to say that the powers of directors and stockholders over the company and over its dividends are changed because one stockholder has seen fit to create a trust in some of its shares.

(c.) *The stockholders have acquiesced in the Corporation Act as revised in 1896 and amended in 1901.*

The corporation had for a number of years before the filing of the bill in this case exercised authority in the matter of dividends, under the Act of 1896. The stockholders, without dissent, in December, 1900, adopted a by-law that the directors might determine, from time to time, the amount to be reserved by the corporation as a working capital. In addition to this, in December, 1900, and each year since the directors have reserved as working capital the accumulated profits in excess of the dividends. The minute book, offered in evidence as Exhibit C 15 (p. 148), including the by-laws, was too voluminous to print, but will be in Court, where it may be consulted, and, if desired, it will be furnished in print. Most of the provisions involved have been read into the testimony.

Action under an amendment to a charter is an

acceptance of it, and stockholders are estopped to deny acceptance unless they dissent promptly. *Gifford v. N. J. R. Co., 2 Stock., 171; Zabriskie v. Hackensack R. Co., 3 C. E. Gr., 178; Chubb v. Upton, 95 U. S., 665; Rogers v. Nashville, etc., R. Co., 91 Fed. Rep., 299.*

The effect of delay is to ratify corporate action, such as issuing preferential shares without authority.

> *Kent v. Quicksilver Mining Co., 78 N. Y., 159; Barr v. Banigan, 39 Fed. Rep., 13, 17;* affirmed, *134 U. S., 291;* criticising *Reed v. Boston Machine Co., 141 Mass., 454.*

Every stockholder knows that the Corporation Act is liable to be changed by amendment; and if he desires to protect himself by contract, he must do so by a provision incorporated in the certificate of incorporation, or in the by-laws, or in his certificate of stock.

(4). *The stockholders have ratified the accumulation by by-law and by acquiescence.*

In 1882 the following By-Law was adopted:

"XII.

"DIVIDENDS.

> "Dividends shall be declared and paid semi-annually in the months of January and July, of such portion of profits as the directors shall deem advisable."

On this the directors acted without objection, until the year 1900, when, in conformity with the revision of 1896, a new By-Law was added as follows:

"XVII.

"The directors may determine, from time to time the amount to be reserved by the corporation as working capital."

This By-Law was within the power conferred by section 47 of the Corporation Act, as well as by the general law applicable to corporations.

The complainant Murray was one of those voting for this amendment, which was unanimously adopted. Under these circumstances, the stockholders are estopped from questioning the action of the directors in accumulating the surplus.

Raynolds v. Diamond Mills Paper Co., 3 Robb., 299.

II.

The surplus of the Beattie Manufacturing Company is not to be regarded as accumulated profits subject to dividend under the statute.

The term "accumulated profits" was used in the Act of 1866, incorporated in the Corporation Act of 1875 (section 52), and is also used in section 47 of the present law.

The meaning of this term is discussed elaborately by Vice-Chancellor Stevenson in the case of *Stevens v. United States Steel Corp., 2 Robb., 373, 381.* He calls attention to the fact that dividends are payable on demand, and says that he knows of no rule requiring directors to sell property at a loss, or to borrow money to pay dividends because an appraisement exhibits a surplus. He says that the fact that profits are payable in cash on demand indicates a situation where profits exist practically as cash on hand, so as to be capable of distribution.

In *Park v. Grant Locomotive Works, 13 Stew., 114*, Van Fleet, V. C., held that a contract obligation with stockholders to pay all surplus in dividends did not require that they should be paid out of choses in action, but only out of cash profits.

In *Trimble v. Sugar Refining Co., 16 Dick., 340, 348* (Pitney, V. C.), it was held that the mere fact of a surplus was not enough to warrant a single stockholder to come in and compel dividends.

III.

If the surplus were distributed, the life beneficiaries of stock would not be entitled to receive it.

Where the surplus is derived from an increase in the value of the land or other capital of the company, it does not belong to the tenant, but is held for the remainderman.

The argument, therefore, that by withholding dividends the directors are decreasing dividends of the life tenants fails so far as surplus from the sale of lands and water power is concerned. See *Herd v. Eldrige, 109 Mass., 258; Gifford v. Thompson, 115 Mass., 478; Spooner v. Phillips, 62 Conn., 62; 24 Atl. Rep., 524; Hite v. Hite, 93 Ky., 257; 2 Clark & Marsh. on Corp., p. 1620.*

IV.

There is no ground to question the good faith of the directors in the declaring of dividends.

A careful study of the statements D 1 and D 2 offered at the original hearing (case, pp. 450-531) will show that there have been critical periods in the business, and that from a time considerably anterior to the filing of the bill of complaint a much larger capital has been necessary than formerly to enable the company to maintain payment of dividends at the

rate it has been declaring them. This is common knowledge of all great industries in the last twenty years. Raynolds v. Diamond Mills Paper Co., 3 Robb., 299. An examination of any of the bulletins issued from time to time will disclose that all prosperous companies maintain large surpluses.

In *Burden v. Burden, 159 N. Y., 287*, it appeared that the corporation involved had a cash surplus of half a million dollars to its credit, and that its total surplus exceeded one million dollars on a capital of two million dollars. The Court said (p. 308) that there was no doubt that the plaintiff had been ignored in the management, and that his troubles were inherent in the situation; that the directors were within their powers and the plaintiff must submit; and that no intimation of bad faith could be drawn from the accumulation of the surplus in cash.

The Beattie Manufacturing Company began with dividends of 3, 4 and 5 per cent. The year 1886 first showed substantial profits, and such profits continued down to the year 1892, and dividends from 10 to 12½ per cent. were paid. These were very prosperous years for business generally. It is to be noted that during these years, less than one-half of the business of the company was the sale of carpets. The profits came from the manufacture of plush and felt, which required little capital and was very profitable.

In 1893 and 1894 there was a loss of this business, and, in some subsequent years, the earnings did not suffice to pay dividends. The sales were nearly all of carpets, requiring a much heavier stock of goods and a larger amount of cash. In most years since 1892 the income from manufacturing has been insufficient to pay a 10 per cent. dividend.

Since the year 1900 interest has been received at 4 per cent. on a mortgage for $315,000 paid for sale of water power, and this income has enabled the company to maintain its 10 per cent. dividends without impairing its cash working capital. Meantime, in order to meet the danger indicated by the falling off of profits from the sale of carpets, the company found it necessary to make an important change in the business by manufacturing rugs as well as carpets, and this change was under way at the time of filing the bill of complaint, and involved a substantial increase in investment in manufacturing plant, and also an investment in cash working capital and merchandise. It is perfectly clear that but for the conservative policy of the directors in declaring dividends the company would have been driven out of business.

The machinery and business chargeable to rugs amounted at the time of the hearing of the cause to $81,912.53. The sales of carpets and rugs for the last three years before the filing of the bill were as follows:

1903			
	Carpets,	3 shoot,	$272,198.00
	"	2 "	150,511.00
	Rugs,		37,700.00
1904			
	Carpets,	3 shoot,	132.000.00
	"	2 "	83,000.00
	Rugs,		77,000.00
1905			
	Carpets,	3 shoot,	175,000.00
	"	2 "	73,000.00
	Rugs,		152,000.00

It will be seen that the rug business is growing, and it is estimated that it will be $250,000 for the

year 1906. It is also hoped that the carpet business will be enlarged; but both those trades take large amounts of capital and require a large stock of goods, manufactured and unmanufactured. In December, 1905, it was expected that the business for 1906 would amount to $600,000, which would be the largest in the history of the company; but to carry on that business all the available surplus is requisite. It is desirable to have a good business in both rugs and carpets, so that when one falls off the company can keep up work on the other. The falling off of the carpet business in the year 1904 was very marked and alarming. It threw a large amount of cash on the hands of the company, and the directors used it to buy new rug machinery. If the old carpet trade had kept up the cost of the rug machinery would have come out of the surplus. At this time (in the Fall of 1906), the needs of the company have reduced the cash surplus so that it is estimated that it will all be drawn out on March 1, 1907. The business of the company is about $50,000 per month. The custom of the trade is to carry customers' accounts for five months, so that there must be for that purpose a cash capital of $250,000.

The foregoing was substantially the argument presented to the Vice-Chancellor by the late Charles L. Corbin, who tried the cause; and it prevailed so far as relates to the statutory law applicable to the Beattie Manufacturing Company; but in his decision the learned Vice-Chancellor entirely overlooked the vital element that under that law the action of the stockholders in establishing a reserve for working capital is not subject to review by the Courts. He treated the case as one where the judgment of the directors was to be reviewed, and he based his decision upon the "*incapacity* of these

corporate managers" (Robert Beattie and William H. Beattie) "to act fairly where they have so large a selfish interest at stake" (p. 566)—the selfish interest being that in case of the death of Agnes Beattie and Josephine Gedney, life beneficiaries of the stock, without issue, Robert Beattie and William H. Beattie, or their children, will receive a substantial portion of the shares held in trust under the terms of the will creating the same (p. 565 bottom). He lost sight of the fact that income is no less income because it remains undivided and that on final adjustment between legal representatives of the life beneficiaries and the remaindermen, income, though remaining undivided, will go to the life beneficiaries.

In anticipation of the ascertainment of "present conditions," Mr. Corbin procured data afterwards put in evidence, and in his sick chamber prepared a supplemental brief on the whole case as thus presented, which I have thought proper to here reproduce, knowing as I do, that this Court will be glad to have the benefit of his mature judgment after his perusal of the Vice-Chancellor's memorandum.

Mr. Corbin wrote as follows: The sole question is what dividend ought to have been declared for the year ending November 30, 1905. The bill was filed about June, 1906; the dividends before 1905 were acted on by the company, and acquiesced in by all the stockholders, without objection; the dividends since 1905 cannot be raised, unless by supplemental bill.

The material evidence is that presented by a study of Exhibit D 1 (case, p. 45 '), showing amount of sales each year, and business assets and disbursements, at the end of the year, and the balance between such assets and disbursements properly called "working capital."

The company was formed in 1882, and after two or three years became highly prosperous, and has declared dividends of 10 per cent. or more ever since, except two years, when the dividend was 7 per cent. The best year of the company was 1887, when the profits were nearly 20 per cent., and a solid addition was made to the working capital after declaring a 10 per cent. dividend. This period of prosperity ended in 1893, since which period the directors have encountered a succession of difficulties and embarrassments which would certainly have destroyed the dividends, and probably have ruined the business, if it had not been for the foresight which had accumulated a working capital large enough to keep up uniform dividends. These embarrassments may be enumerated as follows:

First—Plush went out of use about 1893. This was by far the most profitable article of manufacture of the company. It required little capital for material, and yielded the large profits of such years as 1887.

Second—A contract for making felt into gun wads expired about 1893, and was not renewed. This also was very profitable, and required small capital for material. This threw the company back on its old staple of carpets, the sales of which were less than half of the previous total. These carpets are made of imported wool, bought in large lots, and tying up much capital; and competition in carpets was close, and profits small.

Third—The panic of 1893 struck the carpet trade hard. Many concerns were driven out of the business, and only their large surplus working capital enabled the Beattie Company to keep on. The profits for seven or eight years fell below 10 per cent. on $300,000 capital, and dividends were kept up at 10 per cent. only by drawing from surplus during most

of those years. By order of Robert Beattie, the President, both wages and salaries were greatly cut down, reducing his own salary from $10,000 to $8,500; though he afterwards raised wages, he kept down his own salary, the earnings of the company not having reached a satisfactory basis up to the time of the trial of this cause in 1906.

Fourth—Soon after the year 1900, when on the revival of business good profits might naturally have been expected, a new and serious difficulty was encountered—the use of carpets, which had been manufactured for a century,—began to fall off, their place being taken by rugs. Robert Beattie believed that the change was temporary, and delayed for two or three years to enter the rug business, but was constrained to begin making rugs in 1903. This was a new line of manufacture, requiring new and expensive machinery, and the displacement of the old carpet looms and machinery, which cannot be used to make rugs. It took time to work up a trade in rugs. In 1903, the total sales were $460,410.90, of which rugs were $37,700.75. In 1904, the total sales were $357,564.02, of which rugs were $53,832.59. In 1905, the total sales were $482,977.53, of which the sale of rugs was $96,410.66. This was encouraging, and the year showed an improved profit, but the directors did not think that the experiment had been carried far enough to justify an enlarged dividend. The increasing manufacture of rugs required an increasing investment in machinery, as well as larger purchases of imported wool. At this stage, a few stockholders became impatient, and filed a bill for larger dividends, although they had made no objection to the dividend when paid, and the stockholders proceeding under the statute had paid the surplus into working capital without objection. At the time when the last testimony

was taken in the Fall of 1906, the directors thought their sales for that year would rise to $600,000, but the business became dull in the Fall, and their expectations were disappointed, though the year showed a continued growth in the new line of rugs. This growth continued for 1907 and 1908, and, the business having become firmly established, a large profit was made in 1909. In that year, for the first time, the profits exceeded those of the year 1887, and a 20 per cent. dividend was declared, and it is hoped that a high rate can hereafter be maintained, without prejudice to the growth and prosperity of the company.

Fifth—One important occasion for large expenditure should be stated ; the introduction of a new line of manufacture has required a substantial investment of working capital in buildings and machinery, which further growth may require to be increased. In addition to this, a special and emergent investment is necessary, and is now being made in 1910 as follows :

About the year 1898, the company sold its valuable water power, including the lands in the bed and on the banks of the Passaic River to the East Jersey Water Company, reserving, however, the use of enough water to create 300 horse power until about 1912. The company now needs more than 300 horse power, and, in addition, must put in a steam plant adequate to replace the horse power. This work will require the use of a substantial part of the cash surplus for the year 1910.

In considering the duty to declare dividends, I may discuss, first, the duty of Robert Beattie, as a trustee for his sisters. He testified that in making dividends he was influenced by a desire to keep up a substantial regular dividend. This view of duty has been criticized by the Vice Chancellor,

but, looking to Mr. Beattie as trustee, he was clearly right. The trustee investing for a life annuity would not be justified in so managing the investment that in one year the cestui que trust would receive a large sum of income, and in the next year nothing at all. A safe uniform income conforms to testator's intent, and it is the duty of the trustee to seek to attain it. Secondly, the question is the duty of Mr. Beattie as a director. Here he should look to the permanent prosperity of the company, as well as to the current income. His duty as director cannot be changed because another stockholder has created a trust out of the dividends for the life of the donee of the trust. If such a doctrine should be applied in this case—that the directors must declare dividends more liberally because of a trust than they would have done if there were no trust, then the interest of the general stockholders will be subordinated to the caprice of the creator of the trust.

The notion that these dividends have been reduced because the directors were stockholders, and would get the benefit of the increased surplus, is without support in the proofs. Improper motives cannot be attributed without evidence, and here not only are proper motives evident, but the evidence warrants the belief that had dividends been declared to the full extent of earnings, the result would have been a severe loss of income to the complainants. Robert Beattie denies any interested motives. The amount of gain to him, if he had survived his sisters, would have been small compared with his total interest in the shares, besides he was a man of principle and liberality. The proof shows his voluntary surrender of $1,500 per year out of a reasonable salary in the dull years of the company; it also shows that he waived the large

commissions to which he was entitled as executor of his father's will, and also as trustee for his sisters. To attribute meanness of motive in declaring dividends to a man of the character of Robert Beattie, lately deceased, is a shock to every one of his business associates, to none more than to the counsel who have esteemed him during thirty-five years of continued legal service.

It should be observed that since the year about 1898, when the water power was sold to the East Jersey Water Co., an income of $12,400 per year has been received for interest on the mortgage given for the price, and this income is included in Exhibit D, with the earnings of the business. There were some years when, without this income, the business did not earn a 10 per cent. dividend.

The Vice-Chancellor refers in his opinion to the vacant lands of the company, and appears to suppose that the sale of building lots is an available source of revenue. There is no evidence of this, and it is unfounded in fact. The elder Beattie who died in 1882 bought large tracts of rough land on both sides of the river for a mile or more at Little Falls, in order to control completely the water power. Much of this has been sold to the East Jersey Water Co., and the residue has never been, and is not now of much value for building lots, though, of course, there is a possibility that the growth of Paterson may make it available at some future date.

The history of the Company since the testimony was taken in 1906, indicates that the business would probably not have been prejudiced by a dividend of 20% instead of 10% in 1905, but such dividends of 20% could not have been regularly maintained from that time to this, without leaving the company with a narrower margin of cash surplus

than was prudent. The success of the efforts of the directors to make their manufacture profitable by adopting the rug manufacture has been so great that a Chancellor, having no knowledge of the carpet business, should defer to their judgment. There is good ground to hope that they have now reached the period of sustained high dividends, and it is manifest that they could not have reached it, had they adopted the policy from the beginning of dividing up all earnings annually, and if it be said that they had a discretion, who is to say how much shall be added to the surplus, except the directors? Will the Court now undertake to direct this company how much they may add each year to working capital?

I have relied for my figures on Exhibit D 1 and I call attention to the fact that when it was offered, the counsel for complainant and his expert expressly admitted the substantial correctness of the statement, which undoubtedly accords with the books of the company (p. 168).

In using this statement, it ought not to be forgotten that the cash balances shown as on hand November 30, are much higher than the balances at other periods of the year, when the course of trade draws the cash into wool and manufactured goods for some months at a time before returns come in.

It should be noted that the learned Vice-Chancellor did not venture to attribute actual bad faith to Robert Beattie and William H. Beattie, and in that he was wise, for the case is barren of evidence of that purport. Indeed the evidence is all the other way. He based his opinion upon the inability of directors to act fairly when they have what he called a selfish interest. He said (pp. 565, 6):

"I think it is quite plain that the power of a

> Court of equity to intervene in a case like this and control a corporation in respect of the declaration of dividends, thus setting aside the discretionary power of the directors in the premises, may be safely based upon the *incapacity* of these corporate managers to act fairly where they have so large a selfish interest at stake."

This was a violent presumption, which no Court should indulge, and for which there is no precedent.

In February, 1911, additional testimony was taken before the Vice-Chancellor to show "present conditions." The original bill of complaint was filed in August, 1905. Before the hearing came on in October, 1906, a dividend of 10 per cent. for the fiscal year ending November 30, 1905, was declared and duly paid. Like dividends were declared for the years ending November 30, 1906 and 1907. In 1908 the dividend was made 12½ per cent. For the years ending November 30, 1909 and 1910, the dividends were 20 per cent. (see table, pp. 534, 5).

Statements were prepared and proved showing the financial condition of the corporation. They are Exhibits D 1 and D 2 of 1911 (pp. 533, *et seq.*). From these tables as well as from the oral testimony it will appear that the forecast of the managers of the corporation given in the testimony in 1906 was amply justified; and I submit that the Vice Chancellor was unwarranted in superseding by his decree the dividends by the directors, on the direction of the stockholders and the express authority o Section 47 of the Corporation Act; and ordering in March, 1911, a dividend to be forthwith declared of 20 per cent. on the capital stock in addition to the dividends that had been declared pending the suit.

To summarize:

A full justification of the propriety and wisdom of the management is found in the history of the company, as shown in the tabulated statement Exhibit D 2, coupled with common knowledge of business history since 1882, when the company was formed. This shows that during the first five years of growing business the dividends, which began at 4 per cent., were raised to ten in 1887, the most prosperous year in the history of the company, until 1909. Since then the dividends have been 10 per cent., or more, except for two years at 7. Down to 1893 the profits on sales of goods exceeded 12 per cent., and sales were large. But 1893 was a panic year, and, before there was a recovery, it was well known that many manufacturers were forced out of business altogether, while others were driven into large combinations. The Beattie Company had ten poor years, from 1893 to 1902 inclusive. The sales were small for seven years, and the profits even on the reduced sales were less than half of the old percentage. After 1900 the sales came back to the old amount, but not the profits. In the ten years ending in 1902, the dividends exceeded the business savings, but, beginning with 1900, there came in an additional income of $12,600 per year, interest on a mortgage given by the East Jersey Water Company on its purchase of the water power of the Beattie Company at Little Falls. This added to the business profits made the annual income after 1900 good for 10 per cent. dividends.

In 1903 large sales appear, with over 10 per cent. profit, being the first satisfactory year since the panic of 1893; but the slump at the close of 1903, showed its effect on the trade of the two following years. Other conditions of trade also became manifest by this time. Materials for carpets cost much

more, labor cost more, and the percentage of profit was much reduced. Only by greatly increasing the amount of manufacture and sales, could a satisfactory profit be realized; and this required the use of more working capital. But, nevertheless, the trade languished, because carpets were going out, while rugs were coming in. The Beattie Company had not the machinery for rugs, and hung onto carpets alone probably longer than was wise. They began to put in rug-weaving looms about 1903, and rapidly built up a rug trade. By 1905 it had become a substantial business, and the total sales of carpets and rugs ran up to $482,977 (See D 1 of 1911, p. 536). The profits, however, were still very unsatisfactory, only $22,134, being less than 5 per cent. It was before the close of the next year that this case was tried and submitted for decision, the complainants contending that the large cash surplus at the close of the year 1905—over $200,000—ought to be divided, and the defendant urging that this was only a temporary accumulation, the cash being always high at the close of the year; that the business was growing so that it would need more working capital, and that the change to the making of rugs called for large expenditures for new machinery and buildings.

The history of the business since was shown on settling the decree. It appears that the rug business and the total business have grown, that the cash balance at the close of the year, December 1, 1906, was reduced from the previous year to $128,000, but the net profits were better; that in 1907, 1908 and 1909 both sales and profits grew rapidly, the year 1909 being the first year to surpass the high mark of 1887. The dividends in 1908 were raised to 12½ per cent., and in 1909 to 20 per cent.

With this record, I may say, with confidence, that the policy of the increase of working capital has been vindicated as sound business management. In the early years of the company, the best business was the making of plush and felt, which called for small capital, and was highly profitable. But the plush went out of use, and the felt contract of the company ended, and they were thrown back on carpets, standard articles, where competition was keen, profits low, and materials costly. But for the accumulation prior to 1903, the company must have wound up. But, with the aid of the surplus, the 10 per cent. dividends were kept up, though the working capital, which in 1892 had reached $372,459, was reduced in 1901 to $307,842. The improvement which then set in was checked by the rug competition, and it was not until 1907 that the company got its rug business well inaugurated, and bringing in profit. For three years business has shown the results long and sagaciously worked for, and the dividends have been put up to 20 per cent.

No intelligent business man can believe that this record of dividends could have been made, if all the profits had been annually declared from the start. The working capital at the close of 1882 was less than $80,000. To carry on the business successly called for more capital. It could be obtained by gradually accumulating a surplus out of profits, or by increasing capital. Beyond a doubt, the former method was best for the stockholders now complainant. Suppose the directors had, as stockholders owning over two-thirds, increased the stock by a new issue of $300,000. The complainants could not have taken it all. Then there would have been enough working capital, and all the profits could have been divided. But the business and profits would have been no greater, and in the ten

lean years when complainants were getting 10 per cent., largely out of accumulated surplus of former years, there would have been no such surplus. They would have received only a dividend from earnings, and that would have been cut in half, because of the doubling of the stock. From 1893 to 1902, their dividend would have ranged from 2 to 5 per cent. And the total for the whole period would have been much less than they have now received. Indeed, the stockholders might have issued new preferred stock at 7 per cent., and this, as the business turned out, would have taken all the earnings.

Had the controlling stockholders adopted the method of obtaining the necessary working capital by such increase of stock, no one could dispute their power to do so under the statute. But their right to obtain such working capital by accumulation of profits is also given by statute, and can no more be questioned than the other method.

The question between a life-tenant and remainderman over earnings accumulated as surplus, is not to be settled by over-riding the powers conferred by statute on the stockholders and directors.

Possibly, when the time comes to distribute the shares, the administrator of the life tenant can set up a claim against the remainderman for so much of the value of the shares as represents surplus profits. The Court of Chancery has no right to deprive the majority stockholders or the directors of their statutory powers in the management of the corporation, merely because one stockholder has, by will, created a trust in a minority of the shares. Corporation management cannot be subordinated to such considerations. A stockholder cannot, by creating trusts in his will, change the power, or duty of other stockholders, or of directors.

But, even if it were otherwise, the course taken was such as should have been taken if the paramount duty of the majority stockholders and directors had been to consult the interest of the complainants.

It will be observed that the decree not only ignores the absolute authority of the stockholders in the matter of reserving working capital; but is bottomed not on fraud of directors, but only on the opinion of the Vice Chancellor that profits have been "unreasonably withheld by the corporation" from distribution among its stockholders (p. 577).

Furthermore, the Vice-Chancellor departed from the guiding principle laid down by him in *Stevens v. U. S. Steel Corp.*, *2 Robb.*, *373*, namely (p. 387), that dividends can only be declared out of cash on hand warranting the declaring of a dividend payable on demand. The Vice-Chancellor recognized that the financial situation of the company did not warrant the declaring of such a dividend; and he therefore provides for payment in the future in quarterly instalments. He also recognized that the company did not, at the date of his decree, have cash on hand to meet the extraordinary dividend directed, for his recital is that the profits ordered to be distributed "exist in the form of cash *or* which can be readily converted into cash and which the said corporation does not reasonably require for the continuation of the successful business of all kinds in which at the present time it is lawfully engaged" (p. 577). If we consult the table Exhibit D 1 of 1911 (pp. 534-5), it will appear that the dividend declared by the company for the year ending November 30, 1910, with the bills payable, together exceed the cash on hand at the close of that year, and that of necessity, in order to pay the new dividend directed to be declared, resort must be had

to merchandise and bills receivable. Furthermore, the "Statement showing needs to March 1, 1911," (p. 539) makes it plain that the cash on hand, always greater in November than at other times during the year, will be needed to pay obligations already contracted for, or reasonably necessary during the year. The attempt of the Vice-Chancellor to substitute his judgment for that of the stockholders in whom the law reposes authority, is a very dangerous precedent.

From my point of view it is, of course, unnecessary to discuss that part of the cross appeal which claims that the dividend ordered to be declared and paid should be larger than the sum directed by the Vice-Chancellor.

2.

As to Salaries.

V.

The dismissal of the bill of complaint as against the individual defendants was right.

This is a matter involved in the cross appeal and affects the salaries received by Robert Beattie and William H. Beattie. On this subject the Vice-Chancellor reached conclusion as follows (p. 549): "My further conclusion is that the salaries of the defendants Robert Beattie and William H. Beattie ($8,500 each) are not excessive but on the contrary in view of all the facts and circumstances of the case so far as they are disclosed by the evidence are fair and reasonable;" and he accordingly dismissed the bill to that extent.

The testimony so fully bears out the Vice-Chancellor's conclusion that I am content to rest the case

without further argument, except to call attention to the fact, which the Vice-Chancellor points out at page 572, that the complainants had inferential knowledge of the amount of the salaries that were being paid.

Under these circumstances, they are estopped from disputing them. *Raynolds v. Diamond Mills Paper Co., 3 Robb., 299; Lillard v. Oil, Paint & Drug Co., 4 Robb., 197.*

3.

As to Counsel Fees.

VI.

I challenge the imposing on the corporation of complainants' costs and counsel fees. If the Court can split up the controversy raised by the bill, which was really multifarious, and consider that the complainants prevailed in the matter of dividends, though defeated in the matter of salaries, probably some counsel fee should be allowed them, if they shall succeed in upholding so much of the decree as is in their favor; but the amount allowed is grossly excessive. The bill of complaint was simple and called for no great acumen in conception or skill in drafting. Only four days were consumed in the trial of the cause, and the work of preparing for argument and arguing the questions involved was not great. It will be argued that considerable time was spent in examining the books of the corporation and inquiring into its financial condition; but that was not counsel's work, and, as the Vice-Chancellor very properly says, no allowance for experts is proper (p. 575).

I submit that $5,000 was so excessive as to amount to an abuse of discretion, and that an appeal will therefore lie.

If the decree should be reversed on defendant's appeal, the provision for allowance of costs and counsel fee to complainants should fall with it *in toto*. The case is not one where costs and counsel fees can be allowed irrespective of success. The subject is covered by P L. 1910, p. 427. Should the decree be reversed, the complainants will not be within the purview of the statute, and the dismissal to be directed should not only be without the allowance of costs and counsel fee to complainants; but the Court of Chancery should be directed to award costs and counsel fee against them.

On the appeal of the defendants the decree should be reversed; and on the cross appeal so far as it dismisses the bill of complaint, it should be affirmed.

GILBERT COLLINS,

Of Counsel with the Beattie Mfg. Co. and William H. Beattie.

New Jersey Court of Errors and Appeals

Between Alexander Murray and Others, Complainants, Appellants and Respondents, and Beattie Manufacturing Company and Others, Defendants, Appellants and Respondents.	On Cross Appeals from Chancery.

Brief of Humphreys & Sumner for Complainants, Appellants and Respondents

These appeals are from a final decree of the Court of Chancery, dated March 27th, 1911 (among other things)) directing the defendant corporation, Beattie Manufacturing Company, by its Board of Directors, to declare and pay a dividend of $60,000 to its stockholders out of its accumulated profits, and granting leave to the complainants to apply to the Court of Chancery from time to time in the future to compel the defendant corporation to declare such further dividends as according to law ought to be paid, and directing the payment by the defendant corporation to the complainants' solicitors of their taxed costs, including a counsel fee of $5,000 to their counsel.

The defendants on the one hand appeal from all the above stated directions contained in said decree. On the other hand, the complainants appeal from that part of the decree which limits the dividend to $60,-

000, and from that part of the decree (not stated above), declaring that the complainants are not entitled to the relief prayed for in respect of the annual salaries of Robert Beattie, (now deceased) and William H. Beattie, and dismissing the bill insofar as it prays relief in that respect; and from that part of the decree (not stated above) which allows certain costs and counsel fees to the counsel of the individual defendants. They also appeal because the decree fails to provide for the payment to the complainants, by the defendant corporation, of the amount of the reasonable disbursements made by the complainants in payment for the services of expert accountants in examining the books of account of Beattie Manufacturing Company, in order to present the facts to the court at the hearing of the cause.

History of the Litigation.

The case has been pending over six years. The original bill of complaint, in which Alexander Murray appeared as sole complainant, was filed August 7th, 1905. An amended bill of complaint, in which three ladies, Mrs. Mary Murray, Mrs. Josephine Gedney and Miss Agnes Beattie, joined with the original complainant, Alexander Murray, as co-complainants, was filed September 20th, 1905. The cause became at issue upon bill, answer and replication, November 3rd, 1905. It was referred to his Honor Vice Chancellor Stevenson November 8th, 1905.

The case did not come on for hearing before the Vice Chancellor until October 9th, 1906, but the taking of testimony was concluded November 14th, 1906. The case was argued by counsel at the conclusion of the taking of the testimony, and the Vice Chancellor stated that he would announce his decision at a later date.

That decision was not finally announced until June, 1910, *nearly four years after the argument.*

After the long lapse of time which had intervened since the hearing, it was possible only for the Vice Chancellor to announce his general conclusions; and further hearings became necessary in order to disclose the exact situation to which the Vice Chancellor's general conclusions should be applied in fixing the amount of the dividend and settling the decree.

Further testimony was accordingly taken February 16, and February 18th, 1911, and after final argument the Vice Chancellor announced his decision. Upon that decision a final decree was entered March 27th, 1911, and from that decree the present appeal and cross appeal have been taken.

The appeals were noticed for argument at the June term (1911) of this court, but were not then reached for argument.

Touching the great delay (*more than six years*) which has occurred through no fault of the complainants, in reaching the present stage of this litigation, we may perhaps, without criticism, be permitted to remark that that delay has worked a very real hardship upon the complainants, the case being peculiarly one where, if the complainants were entitled to the relief sought for, that relief should have been afforded promptly.

The Nature of the Litigation.

The suit was originally commenced by Alexander Murray as sole complainant. He, as the holder of twenty-five shares of the capital stock of Beattie Manufacturing Company, filed his bill against that company and three individuals, Robert Beattie, William H. Beattie and William Dickson, composing its board of directors, praying for a compulsory dividend of the net earnings and accumulated profits of the company not

needed for the legitimate purposes of the company's business, and which it was alleged in the bill of complaint, were being withheld from the stockholders by the actions of two of the three members of the board of directors, who dominated and controlled the management of the company's affairs. It was charged that these two directors were actuated by fraudulent motives, hoping to benefit themselves at the expense of others of the stockholders. It was also sought to have the salaries which these same two directors had been drawing from the company for their services as executive officers, declared excessive, and that they should be decreed to pay back into the treasury of the company such excess, so that the amount might be added to the distribution of the profits which it was the main purpose of the suit to obtain.

Subsequently three ladies, Mrs. Mary Murray, the mother of the original complainant, Alexander Murray and Mrs. Josephine Gedney and Miss Agnes Beattie, who were his aunts, joined in the suit as co-complainants, and an amended bill of complaint was filed in the names of the four complainants.

In both the original bill and the amended bill the suit was brought on behalf of the complainants and all other stockholders of the Beattie Manufacturing Company who should come in and contribute to the expenses of the suit.

The individual defendants in the suit, as distinguished from the corporate defendant, Beattie Manufacturing Company, were Robert Beattie, its president and a member of the board of directors; William H. Beattie, his son, its treasurer and a member of the board of directors, and William Dickson, a brother-in-law of Robert Beattie, and the third and remaining member of the board of directors.

Mr. Dickson was merely a nominal defendant in the suit and took no part in the litigation.

Three of the parties to the suit have died since its commencement, viz.: Mrs. Mary Murray, one of the complainants, and Robert Beattie and William Dickson.

In order to understand the litigation a brief statement of the history of the Beattie Manufacuring Company and of the relationships existing between the members of the Beattie family, including the parties to the suit, would seem necessary.

The Beattie Manufacturing Company is one of the oldest and most successful carpet concerns in this country. The business was originally founded by Robert Beattie, Sr., some time previous to the Civil War. He had two sons, Robert Beattie and William Beattie, to whom he gradually confided the management of his business. A short time before his decease he was taking very little active part in its management, the business being conducted under a partnership between himself and his two sons.

In July, 1882, about one month previous to the death of the elder Robert Beattie, Beattie Manufacturing company was incorporated. The carpet business was transferred to the new company, together with the plant and factory at Little Falls. There were also transferred to the company a tract of real estate and certain water rights arising out of the ownership of lands upon both sides of the Passaic river at the falls known as "Little Falls", at the point where the company's factory was located. The property so conveyed comprised all of the assets of the partnership engaged in the manufacture and sale of carpets; also the real estate belonging to Robert Beattie, Sr. These properties were transferred to the corporation in exchange for its capital stock, consisting of 3,000 shares of the par

value of $100 each; Robert Beattie receiving 1,600 shares, and each of his two sons receiving 700 shares.

Robert Beattie, Sr., died within about a month after the incorporation of Beattie Manufacturing Company. He left six children surviving him, viz.; his two sons, Robert and William, and four daughters, viz.: Mrs. Mary Murray, Mrs. Josephine Gedney, Miss Agnes Beattie and Mrs. Catharine Dickson, wife of William Dickson above mentioned.

By the terms of his will Robert Beattie, Sr., disposed of his 1,600 shares of stock of Beattie Manufacturing Company as follows:

He divided 1,300 of these shares into four separate parcels and he left the four parcels to his executors, consisting of his two sons, Robert and William, and his two sons-in-law, William Dickson and E. E. Gedney, to be held by them in trust one parcel for each of his four daughters mentioned above, in each case providing that the income and dividends thereof should be paid to such daughter during her life, and that upon her death the shares of stock so held for her in trust should go to her issue if any, *if none, then to her heirs at law,* to be divided among such heirs at law in the same proportions as real estate of which she might die seized, would descend. (Exhibit C-2, p. 373.)

He then gave 100 shares in all to his four grandchildren, the children of Mrs. Mary Murray, including the complainant, Alexander Murray, and included in his residuary estate, by the residuary clause of his will, he left the remaining 200 shares of his stock to his two sons, thus making them the owners between them of 1,600 shares altogether, they having originally received 700 shares each.

It has already been stated that the executors of Robert Beattie, Sr., viz.; his sons, Robert and William, and

his sons-in-law, William Dickson and E. E. Gedney, held all the remainder of the capital stock (1,300 shares) in trust for the four daughters of Robert Beattie, Sr., who were sisters of Robert Beattie, Jr., and William Beattie.

It will be observed that in case any one of these four sisters should die childless, survived by their two brothers, Robert and William, the latter, with the surviving sisters, would constitute the heirs at law of such deceased sister, who would divide among them the shares of stock held in trust for her by the terms of her father's will.

Some time previous to the commencement of the suit one of the brothers, William Beattie, had died, leaving children, who are still living. Robert Beattie was then living and had a number of children, who still survive him. The four sisters were also then living but were well advanced in years, *one of them unmarried and two of the others were childless.* Mrs. Mary Murray, the mother of the complainant, Alexander Murray, was the only daughter of Robert Beattie, Sr., having children, to whom the shares held in trust for her would descend by the terms of her father's will.

It had therefore been apparent for a number of years previous to the commencement of the suit, that upon the decease of these three childless daughters of Robert Beattie, Sr., viz., Mrs. Gedney, Mrs. Dickson and Miss Agnes Beattie, the two brothers, Robert and William, or in case of their own decease, then their children, would be among the heirs at law of the deceased daughters and entitled to a very considerable share of the stock held in trust for them.

Consequently the smaller the amount paid out in dividends by the company during the lifetime of these childless sisters, the greater sum would then re-

main to be divided among their heirs at law after their decease. This was a very powerful motive to act upon the conscience of the two sons, who, after their father's death, absolutely controlled the management of the company between them, and dictated its dividend policy.

Upon the death of the son William Beattie, the defendant, William H. Beattie, a son of the defendant, Robert Beattie, succeeded his uncle William in the directorate of the company, and also became treasurer of the company.

It was alleged in the bill of complaint, and the allegation has been sustained by the Vice Chancellor, that the two defendants in the suit, Robert Beattie and his son William H. Beattie, had been fraudulently actuated by the selfish motive above referred to, and had under the influence of that motive withheld the payment of dividends which should have been paid, regard being had to the amount of the accumulated profits as qualified by the necessities of the company.

By the terms of William Beattie's will he appointed his brother Robert a co-executor with his widow, Emma, and he left to them a total of 444 4-9 shares of the stock of the Beattie Manufacturing Company, to be held in trust by them in two different parcels for the testator's widow and his daughter, Madeline, during their respective lives. Both the widow and daughter were living at the time of the commencement of this suit and are still living.

The remainder of the 800 shares owned at the time of his death, viz., 355 5-9 shares, William Beattie divided equally between his two sons, Charles G. Beattie and Robert H. Beattie, 177 7-9 shares to each.

Robert Beattie, or one of his sons, afterwards acquired ownership of the 177 7-9 shares left to Charles G. Beattie by his father, so that when the suit was

brought the holders of the stock in the company were as follows:

	Shares
Mary Murray, one of the complainants (being the same shares bequeathed by Robert Beattie, Sr. to his grandchild, Agnes Murray, who had died)	25
Alexander Murray, grandchild of Robert Beattie, Sr., one of the complainants	25
Eva Yergason, grandchild	25
Georgianna Booth, grandchild .	25
Robert H. Beattie, son of William Beattie, deceased	177 7-9
Robert Beattie, one of the defendants	751 7-9
William H. Beattie, son of defendant Robert Beattie, and himself a defendant	200
Robert Beattie, Jr., son of defendant Robert Beattie	25
William Dickson	1
Total shares held by individuals in their own right	1255 5-9

	Shares	Shares
Forward		1255 5-9
Robert Beattie, Edward E. Gedney and William Dickson, surviving trustees of estate of Robert Beattie, Sr., in trust		

for his four daughters.....	1,300	
Robert Beattie and Emma G. Beattie, trustees of the estate of William Beattie, deceased, in trust for the latter's widow and daughter	444 4-9	1744 4-9
Total shares outstanding		3,000

It will thus be seen that out of 3000 shares outstanding, Robert Beattie jointly with others, held 1744 4-9 shares of stock in trust, and of the remaining 1255 5-9 shares outstanding he held individually in his own right 751 7-9 shares, or together with 225 shares held by his sons William H. Beattie and Robert Beattie, Jr., 976 7-9 shares.

It is thus perfectly evident that Robert Beattie entirely dominated the company for in case any of his co-trustees in either of the two trust estates had attempted to thwart his control by objecting to his manner of voting the trust stock, such mere lack of unanimity would have prevented the trust stock from being voted at all.

The rule is that trustees must vote unanimously or not at all.

See Thompson on Corporations, Vol. 1, Section 731; also Vol. 3, Section 3871.

And if the trust stock were not voted Robert Beattie held a large majority of the remaining outstanding stock of the company. As a matter of fact, after the decease of William Beattie, Robert Beattie always did vote this trust stock in his own interests so as to elect himself and his son William H. Beattie as directors of the company, but he could have accomplished this same purpose in defiance of his co-trustees if they had undertaken to thwart his will.

The gist of the present suit was that Robert Beattie had used this control of the company for his own fraudulent interests, and actuated by the selfish motive already referred to, had persistently pursued a policy of heaping up a vast surplus of accumulated profits in the treasury in order that it might not be distributed among the stockholders of the company until after the decease of the three childless old ladies who had only equitable life interests in their shares of the stock of the company; and it was alleged that at the time of the commencement of the suit the surplus then heaped up in pursuance of that policy aggregated an enormous sum, existing very largely in the form of cash upon deposit in the various banks and trust companies, and drawing only nominal rates of interest. As we shall point out later, these allegations in the bill of complaint in regard to the existence of those accumulated profits, were fully substantiated by the evidence produced at the hearing by the complainants, the proof consisting in the results of the examination of the books of account of the company made by expert accountants.

The Decision of the Vice Chancellor.

Vice Chancellor Stevenson in his memorandum of conclusions (p. 549) determined the case generally in favor of the complainants, regarding the question of the distribution of the accumulated profits of the company, that is to say, he determined that the stockholders of the company, *when the bill was filed,* were entitled to a compulsory dividend, distributing a very substantial amount of the accumulated profits.

After the hearing in February, 1911, the vice chancellor fixed the amount to be distributed at $60,000, to be paid in three installments, with leave to the complainants to apply from time to time in the future for further dividends, the complainants also being allowed

their costs, including a counsel fee of $5,000, and the decree was entered accordingly. (See oral opinion, page 364).

Upon the question of the salaries of the defendants, Robert Beattie and William H. Beattie, the decision was in favor of the two defendants, viz., that their salaries had not been excessive, but were on the contrary fair and reasonable.

The Vice Chancellor reached his conclusion upon the question of dividend, not upon any statutory provision governing the distribution of corporate profits, but based his determination solely upon the general equitable powers of the court to intervene and control corporations, and to set aside the discretionary powers of the directors when, as the Vice Chancellor found the facts to be, the directors were incapable of acting fairly and did not act fairly, because of their own private and selfish interests. (pp. 566 et seq.

It will be noted that the only questions of law raised by the defendants' appeal are contained in that ground of their appeal, that the Court of Chancery *had no jurisdiction upon the bill of complaint before it,* to decree leave to the complainants to apply to the court from time to time in the future for further dividends; and in the last ground of their appeal, concerning the question of *costs and counsel fees.*

Upon the main branch of the case, involving the power and jurisdiction of the Court of Chancery in a proper case, to direct a compulsory dividend of its accumulated profits by a corporation, *no question is raised.* Such power in the court is *conceded* in the petition of appeal, in which it is asserted that the court is without jurisdiction *in the absence of fraud or gross abuses.* By necessary implication the petition of ap-

peal thereby concedes that the court has such jurisdiction *where fraud or gross abuses do exist.*

As, of course, the presence or absence of fraud in a particular case is always a question of fact for the court to determine upon the evidence; and as the Vice Chancellor has found that the board of directors were disqualified by their own selfish interests, and that the accumulation of the profits of the corporation by the directors could not be justified (p. 566), that is to say, that fraud on their part did exist, the appeal merely raises the question of fact, whether or not the evidence justified that conclusion by the Vice Chancellor.

But if the question of the power or jurisdiction of the Court of Chancery in a proper case may be deemed to be raised by the appeal, it can be very briefly dismissed by a bare citation of the cases in which that question has been determined beyond all doubt in favor of the power and jurisdiction of the court.

Laurel Spring Land Co. v. Forgeroy, 50 N. J., Eq., 756.

Griffing vs. Griffing Iron Co., 61 N. J., Eq., 269.

Pratt vs. Pratt, 33 Con., 446.

Deers vs. Bridgeport Spring Co., 42 Conn., 17-27.

Upon the main points, therefore, the appeal of the defendants is confined to the question whether or not, upon the evidence, the Vice Chancellor was justified in his conclusions that the two individual defendants had been actuated by fraudulent motives in dictating the dividend policy of the company, and that in fact the accumulated profits had been unreasonably withheld from distribution among the stockholders, and, assuming such to have been the case, that the sum of $60,000 should have been decreed to have been distributed.

These questions of fact are necessarily involved in the questions raised by the cross appeal of the complainants, in which they complain that no greater sum than $60,000 was decreed to be distributed, and these questions can be discussed together at the same time.

But in the cross appeal of the complainants, in addition to the question of fact, there is also a question of law involved in the complaint, that the dividend was limited to $60,000.

It was contended in behalf of the complainants in the Court of Chancery that the Beattie Manufacturing Company, which was organized under the Corporation Act of 1875, was governed by Section 52 of that act, which directs "that all manufacturing corporations within this state shall on the first day of August in each and every year, unless some other specific day for that purpose be fixed in their charter or by-laws, and in that case then on the day so fixed, after reserving over and above their capital stock paid in as a working capital for said corporation, a sum to be specified by their board of directors, *and not exceeding the amount of one half of the amount of capital stock paid or secured to be paid, declare a dividend of the whole of their accumulated profits exceeding the amount so reserved as working capital,* and pass the share or dividend of each stockholder of such profit to the credit of their respective stockholders, and pay the same to such stockholders on demand"; and that that section of the law under which the Beattie Manufacturing Company was incorporated, constituted a contract between the corporation and its stockholders *inter sese,* which contract it was incompetent for the legislature to impair by subsequent legislation. We contended that dividends should have been declared by the Beattie Manufacturing Company according to the requirements of this statute.

The Vice Chancellor, while he decided this question against us, has decided that the Beattie Manufacturing Company was not a manufacturing company within the purview of this statute, and was therefore never subject to the provisions of Section 52.

This conclusion was based upon the fact that at the time of the incorporation of the company, to which was transferred the corporate business previously conducted by the partnership of Robert Beattie & Sons, there was also conveyed to the company the real estate holdings of Robert Beattie, Sr., consisting of the factory and plant at Little Falls, together with the tract of real estate whereon the same was erected, and the adjoining lands, and certain water powers and privileges appurtenant thereto, and because among the other powers granted to the corporation in its certificate of incorporation, was included the power to purchase this real estate and to improve, rent and sell the same, and to carry on any other business necessary for the proper management and development of said property.

While there was no evidence produced directed particularly to the question under discussion, it does very clearly appear from the evidence in the case that the only business ever conducted by the Beattie Manufacturing Company was that of the manufacture and sale of carpets, rugs, etc. It is true that at the time the lands upon which the factory and plant were situated were conveyed to the company, other adjacent lands were included in the conveyance, and that these adjacent lands were not required in its business of carpet manufacturing. So far as the water rights are concerned, they were immediately appurtenant to the mill property and the water power derived by means of those rights was required in the business of manufacturing, and was used to operate the factory. This water power was so essential to the conduct of the busi-

ness that it was necessary to substitute steam power in its place because of the sale of the water rights.

We submit that notwithstanding the company at the time of its incorporation became the owner of the tract of vacant lands adjoining its factory, and notwithstanding it has during the more than twenty years of its existence disposed of certain small parcels of this land, and notwithstanding it has received certain rents from other portions of the property, and notwithstanding the management deemed it wise to dispose of the water rights and thereby deprived the plant of the water power, so that it became necessary to substitute steam power, the company nevertheless has always *in fact* been a manufacturing concern; all the transactions concerning its lands and real estate have been mere incidents to the conduct of its business, and the powers contained in its certificate of incorporation were clearly only intended to be incidental to the principal purpose of the company, which the certificate clearly indicates was "to carry on the manufacture and sale of carpets."

Judge Collins' brief contains this statement or argument (p. 6):

"Section 52 of the Corporation Act of 1875 does not apply to the Beattie Manufacturing Company. That company was not merely a manufacturing company. It was a large owner of land and of water power not used for its manufactures, and among the purposes stated in its certificate of incorporation is the purchase of real estate at Little Falls and water power and the improvement, renting and selling of said real estate. It is a land company as well as a manufacturing company. * * * "

Contrast this language with the following language used by Judge Collins at page 23 of his brief:

"The Vice Chancellor refers in his opinion to vacant lands of the company and appears to suppose that the

sale of building lots is an available source of revenue. There is no evidence of this and it is unfounded in fact. The elder Beattie, who died in 1882, bought large tracts of rough land on both sides of the river for a mile or more at Little Falls *in order to control completely the water power.* Much of this has been sold to the East Jersey Water Company and the residue has never been, and is not now, of much value for building lots, though, of course, there is a possibility that the growth of Paterson may make it available at some future date."

As a matter of fact the certificate of incorporation of Beattie Manufacturing Company does not include among the purposes of its incorporation, the sale of water power.

It is thus conceded by Judge Collins that the lands of the company not actually used in connection with its manufacturing business are not an available source of revenue, and must therefore be a mere incident to its manufacturing business.

POINT I.

The Beattie Manufacturing Company is a manufacturing company within the application of Section 52 of the Corporation Act of 1875.

The first general statute under which corporations could be incorporated in New Jersey was entitled "An act to authorize the establishment and to prescribe the duties of companies for manufacturing and other purposes," approved March 2nd, 1849, (Nixon's Digest, 4th Ed. p. 534).

The first section of that act prescribed the method of the formation of manufacturing companies, includ-

ing mining corporations and corporations for carrying on inland navigation, and by a later section of the same act, such corporations were given the express power to buy, hold and convey any lands, tenements, goods, wares and merchandise whatsoever *necessary* or *useful* for the said company to carry on their operations.

Undoubtedly when the Beattie Manufacturing Company purchased its factory plot and the tracts of land on both sides of the river, it did so in the belief that such lands and water power would be either *necessary* or *useful* for said company to carry on its operations. Judge Collins in his brief admits as much. He says (p. 23):

"The elder Beattie, who died in 1882, bought large tracts of rough land on both sides of the river for a mile or more at Little Falls *in order to control completely the water power.*"

In therefore exercising one of the powers expressly given to it as a manufacturing company by its act of incorporation, it is absurd to say that by doing so it was losing its status as a manufacturing corporation.

Nor could the insertion in its certificate of incorporation (p. 370) among the purposes for which it was formed, of the purpose "to improve and sell said real estate," where the evidence shows that it did not in fact embark in the real estate business, but simply sold part of the water power it had purchased, as necessary and useful for the company to carry on its operations, and substituted steam power in its place, alter or change in any respect its obvious status as a manufacturing corporation pure and simple.

Later on by a supplement to the act above quoted, approved March 2nd, 1849, which supplement was itself approved April 6th, 1865 (Nixon's Digest, 4th

Ed. p. 543) the first section of the act to which it was a supplement, was extended so as to embrace within it all persons exceeding four, who should associate themselves together for the purpose of carrying on any lawful business whatever.

The act of 1866 requiring certain dividends by manufacturing companies (Nixon's Digest, 4th Ed. p. 173, sec. 32) was a supplement to an act entitled "An act concerning corporations," approved February 14th, 1846, which original act simply defined certain rights, etc., of corporations, but contained no provisions for forming corporations under that act itself, and as a matter of fact there was at that time no general act on the statute book under which corporations could be formed.

In ascertaining the status of the Beattie Manufacturing Company as a manufacturing company or otherwise, it would be interesting to ascertain if it has not throughout its entire corporate life, claimed exemption from state taxation as a manufacturing corporation at least fifty percentum of whose capital stock issued and outstanding is invested in manufacturing carried on within this state.

While we believe there is no evidence on this subject in the printed book, the archives of the secretary of state's office are open to inspection, and, we submit, that this court should take judicial notice of what the records of that department of state will disclose on that subject.

There is no material difference between section 52 of the act of 1875, under which the Beattie Manufacturing Company was incorporated, and the corresponding section in the original act or supplement of 1866. The only difference is that the act of 1866, in fixing the date upon which dividends should be declared, fixed the

first of August in each and every year, unless some specified day for that purpose should be fixed in the *charter*—while the act of 1875 fixed the same day, August 1st, for the declaration of such dividend, unless some other specific day for that purpose should be fixed in the charter or *by-laws*. Both statutes provided that "all manufacturing corporations shall (on such date) after reserving over and above their capital stock paid in as a working capital for said corporation, a sum to be specified by their board of directors, and not exceeding the amount of one-half of the capital stock paid or secured to be paid, declare a dividend of the whole of their accumulated profits exceeding the amount so reserved as working capital, etc., etc."

It is perfectly plain, by a comparison of the acts of 1875 (P. L. 1875, p. 186, sec. 52); 1891 (P. L. 1891, chapter 106, p. 176); 1896 (P. L. 1896, chapter 185; sec. 47, p. 293), and 1901 (P. L. 1901, chapter 110) that the position of a life owner of stock in a corporation who is only entitled to receive the income and dividends thereof during the term of his natural life, would be very much more advantageous under the Act of 1875 than under the Act of 1896, and under the Act of 1896 than under the Act of 1901.

We respectfully submit that the legislature could not change the organic law of the stockholders of the Beattie Manufacturing Company *inter sese* in respect of the distribution of dividends; in other words, that the Beattie Manufacturing Company having been incorporated under the act of 1875, under which its stockholders were entitled annually to receive distribution among them of the whole of the accumulated profits, exceeding the amount reserved as a working capital, which working capital was not itself to exceed the amount of one-half of the capital stock paid or secured to be paid, the legislature could not deprive dissentient stockholders of that right in 1896 by permitting

a majority of the stockholders to reserve over and above its capital stock paid in as a working capital for said corporation, a sum *exceeding* the amount of one-half of the capital stock paid or secured to be paid, nor could the legislature constitutionally deprive dissentient stockholders of that right vested in them under their organic law of 1875 by an act passed in 1901 authorizing a majority of the stockholders to substitute for the previous statutory rules of distribution of dividends, a rule laid down in a by-law adopted by the majority of the stockholders.

That the Acts of 1896 and 1901, if they respectively superseded the act of 1875, and applied to the Beattie Manufacturing Company, changed the organic law of 1875 of the stockholders *inter sese* in respect of the distribution of profits, is manifest from the following hypothetical case:

A corporation with a capital stock of $300,000 and net earnings of $1,000,000, would, under the act of 1875 have been bound to distribute among its stockholders at least $850,000 of those profits. Under the act of 1896, if applicable, the whole or any part of the $1,000,000 accumulated might be reserved as a working capital provided the directors or stockholders in making such reservation, acted in good faith and did not make the reservation merely for the purpose of preventing the declaration of a dividend. Under the act of 1901, if applicable, the whole or any part of the $1,000,000 might be reserved either as a working capital or for any other purpose or reason, at the will honestly exercised, of a majority of the stockholders.

It was, and we suppose will be, claimed by counsel for the defense that Section 6 of the act of 1875 is germane to the present topic and that the Beattie Manufacturing Company having been formed under the act of 1875, Section 6 of that act, which provided that

"the charter of every corporation which shall hereafter be granted by, or created under any of the acts of the legislature, shall be subject to alteration, suspension and repeal in the discretion of the legislature," formed part of the contract entered into between the stockholders at the time of their incorporation, and thus rendered that contract liable to be changed by the legislature at any subsequent period, thereby rendering the Beattie Manufacturing Company on this question of the distribution of dividends, subject in turn, first to the provisions of the act of 1875, then to the supplement passed in 1891, afterwards to the law of 1896 and now finally to the law of 1901.

But this construction of the effect of Section 6 of the act of 1875 is absolutely negatived by the case of Zabriskie vs. Hackensack & New York R. R. Company, 18 N. J., Eq., 178, and numerous other decisions preceding and following that authority.

That case has a dual aspect to which attention will be called later on. *It is now, in the first place, cited as authority for the proposition that the object and purpose of Section 6 of the act of* 1875, *were the reservation to the State for the benefit of the public, of the power to alter, modify or repeal what had been decided by the Dartmouth College Case to be a contract. It was to avoid the ruling in the Dartmouth College Case, not that in Natusch vs. Irving, that the change was made.*

Natusch vs. Irving, decided by Lord Eldon in 1824, is not contained in the regular reports but may be found in the appendix to Gow on Partnership (3rd, Ed., P. 576) or in Lindley on Partnership, p. 511.

Although this case of Zabriskie vs. The Hackensack & New York R. R. Company contains no reference to the case of Const. vs. Harris *infra,* the opinion

might just as well have read that it was to avoid the rule in the Dartmouth College Case, and not that in Const. vs. Harris, that the change was made.

Const. vs. Harris is precisely in point with the case at bar and was decided on precisely the same reasoning as Natusch vs. Irving, and by the same judge.

See Lindley on Partnership, 2nd Ed., (Ewell), 316.

Page 319:

Altering principles upon which profits should be dealt with.

"In Const. vs. Harris the proprietors of Covent Garden Theater agreed that the profits should be exclusively appropriated to certain definite purposes. Afterwards the proprietors of seven out of eight shares entered into an agreement to apply the profits in a different manner, but they had not consulted the owner of the other eighth share and he disapproved of the alteration. It was held by Lord Eldon that the majority had no power to depart from the terms of the original agreement; and upon a bill filed by the one dissentient partner for a specific performance of that agreement a receiver of the profits was appointed. In a long and elaborate judgment Lord Eldon distinctly recognized the principle that articles which had been agreed upon to regulate a partnership, cannot be altered without the consent of *all the partners.*"

See Const. vs. Harris, Turner & Russ Chancery Reports, Vol. 1, p. 496.

Livingston v. Lynch, 4 John Chan. Rep., 573.

Stevens vs. Rutland & Burlington R. R. Co., 29 Vt. App., 545.

Angell & Ames on Corp., 11th Ed. Sec. 392, p. 439.

Hart. & N. H. R. R. Co. vs. Crosswell, 5 Hill 383.

Morawetz on Priv. Corp., 2nd Ed. Vol. 1, Sec. 404.

Salomans v. Laing, 6 Ry. Cas., 289-301.

Pratt vs. Pratt, 33 Conn., 446.

Pronick v. Spirits Distributing Co., 58 N. J. Eq., 97.

Meredith v. N. J. Zinc & Iron Co., 59 N. J. Eq., 257.

Kean v. Johnson, 1 Stock, 401.

Mills v. Central R. R. Co., 14 Stew. Eq., 1.

Black vs. Delaware & Raritan Ry. Co., 19 Greene, 455.

In re. Newark Library Ass'n., 64 N. J. Eq., 217.

A perusal of these cases, and especially the case of Zabriskie v. Hackensack & New York R. R. Company, will, we submit, make it perfectly clear that the provision contained in the sixth section of the Act of 1875 making the charter of every corporation subject to alteration, suspension and repeal in the discretion of the legislature, was a mere reservation to the State for the benefit of the public, to be executed by the State alone. It was never intended by it to authorize the legislature to put it in the power of one part of the stockholders as against the others, to determine that the profits of the company should be disposed of, or retained by the corporation, as against the other stockholders, in a manner not authorized by the original charter. This section of the Act of 1875 was passed to avoid the rule in the Dartmouth College Case, not that in Const. vs. Harris supra, and Const. vs. Harris is direct authority for the proposition that the majority have no power to depart from the terms of the original agreement as to the division of profits.

Second aspect of Zabriskie vs. Hackensack & New York R. R. Company case.

The true construction of this section of the statute of 1875 is that *the legislature may alter, not that the stockholders may alter as between each other. Even if it were a matter in which the public was interested as to what proportion of its "profits" a manufacturing corporation of this kind should be allowed to reserve as a working capital, the Act under which the Beattie Manufacturing Company was incorporated having provided that the sum to be reserved as a working capital should not exceed one half of the capital stock paid or secured to be paid, a subsequent act of the legislature could not make it optional with a majority of the stockholders, or a majority of the board of directors, to determine whether the reserve fund should be greater than that amount.* Still less could the subsequent act of the legislature, where the act of incorporation provided that the whole of the accumulated profits exceeding the amount reserved as a working capital should be actually declared as a dividend, authorize a by-law to be adopted by a vote of the majority of the stockholders providing otherwise, e. g. directing that only one half of its accumulated profits exceeding the amount so reserved as working capital, should be declared as a dividend.

This brings us to the effect of the by-law which was passed in Robert Beattie Sr.'s lifetime, as follows: "Dividends shall be declared and paid semi-annually in the months of January and July of such portion of the profits as the directors shall deem advisable."

This so-called by-law was passed at a meeting of the stockholders on July 6th, 1882. The three stockholders were present, Robert Beattie, Sr., William Beattie and Robert Beattie, Jr. The so-called by-law was therefore adopted just one month before the death of Robert Beattie, Sr., which occurred August 8th,

1882. Robert Beattie therefore never lived to act under the by-law or to show by his conduct the construction he placed upon it.

If it was intended by this by-law to give the directors power to reserve out of the profits as a working capital a sum exceeding the amount of one half of the capital stock paid or secured to be paid, that is to say, to adjudge the amount of dividends which the stockholders should receive, in disregard of the mandate of the statute of 1875, that the whole of the accumulated profits exceeding the statute-limited amount reserved as working capital should be declared as a dividend, then manifestly *the by-law was absolutely void as a by-law and of no effect whatsoever as a law of the corporation.*

A by-law repugnant to the charter is of no effect but is illegal and void.

Taylor v. Griswold, 14 N. J. Law, 222.
State v. Overton, 24 N. J. Law, 435.
1 Thomp. on Corp., Sec. 1011 and cases there cited.
State vs. Conklin, 34 Wis., 1.
Re. Dunkerson, 4 Biss. U. S., 27.

Assuming then that this so-called by-law was of no force or efficacy as a by-law, and created no obligation upon the corporation as such, it remains to see what effect (if any) it had in the nature of *waiver, acquiescence* or *estoppel* upon the three stockholders who cooperated in passing it, and upon those who claim under them.

The operation of a so-called by-law of this kind as a *waiver* of the statutory right of the stockholders was discussed to some extent by Vice Chancellor Stevenson in the case of Raynolds v. Diamond Mills Paper Company, 69 N. J. Eq., 299 (see especially quotation at page 303 of that case, commencing with the words

"Now counsel for the complainants insists," fifteenth line from the bottom of the page).

The distinction between the term "waiver" and the term "estoppel," when used in connection with the relinquishment of this statutory right of the stockholders to have the profits divided in a certain manner, is somewhat artificial, or perhaps, it would be more correct to say that as distinguished from an "estoppel" there can be no such thing as a waiver by a stockholder of this right *that will bind the stockholder* until acted upon. Any such waiver is purely voluntary on his part and can be withdrawn at any moment.

We must not get away from the actual subject matter to which, in the case at bar, this so-called "waiver" relates. Here is the by-law which is invalid as repugnant to the charter of the corporation. If Robert Beattie, Sr., were living today, and if he had co-operated with the other directors in their conduct with reference to the declaration of dividends from time to time, and the amassing of this huge surplus, it might be safely conceded that he would be *estopped* by reason of his conduct, or even if he had taken no active part in the policy of the directors, then by reason of his acquiescence in that conduct, or by reason of his inactivity, the *cause or intention of which would stand interpreted by this by-law which he himself took part in passing,* from asking for a dividend under the statute of 1875 of those portions of the *accumulated profits of the Company* which, on the strength of this by-law, and on the strength of this policy of the directors in acting under it, had been invested in permanent improvements, but we submit that the mere failure of any stockholder, up to the filing of this bill, to demand a dividend under the statute, cannot estop such stockholder from now demanding a dividend under the statute, of such part of the accumulated profits as has not been so invested but remains in the hands of the

corporation in the form of cash or the equivalent of cash—and that is all that is asked for in the present case.

Let it be conceded that to the extent that the policy of the directors, based on this by-law, has changed the situation of the corporation—to the extent that the corporation has expended its accumulated profits in enlarging its equipment and plant—to that extent the stockholders are now estopped from claiming their statutory right to the whole of the accumulated profits, including that part so invested; but we submit that there can be no such thing as any additional waiver on their part which can prevent them from today insisting upon their full statutory right so far as accumulated profits exist in the hands of the corporation in the form of cash or the equivalent of cash.

It may, moreover, be further admitted, for the purposes of this case, that a stockholder in a corporation organized under the Act of 1875, who acquiesces in the board of directors disregarding the mandate of that statute, and heaping up a tremendous surplus in excess of one half of the capital paid or secured to be paid, with *part* of which accumulated surplus the plant and equipment of the corporation are so largely increased, and the business of the corporation thereby so swelled that to properly carry it on and conduct it profitably a much larger working capital is required than a sum equal to one half of the capital stock paid or secured to be paid, may very properly be deemed to be *estopped* from afterwards insisting upon his strict statutory rights in regard to dividends, and it may be said to him by the corporation, "You have seen us storing up this surplus year by year and adding to our plant, and adding to our business. You have taken the dividends we have given you without complaint and have watched us building extensions and buying new machinery and so magnifying the scope of our

business that now, in order to carry it on profitably we need a working capital considerably in excess of that which the Act of 1875 permitted us to store up—you cannot therefore now destroy the business and ruin our venture and destroy the value of the stock as a permanent investment by insisting on your strict statutory rights." That, we submit, would be a pure case of *estoppel,* but the complainants in this case are making no such claim.

While we insist that neither Miss Beattie, Mrs. Gedney nor Mrs. Murray had any knowledge of the building up of this surplus, nor of the enlargement of the business, and there is no evidence whatever that they had, and that for that reason there can be no estoppel as against them, even *they* do not ask to have withdrawn from the business and distributed among the stockholders as dividends, any more of the accumulated profits than can, with due regard to the best interests of all the stockholders, be properly withdrawn. But as will be presently shown, there is a large amount of accumulated profits represented by cash, or the equivalent of cash, in the possession of this corporation which is not needed in its business, and which, if any analogy can be drawn from the past, will not ever be needed, and which certainly should be distributed. It is very plain that the directors have never fixed a working capital within the meaning of the statute. Instead of first fixing a working capital and then dividing the whole of the accumulated profits in excess of the working capital as a dividend among its stockholders, it has invariably fixed, in the first place the amount of the dividend which it thought it was advisable to distribute among the stockholders, and then accumulated all the profits in excess of that dividend as a working capital regardless of the amount of working capital which the corporation really required.

All that has been hitherto said with reference to the effect of the by-law adopted at the organization of the company applies with equal, or greater, force to the by-law adopted December 26th, 1900, as follows:

"Resolved, that the by-laws be amended by adding the following, 'The directors may determine from time to time the amount to be reserved as working capital.' "

This by-law was never assented to by either Mrs. Murray, Agnes Beattie or Mrs. Josephine Gedney, and there is no evidence that they had any knowledge whatever concerning its existence. Furthermore, if we are right in our contention that neither the Act of 1896 nor that of 1901 applies to the Beattie Manufacturing Company, then the last mentioned by-law would not have acquired additional force by either of those statutes.

We insist that there is in this case no evidence that the directors ever did specify a working capital in any year.

Manifestly the statute required the board of directors to exercise judgment and discretion in the amount they should reserve as a working capital. The power to reserve profits for a working capital could not be exercised merely for the purpose of preventing the declaration of a dividend. The mere fact that a by-law was adopted December 26th, 1900, providing that the directors might determine from time to time the amount to be reserved by the corporation as working capital indicates that theretofore the directors had not exercised that power. That by-law was evidently passed pursuant to the proviso contained in the Act of 1896, which Act we have shown did not apply to the Beattie Manufacturing Company. The directors of the Beattie Manufacturing Company did the very opposite of what they were required to do by the Act of 1875. By the Act of 1875 they were required to first

specify the amount of the working capital and then declare a dividend out of the balance of the accumulated profits. What they did was to fix a dividend in the first place, regardless altogether of what working capital was actually required, and then reserve the balance, whether as a working capital or for what other purpose, does not clearly appear. The fact, however, that this surplus fund was reserved under two separate accounts, one named "Reserve Fund" and the other "Real Estate Reserve" would indicate that what was reserved was not strictly a working capital, nor was it intended as such.

In further support of our contention that neither the Act of 1896 nor the Act of 1901, in so far as these provisions relating to the declaration of dividends are concerned, apply to the Beattie Manufacturing Company, it is noteworthy that neither of those Acts, so far as those provisions are concerned, by its express terms applies to a corporation created under the Act of 1875.

We have already shown that the provisions contained in the Act of 1896 and in the Act of 1901 respectively, with reference to the declaration of dividends, are inconsistent with the provisions relating to the same subject matter contained in the Act of 1875.

The forty-seventh section of the Act of 1896, requiring the directors to declare dividends annually, had express reference only to the directors of "every corporation created under this Act." There are other sections in the Act of 1896 which expressly refer to every corporation, whether incorporated under that Act or under some other act.

The forty-seventh section of the Act of 1901 expressly pointed out the duty in regard to dividends of the directors of every corporation created under *that Act.* The Act of 1901 was an Act to amend the Act

of 1896 and expressly related only to corporations organized under that Act. There is no ambiguity in the language used and it is submitted by elementary rules of construction that the application of these statutes must be confined to those corporations to which they in terms solely apply.

Judge Collins, at page 10 of his brief, makes this statement:

"It was argued that Section 47 applies only to corporations created under the Act of 1896; but this overlooks Section 2 of the Act of 1896, which extends its provisions to all corporations so far as appropriate."

The exact language of the material part of Section 2 of the Act of 1896 is as follows: "and shall be governed by the provisions and be subject to the restrictions and liabilities in this Act contained, so far as the same are appropriate to *and not inconsistent with such charter or the act under which such corporation was formed.*"

We have devoted considerable space in this brief to showing that the provisions contained in Section 47 of the Act of 1896 were absolutely inconsistent with the provisions contained in Section 52 of the Act of 1875, so that by the very express terms of Section 2 of the Act of 1896 the provisions contained in Section 47 of that Act do not apply to the Beattie Manufacturing Company, being inconsistent with the Act under which the Beattie Manufacturing Company was formed.

Again, Judge Collins in his brief claims (p. 10) that the case of Pronick v. Spirits Distributing Company, 13 Dick., 97-99, cited against Judge Collins' contention that the provision for dividends in the Act of 1875 was not a part of the contract between stockholders which could not be changed by legislation, was

one where the attempt was made by common stockholders ~~of~~ to reduce the dividends of preferred stockholders by amending the certificate which provided for the preference, and he says "that certificate contained no provision for its own amendment and it was held that the general power of amendment of certificates conferred by statute did not permit the stockholders to alter the contract made by the stock certificates." Judge Collins then pointed out that the amendment involved in our case was not of any contract made by stockholders, but of the statute under which the corporation was formed.

In support of the proposition that the charter of a corporation formed under a general law does not consist of the articles of association alone but of such articles taken in connection with the law under which the organization takes place, and that the provisions of that law enter into and form a part of the charter —a proposition essential to the validity of our argument on the constitutional question involved in this case—we refer to the following authorities:

Lincoln Shoe Mfg. Co. v. Sheldon, 44 Neb., 279.

Abbott v. Omaha Smelting Co., 4 Neb., 416.

Van Eteen v. Eaton, 19 Mich., 187.

Granger Life & Health Ins. Co. v. Camper, 73 Ala., 325.

Spring Valley W. W. v. Schattler, 62 Cal., 110.

The People v. Chicago Gas Trust Co., 130 Ill., 268.

Mason v. Perkins, 73 Mich., 303.

The foregoing argument relative to the statutory question which we claim is involved, is inserted in this brief because that subject was very fully argued in the Court below, and although decided against us,

seems of sufficient importance to merit review by this Honorable Court. But in view of the fact that it is not the purpose of this litigation whatever the strict legal rights of the complainants may be to insist upon an enforcement of those rights to their fullest extent, if the result of such enforcement would be inimical at the present time to the common interests of all the stockholders in general, but only to the extent that such enforcement will not interfere with the needs and necessities of the Company, it may be sufficient for this Honorable Court to inquire simply into the question as to the quantum of the dividend the stockholders are entitled to under the evidence in this case under the general equity powers of this Court to supervise the actions of the directors in this respect.

If, however, the statutory question we have raised is sound, then with regard to all that part of the surplus in the form of cash or its equivalent not absolutely necessary to be retained as a working capital, the stockholders have an absolute right to that part of the surplus without any question whatever of any discretion on the part of the directors as to the uses to which it shall be put.

Fortunately for the complainants' case the statutory question is merely incidental to the main question involved in the case, which is whether or not the evidence does not clearly disclose beyond any shadow of doubt that the Beattie Manufacturing Company could, without the slightest embarrassment, at the time the decree was entered herein, or shortly afterwards, have divided among its stockholders at least the sum of $150,000 which thus actually belonged to the stockholders, being withheld by the directors for an improper and fraudulent, or at all events unnecessary, purpose.

Before passing, however, to that subject, viz., the main point in this case, we wish briefly to answer some

of the arguments advanced by Judge Collins in his brief, not already answered by us.

Judge Collins in the third point contained in his brief, (p. 14) states that where the surplus is derived from an increase in the value of land, it does not belong to the tenant, but is held for the remainderman, from which he argues that if the surplus in question were distributed the life beneficiaries of stock would not be entitled to receive it, and he cites cases in support of his argument.

It will presently be shown that we are not asking at the present time for any distribution of any surplus derived from any increase in the value of land but exclusively of surplus derived from the manufacturing business proper, but we may here state that the correctness or incorrectness of Judge Collins' argument, now under discussion, depends upon the correctness or incorrectness of his claim that the Beattie Manufacturing Company is not a manufacturing company exclusively, but a manufacturing company plus a land company.

If the Beattie Manufacturing Company (as we claim) is exclusively a manufacturing company, then Judge Collins' argument as to the rights of the remainderman to any distributed surplus derived from an increase in the value of the land, is probably correct.

In Herd v. Eldridge, 107 Mass., 258, cited by Judge Collins, it was held that "Money paid to compensate a corporation whose property consisted of a wharf and dock, for part of its real estate taken by right of eminent domain, if distributed as a dividend to the share holders belonged to the capital and not the income of a trust fund invested in the shares." In that case the income of the company consisted of rents and wharfage.

But the rule invoked by Judge Collins does not apply when the nature of a corporation is such that its ordinary business is to sell property in which its capital is invested, and distribute the proceeds among its stockholders. In a Massachusetts case, for instance, it was held that a legatee entitled to the income for life from stock in a company deriving its profits from the improvement and sale of land, was entitled to the ordinary dividends declared thereon, although they in reality consisted of a part of the capital stock.

Reed v. Head, 6 Allen (Mass.), 174.

In re. James, 78 Hun., 121, 146 N. Y., 78.

2 Clarke & Marsh, Corp., p. 1621.

If, therefore, as Judge Collins claims, the Beattie Manufacturing Company was partly a land company, deriving its profits from the improvement and sale of land, then the dividend to which he refers would belong to the life tenant, and not to the remainderman.

His argument, therefore, must be that for the purpose of avoiding the application of Section 52 of the Corporation Act of 1875, the Beattie Manufacturing Company was not a manufacturing company exclusively, but a manufacturing company plus a land company —while, for the purpose of making good the proposition contained in Point 3 of his brief, the Beattie Manufacturing Company was exclusively a manufacturing company.

At page 18 of his brief Judge Collins quotes from the late Mr. Corbin's brief, as follows:

"The sole question is what dividend ought to have been declared for the year ending November 30, 1905. The bill was filed about June, 1906 (sic.—in fact filed August 7, 1905); the dividends before 1905 were acted on by the company and acquiesced in by all the

stockholders without objection; the dividends since 1905 cannot be raised unless by supplemental bill."

In view of the fact that after Vice Chancellor Stevenson's first conclusions were announced June, 1910, dealing with the condition as disclosed up to November 30, 1905, counsel for the defence were most insistent on the claim that the decree could only deal with the situation as it existed when the final decree was entered, there is something especially disingenuous in now claiming that the dividend since 1905 could not be raised unless by supplemental bill.

Here again we have counsel for one purpose, viz., the settling of the scope of the final decree, taking one position, and for the purpose of reviewing that decree in this Honorable Court, taking another position.

The fact remains that although if the situation had been dealt with in the final decree solely as it existed on November 30th, 1905, the decree actually entered would have been amply justified; nevertheless Vice Chancellor Stevenson was correct in his conclusion (p. 570) that "the amount of the dividend to be declared will, of course, *depend upon present conditions.*" As in injunction cases, a decree in cases of this character must *ex necessitate rei* and to avoid the working of great injustice, or inconvenience, speak as from the conditions existing at the time the decree is entered, and not from those existing at the time the bill is filed.

At page 29 of his brief Judge Collins writes: "Possibly when the time comes to distribute the shares the administrator of the life tenant can set up a claim against the remainderman for so much of the value of the shares as represent surplus profits."

But as opposed to this suggestion see the following authorities:

"A trust fund was invested in the stock of a corporation which having sold its franchises and property and being about to wind up its affairs and dissolve, voted to pay a dividend in cash to its shareholders upon the surrender of their certificates. *Its assets at the time of its dissolution consisted in part of undivided earnings.* Held that the entire amount received by the trust was capital and not income."

Gifford v. Thompson, 115 Mass., 478.

Quotation:

"The earnings of the corporation remained, while undistributed, part of the capital of the corporation, and the interest therein represented by each certificate of a share of stock was part of the capital and not of the income of that share as between those entitled to successive rights in it." Citing Minot v. Paine, 99 Mass., 101.

See also that case, Minot v. Paine, 99 Mass., 111.

Quotation:

"The money in the hands of the directors may be income to the corporation; but it is not so to a stockholder until a dividend is made."

At page 24 of his brief Judge Collins writes as follows:

"It should be noted that the learned Vice Chancellor did not venture to attribute bad faith to Robert Beattie and William H. Beattie, and in that he was wise for the case is barren of evidence of that purport. Indeed the evidence is all the other way. He based his opinion upon the inability of the directors to act fairly when they have what he called a selfish interest. * * * * * This was a violent presumption which no court should indulge and for which there is no precedent."

What Vice Chancellor Stevenson in fact said on this subject was this (p. 566): "I have already pointed

out the very substantial selfish interest of the directors which naturally inclines them to keep back dividends and let the accumulated profits add value to the stock. This *disqualifying interest* upon a slight showing of actual hardship and unfairness might justify intervention by a court of equity. But the proofs in this case establish beyond the shadow of a doubt that for years there has been an accumulation of the profits of this company drawing a low rate of interest. * * * * * * The only attempt worthy of consideration made by the defendant directors to justify this enormous piling up of profits in money was to the effect that such accumulation of money enabled the corporation to guarantee for the future the payment of ten per cent dividends."

We shall later on attempt to show the full and absolute right of the Chancellor under the authorities to supervise the conduct of the directors in improperly or unnecessarily withholding accumulated profits without necessity of proof of any actual fraud. For instance if directors should build up an enormous surplus without any necessity whatsoever, from sheer stupidity, let us say, or any other unjustifiable motive, not necessarily fraudulent in character, the right of the Chancellor under the authorities to supervise the abuse of their discretion over the subject matter of dividends is undoubted; but the point we wish now to accentuate is that Vice Chancellor Stevenson did in fact by the strongest implication convict these gentlemen of a fraudulent or self serving purpose and not an honest purpose in heaping up this huge surplus. The Vice Chancellor first pointed out the very substantial selfish interest of the directors which naturally inclined them to keep back dividends and let the accumulated profits add value to the stock. The Vice Chancellor then pointed out that the defendants had made no justification worthy of consideration of the enormous piling up of those profits;—so that we have an evil motive found

by the Vice Chancellor and an act done which could be only explained, under the Vice Chancellor's ruling, by a yielding on the part of the directors to that evil motive. If that does not amount to an allegation of fraud it comes so near to it as to emasculate altogether the force of Judge Collins' criticism "this was a violent presumption which no court should indulge and for which there is no precedent."

POINT II.

Independently of any statute at all, the stockholders under the general equity power of the Chancellor, were entitled to have a dividend of at least the amount of money directed to be declared as a dividend by the Vice Chancellor. We insist that that dividend instead of being for $60,000 should have been for at least $150,000.

As stated by Vice Chancellor Stevenson in Stevens v. U. S. Steel Corporation, 59 Atl. Rep., 905, "The general rule is well settled that the directors of trading corporations are invested with a wide discretionary power in regard to the distribution of profits in the form of dividends among the stockholders. Subject, of course, to provisions in the charter and also to the by-laws of the company, it is for the directors to say whether profits shall be distributed to the stockholders or retained for the purpose of the corporate business. It is, however, equally well settled that this discretionary power is not absolute, and when the directors improperly refuse to make a dividend of unused profits, a court of equity will intervene on behalf of any stockholder who may complain. * * * * * * The New Jersey cases as well as many cases in other states,

illustrate how ample are the powers of the courts of equity to enforce the rights, and satisfy the reasonable expectation of stockholders in the matter of the declaration of dividends when profits which are not required to be retained for the purposes of the corporate business, including protection against emergencies, are unreasonably and unjustly allowed to remain undistributed."

The equitable power of the Court of Chancery under this heading was invoked upon the facts and figures submitted in behalf of the complainants at the hearing, consisting of the tabulations made by expert accountants of their examination of the books of account of the company. The defendants on their part submitted similar statements prepared by the company's head-bookkeeper. In the main the figures submitted by both sides substantially agreed. Whatever important discrepancies may appear from the figures we shall discuss later on.

The figures are so voluminous and they all yield themselves so strongly to the purpose of assisting the argument on behalf of the complainants' side of the case, that our difficulty is to select those to be especially noticed so as not unbearably to extend the size of this brief. We shall endeavor, therefore, to confine ourselves only to salient facts, at the same time most earnestly soliciting on the part of the court a careful study of all the figures contained in the printed state of case. We confidently assert that there is not a figure contained in all the mass submitted by both sides which, if properly studied, does not tend to establish the contention of the complainants.

The Company began business July 1st, 1882, with total assets valued at
(Exhibit C-8, page 389), $ 381,519.53
and total liabilities, ex-

clusive of its capital stock, (page 391),	81,519.53	
Net assets, represented by its capital stock,		$ 300,000.00
On November 30, 1905 the total assets amounted to (p. 390)	$1,209,362.11	
With total liabilities, viz. bills payable, $51,257.76 and dividend declared but not then paid (p. 391) $30,000.00	81,257.76	
	$1,128,104.35	
An increase in net assets of		828,104,35
	$1,128,104.35	$1,128,104.35

The sum of $828,104.35 represents the increase in value of the net assets of the Company during the period of its existence up to November 30th, 1905, to which date the examination of the books submitted at the first hearing of the case, related. This sum was the amount of its accumulated profits at that date derived from the operation of its business and the sale of its water rights. It is the sum with which Vice Chancellor Stevenson had to deal when he reached the determination in the case, contained in his memorandum of conclusions "that the complainants *when they filed their bill* were entitled to a compulsory dividend distributing *a very substantial amount of accumulated profits.*"

During the more than five years that the case was pending before the Vice Chancellor the company had been going on doing business and heaping up addi-

tional profits over and above the amount paid out in dividends during that period.

At the final hearing before the Vice Chancellor last February, (1911) at which the situation of the company's financial condition on November 30th, 1910, was established, and upon which showing the decree directing a dividend of $60,000 was based, the following results appeared:

The total assets on November 30th, 1910, had increased so that they amounted to the sum of (Exhibit C-2, p. 441)		$1,394,445.69
Deduct total liabilities consisting of accounts payable....	$39,701.39	
Dividend declared but not then paid	60,000.00	99,701.39
Total net assets		$1,294,744.30
Deduct from this last amount the capital stock		300,000.00
There remains a net surplus of		$994,744.30

This last sum, viz., $994,744.30, was the amount of the accumulated profits existing on November 30th, 1910, out of which Vice Chancellor Stevenson finally determined that $60,000 should be distributed by way of a dividend.

Comparing the amount of the accumulated profits on November 30th, 1910, viz., $994,744.30, with the amount of the surplus on hand November 30th, 1905, viz., $828,104.35, there appears an increase in the accumulated profits of $166,639.95 during the five years in question.

The Vice Chancellor, therefore, having determined that the complainants were entitled, *when they filed their bill,* to *a very substantial dividend,* finally fixed the amount *at a little over one third of the sum by which the undistributed profits had actually increased during the time the case was pending before him. ! !*

That the surplus on November 30th, 1910, amounted to the sum stated above, the balance sheets contained in defendants' Exhibit D-1 (pp. 542-44) also show, viz.:

From total assets (p. 543)....		$1,502,105.00
Deduct accounts payable (p. 544)	$147,360.70	
Dividend	60,000.00	
Capital stock	300,000.00	507,360.70
		$994,744.30

It will be noticed that the total on both sides of the balance sheets submitted by the defendants are larger than those contained in the figures submitted by the complainants. This was due to the inclusion by the defendants in their balance sheets (*on both sides of the account*) of an item of $107,659.31 (pp. 543-4). This item will be discussed later on but it may be stated here that the complainants insisted before the Vice Chancellor that this item had been included in the figures of the defendants for the purpose of swelling the apparent amount of the cash requirements of the company within the near future.

By the balance sheets produced by the defendants (Exhibit D-1, p. 544) the above amount of surplus was distributed by way of book-keeping as follows:

Doubtful debts reserve		$ 24,406.29
Real Estate improvement account	$204,653.64	
Reserve fund	410,684.37	
Water rights reserve	355,000.00	970,338.01
		$994,744.30

Complainants' Exhibit C-7 (p. 448) shows how this amount of surplus, or accumulated profits plus an unpaid dividend amounting to $60,000 was distributed among the Company's assets on November 30th, 1910. The figures in that statement were obtained by comparing the items in the balance sheets of July 1st, 1882 (C-8, pp. 389-391), the date when the Company began business, with the items on the balance sheets of November 30, 1910. By that comparison the following result appears:

	1882 (Exh C-8, p. 389)	1910 (Exh. D-1, p. 542-543)	Increase	Decrease
Real Estate	$139,903.63	$191,911.23	$52,007.60	
Machinery	69,408.75	172,251.59	102,842.84	
Stock Merchandise	92,931.23	356,335.32	263,404.09	
Cash	2,535.34	203,016.52	200,481.18	
R. Beattie & Sons	63,298.59			$63,298.59
New Bldg., Improvt., etc.	1,655.68			1,655.68
Accts. & Bills Receivable	11,786.31	147,324.94	135,538.63	
Bowling Alley		1,533.58	1,533.58	
East Jersey Water Co.		315,000.00	315,000.00	
Little Falls Carpet & Rug Account Engine Room, etc. Contract		700.00	700.00	
		6,372.51	6,372,51	
Total Assets	$381,519.53	$1,394,445.69	$1,077,880.43	$64,954.27
Increase			$1,077,880.43	
Decrease			64,954.27	
Increase in Assets			$1,012,926.16	

LIABILITIES.

	1882 (C-8 p. 391)	1910 (D-1 p 544)		Decrease
Accts and Bills Payable	$ 81,519.53	$ 39,701.39		$41,818.14
Capital Stock	300,000.00	300,000.00		
	$381,519.53	$339,701.39		$41,818.14
Decrease in Liabilities			$41,818.14	
Increase in Assets			1,012,926.16	
Surplus (See Ex. C-7, p. 448)			$1,054,744.30	

A similar comparison of the balance sheets for the years 1905 and 1910, shows how the increase in surplus was made up during that period:

	1905 (C-8 p. 390)	1910 (C-2 p. 441)	Increase	Decrease
Real Estate	$188,618.96	$193,444.81	$4,825.85	
Machinery	132,660.06	172,251.59	39,591.53	
Stock Merchandise	237,353.63	356,335.32	118,981.69	
Cash	78,336.56	138,759.97	60,459.41	
New Bldgs., Mchy. Imp., Etc.	10,170.11	6,372.51		3,797.60
Accts & Bills Receivable	80,630.59	147,324.94	66,694.35	
Brown Bros., Cash	78,729.71	63,222.86		15,506.85
Colonial Trust Co., Cash	54,379.01	997.69		53,381.32
L. I. Real Estate	33,483.48			33,483.48
E. J. Water Co.	315,000.00	315,000.00		
Little Falls Carpet & Rugs, Invest		700.00	700.00	
Total Assets	$1,209,362.11	$1,394,445.69	$291,252.83	$106,169.25
Increase			$291,252.83	
Decrease			106,169.25	
Increase in Assets			$185,083.58	

LIABILITIES.

	1905 (C-8, p 391)	1910 (C-2, p. 441)	Increase	Decrease
Accts., Bills Payable, etc.	$ 51,257.76	$ 39,701.39		$11,556.37
Capital Stock	300,000.00	300,000.00		
Dividend	30,000.00	60,000.00	30,000.00	
	$381,257.76	$399,701.39	$30,000.00	$11,556.37
			11,556.37	
			$18,443.63	
Increase in assets			$185,083.58	
Increase in liabilities			18,443.63	
Increase in undivided profits between Nov. 30, 1905 and Nov. 30, 1910			$166,639.95	

Judge Collins insinuates in his brief that the present surplus of the company does not consist of profits derived from the business but from an appreciation in the value of its real assets. On page 7 of his brief he says: " * * * * * and its surplus is made up in great

part of the value of its land and water power, or the proceeds thereof."

Again, on page 8 he says: "The Beattie Manufacturing Company is not a manufacturing company under the statute in force in 1882, when it was formed, and its surplus is not one arising from the business of manufacturing but chiefly from appreciation of it real estate and water rights."

But referring to the table contained in Exhibit C-8 (p. 402) it is demonstrated mathematically that of the surplus of the company on November 30th, 1905, which at that date amounted to $828,104.35, $473,-104.35 was derived from the profits of the business, the total profits from the business during the history of the company up to the date in question amounting to $1,106,104.35. The total dividend paid amounted to $633,000, leaving this balance of $473,104.35. If to this last figure is added the amount realized from the sale of the water rights, viz., $355,000, the result is the amount of the surplus on hand November 30th, 1905, viz., $828,104.35.

By comparing the items showing the annual profits contained in the table on page 402 of the printed case with the profit and loss account contained in the same exhibit on pages 397 to 401, it will be seen that these annual profits all came either from the merchandise account, that is to say, the manufacturing business, or from the rents and interest and did not include any items received from the sale of real estate or of any of the fixed capital of the company.

An examination of the real estate account contained in Exhibit D-2, (p. 482), demonstrates mathematically that instead of any profits of the company on hand November 30th, 1905, having arisen out of the real estate, on the contrary, some of the profits derived

from the business were used in payment for the permanent improvements charged to this account.

The demonstration is as follows:

The real estate account was opened with a charge of $139,903.63. From time to time as improvements were made to the property the amounts of these improvements were charged to the account, and on the other hand, as property was sold, the proceeds of the sale were credited to the account. The account was also credited with various amounts written off to depreciation.

At the end of the period in question the total charged to the account amounted to (p. 486)	$263,275.65
The credits to	74,656.69
By deducting the latter sum from the former the result is	$188,618.96
This is the amount contained in the balance sheet in the same exhibit on page 527. By deducting from	$263,275.65
the initial charge to the account	139,903.63
with which the account was opened, the result,	$123,372.02
is the total charged to the account afterwards for permanent improvements. By deducting from this latter sum the amount of credits,	74,656.69
we find that	$ 48,715.33

is the excess of charges to the account over credits, and this last sum must, of course, have been derived from some other source than the real estate itself, and the only other source available was the profits derived from the business. This last sum is also the net increase in the book value of the real estate as it stood on the books up to the date in question.

If from the total credits to the account there is deducted the amount charged off for depreciation, the result shows that even a greater sum than $48,715.33 was taken from the profits of the business to add to the permanent improvements to the real estate.

The various credits to the account on account of depreciation were as follows:

Nov. 30, 1902. By profit and loss (p. 485)	$24,414.96
Nov. 30, 1903. By profit and loss, 10 per cent. of balance of account written off.....	21,898.46
Nov. 30, 1905. Profit and loss 5 per cent. written off balance of account to cover depreciation...	10,146.06
	$56,459.48

If this amount written off to depreciation be deducted from the total credits to the account, as follows:

Total credits	$74,656.69
Written off to depreciation	56,459.48
the result	$18,197.21

shows the total amount of cash derived from sales of real estate during the history of the company up to the date in question; consequently the final result shows that $105,174.81 derived from the profits of the business were expended upon the real estate.

So that if the manufacturing business be considered as distinct from the real estate department, and if separate books had been kept, the result shows that on November 30th, 1905, the real estate department would have been indebted to the manufacturing department $105,000.

Between November 30th, 1905, and November 30th, 1910, during which period the surplus appreciated to the extent of $166,639.95 no part of such appreciation

came from real estate except perhaps what they received for the Long Island real estate inventoried at about $30,000 in 1905 and which represented itself a debt due to the manufacturing department for which it was taken in payment..

It thus appears that the accumulated undivided profits of the company amounted on November 30th, 1910, to the huge sum of $994,744. As it must be assumed that some part of this enormous sum should be distributed by the decree of the court, the question remains, what amount that sum should be.

In discussing this question the fixed assets of the company, which it may be conceded cannot be distributed, may first be eliminated. As shown on the balance sheet of November, 1910, (Exhibit C-2, p. 441), these fixed assets were as follows:

Real Estate	$193,444
Machinery	172,251
New Buildings, Improvements, etc.	6,372
East Jersey Water Company mortgage	315,000
Little Falls Carpet & Rug Mills Investment	700
	$687,767

The East Jersey Water Company mortgage is included among the above items; for until it is paid off by the Water Company upon its maturity in 1918, or until it is disposed of by the Beattie Manufacturing Company, the amount in money it represents is not capable of distribution.

There remain the quick assets, composed of the following items as shown in the same balance sheet:

Cash	$138,795.97	
Colonial Trust Co.	997.69	
Brown Brothers	63,222.86	$203,016.52
Accounts and Bills Receivable		147,324.94
Stock of Merchandise		356,335.32
		$706,676.78
Deduct:		
Accounts Payable	39,701.39	
Dividend	60,000.00	99,701.39
		$606,975.39

This last sum is the amount of the quick assets of the Company.

By comparing the amount of these quick assets on hand November 30th, 1910, with the amounts the Company had on hand during the years previous to the commencement of the present suit, as shown in the table (Exhibit C-8, pp. 392-3) it will be seen that the quick assets in November, 1910 very greatly exceeded the amount on hand in any one of those previous years.

The particular item of quick assets on hand November 30th, 1910, which immediately attracts attention is that of the stock of merchandise, $356,335.32. That item appears to be abnormally large. It will be seen that the item is abnormally large by comparing it with similar items in the balance sheets for the five years previous, and with the average amount of those items for that period. The stock of merchandise on hand on the five previous years was as follows:

(Exhibit C-8, p. 390 and Ex. C-1, p. 437.)

1905	$237,353.63
1906	291,626.55
1907	282,484.78
1908	280,654.72

1909	276,732.33	
	$1,368,852.01	
Average	273,770.40	
Stock of Merchandise Nov. 30, 1910		$356,335.32
Average for the five years previous		273,770.40
Excess		$ 82,564.92

We submit that this excess of the merchandise account over the five years average is clearly abnormal and by reducing this one item to a normal basis there will be afforded the amount of excess available for distribution by way of dividend, viz., the sum of $82,-564.92.

We further submit that a large amount of the cash on hand should be distributed and that it could be done without causing any embarrassment in the conduct of the business. It appears that during the whole of the year Nov. 30, 1909, to Nov. 30, 1910, there remained cash untouched in Brown Bros. to the amount of over $61,000 (see p. 446).

In connection with this question, viz., the amount of working capital required by the company, we insist that the East Jersey Water Company mortgage of $315,000 should be taken into consideration. To the extent that profits have been used to restore to capital what was taken away from capital by the substitution of steam power for water power, this particular mortgage may be said to owe to profits the amount thus diverted therefrom. And the mortgage is an asset on which the company can readily raise any sum up to its face value at any time if it ever becomes necessary to do so.

In order to meet the case presented by the figures showing the actual condition of the Company on No-

vember 30th, 1910, the defendants prepared and presented to the court at the hearing in February last, their Exhibit D-1 (p. 539 et seq.). Besides the balance sheet contained in this exhibit, to which we have already referred, it also contained a statement (p. 539) which purported to show the financial needs of the company to March 1st, 1911. This statement took the situation existing on February 1st, 1911, and pretended to show the cash requirements of the company on the first of the following month. We insisted on the argument before Vice Chancellor Stevenson, and we still insist, that that statement was incorrectly drawn and that it must have been prepared for the purpose of misleading the court. Whether or not the statement was purposely intended to mislead, that certainly would be the effect if the figures in the statement were relied upon.

The statement begins by giving the cash on hand February 1st, 1911	$125,086.73
To this figure is added	24,704.89
making the total estimated cash on hand March 1st	$149,791.62

This result is obtained by adding to the cash balance February 1st, the estimated cash receipts for the month of February, the estimate being based on the figures for the previous year.

The glaring defect in the estimate which was either an inexcusable error or an intentional misrepresentation on the part of the defendants, as we insisted before Vice Chancellor Stevenson, is contained in the estimate of the expenditures in the same exhibit (p. 539).

In the first place the total expenditures of the business for the previous year, $640,074 are divided by twelve to obtain the average monthly expenditures,

which thus appear to have been $53,339.51, and that sum is taken as the estimated expenses for the month of February then ensuing, and that method of estimating was, of course, entirely proper.

But having made an estimate of one-twelfth of the total annual expenses as the probable expenditures for the month of February, there is then added to the result so obtained, the amount of the actual current liabilities of the company owing February 1st, $53,574.98, which it is assumed in the estimate, would all be paid during the month of February. Now it is perfectly apparent that in preparing this estimate the defendants might have taken either one of these two items, namely the first obtained by taking the average monthly expenses, based upon the previous year, or the second, by taking the actual amount of the accounts payable during February, but that they could not take *both*, the result of which would be *to double the apparent cash requirements for the month in question.*

The precise point is that the estimated items would not actually be paid until March though the debts would be incurred during February. In other words, the defendants have endeavored to crowd into the month of February not only the debts which were actually incurred during January, but would not be paid until February, but also estimated debts which would be incurred during February, but would evidently not be payable until after March 1st. If the January actual debts were not payable until February, it necessarily follows that the February estimated debts would not be payable until March.

Having thus doubled the apparent ordinary cash requirements for the month in the manner pointed out, there is then added to the estimate the two following items:

Engines, boilers, machinery,	
Under contract	$58,101.57
To be ordered	26,550.00
Total	$84,651.57

As to the first of these two items, it is to be noticed that the estimate provides for the payment during the month of February for all the work then under contract, regardless of whether the contracts are likely to be completed in that time or not, but still more extraordinary, the estimate provides for the payment of things not then even contracted for, within the month of February but *"to be ordered."*

By this unfair method of estimating it is made to appear that the company would actually be short of cash by the first of March. On the contrary, by the proper method the following result would have appeared:

RECEIPTS

Estimated cash balance March 1st, 1911		$149,791.62

EXPENDITURES

One-twelfth of annual expenses	$53,339.51	
New plant, etc. under contract	58,101.57	111,441.08
		$38,350.54

By this method of estimating it would appear that after paying for *all work then under* contract, the great bulk of which would certainly not really be paid for in February, there would still have been remaining on hand over $38,000 in cash on March 1st, 1911. Besides, this new plant is an extraordinary disbursement and properly payable out of capital.

In this connection we wish to notice briefly the item in the balance sheet contained in this same exhibit D-1, (p. 544) entitled "Account improvements as per journal entry $107,659.31."

We insisted in the argument before Vice Chancellor Stevenson, and we still insist, that this item was improperly inserted in the defendants' balance sheet for the purpose of swelling the apparent cash requirements of the company in the near future so as to influence the Vice Chancellor's decision as to what amount of cash the company could then distribute as a dividend.

This sum was made up of various items contained in the same exhibit D-1, under the head of "Statement of expenditures for improvements, machinery and replacements under way, contracted for or *planned,*" (pp. 540-2).

This statement shows on its face that the items contained in it did not, at the time the statement was prepared, constitute outstanding liabilities of the company. It appears that the only actual liability was contained in the items (p. 542):

Paid during December or entered as liability, and paid or entered as liability during January, which together total.....	$37,457.74

How much of this latter amount had actually been paid during these two months, and how much more remained unpaid, and still therefore constituted a liability, the statement does not show, but by referring to the trial balance of February 1st, contained in the same exhibit (p. 547), it appears that the entire amount of outstanding liabilities due to the creditors of the Company amounted to $53,574.98, and whatever liability in fact existed as a real liability in re-

spect of the items contained in the statement of expenditures for improvements, etc., must have been included in the item in the balance sheet of February first (p. 547) entitled, "Creditors' Ledger $45,887.-10."

A great deal of the testimony taken at the hearing in February 1911 was directed to the various items in this statement, and Vice Chancellor Stevenson, by his remarks (p. 267) made it appear to counsel that his mind would be largely influenced upon the question of the amount of dividend to be decreed by the court, by the amount of money the company would need in its business, including the amounts to be paid out for the various matters set out in this statement, but after the lengthy examination of both the witnesses Martin Towey and William H. Beattie, it was still left in doubt how many of the numerous items contained in this statement had in fact then been contracted for, and how many of those not already contracted for the company really intended to order.

It does appear, however, by the testimony of William H. Beattie that whatever contracts were made were entered into after Vice Chancellor Stevenson had announced his decision in favor of the complainants in this suit, although the witness' testimony was to the effect that these improvements had been under contemplation for some time previously.

However, we submit that all these various items contained in the statement in Exhibit D-1 were for additions to the fixed plant of the company and should be clearly charged to Capital Account and should not be paid for out of the profits.

The statements furnished by counsel on the other side simply disclosed what the situation would be if the Beattie Manufacturing Company were to close

down on March 1st, 1911, and cease to do business, and were to pay its outstanding obligations of every kind, including all moneys which it had contracted to pay in future months to its contractors. The statement simply shows that if the Beattie Manufacturing Company ceased to do business on March first and paid off every possible obligation out of its cash on hand, it would be short some $40,000, but that it would still have on hand, not only its still assets, but its merchandise and accounts and bills receivable, amounting to nearly one half a million dollars.

The accounts furnished by counsel on the other side are therefore absolutely valueless.

On the other hand our accounts show that the total reserve account, which on November 30th, 1905, amounted to $473,000, on November 30th, 1911, amounted to $639,000, an increase of some $166,000. It further shows that the net live assets in 1905 amounted to $448,000 and in 1910 amounted to $607,000, an increase of $159,000. It therefore follows that if the company should have paid a substantial dividend to us on the showing of November 30th, 1905, they should now pay us the same dividend (whatever that sum might have been) plus at least $159,000, the increase in the net live assets which represent additional surplus or accumulated profits.

Vice Chancellor Stevenson held, in his opinion, that on the showing of 1905 the stockholders were entitled to a substantial dividend and he so held notwithstanding the testimony of William H. Beattie, that they could not pay any dividend because they were then about to build a 600 horse power steam plant and a new building to be equipped as a rug plant.

An examination of the monthly balances will show the enormous amount of money that lay idle in banks

month after month from November 30th, 1905, and up to November 30th, 1910.

On November 30th, 1905, the period at which Vice Chancellor Stevenson determined the complainants were entitled to a substantial cash dividend, the company had in their banks, (p. 439) $211,445

In January, 1910, they had a cash balance of (p. 446)	195,549
In February, 1910	156,920
" March, 1910	270,159
" April, 1910	273,941
" May, 1910	262,247
" June, 1910	224,562
" July, 1910	216,919
" August, 1910	142,378
" September, 1910	263,414
" October, 1910	245,645
" November, 1910 (p. 446)	203,016

It thus clearly appears that the company could readily dispose of at least $150,000 in the form of dividends at the present time and by reducing its merchandise account by $80,000, if necessary, have ample working capital on hand with which, in addition to the moneys coming in from time to time, to meet its current expenses.

The profits for the last ten years have been as follows: (Exhibit C-8, p. 400, exhibit C-1, p. 438, exhibit C-2, p. 444).

1900	$ 36,040.74
1901	46,300.00
1902	59,943.99
1903	78,045.99
1904	51,452.39
1905	33,073.31
1906	35,473.86
1907	60,882.40

1908	78,586.72
1909	114,829.62
1910	74,073.41
	$668,702.43

These profits have been reached after writing out of the profits, for certain *alleged* depreciation in machinery, real estate and buildings, the following items:

1900	$ 10,487.40
1901	19,805.73
1902	44,938.53
1903	37,174.60
1904	.....
1905	15,529.57
1906	17,490.13
1907	35,696.83
1908	17,654.31
1909	49,704.60
1910	40,462.53
	$278,944.23

This depreciation has been written off notwithstanding the following amounts were paid during these years for repairs:

1900	$ 19,169.99
1901	20,021.38
1902	27,191.29
1903	26,636.51
1904	21,217.60
1905	22,611.46
1906	26,641.91
1907	17,880.82
1908	17,080.38
1909	26,749.09
1910	28,801.31
	$254,001.74

In view of these enormous expenditures for repairs and construction it must surely be manifest that the amounts deducted for depreciation really represent profits hidden in this manner on the books, but which in fact belong to the stockholders to the extent that such deductions exceed the actual depreciation. By simply enlarging this scheme of writing off depreciation on their books they could have made it appear that they had made no profits at all. We insist that the amount that they have written off their books in the form of depreciation during the past five years, amounting to about $150,000, represents profits, and that this method of book-keeping has been adopted in order to deceive the Court as to the true profits made.

During the same period of five years from 1905 to 1910 they have paid out for repairs about $117,000.

The dividends that have been paid during the past ten years are as follows:

1900	$ 30,000.00
1901	30,000.00
1902	30,000.00
1903	36,000.00
1904	30,000.00
1905	30,000.00
1906	30,000.00
1907	30,000.00
1908	37,500.00
1909	60,000.00
1910	60,000.00
	$403,500.00

It may be incidentally remarked here that of these dividends, $67,500 have evidently been paid as a result of, and yielding to, the pressure of this present suit.

In Beers vs. Bridgeport Spring Co., 42 Conn., 1727, it was said that "By an usage or custom which is as well established as if it stood upon legislative enactment, corporations steadily earning profits are expected to divide a portion of the same. Most of them make a division at least annually. A dividend declared imports payment thereof within a reasonable time. Indeed in the mind of the purchaser of shares, investments and dividends are as closely associated as are seed time and harvest in the thoughts of the husbandman."

The evident policy of Robert Beattie, the manager of this big corporation, was to regard *seed time* as coincident with the life times of Miss Beattie, Mrs. Murray, Mrs. Gedney and Mrs. Dickson, and to defer *harvest time* until after their death when he and his family, as industrious husbandmen, might garner in nearly all the grain.

It is very evident that the company, so far from exhausting, has never even attempted to use anything approaching the credit which its assets and working capital legitimately entitled it to receive. Its policy has been, at great loss to its stockholders, to use nearly all its "accumulated profits" as its working capital and make no use whatever of its capital stock for that purpose, *nor of that other important asset of a corporation, "its credit."*

While we admit that the $315,000 mortgage of the East Jersey Water Company is capital until distributed and should not be divided among the stockholders otherwise than in the form of stock dividends, we insist that none the less was the Company bound to use this valuable part of the capital stock as an asset of the Company *for the purpose of obtaining credit if necessary.* It had no right to take out this enormous sum out of its capital stock and tie it up in a napkin

as it were, and bury it in the ground so that the only benefit the stockholders derive from it is the four per cent interest paid by the East Jersey Water Company. There is not a bank in the City of Paterson who would not take this mortgage as collateral for a loan of more than $100,000 any day in the week, *but the Company has preferred to borrow money from its stockholders by withholding dividends to using the assets it had on hand, and which formed part of the natural working capital of the corporation.*

We feel that we shall only be exhausting the patience of the Court (if we have not already done so) if we go any further into this subject. The figures contained in the statements prepared by the accountants are more eloquent and persuasive than any argument could be.

We submit that a dividend of at least $150,000 should be declared, payable in cash at the present time or in such installments as the court may think reasonable.

II.

Counsel object to that portion of the decree which reserves to complainants the right to apply in future to the court for further directions so as to keep the conduct of these directors (if they remain in office), which has been so reprehensible in the past, under the control and supervision of this Court for the benefit of the stockholders. The amended bill of complaint prayed for relief of that character (p. 21). This was done in the case of Laurel Spring Land Co. v. Fougeray, (Court of E. & A.,) 50 N. J. Eq. 756.

Quotation:

"And in order that the matter may remain under the scrutiny of the court the decree directing the defendants to account and elect, as to salary or commissions should be supplemented by requiring them to declare such reasonable dividends, and to do so from

time to time, as the financial status of the business may warrant, *with leave to the complainant to apply to the Court of Chancery for relief in the premises if it be necessary for him so to do.*"

III.

On the Question of Excessive Salaries.

Upon the question of the salaries of the defendants, Robert Beattie and William H. Beattie, the cross appeal of the complainants relates to the salaries of those two officers during the six years, 1900 to 1905, both inclusive.

This question of the value of the services of corporate officers is difficult to deal with for the reason that its determination is altogether a matter of opinion.

The fairest criterion seems to be to compare the salaries received by the officers with the results which their services have obtained for the stockholders. The officers are, of course, the servants of the stockholders and the value of their services depends altogether upon the benefits derived from them by the stockholders.

Exhibit C-28, (p. 434) contains in tabulated form a statement showing the total net profits of the Company; also how those profits were derived, both from its manufacturing business and from the receipts of rents, interest, etc., the dividend paid to the stockholders and the salaries received by the officers during each year. From these figures it appears that out of the total net profits from 1900 to 1905, inclusive, of approximately $305,000, there was only about $192,000 derived from the manufacturing business, the balance coming in in the form of rents and interest; and for earning this

$192,000 for the stockholders, who only received in dividends during that period, $186,000, these two officers drew in salaries $99,500.

Of the sum of about $112,000 received from rents, etc., $75,600 was derived from the interest on the East Jersey Water Company mortgage (Exhibit C-8, p. 411).

Exhibit C-29, (p. 435) shows the dividends paid during the history of the company up to and including the year 1905, with a calculation of the rate per cent. of the dividend upon the amount of the par value of the capital stock and also upon the actual value of the company's capital and surplus. This shows that the average percentage which the dividend bore to the surplus and capital stock, or the total capital investment of the stockholders during the history of the company to 1905, was 4.28 per cent.

For the last six years of that period, viz., 1900 to 1905, both inclusive, those figures were as follows:

	Rate on surplus and Capital Stock.	Capital and Surplus	Dividend Paid	Rate on Cap. Stock.
1900 Nov. 30	4.28 per cent.	$ 700,288.87	$30,000	10.00 per cent
1901 " "	4.20 "	715,288.67	30,000	10.00 "
1902 " "	4.86 "	740,232.66	36,000	12.00 "
1903 " "	3.83 "	782,278.65	30,000	10.00 "
1904 " "	2.66 "	1,125,031.04	30,000	10.00 "
1905 " "	2.66 "	1,128,104.35	30,000	10.00 "
	22.49			

Average 3.75 per cent.

We submit that these figures speak for themselves. These directors voted their own salaries to themselves and the burden of proof was on them to show that such salaries represented the reasonable value of the services rendered. This, we submit, as the figures show, they absolutely failed to do. In considering the question of salaries it must also be borne in mind that these two officers were actuated by improper motives

in the conduct of the business in pursuing the dividend policy which they followed during the period in question. Upon the subject of salaries we refer to the following cases:

Raynolds v. Diamond Mills Paper Co., 60 Atl., 941.

Lillard v. Oil Paint and Drug Co., 56 Atl., 254.

David v. Thomas & Davis Co., 63 N. J., Eq., 572.

Gardiner v. Butler, 30 N. J., Eq., 702.

IV.

As to Counsel Fees

First, as to the charge of Judge Collins that the counsel fee allowed is *grossly excessive.*

The firm of Griggs & Harding, who were retained as special counsel by Mrs. Gedney, worked throughout in unison with the firm of Humphreys & Sumner, who had previously been retained by the other complainants, and by an agreement between the two firms, whatever counsel fees shall be finally allowed will be divided equally between them.

There were at least twenty occasions during the litigation upon which appearances were made before Vice Chancellor Stevenson at Jersey City or elsewhere, and upon all these occasions both Mr. Harding and Mr. Humphreys, and generally Mr. Sumner also, were present.

As a matter of fact if the counsel fee which the Vice Chancellor, after reviewing our work, has allowed ($5,000) were to be split up into an itemized bill, specifying each service rendered and each period of

time occupied in rendering it, it would be found that counsel were barely receiving clerical pay for the actual time engaged in the litigation. The work done by counsel, which covered a great part of the years 1905, 1906 and 1910, and January, February and March, 1911, was simply enormous. As to the quality of the work and its necessity, we submit that the learned Vice Chancellor, who fixed the fee, is a better judge on those subjects than counsel for the defeated party.

The result of the decree of the Court of Chancery was to secure $60,000 for the stockholders of the Beattie Manufacturing Company as a dividend. Consideration should also be given to the fact that during the litigation, and, as we believe, yielding to the pressure of it, the corporation declared extra dividends (in excess of the usual dividends) of $67,500. We cannot, of course, say as an absolute certainty that these extra dividends, aggregating $67,500, would not have been paid but for the pressure of the suit, but in view of the fact that with the exception of the years 1899 and 1903, when the company declared a dividend of twelve per cent ($36,000) in each of those years, the company had never during its whole prosperous career, during which it had heaped up its tremendous surplus, declared a dividend in excess of ten per cent per annum ($30,000), it is at least highly probable that this litigation had something to do with the distribution among the stockholders of this extra dividend of $67,500. If, then, we claim that that extra dividend resulted from our suit, then we have a fund of $127,500 which, so far, this suit has been instrumental in causing to be divided among the stockholders, and the fee allowed, $5,000, is less than five per cent of that amount.

The fact that the complainants failed to cut down the salaries of the defendants other than the corpora-

tion, cannot affect the complainants' right to counsel fees.

The suit was to some extent a peculiar one. In so far as it sought to cut down the salaries of the defendants other than the corporation, it was a suit designed, it may be said, for the benefit of the corporation. So far as the bill sought to compel the corporation to declare an extra dividend, it was a suit in every respect hostile to the corporation.

The complainants having been successful in their suit so far as it was hostile to the corporation, the corporation ought not to be heard to ask that the complainants should be deprived of their counsel fees because that part of their claim, which was in good faith designed for the benefit of the corporation, was unsuccessful.

The defendants in prevailing on that branch of the case prevailed merely against the corporation, but it was through the management of these defendants, who were governed by selfish motives, that the dividends were unlawfully withheld, and we know of no principle upon which the court should allow them to take advantage of their wrong and recover costs even against the corporation, but if they should recover such costs against the corporation, that in no respect should stand in the way of our right to counsel fee out of the fund.

From the very nature of the case the work devolving upon the complainants was vastly more onerous than that devolving upon the defendants. We had first of all to construct a case, analyzing most complicated figures for that purpose, and constructing the form, character and scope of the tables and calculations which should be prepared in order to inform the court as to the true facts. We had then to attack the defendants' position while they, on the other hand, had

all the facts in their own breast and fought us inch by inch to the end. The matter was placed in our hands in July, 1905, and efforts were then made to procure an examination of the accounts of the Beattie Manufacturing Company by experts procured by us. This was refused and it was not until January 8th, 1906, after the bill had been filed, and after we had insisted upon an examination of the books, that we secured finally a stipulation agreeing to their examination by Mr. Lewis. We had numerous conferences with Mr. Lewis in which we laid out the plan, character and scope of the arithmetical information we desired to submit to the court. Then Mr. Lewis died and we had to have another accountant, Mr. Peterson, to verify his work in order that he could testify at the hearing. We had to go through the same course of instructions and analyses with Mr. Peterson. Afterwards, when a decision was announced in 1910, there had practically to take place a second hearing. The case had to be prepared all over again. New tables had to be prepared by an accountant (W. Howard) covering the period between the date of the hearing (1905) and November 30th, 1910. This imposed upon counsel the burden of practically beginning the case over again and trying it a second time.

A large part of the work of the complainants had therefore been to discover and present to the court all the facts relating to the business affairs of the company extending over many years. Those facts were necessary for the court in order to decide the questions involved.

From the beginning to the end of the case by various motions, complainants sought to get these facts, and in each instance the defendants instead of rendering us any assistance, strenuously made opposition. The labor of building up this case in order to present the facts necessary for the court, was manifestly more than the labor of the defendants in obstructing us. The services

rendered by counsel for the defendants to his clients, who were defeated, is no criterion as to what the court should allow the counsel who have succeeded in obtaining the distribution of this dividend. If the same labor had been expended by counsel during the trial of the probate of an important will, would the court have any hesitation in making the allowance in question?

We submit that instead of cutting our counsel fee down, as suggested by Judge Collins, a substantial sum should be added to it for the services of counsel for the complainants before this Honorable Court. Of course, if this court should, under our cross-appeal, increase the dividend to be paid by the defendant corporation, this court will have the power (if it has the inclination) to increase our counsel fee accordingly.

As to Our Legal Right to Any Counsel Fee.

We insist, first, that we are entitled to a counsel fee under P. L., 1910, (p. 427), being the parties obtaining the decree within the meaning of that statute. It is absurd to argue that because we failed in that part of our prayer in which we sought to cut down the salaries of the defendants other than the corporation, a prayer which was designed for the benefit of the corporation, that the corporation should be allowed to deprive us of our counsel fee, although we have been successful in our suit so far as it was hostile to the corporation.

Secondly, we insist that if the statute should not apply, we are entitled to a counsel fee out of the dividend directed to be paid, or out of such dividend as may by this court be directed to be paid.

The suit was brought by Alexander Murray, Agnes Beattie and Josephine Gedney not only for their own benefit, but on behalf of all other stockholders of the

Beattie Manufacturing Company who should come in and contribute to the expenses of the suit.

Although no other stockholders did come in or contribute to the expenses of the suit, every stockholder of the corporation will participate in the dividend which the decree orders shall be divided among them.

The suit was practically a suit to compel the corporation to distribute a dividend among its stockholders, which, according to law, it ought to have distributed before, but had not distributed, and there can be no doubt that under these circumstances it is only proper that the corporation should pay this reasonable counsel fee out of the fund which would thus in effect come very lightly out of the pockets of its stockholders. We base our right independently of the statute of 1910, upon the court's general equitable power to make such an order.

We claim that this case is somewhat analagous to the ordinary interpleader suit. The object of the suit was to ascertain, as between the corporation as a separate entity, and its stockholders as independent parties, whether a certain fund, part of the accumulated profits of the business, belonged in law to the corporation, or belonged in law to the stockholders; i. e., whether the corporation had the right to retain those profits as a working capital, or whether it was bound to distribute them among the stockholders.

The Court of Chancery has held that the sum of $60,000 belonged to the stockholders and was wrongfully and for an improper purpose withheld by the directors of the corporation, and should have been distributed among the stockholders by the corporation. It would therefore seem to us that every reason which justifies the Chancellor to allow a counsel fee by reason of his inherent jurisdiction in that behalf in the ordi-

nary interpleader case, or in the ordinary case of a trustee seeking directions from the Court of Chancery as to his duties dependent upon the proper construction of the will of a testator, applies to the case at bar.

We refer to the power referred to in the leading case of Attorney General vs. Moores Executors, 19 N. J. Eq., 503-519.

We submit that the fund which the Chancellor has declared to belong to the stockholders and not to the corporation, is in fact a trust fund. The complainants were *cestuis que trust* and invoked the power of the court for the purpose of having distributed to them this fund which was unlawfully withheld by the corporation through its directors. Inasmuch as the court has decided that that money was unlawfully withheld from the stockholders, it may be conclusively presumed that the distribution of this fund is for the benefit of all the stockholders, since it must be presumed to be for their benefit, as it lawfully belonged to them and should have been distributed to them under our corporation laws. In this respect then the suit appears to bear a close analogy to Trustees v. Greenhough, 105 U. S., 527; and the cases cited by Judge Bradley in that case. From those cases, we submit, that the true rule to be deduced is that the power of a court of equity, irrespective of the statute in question allowing counsel fees, is not confined to cases of either wills or interpleaders or any particular case where a trust fund is involved, but that the rule extends to allow a counsel fee in all cases where one party recovers a fund for the common benefit of other parties who are similarly interested.

In Trustees v. Greenhough supra, Judge Bradley says: "In a case like the present, where the bill was filed not only in behalf of the complainant himself, but in behalf of the other bondholders having an equal

interest in the fund and where the bill sought to rescue that fund from waste and destruction arising from the neglect and misconduct of the trustees, and to bring it into court for administration according to the purposes of the trust; and where all this has been done, and done at great expense and trouble on the part of the complainant; and the other bondholders have come in and participated in the benefits resulting from his proceedings; if the complainant is not a trustee, he has at least acted the part of a trustee in relation to the common interest. He may be said to have saved the fund for the *cestuis que trust,* and to have secured its proper application to their use. * * * * *

"It would be very hard on him to turn him away without any allowance except the paltry sum which could be taxed under the fee bill. It would not only be unjust to him, but it would give to the other parties entitled to participate in the benefits of the fund an unfair advantage. He has worked for them as well as for himself, and if he cannot be re-imbursed out of the fund itself, they ought to contribute their due proportion of the expenses which he has fairly incurred. To make them a charge upon the fund is the most equitable way of securing such contribution. * * * * *

"It is a general principle that a trust estate must bear the expenses of its administration. It is also established by sufficient authority, that where *one of many parties having a common interest in a trust fund at his own expense takes proper proceedings to save it from destruction* and to restore it to the purposes of the trust, he is entitled to re-imbursement, either out of the fund itself, or by proportional contribution from those who accept the benefit of his efforts.

The same rule was followed in Atty. Gen. v. Old South Society, 13 Allen 474.

"Of course, it is well understood that costs as between solicitor and client include all reasonable expenses and counsel fees, and are not like costs as be-

tween party and party, confined to the taxed costs allowed by the fee bill. This difference is pointed out in the case, In re. Paschal, 10 Wall. 483, 493.

"The same rule is applied to creditors' suits, where a fund has been realized by the diligence of the plaintiff. In England where specialty creditors have a preference a simple contract creditor who recovers a fund for the general benefit, is allowed his costs, as between party and party, out of the fund in preference to all other claims; and the balance of his costs, as between solicitor and client are to be paid either out of the fund or pro rata by all the creditors who partake of the benefit of the suit. This was the judgment in *Stanton* vs. *Hatfield,* 1 Keen 358; followed in *Thompson* vs. *Cooper,* 2 Coll. 87. In the latter case, Vice Chancellor Knight Bruce said: 'Having come in and proved, and obtained the benefit of the suit which was instituted on their behalf, as well as that of the plaintiff, it cannot be just that in such a suit—a suit instituted for the benefit of all the creditors—one alone should bear the burden when others have the benefit.' To the same purport see Tootal v. Spicer, 4 Sim. 510; Larkins v. Paxton, 2 N. Y. L. & K. 320; Barber vs. Wardle, 2 N. Y. L. & K. 818; and Sutton v. Doggett, 3 Beav. 9.

"The rule that a party who recovers a fund for the common benefit of creditors is entitled to have his costs and expenses paid out of the fund, prevails in bankruptcy cases."

In Massachusetts this rule has been enacted upon "not only cases of express trust under wills or other written instruments, but in proceedings for the common benefit of any person interested in the preservation of property." Davis vs. Bay State League, 158 Mass. 434.

There are other cases applying this rule cited in 2 Daniels Chancery Pleadings and Practice, 6th American Edition in foot notes on pages 1411.

Whether our counsel fee should in terms be paid out of the dividend to be distributed, or whether it should be paid by the corporation itself out of other funds, would seem to make but little difference in effect. The cases cited seem to hold that it should be paid out of the dividends if the court in allowing counsel fees exercised its jurisdiction irrespectively of the statute.

We therefore respectfully submit that we are either entitled, under the statute, to the counsel fee in question, or that the Court of Chancery had jurisdiction to direct the payment of the counsel fee either out of the corporate funds generally, or out of the dividend directed to be declared.

V.

The decree should be changed so as to provide for the payment to the complainants by the defendant corporation of the amount of the reasonable disbursements made by the complainants in payment for the services of the expert accountants.

The whole of the above argument with reference to the equitable jurisdiction of the Court of Chancery to allow a counsel fee out of the fund, applies with equal force to the payment out of the fund of the expenses of the three accountants.

The late I. A. Lewis' bill, aggregating altogether $940.04, was paid in equal shares by the defendant corporation and by our clients. It was stipulated between the parties to the suit that Mr. Lewis should make a report and inasmuch as one half of the bill has been paid by the corporation and not by the defendants other than the corporation, we submit that now that the corporation has lost the suit it must bear the whole expense.

Mr. Lewis died before the hearing, the court appointing Mr. Peterson to take his place, and his bill of $532 was fairly earned and was paid by the complainants.

On Mr. Peterson's death Mr. Howard also fairly earned his bill of $663.87, which was rendered necessary in order to bring down the accounting from November 30th, 1905 to a date as near as possible to the date of the final decree.

These accounts were made use of by all the parties in the cause and by the court and they enured to the benefit of very stockholder of the company. It would not therefore seem equitable that these bills, which have enured to the benefit of all the stockholders, should be borne exclusively by the complainants who only represent a minority portion of the stock. If these bills are all paid by the corporation then they will come easily out of the pockets of each stockholder who is a beneficiary in the suit. All the stockholders are going to benefit by the suit. Can there in equity, therefore, be any reason why they should not all contribute equally to the expenses of this suit, and this can only be effectually accomplished by making the corporation bear those expenses.

If we were claiming (as perhaps we might claim) that the defendants other than the corporation should pay the costs and counsel fees in this suit. then there might be some question whether these special disbursements could be made a part of the taxable bill of costs as against them. But as we are not claiming that relief it is, we submit, only fair that the corporation should pay these disbursements in order that all the stockholders, who share pro rata in the benefits of this litigation, should bear equally the expenses and burdens of the suit. It should be borne in mind that all the expenses of all the defendants in defending this

suit have in all likelihood been paid out of the corporate funds, that is to say, out of the pockets of the stockholders, and it seems to us that under those circumstances these special disbursements incurred by the complainants for the benefit of all the stockholders, should not be borne exclusively by the complainants but by all the stockholders pro rata.

We are not particularly concerned in the counsel fee that has been allowed the defendants other than the corporation, but we submit that under the circumstances such counsel fees, if proper, should be paid by the corporation and not by the complainants.

If the counsel fees of counsel for the defendants for defending that part of this suit in which they have been beaten have been paid out of the corporate funds, it would seem at least fair that the corporation should also pay their fees and expenses in regard to that part of the case in which they prevailed against the corporation.

Respectfully submitted,

HUMPHREYS & SUMNER,

Of Counsel with the Complainants.

New Jersey Court of Errors and Appeals

Between

ALEXANDER MURRAY ET ALS.,

Complainants,
Appellants and Respondents

and

BEATTIE MANUFACTURING COMPANY ET ALS.,

Defendants,
Appellants and Respondents.

On Cross Appeals from Chancery.

BRIEF OF GRIGGS & HARDING, COUNSEL FOR COMPLAINANT, JOSEPHINE GEDNEY,

The Vice Chancellor decided that there was a large surplus derived from profits not needed for the company's business, and improperly withheld from the stockholders. The decree rests upon the general power of the Court of Chancery to decree distribution in such case, irrespective of any statute requiring it.

After denying complainants' right to invoke the Statute, the Vice-Chancellor says:

"Under the original law of the State and un-
"der the present corporation act, as amended in
"1901, the rule still obtains, as we have seen,
"that while the distribution of the profits of a

"corporation in dividends is largely within the "discretion of the directors, a Court of Equity "will intervene and compel a distribution of pro- "fits which have been unreasonably and improp- "erly withheld. See authorities cited in Stevens "vs. United States Steel Corporation, supra, pp. "337 and 378.

"The control over dividends by the directors of "a corporation, obtainable through a by-law, pur- "suant to the provisions of Paragraph 47 as "amended in 1901, is plainly subject to this well "settled rule of equity.

"(5). The case under consideration is one "where this Court, in my judgment, should inter- "vene to compel the distribution of a large "amount of the accumulation of profits which for "a long period of time have existed as cash on "deposit with bankers or in a trust company.

"I have already pointed out the very substant- "ial selfish interest of the directors which natur- "ally inclines them to keep back dividends and let "the accumulated profits add value to the stock. "This disqualifying interest upon a slight show- "ing of actual hardship and unfairness might "justify intervention by a Court of Equity. But "the proofs in this case establish beyond a "shadow of doubt that for years there has been "an accumulation of the profits of this corpora- "tion in money drawing a low rate of interest. "The dividend of late has been 10 per cent per "annum. Thus $30,000 a year has been distri- "buted, while it is perfectly plain that the divi- "dend often might have been doubled without "having any other effect upon the corporation "or its business than to diminish these huge de- "posits in the banks. The only attempt worthy "of consideration made by the defendant direc- "tors to justify this enormous piling up of pro-

"fits in money was put forward by Mr. William "H. Beattie, to the effect that such accumulation "of money enabled the corporation to guarantee "for the future the payment of 10 per cent. divi- "dends. Inasmuch as directors of corporations "engaged in endeavoring to make money for "stockholders are not charged with the duty of "guarantying stated incomes to the shareholders, "and are charged with the duty of honestly pay- "ing out all profits which the corporation does "not require for its own use in the corporate "business, the excuse of this director need not "be further considered.

"The proofs do not show that the Beattie "Manufacturing Company is engaged in erecting "buildings or in improving land or using capital "in carrying on any business not connected with "manufacturing which is permissible under its "charter, nor does it appear that the corporation "is contemplating engaging in any such work. If "the corporation should spend $40,000 or $50,000 "in the erection of a new power plant to take the "place of the water which has been cut off or "will be cut off on or before 1915, the evidence "shows that after allowing for this extra-ordin- "ary disbursement a large dividend could still be "paid without injuriously affecting the corpor- "ation in any way." (pp. 566, 567.)

The power of the Court to order a dividend of such profits improperly withheld from stockholders is undoubted.

Laurel Springs Land Co. vs. Fougeray, 5 *Dick.* 757.

Griffin vs. Griffin Iron Co., 16 *Dick.* 269.

Stevens vs. U. S. Steel Corporation, 68 *N. J. Eq.* 373.

Reynolds vs. Diamond Mills Co., 3 *Rob.* 299.

In Laurel Springs Land Co. vs. Fougeray, 5 Dick. 757, Mr. Justice Garrison speaking for this Court, on pages 759 and 760, refers to this power and the mode of exercising it as follows:—

"The power of the Court of Chancery to order "the directors of a trading corporation to make "a dividend of unused profits when they im- "properly refuse to do so is undoubted. The "shareholders in such concerns not unreason- "ably expect to enjoy the fruits of successful en- "terprise in stated distributions of profits * * * * "there is also an implied condition that the con- "fidence thus reposed shall be honestly exercised "with reference to the avowed purpose of the "company * * * * *. In the present case the "prayer of the complainant should be met by a "decree requiring the defendants, as directors, "to declare a dividend of all the net earnings *not "needed for the legitimate purposes of the com- "pany's business.* And in order that the matter "may remain under the scrutiny of the Court, the "decree directing the defendants to account and "elect as to salary or commissions should be sup- "plemented by requiring them to declare such "reasonable dividends and to do so from *time to "time as the financial status of the business may "warrant,* with leave to the complainant to apply "to the Court of Chancery for relief in the prem- "ises if it be necessary for him so to do."

In the present case in the determination that the distribution should be made and in the manner of its payment, the Court of Chancery closely followed the rules laid down by this Court in Laurel Springs Land Co. vs. Fougeray, supra.

The difficulty which the Court often has in this class of cases in seeing its way clear to substitute its judgment for that of directors, did not appear in this case. The business was not so vast

or complicated, that a Judge could not from the evidence understand what amount of working capital the business required.

There was no claim by defendants that any unusual contingent fund should be maintained, such as may be required in some kinds of business as for instance, for purchasing patents, buying competing business, and the like, where a Judge has peculiar difficulty in seeing a clear way to substitute his judgment for that of experienced business men, who have exercised their honest judgment.

In this case the only contemplated expenditures presented to the Court to justify the surplus, were for erecting buildings and procuring machinery for manufacturing rugs. The defendants did not pretend that they could not give reliable estimates as to such expenditures.

The Vice Chancellor took into account all estimated expenditures which defendants claimed were to be made, and in view of such expenditures, found that the distribution ordered in the decree should be made. The defendants did not justify the surplus as necessary for the company's business, but claimed to have maintained it for the purpose of giving a uniform dividend of 10 per cent. from year to year. In addition to the fact that its maintenance for such avowed purpose was illegal, the defendants as trustees for the complainants, by the terms of the trust under their father's will, had a selfish interest tending to induce them to maintain the surplus for selfish purposes, and the further fact appeared to the Court, that defendants had shown a disposition to act unfairly with complainants as directors and trustees.

The conclusions of the Vice Chancellor are based upon the following propositions supported by the evidence:—

FIRST: For several years before the bill was filed and at the time of the decree, accumulated profits of the Company not needed for its business remained undistributed.

The truth of the proposition will be seen upon an analysis of the figures proven, showing the financial condition of the company.

From December 31, 1882, when the company was organized, until November 30, 1905, the total net profits of the Company amounted to $1,106,-104.35 (pp. 44, 67, 402, 403, Ex. C-8). This sum represents the total net profits after deducting for depreciation of machinery and property for the same period.

The total amount of dividends paid during the same period was $633,000.00 (pp. 45, 66, 406, 407 Ex. C-8.)

The accumulated profits therefore, on November 30, 1905, the date to which calculations were made on the original hearing were $503,104.35; and deducting from that sum the $30,000.00 dividend declared for that year would leave accumulated profits of $473,104.35 (pp. 45, 67.)

These accumulated profits amounting to $473,-104.35 on November 30, 1905, were then represented in the various items of cash in banks and Trust Companies, merchandise, machinery and property of the company.

On November 30, 1905, the quick assets of the company consisting of property either in cash or quickly convertable into
Cash, amounted to.....$529,429.50
And the liabilities of the company were 81,257.76

Leaving a working capital at that time
of. $448,171.74
(P. 393. Ex. C-8.)

Of this working capital on November 30, 1905:
$ 78,336.56 was cash in Bank on deposit in Paterson.
78,729.71 was cash in Brown Bros. Bank.
54,379.01 was cash in Colonial Trust Co. (p. 393.)

$211,445.28 was the total sum in cash of this working capital on November 30, 1905, and in addition to this cash there was the remaining working capital consisting of accounts and bills receivable amounting to.....$ 80,630.59
And stock of merchandise amounting to. 237,353.63

Total. $317,984.22
Against which were liabilities amounting to. 81,257.76

Leaving over liabilities, merchandise and bills and accounts receivable amounting to. $236,726.46
Cash amounting to..... 211,445.28

Total working capital amounting to. .$448,171.74
(pp. 393. Ex. C-8.)

The statement of Mr. Peterson shown in the printed case, (pp. 412 to 414, Ex. C-8) shows the amount of monthly cash balances which the company had in Trust Companies and Banks at the end of each month from November 30, 1899 to November 30, 1905.

(p. 412 to 414.)

This statement shows, that during this period of six years immediately preceding November 30, 1905, the last date to which the financial condition of the company was considered for the purposes of the suit on the original hearing, the

Company, at the end of every month, after making all expenditures ordinary and extraordinary, including unusual expenditures for machinery, improvements, large purchases of merchandise and all contingencies whatsoever, always had left a surplus of cash either in Bank or in Trust Companies *which had not been used* exceeding $90,000.00, and it will be noted that at the end of very few months was this *unused* cash as low as $90,000.00, but generally it would run from $150,000.00 to $175,000.00.

From the year 1903 to 1905 these unused monthly balances grew from sums generally between about $150,000.00 and $175,000.00 to sums between about $200,000.00 and $250,000.00.

The lowest cash balance in the year 1904 was in February, being $164,874.66, and the lowest balance in the year 1905 was in August, being $176,478.44. Generally in 1905 the balances ran from sums between $200,000.00 and $225,000.00. (p. 414, 415.) It should be noted in this connection, that during this latter period extraordinary expenditures had been made for goods, machinery, &c.

In the year 1905 the machinery item of assets was $132,660.06 as against $107,670.26 in 1904, an increase in expense for that item of about $25,000.00 (p. 390), indicating that such sum had been spent for machinery during that year.

Moreover the stock merchandise item of assets in 1905 was $237,353.63, as against $194,487.70 in 1904, showing that this expenditure of 1905 exceeded that for the same item of 1904 by about $43,000.00; and yet, notwithstanding these abnormal expenditures of about $68,000.00 for these two items of the year 1905 over the year 1904, we find on November 30, 1905, a cash balance in bank and Trust Companies of $211,445.28, as we

have previously shown, representing unused cash. At this time the accounts and bills receivable were $80,630.59, while the bills payable were only $51,-257.76, an excess of between $29,000.00 and $30,-000.00; and at the same time the stock merchandise item representing stock goods in process of manufacture and manufactured goods ready to be converted into cash amounted to $237,353.63. (pp. 390, 391.)

This cash, it will be noted, was derived from accumulated profits over and above all profits applied to improvements and profits represented in large sums written off for depreciation of property; and it was in addition to the other quick assets consisting of bills and accounts receivable and large stock of merchandise manufactured and in process of manufacture which were constantly available as working capital.

Since this large sum of cash amounting to from approximately $200,000.00 *to* $250,000.00 *was constantly in the banks during* 1905, *and from approximately* $150,000.00 *to* $175,000.00 *for the four preceding, it is evident that these large amounts of cash were not, during those years, in fact used in any way in the business.*

The fact that such a large sum of money in cash was *constantly* in hand for six years and never used in the business during that time sufficiently shows in itself, that it was not needed for the business.

It sufficiently shows, that the quick assets other than this cash, consisting of merchandise constantly sold and bills and accounts constantly received, afforded all the working capital needed by the Company during these years, prior to November 30, 1905.

The complainants on the hearing showed the situation of the company to November 30, 1905,

because that date was the end of that fiscal year and complainants' accountant could not give the situation for the year 1906 until after the end of that fiscal year and the yearly inventory for that year.

The Statement Ex. C-8 (pp. 389-420) shows, that for the years 1903, 1904 and 1905, the company had been piling up a surplus not used or needed in the business. The two years of the greatest sales in the history of the company up to the year ending November 30, 1905, were 1902 and 1903. The sales for the year ending November 30, 1903, were $528,596.68 (p. 390.) During the whole period of the two years preceding November 30, 1903, the lowest cash balance was in January and February 1903, which was from about $100,000.00 to $110,000.00, (p. 413) which continued for about two months only, but at all other times during that period of two years, from November 1901, to November 1903, the balances were generally from $150,000.00 to over $200,000.00, approximately (p. 412, 413).

The next time of the lowest cash balance after this period in January and February, 1903, was August 31, 1903, when the cash balance was $154,558.26 (p. 413).

Although the two lowest periods of cash of the year 1903 had these cash balances, the sales for this year were next to the highest in the history of the company up to that time, the year before, 1902, being slightly higher. Yet in this year of great sales and presumably of greatest purchases of raw material and other expenditures, the unused cash during the whole of the year only once for a short time was as low as about $100,000.00, and once again about $150,000.00. This was in excess of the company's greatest possible needs, and it took no advantage of credit. Yet for this

fiscal year ending November 30, 1903, *out of* $78,045.99 (*p.* 402) *of net earnings there was paid only* $36,000.00 *in dividends,* (*p.* 407) *and the directors then again added over* $42,000 *of these profits to the surplus which had not been used, and in* 1904, *with the surplus thus augmented, so that from* 1903 *onward their cash balances never at any month appear to have been less than about* $200,000.00, *except once when it was about* $190,000.00 *they again added* $21,452.39 *of the net profits of* 1904 *to this great and needless surplus, out of the net earnings for that year of* $51,452.39 (*pp.* 402,407).

During the year 1905 the lowest cash balance in the bank was about $176,000.00, while it was generally between $200,000.00 and $240,000.00. It is also noticeable that during this period, from November 1903, to 1905, the machinery account was increased over $27,000.00, which was an unusual expenditure.

It is evident, that the large stock of merchandise in November, 1905, being $237,353.63, or about $40,000.00 in excess of the preceding year, (p. 390) and about that much in excess of any year, represented the material which they had purchased and paid for, in anticipation, as William H. Beattie says, of the large business of 1906, although it has turned out in 1906 to be a disappointment. Although they had procured this large stock of material before November 30, 1905, yet the balance of cash in bank and Trust Companies at that time was $211,445.28 (p. 390).

From the foregoing it is clear, that during the year, 1905, there was in cash constantly on hand a sum left, (after paying for unusually large expenditures and every purpose of the business) amounting to from $200,000.00 to $240,000.00, which was not at any time used or needed for the

purposes of the business. Even if, on one or two occasions during this year the surplus was reduced to about $176,000.00, it was not necessary to reduce it that much at any time, since in the next month it was always very much higher and the Company's credit could always have been carried a few weeks.

The only extraordinary expenditure of the company to reduce this surplus of cash amounting to $211,445.28 on November 30, 1905, required after that date until the time of William Beattie's testimony taken in October 1906, was an expenditure of about $25,000.00 which, according to William H. Beattie's testimony, had been spent for machinery in 1906.

The only possible use which defendants, in their testimony when the case was closed in October 1906, gave for maintaining this unused cash, was the following:—

William H. Beattie said, that to keep up the rug business the Company might have to make expenditures; that the company had already paid out since November 30, 1905 to the time of his testimony in 1906, $19,109, and that it would thereafter cost $45,000.00 to install a new power plant distributed by motors with appurtenances of every kind, coal sheds, and everything else necessary for the operation of the plant, and that he *should think* that it would cost from $35,000.00 to $30,000.00 for rug plant consisting presumably of building and machinery (p. 173).

Taking this estimate of William H. Beattie of $45,000.00 as the cost of the power plant and for the rug plant from $30,000.00 to $35,000.00, the total sum of about $77,500.00 only was needed, according to his statement to make these improvements which were to be made not immediately, but some time thereafter.

If this sum of $77,500.00 had been required to be paid all at once at the time of his testimony, (which of course was not the case), there would then have been left of this surplus, more than $100,000.00 *in cash* not needed for the company's use, without regarding the large working capital in bills and accounts receivable and merchandise.

It appeared on November 30, 1905, the last fiscal year for which the amount was taken at the time of the trial, and for several preceding years, on corresponding dates, that the bills and accounts receivable by the company considerably exceeded the bills and accounts owed by it.

On November 30, 1905, the bills and accounts receivable exceeded those payable by about $30,000.00; on November 30, 1904, by about $29,000.00; on November 30, 1903, by about $45,000.00; on October 30, 1902, by about $37,000.00; on October 30, 1901, by about $26,000.00 (pp. 390, 391, Ex. C-8).

This situation of the company thus having been shown by the accountant down to November 30, 1905, the testimony was taken in October, 1906, and the case argued in the fall of 1906 (p. 34.)

The Vice-Chancellor having then heard the argument retained the case until June, 1910, when his first opinion was filed. (See memorandum of conclusions, pp. 549 to 572.)

This opinion filed in June, 1910, was based upon the situation of the company as shown to exist to November 30, 1905, by the accountant's statements, together with certain other facts appearing in the evidence relating to the company's affairs to the time of the taking of the testimony in October 1906.

Upon application to settle the decree pursuant to this opinion, the Vice Chancellor held, that in order to determine what amount should be dis-

tributed pursuant to his opinion, it was necessary to show the condition of the company down to a time as near as practicable to the time of the decree, to which holding of the Vice Chancellor no objection was made by either party, all parties apparently agreeing and acquiescing in the view of the Vice Chancellor, which view accords with the rule in Laurel Springs Land Co. vs. Fougeray, supra.

Application was then duly made by the complainants in the summer of 1910, for an order permitting complainants' accountant to again examine the books of the company, in order to show its condition down to the time of the proposed decree. The Vice Chancellor gave on order allowing such examination. After several applications and adjournments relating to the settling of the decree and further examination of the books for that purpose, the examination of the books was made and continued down to the close of the fiscal year, November 30, 1910. (These various hearings on these applications during the year 1910, defendants have not included in the printed case, the omission of which was not noticed by us until the time of preparing this brief.)

It was after this examination of the *status* of the company for the fiscal year ending November 30, 1910, that additional testimony was taken to show the condition of the company down to a time as near as practicable to the proposed decree, for the purpose of settling the decree.

Such additional testimony was taken February 16th and February 18th, 1911 (pp. 238, 281.)

Statements were then produced (the balance sheets) showing the assets and liabilities of the company for each year ending November 30th from 1906 to 1910 inclusive (p. 437 Ex. C-1 offer-

ed February 16, 1911 and p. 441 Ex. C-2 offered February 16, 1911.)

These balance sheets for the years 1906, 1907, 1908, 1909, 1910 show how the surplus of accumulated profits had still increased on November 30, 1910, over the amount of such surplus on November 30, 1905, at which time the Vice Chancellor had held in his opinion, that a large distribution of that surplus should even then have been made.

The increase of this surplus may be readily seen by comparing the situation as presented on November 30, 1905, with that presented on November 30, 1910, as follows:—

Situation November 30, 1905.

ASSETS.

Real Estate		$ 188,618.96
Machinery		132,660.06
Stock Merchandise	$237,353.63	
Cash	78,336.56	
New Buildings, Machinery, Improvements, etc.		10,170.11
Accounts and Bills Recble.	80,630.59	
Brown Bros. Cash	78,729.71	
Colonial Trust Co. Cash	54,379.01	
Long Island Real Estate		33,483.48
East Jersey Water Co. Mortgage		315,000.00
Still assets		$679,932.61
Live Assets	$529,429.50	529,429.50
Total Assets		$1,209,362.11

(p. 390.)

LIABILITIES.

Account & Bills payable.	$ 51,257.76	
Capital stock		$ 300,000.00
Reserve Fund		251,295.52
Real Estate reserve		204,653.64
Dividend	30,000.00	
Doubtful debts reserve		17,155.19
Water rights Acct		355,000.00
	$ 81,257.76	$1,128,104.35
		81,257.76
		$1,209,362.11
		(p. 391.)

Total reserve Acct	$473,104.35
Net live assets	448,171.74
Lying idle in bank	211,445.28
Merchandise	237,353.63
Bills Receivable	80,630.59

During this year of 1905, the *average* monthly balances of *unused* cash was $210,646.00 lying idle in Bank.

Situation November 30, 1910.

ASSETS.

Real Estate		$ 193,444.81
Machinery		172,251.59
Merchandise	$356,335.32	
Cash	138,795.97	
Colonial Trust	997.69	
Brown Bros.	63,222.86	
Accts. & Bills Receivable	147,324.94	
New Buildings, Improvements etc.		6,372.51
East Jersey Water Co.		

Mortgage.		315,000.00
Little Falls C. R. Invt. . .		700.00
Still Assets.		$ 687,768.91
Live Assets.	$706,676.78	706,676.78
Total Assets.		$1,394.445.69

LIABILITIES.

Accounts payable.	$ 39,701.39	
Capital stock.		300,000.00
Reserve Fund.		410,684.37
Real Estate reserve.		204,653.64
Doubtful debts reserve. . .		24,406.29
Dividend.	60,000.00	
Water rights acct.		355,000.00
	$ 99,701.39	$1,294,744.30
		99,701.39
		$ 1,394.445.69

Total reserve.	$639,744.30
Net Live assets.	606,975.39
Lying idle in bank.	203,016.52
Merchandise.	356,335.32
Bills Receivable.	147,324.94

During this year of 1910 the *average* monthly balance of *unused* cash was $223,138.00 lying idle in bank.

Note:—The above statement correctly shows the assets and liabilities as shown by Ex. C-2, offered Feb. 16, 1911 (p. 441). The balance sheet as printed on p. 441 of the printed case, is incorrectly printed and should be corrected to conform to the above.

From these statements it appears, that the total reserve account, which on November 30, 1905,

amounted to.....$473,104.00
On November 30, 1910, amounted to.. 639,744.00
an increase of further accumulated
profits from November 30, 1905, to
November 30, 1910, of.....$166,640.00

Note: That the Vice Chancellor held in his opinion, that on the showing of 1905, the stockholders were entitled to a substantial dividend, after taking into account that William H. Beattie had in 1906 testified that he estimated the six hundred horse power steam plant would cost $35,000.00, not including boilers, and afterwards estimated the cost of the whole steam plant, including the boilers at $45,000.00, and that a new building would be needed for the rug plant—costing from $30,000.00 to $35,000.00—and that since November 1, 1905, they had paid for machinery $19,109.00 (pp. 173, 190.) Yet, notwithstanding these payments, estimated to be about $100,000.00, the company's surplus had increased from that period up to November 30th, 1910, to the extent of $166,640.00. From the foregoing it would appear, that, if the stockholders were entitled as the Vice Chancellor held, to a very substantial dividend upon the showing of November 30, 1905, they should at the showing of November 30, 1910, have been entitled to a greater dividend, owing to the fact that the surplus of accumulated profits had increased, from November 30, 1905, to November 30, 1910, to the extent of $166,640.00.

The live assets were then as follows:—

Cash lying idle in banks and Trust
Co's. $203,016.52
Merchandise. 356,335.32
Bills receivable..... 147,324.94

Total live assets were.....$706,676.78
(p. 441, Ex. C-2).

Deducting from this sum of $706,671.78 the accounts payable $39,701.39, and even deducting the dividends for $60,000, *which were not payable until the year* 1911, the net live assets left on November 30, 1910, after these deductions were, $606,975.39. (P. 441, Ex. C-2.)

The only extraordinary expense which defendants pretended to anticipate, when William H. Beattie was sworn in February, 1911, was that the company contemplated the erection of a steam plant which he estimated would cost about $107,000.00. (pp. 540, 541.)

It was then apparent, when the decree was made that, if this steam plant should thereafter be erected, its erection and expenditures therefor would be continued for considerable time, so that such expenditure would not be immediately required.

But even if these expenditures had been immediately required, on November 30, 1910, there was then cash lying idle in bank amounting to $203,016.52, which exceeded these expenditures if they had even then been required, by about $100,000.00.

But it is evident that even this large amount of *cash* on November 30, 1910, was made as low as defendants could possibly make it, by the following contrivance:—

They simply increased the stock of merchandise beyond all precedent and allowed the bills and accounts *receivable* by the company to greatly exceed the bills and accounts *payable* to it.

The defendants have contended since the suit was commenced and now contend, that the court has no power to order a distribution of accumulated profits, although unnnecessary for the company's needs, unless they are in the form of *cash*. It is manifest if defendants' contention is sound,

that, although at a given time such cash should be legally distributed, defendants could defeat it by the simple plan of converting such cash into merchandise not needed and allowing the debts due to the company to abnormally increase.

We submit, that the following facts indicate such purpose of defendants since the bill was filed:

Up to the year 1905, when the present suit was started, the largest stock of merchandise the Company ever had on hand at the end of the fiscal year, was in the year 1903, when it amounted to. $206,858.00
(p. 390.)

In 1905, the year the suit was started the merchandise account jumped to. . $237,353.00
(p. 390.)

The cash on hand that year was. $211,445.00
(p. 390.)

In 1906, the merchandise account jumped to. $291,626.00
(p. 437.)

and the cash on hand sank to. $128,049.00
(p. 437.)

In 1907, the merchandise account went down to. . . . $282,484.00
(p. 437.)

and the cash on hand rose to. $140,897.00
(p. 437.)

In 1908, the merchandise account was. $280,654.00
(p. 437.)

and the cash on hand was. . $199,828.00
(p. 437.)

In 1909, the merchandise account was..... $276,732.00 (p. 437.)

and the cash on hand was. $274,430.00 (p. 437.)

and in 1910 (as the time for settling the decree drew near) the merchandise account jumped on November 30, 1910, to the enormous sum of..... $356,335.00 (p. 441.)

and even by doing that the defendants could not get rid of cash to the amount of..... $203,016.00

which then still *lay idle in Bank and Trust Companies.*

Taking the year 1903, the year in which the Company had the largest amount of merchandise on hand at any time before the commencement of this suit as the basis or test as to the amount of merchandise the company ought to have on hand when the volume of business was what it was in 1903, let us see how that volume of business compares with the volume of business in 1910.

Taking the sales in 1903 amounting to $528,596 (p. 396) and the sales in 1910 amounting to $698,531.00 (p. 443) an increase of about $170,000, or an advance of about thirty-three and one-third per cent on the sales in 1903. The merchandise on hand in 1903 amounted to $206,858.00; add thirty-three and one-third per cent., or one third, ($68,952) to this, to represent the increased volume of business, and we get $275,808.00 as the normal amount of merchandise which it is probable the company would have required to have on hand in 1910, when the volume of business had

increased thirty-three and one-third per cent. above what it was in 1903.

In 1910 the company actually had merchandise on hand to the extent of.....$356,335.00
(p. 441.)

Deduct from this what they should have had on hand..... 275,808.00

and we get the sum of.....$ 80,527.00

as representing the excess of merchandise which could be readily converted into cash and used as working capital, or divided, as realized upon, among the stockholders.

Moreover this sum for merchandise large as defendants admit it is, is smaller than it should be owing to the fact that it was inventoried at less than it should have been.

Our accountant in comparing the inventories of 1909 with those of 1910 upon the goods in process of manufacture finds differences in rugs inventoried at less value in the year 1910, making a total difference from that item of $17,828.00 although there is no apparent reason for such difference (pp. 251, 252.) He was unable from the data which he had to make a comparison as to inventories for the raw material, but it is inferable that the same low inventory has been put upon the raw material.

Another plan adopted by defendants to reduce the actual cash on hand as much as possible, has been to cause the bills and accounts receivable to become abnormally large since the suit was started.

The growth of bills and accounts receivable since the suit was started appear by the following statement.

The bills and accounts receivable were:—

Nov. 30, 1905. $ 80,650.00 (p. 390.)

Nov. 30, 1906.	91,268.70	(p. 437.)
Nov. 30, 1907.	121,554.19	(p. 437.)
Nov. 30, 1908.	136,356.81	(p. 437.)
Nov. 30, 1909.	156,776.48	(p. 437.)
Nov. 30, 1910.	147,324.94	(p. 441.)

While the bills and accounts payable during that time were as follows:—

Nov. 30, 1905.	$51,257.76	(p. 391.)
Nov. 30, 1906.	46,130.60	(p. 437.)
Nov. 30, 1907.	30,526.48	(p. 437.)
Nov. 30, 1908.	37,646.21	(p. 437.)
Nov. 30, 1909.	57,858.67	(p. 437.)
Nov. 30, 1910.	39,701.39	(p. 441.)

Notwithstanding these contrivances to reduce the cash lying idle in banks by an abnormal and unnecessary increase of merchandise and bills and accounts receivable, the amounts of cash lying idle in banks during each month of the year 1910 were as follows:—

In January, 1910, the Company had a cash balance of	$195,449.00
In February, 1910, the Company had a cash balance of	156,920.00
In March, 1910, the Company had a cash balance of	270.159.00
In April, 1910, the Company had a cash balance of	273,941.00
In May, 1910, the Company had a cash balance of	262,247.00
In June, 1910, the Company had a cash balance of	224,562.00
In July, 1910, the Company had a cash balance of	216.919.00
In August, 1910, the Company had a cash balance of	142,378.00
In September, 1910, the Company had a cash balance of	263,414.00
In October, 1910, the Company had a	

cash balance of..... 245,641.00
In November, 1910, the Company had
a cash balance of..... 203,016.00
(p. 446.)

The total net profits for the ten years from 1900 to 1010, were about $668,000.00. But these profits were reached after deducting out of profits all alleged depreciation in machinery, real estate and buildings for those ten years amounting to about $278,000.00; and this depreciation has been written off notwithstanding the fact that during these ten years the sum of about $250,000.00 was paid out for repairs, of which about $117,000.00 was for repairs during the five years from 1905 to 1910.

To summarize, the status of the company on November 30, 1910, notwithstanding these amounts written off for depreciation and for repairs which were taken from profits, there remained on November 30, 1910:

1st. $203,016.52 *unused cash idle in the bank.*

2nd. An excess of merchandise over the highest amount they had ever had before in proportion to their sales not necessary for the business of over $80,000.00.

3rd. Bills and accounts receivable exceeding the bills payable amounting to $107,623.55.

In determining what amount of profits should be distributed the Court should have regarded these two latter items amounting to $187,623.55, as equivalent to cash. The important question was what sum did the company reasonably need for its current business as of the date November 30, 1910? If the defendants had on that date caused the purchase of an abnormal and unnecessary amount of merchandise, they would need that much less cash in the future, and if they allowed bills and accounts receivable to increase unneces-

sarily, such excess was equivalent to cash, since they could collect these debts to meet the current debts as they should become due.

In this connection we call attention to the following statement in the brief of defendants' counsel on pages 30 and 31 as follows: "If we "consult the table Ex. D-1 of 1911 (pp. 534, 535) "it will appear that the dividend declared by the "company for the year ending November 30, "1910, with the bills payable, together exceed the "cash on hand at the close of that year, and that "of necessity, in order to pay the new dividend "directed to be declared, resort must be had to "merchandise and bills receivable."

Ex. D-1 thus referred to by counsel gives the item for accounts payable as $147,360.70 *on November* 30, 1910 (p. 535). But the accounts actually payable on that date were only $39,701.39 (p. 441.) In order to make this sum of $147,-360.70 in Ex. D-1, defendants have improperly added to $39,701.39 which were the actual bills payable November 30, 1910, the sum of $107,659,31 which they estimated in February, 1911, as the sum which they contemplated expending for new buildings *to be sometime thereafter erected* (pp. 541, 544.) This argument of counsel simply amounts to this, that if the estimated cost of the buildings which it was contemplated might be erected *sometime after the spring of* 1911, and the bills payable on November 30, 1910, and the dividend for $60,000.00 *which was not to be paid until the year* 1911, should be added together the total amount of these items would about equal the amount of *cash* which was lying idle in the banks *on November* 30, 1910.

This argument, of course, ignores the fact that the only offset for the company's use against the cash of $203,016.52 which the company had on

November 30, 1910, was the accounts payable *at that time* of only $39,701.39, and that the expenditures for the contemplated buildings were not to be made until some time in the future long after November 30, 1910, and the payment of the $60,000.00 dividends would not be made until 1911. The argument also ignores the fact, that when such payments should be required, the abnormal amount of $147,324.94 for bills receivable would be available for such new buildings when erected and dividends payable in 1911, and that the abnormal amount of merchandise would require less expenditure for merchandise than otherwise for the year 1911, so that the abnormal quantity of merchandise was equivalent to that much cash in considering the actual needs of the company.

SECONDLY:—The defendants when called upon to show that the large surplus of profits was necessary for the needs of the company failed to do so, but on the contrary showed that it was improperly maintained for the purpose of equalizing or maintaining constantly a certain dividend. This was an important consideration in the Vice Chancellor's decision.

On the original hearing in 1906, Robert Beattie the defendant who was the President of the company was called as a witness and his evidence was the evidence then offered by the defendants which attempted to give the reason why such large surplus of profits has been theretofore maintained.

The questions and answers upon this subject clearly show the purpose of making and keeping the surplus as follows:—

Q. What guided you in determining the amount of dividends?

A. I determined dividends by what *I* thought

we ought to pay, keeping in mind that I wanted a *surplus enough there to guarantee them.* There were five or six people entirely dependent upon it, and I wanted to guarantee the dividends so I knew I could pay them *whether we earned them or not* (p. 127.)

This was the plain object in the past for keeping the surplus. It was not denied by Robert Beattie, that it was not still his real object for keeping such a large surplus at the time of giving his testimony.

We dispute the right of directors to accumulate the profits of a company against stockholders' consent merely for the purposes of maintaining some uniform rate of dividend. The stockholders by their contract when they became stockholders do not agree by implication to any such thing. On the contrary, the great and primary object of the contract is, that the stockholders shall receive all earnings of the company not needed for the business at reasonably stated periods of the year.

Apart from any statute controlling the matter, we contend that the right of directors to keep a surplus of profits, exists only when the business legitimately needs it. It may be needed to protect the business from threatening competition. It may appear necessary to have a fund to buy out competitors, or have a fund for the purchase of patents, or to extend in other respects and the like purposes. But there must be a need to lay up these earnings for such purpose. The immediate necessity for the use of the fund may not be apparent; but the real object must be to use the fund for the purpose of the business, either presently or in the future. But to give directors the right to allow earnings to be accumulated, for the purpose of equalizing dividends during a course of years against stockholders' consent, is virtually to say that the directors are trustees with full discretion to invest the stockholders'

money for them, without their consent, although no *such* trust is created by the contract of stockholders in becoming stockholders.

The contract is that stockholders shall have the profits except such as may be necessary for the business, and it is understood, that the profits shall be periodically divided as they are earned, whether they are more or less, after retaining sufficient for the real purposes of the business. If directors have the power to so keep and control net earnings not for the purpose of the business, but merely for the purpose of securing a certain periodical dividend, what are the limits of this power? How great may the directors make this arbitrary rate, and for how long a time may such practice continue before a sufficient surplus may be raised to pay the arbitrary rate fixed? If such power exists, then it follows that the directors may retain not merely part of the profits, but may retain all, and indefinitely suspend the payment of dividends. If such practice is legal, the stockholder who has invested his money perhaps to receive the earnings of his money for his actual support, has placed in hands where the earnings may be held until he has ended a long life, while the principal invested as well as earnings take the risk of loss in business vicissitudes.

The proposition that directors have such power is unsound. It does not rest upon any contract made by the stockholder and it is essentially unfair and unjust. A good example of its unfairness is afforded by the very cases of the Complainants in the present suit, who are given the "*dividends*" and "*income*" of the stock for life.

Assuming that the use of these two words "*dividends*" and "*income*" are in this will synonomous, and mean no more than "dividends" or

"income," still the *testator meant* that these life tenants should have *all* of the earnings of this Company *not needed for business as it was earned.*

We do not argue, that the intention of the testator in this respect can control the power of the directors, to legally withhold dividends where profits are required for the company's needs, but the situation of these life interests affords a good example of the wrong which may be done under the power assumed by the defendants.

If, on one hand the provisions of the Will could not affect the power of directors as defendants claim, on the other hand, we claim that the testator did not intend that the trustees of the will should have any discretion as to the amount which the life tenants should receive. The testator said that the trustees should pay to them the *"dividend and income"* of the stock. This "dividend and income" was to be paid to the beneficiaries. They were to have this absolutely to spend, speculate, invest and use. Instead of having all their income to use, these directors have withheld a large part and kept it on an investment yielding from the trust Company probably three or three and one-half per cent. A large part has been kept as cash in bank bearing no interest, while $315,000.00 is held on mortgage at four per cent. Meanwhile the large capital is invested in a business, subject to the usual risks of a manufacturing business.

THIRD:—While the defendants failed to show a necessity for the surplus for the company's needs, and did show that it was illegally kept for the purpose of maintaining a certain dividend for a course of years, a strong motive appeared tending to induce defendants to accumulate the profits, whereby defendants

and their descendants would benefit on account of the nature of the gifts given to complainants under their father's will.

This selfish interest is a potent fact tending to show what the real purpose was for witholding the dividends in view of the fact that it was not shown that the needs of the company required it.

FOURTH:—The conduct of the defendants acting as directors of the company and trustees for complainants under their father's will, shows a disposition to gratify their selfish interests, from which it is natural and easy to infer that the profits were held for a selfish purpose.

We call attention briefly to the following circumstances: These directors acting in the double capacity of Trustees to Stockholders, and as trustees of their sisters under their father's Will, were in a situation wherein we would expect to find good faith and strict dealing. The bare statements of the facts are, that these directors, acting as trustees of their sisters after the company was formed and took over the assets of the firm of R. Beattie & Sons, carried on as R. Beattie & Sons, partners, individually the business of selling goods for the company separately from the Company and divided between themselves the profits of the partnership made in selling the goods. We claim that all of the assets of the firm of R. Beattie & Sons, including good will was turned over to the Company according to the provisions in the certificate of incorporation and the transfer; that presumably the good will of the selling business was valuable, or R. Beattie & Sons would not have continued it as such. But

laying aside the questionable right of so conducting this separate business, the directors admit that William Beattie, one of the directors, *gave all his time to the business at the store from the time of the incorporation* of the Company until the death of William Beattie in the year 1899. He drew altogether from *the Company* in salary the sum of $127,916.65, *although he never rendered any service to the Company* while his time was given exclusively to the business of the firm, from which he and Robert Beattie exclusively shared the profits.

These partners acting for themselves as partners, and at the same time as trustees of stockholders of the Company by virtue of their office as directors, assumed the control of all the money of the Company and paid the Company's bills. They carried on business of selling other goods than those of the Company, and handled the Company's money as their own. They were compelled to take Long Island real estate for a bad debt of *their own*. They turned this property over to the *Company* for the face value of the debt, although it was worth much less than the debt (pp. 101, 102.) They claimed on the hearing that it would turn out that this property would be sold for a sum equal to the debt, but they did not claim that the company would receive interest for the years during which they have held the property. But it is quite clear that this property when taken over was not worth the debt, and the Company has taken the risk of its future value.

Again, Robert Beattie had no hesitation on taking from the funds of the Company the money which he used for his house.

The fact that they as R. Beattie & Sons thus controlled all of the money of the Company and paid the Company's bills, means of course, that

they constantly kept on hand in their control as partners the money of the Company. They were as partners during all this time selling other goods, and presumably using the money for all purposes from their own accounts containing so far as appears the money of the Company, mingled with any other money of the firm. They took upon themselves to thus control the money of the Company from which they paid the Company's bills. They do not say that they did not use this money. If they made use of this money in their hands for goods sold, the Company was entitled to the value of such use. Strict business men who had thus assumed to control as partners the money of the company of which they were directors would have kept and preserved accurate accounts of their business. Their explanation of the loss of these books is not satisfactory. Robert Beattie and his son William H. Beattie knew that these books contained the whole record justifying the accounts of this firm with the company. The books of the company only showed the periodical balances allowed by the firm. Robert Beattie knew that the stockholders knew nothing of these firm accounts; he knew, that by virtue of the stock which the defendants owned individually and as trustees, they had the power to control the Company and that they as the firm assumed to keep the Company's money. Common consideration and a decent respect for the rights of the stockholders who knew nothing of the business of the firm and their accounts, should have caused Robert Beattie to keep these books of the firm showing that the firm had dealt honestly with the Company. The fact that part of the books are produced gives rise to the question, why should part be preserved and part lost? But William H. Beattie says that some of them were

destroyed. Why should *any* of them be *destroyed* under any consideration, and why should part be destroyed and part be preserved?

Another thing which arouses suspicion is that the defendant produced on the hearing part of the books which were called for by our subpoena, but failed to produce others, until the Court should decide how far it would allow the books. After vigorously contesting our right to their admission, some books were produced on that first hearing. After it was held that we were entitled to the others, it appeared that defendants had other books of the firm at the factory which they had not produced at the hearing, although our subpoena called for them all. The only books submitted to Mr. Peterson after the Court's ruling that we could inspect all the books, were fragments, so that the expert cannot tell whether the accounts of the firm with the Company are just or otherwise.

We have in this place called attention to these circumstances, not as subject for relief in this suit, but to show the conduct of the men who were performing this trust, their character thus shown by their acts, as indicating what their *real* object was in maintaining this surplus, in view of the fact that it would personally benefit themselves or their heirs, and that they have not in fact used such surplus for business purposes.

FIFTH:—The fact that the company has been making rugs and carpets since 1903, instead of carpets only, affords no reason why the large surplus of profits held November 30th, 1910 should be maintained.

The change of business affected the surplus profits only so far as the surplus was necessary for buildings and machinery due to the change.

There is no evidence that the business of making rugs as such requires any more working capital than that of making carpets. The Vice Chancellor, in deciding that part of this great surplus should be divided, made his decision with a clear view of this change of business and the cost of such change, upon careful consideration of the working capital required for such business in view of the change.

SIXTH:—The fact that part of the surplus profits have been derived from the sale of land and water power, is no reason why distribution of such profits should not be ordered to stockholders, when they are not necessary for the company's business.

We submit, that the Vice Chancellor properly held, that if the $315,000 mortgage were in the form of cash and not needed by the company, it should legally be divided among the stockholders. But the *yearly interest* on the mortgage which made part of the surplus, clearly, should be treated as profits of the business. The property sold for which the mortgage was taken, was the company's *capital.* By the sale of capital the company lost the use of capital which gave its profits; and certainly the interest on the proceeds of the sale of this capital while invested, should be treated as profits which the capital sold otherwise would have earned.

SEVENTH:—Whether the surplus is to be regarded as "accumulated profits" within the act of 1875 (sect. 52) and Section 47 of the present corporation law, is unimportant in view of the Vice-Chancellor's decision.

The Vice-Chancellor, as has been shown, denies the right of the complainants to invoke these

statutes which require the declaration of dividends under the circumstances therein provided, and bases his decision upon the general power of the court to compel distribution of a surplus plainly not needed by the company and unreasonably withheld from distribution.

It is evident, that Section 47 of the present corporation act has the effect only of leaving the directors with discretion to withhold profits for working capital which they could not have held under the prior statutes if provision so to do were made in the certificate of incorporation or by-law; but section 47 does not affect the established power of the court to compel distribution of dividends which were plainly not needed by the company and unreasonably withheld, and which belong to stockholders by the implied contract between the shareholders and the company.

Laurel Hill Land Co. vs. Fougeray, supra.

We contend, however, that by the provisions of the act of 1875 in force when this company was formed the directors have no *discretion* to withhold, contrary to the provisions of that act, a distribution of the accumulated profits *which were in form to be distributed,* at the time of the decree.

According to the rule established in Zabriskie v. Hackensack and N. Y. R. R. Co., 3 C. E. G. 178, 186, 188, the rights of incorporators *inter se* under the law in force when the company was formed are not affected by the subsequent statutes which changed the act of 1875. The fact that complainants have taken dividends at different years without insisting upon a strict compliance with the provisions of the act of 1875, can operate as a

waiver or estoppel, only as to such part of the accumulated profits which ought to have been distributed from year to year, as have been used by the company for working capital or been put into improvements or some form of property not now distributable, and which could not be distributed without injury to the company. The fact that a stock-holder took part in the passing of the by-laws of 1882 and 1900, or acquiesced in them by accepting less dividends than he was entitled to, does not operate to make such a stockholder bound by any contract relinquishing his right under the law of 1875. At most the participating in the making of such a by-law or taking dividends pursuant to the by-law can only operate as a waiver or estoppel as to such persons' right to compel a greater dividend due at any particular time, after the company has used the excess or put it in such form that it can no longer be distributed *without injury to the company.* But in the present case the large surplus on hand on November 30th, 1910, *then existed in the form of cash.* This was what was then left of the accumulated profits in the form of cash, to which complainants were entitled to distribution under the act of 1875, over and above such accumulated profits as had been put into improvements. There is no waiver or estoppel as this cash which prevents complainants from requiring its distribution under the act of 1875 under which the directors have no *discretion* to hold this cash derived from profits as working capital.

But we submit, that upon a fair construction of the By-Law of 1882, it does not conflict with the provisions of the Statute then in force concerning dividends. This By-Law provides that, "Dividends shall be declared and paid semi-annually in the months of January and July of such portion

of the profits as the directors shall deem advisable." The meaning of this By-Law will be presumed consistent rather than conflicting with the law, if the language will admit of such meaning.

We contend, that from the language used in the By-Law, the discretion given to the board as to the dividends only relates to the time when they are to be declared or paid; and the portions which shall be paid at such times.

The act of 1875 in force when the By-Law was passed provided "that dividends must be declared on the first day of August in each year *unless some other date be fixed in the Charter or By-Laws, etc.*" The By-Law thus by its terms fixes January and July, and in saying "of such portion of the profits as the directors shall deem advisable," it merely means, that the directors may apportion between those dates such portions of the dividends as may be declared, but does not mean that all of the dividends required by the act of 1875 then in force should not be declared. As to the By-Law of 1900, providing that "the di-"rectors may determine from time to time the "amount to be reserved by the corporation as "working capital." We submit, that this By-Law does not affect complainant's right to a dividend of profits under the act of 1875, because, according to the evidence, the directors never did in fact take any official action in determining what sum was necessary for working capital, or in setting it aside.

The Beattie Company is a "manufacturing company" within the act of 1875.

The certificate of incorporation shows: that it is distinctly a manufacturing Company; that it is called therein a "manufacturing company;" that its purpose is to purchase from Robert Beattie and Sons the goods and stock in said factory and

at their store; that it is "to carry on the manufacturing and sale of carpets and other merchandise at said manufactury and store; to erect buildings, wells and machinery for the purpose of such manfuacture; to improve, rent, and sell said real estate," etc.

The real estate here referred to was only such real estate as was incidental and necessary for its manufacturing business. This act of 1875, which by its terms includes, "all manufacturing companies" does not mean to exclude such a manufacturing company, simply because it has the power to sell, rent and improve real estate which it has taken for purpose of manufacturing but may also sell, or rent when not used therefor.

The term "accumulated profits" in the act of 1875 for which dividends must be declared under that act, refers to such as are capable of distribution at the time when the declarations of dividends are made. Such is the ruling in the cases of Stevens vs. U. S. Steel Company, 2 Robb., 373, 59 Atl. R., 908, and Park vs. Grant Locomotive Works, 13 Stew. (40 N. J. E.) 114. These cases merely hold, that under the act of 1875 and the later act, dividends for "accumulated profits" cannot be decreed, unless the "accumulated profits" are then certain and in form capable of being divided, and that mere book profits which may turn out to be real or fictitious are not meant. Nothing in these cases denies the right of stockholders to compel the division of all "accumulated profits" under the act of 1875, or the later act, whenever they become certain and in a form capable of division as they are in the present case.

EIGHTH:—Counsel for defendant suggests that "the dividends since 1905 cannot be raised unless by supplemental bill." (See defendant's brief page 18.)

(a) Under the general power of the court to compel directors to declare dividends of net earnings *not needed for the legitimate purposes of the company's business,* it is evident, that the court must determine what sum is needed by the company not at the time suit was commenced, but at the time of the decree. A company may have a large sum in cash not needed at the time of filing the bill but have nothing at the time of the decree. From the nature of such a case and the remedy given, the decree must be based upon the financial status of the company at the time of a decree. In this respect the suit resembles an injunction suit, where the remedy is given with reference to the situation existing at the time of the decree.

(b) The remedy in such case is not based upon facts coming into existence afterwards and not included in the bill, but the subsequent facts merely show that the condition *remains* which existed as disclosed in the bill.

(c) In the present case the Vice Chancellor decided, in June 1910 that upon the situation existing in November 1905 a substantial dividend should be declared. The subsequent testimony merely showed that such situation continued at the time of the decree. There is no necessity for a supplemental bill in such case. Moreover, counsel for all parties, approved of the Vice Chancellor's course of proceduce without suggesting the necessity of filing a supplementary bill or making any objection whatsoever. It is too late for counsel to raise such objection now even, if it could have been raised at the proper time.

NINTH:—The salaries of Robert Beattie, William Beattie deceased and William H. Beattie were excessive; the salaries should be reduced and the excessive amounts returned to the company.

The salaries were not fixed by stockholders but were fixed by the directors themselves. In such case the court will determine what the fair value of the services were and *the burden of establishing what the fair value was rested upon the defendants.*

Lillard vs. Oil Paint & Drug Co., 56 *At.* 254, 4 *Robb.* 197.
Gardner v. Butler (*Errors & Appeals,* 1879) 30 *N. J. L.* 702.
Foagerty vs. Cord, 50 *N. J. L.* 185, *on Appeal* 50 *N. J. L.* 756-9.
Booth vs. Land Filling & Imp't Co. 59 *At.* 767-769.

The defendants have not maintained this burden of proof. They have not shown that their actual services to the business of the Beattie Company warranted their salaries, or that their services were worth in the market such salaries, based upon salaries of others in similar business.

The only evidence which they produced on the subject was, that of the witness Collier whose opinion as to the value of services was based upon two isolated cases where a particular salary was given based solely upon success in business without regard to the actual worth of the services, contrary to the rule in Lillard vs. Oil Paint & Drug Co., supra.

The witness Collier referred to the salaries of the Ferth Company in comparison with the salaries of the Beattie Company. If the magnitude of

the business is taken as the criterion, and the Beattie Company's officers had received the same rate of salaries as those of the Ferth Company in proportion to the amount of business done, the Beattie Company officer's salaries would have been for the years 1893,—4,—5,—6,—7, and 8, only the sum of about $60,000.00 in salaries, whereas they actually received for those six years $122,000.00.

The officers of the Beattie Company did not create a business or save a failing business, or make by unusual experience, labor or skill on their part any extraordinary profits. The use of the money invested in the business considering its risk in a manufacturing business, should easily have returned all the profits made, under the control of officers with ordinary business capacity, and such as could be employed for moderate salaries.

The profits were not great considering the money invested.

Take the eight successive years, from 1893 to 1901, the average net profits of those eight years is about $28,000.00 per year. The capital invested during these years appears from the statement of assets and liabilities to have been over $700,000.00. On this basis no consideration is given to the mortgage given for the sale of water rights for $315,000.00 which contributed interest to the profits since 1904. We think it would be a conservative estimate to say that the real value of the money invested in the Beattie Company during these six years was at least $800,000.00 to $1,000,000.00, taking into consideration the value of all the water rights.

If only six per cent is taken as the rate of interest which should be earned on the investment, and the investment taken at $800,000.00, $48,000.00

should be earned yearly before it can be truly said that the business has earned anything above the investment by reason of defendants' services.

Taking these eight years referred to, it is seen that the average net profits per year, after salaries were paid, was only about $28,000.00.

Take the year 1905, when the total assets amount to $1,209,362.11, the net profits were only $33,073.31.

From this it is seen, that the profits considering the invested capital did not show great salaries based on business success.

A comparison of the earnings year by year with the corresponding amount of salaries, shows that the amount of salaries at different times was fixed arbitrarily and without regard to the earnings. When the Company was organized, Robert Beattie and William Beattie commenced with salaries of $3,000.00 per year each. That was when Robert Beattie Sr., was alive. There is no reason to believe that these sums in 1882 were not considered by Robert Beattie, deceased, and both his sons, a fair sum for their services.

Observe that this corporation was not a new venture, which consideration might induce the officers to start an uncertain business with an unusually low salary. But the Beattie business was an old established business. The firm of R. Beattie & Sons was known to the trade and continued to sell the goods. The incorporation was a mere change of the form of the business. It is to be observed, that the Company made money in the early days of the Company. In 1885 the net profits were $46,240.05; in 1886 the net profits were $74,771.30; in 1887 the net profits were $93,631.93. (p. 402.) During these three years, as prosperous as any in the Company's history, the salaries in 1885 were increased to $4,416.00 each; (See 2

payments June and November of 1885 p. 404.) in 1886 to $5,000.00 each, and in 1887 to $5,500.00 each. Then in 1888 they were arbitrarily doubled by giving to Robert Beattie and William Beattie $10,000.00, and increasing the salary of William H. Beattie to $1,453.00. (p. 404.) The reason for doubling these salaries was apparently on account of profits. The profits for the previous year of 1887 were $93,631.93 (larger than ever before.) For the next succeeding six years these salaries were $10,000.00 each, and William H. Beattie's salary was $2,500.00. It is to be observed, that while these salaries were doubled in the year 1888, evidently on account of the large profits of the previous year, these $10,000.00 salaries were maintained for six years while the profits were much less during those years than they were for the two years preceding 1888, when the salaries were raised. The last year of these six years viz. 1893, the profits were only $30,788.20. (p. 402). Notwithstanding the fact that the profits of this year were so small, they did not reduce the salary that year. They had doubled it in 1888, since the profits of 1887 had been $93,000.00, and in 1886 had been $74,000.00, but in 1893 when the profits were only $30,000.00, (402) it was not reduced.

However, in 1894 the profits being only $17,-755.00, (402) these salaries were reduced to only $8,500.00 each. Thence forward for the next successive eight years until 1904, the average net yearly profits were only about $28,000.00. During all this time the salaries of Robert Beattie and William Beattie were $8,500.00 each, until William Beattie's death in 1899, and shortly thereafter William H. Beattie was substituted in place of William Beattie, deceased, at the same salary. (pp. 404, 405.)

The plain statement of the fact is, that these salaries were arbitrarily raised and maintained. Robert Beattie and William Beattie were worth no more in the year 1887 than they were in 1888, when they *doubled* their salaries. If they were worth only $5,000.00 each, when the Company earned in 1885 over $46,000.00, in 1886 over $74,000.00, in 1887 over $93,000.00, it is difficult to see how they were worth $10,000.00 each in 1893, when the Company only earned about $30,000.00, or how they were worth $8,500.00 each in 1894 when the Company only earned about $17,000.00 or the eight years succeeding when the company only earned an average of about $28,000.00.

It should be noted that there is no evidence to show, that Robert Beattie and William Beattie had any thing like a market value for their services, such as officers of a big concern may have from their reputation and experience, like managers and general superintendents of great concerns, railroads, street Companies and the like, who have in various places received large sums and have standing offers due to their successful management of other businesses. But in this case those officers never had any experience beyond the particular business of their father. They grew up with it, and it is not shown that their capacity is greater than the ordinary man's with equal opportunity, and the business itself is comparatively plain and moderate. Neither have they received a technical education or a practical education exceptionally different from any other superintendent, nor have they had a reputation which would enable them to command such a salary in any other concern. It cannot be believed that if Robert Beattie the elder had continued to live he would have approved of such salaries.

The sum of $127,000.00 was paid to William

Beattie, deceased, for salaries while he rendered no service to the Company and while he devoted all his time to the firm of Robert Beattie & Son, of which he was a member in selling goods for that firm on commission.

TENTH:—The counsel fees were not too large for the services rendered.

We have appeared for Mrs. Gedney, complainant, since the bill was prepared and filed. For convenience, only one bill was filed, but we have considered the bill and pleadings, and attended all of the motions and hearings. In preparing for the hearing and attending the hearing in 1906, much time and work were spent. After the first oral argument three separate and lengthy briefs were written by us on the various questions which arose on the first hearing.

The second hearing in 1911 was virtually another trial, and required much time and labor in preparing for the hearing, the taking of testimony, oral argument and briefs.

But much time was spent by counsel in consultation with expert accountants, in acquiring information and understanding as to the *status* of the company, and in planning and outlining for the different accountants the proper kind of statements and analysis of the company's affairs which would inform the court as to the issues involved.

It is impossible to state in detail all of the work done in the various motions and arguments for experts to examine the company's books and hearings, which has extended over a period of seven years, where the questions in the various hearings have been stubbornly contended.

We respectfully submit, that the distribution of $60,000 of the surplus was a small sum to be

distributed in view of the fact, that the sum should be increased by this court rather than decreased; that the salaries should be reduced and the excessive amounts returned to the Company, and that the counsel fee allowed by the Chancellor should not be decreased but rather increased, if changed.

Respectfully submitted,

GRIGGS & HARDING,

Counsel with complainant JOSEPHINE GEDNEY.

NEW JERSEY

Court of Errors and Appeals

BETWEEN
ALEXANDER MURRAY ET ALS.,
Complainants,
Appellants and Respondents,

and

BEATTIE MANUFACTURING COMPANY ET ALS.,
Defendants,
Appellants and Respondents.

On Cross Appeals from Chancery.

Criticism of some statements of fact in the briefs of counsel for complainants.

Both of the briefs of the counsel for the complainants are misleading with relation to the claim of the Beattie Manufacturing Company of its needs for improvements. There would be much greater reason to charge counsel with being "disingenuous" in this regard than for the like charge made by Messrs. Humphreys & Sumner (at p. 37 of their brief) with respect to Mr. Corbin's claim that the sole question before the Court of Chancery was what dividend should have been declared for the year ending November 30, 1905, and that later dividends could only be raised by supplemental bill. On that point let me pause to say that there is nothing in the Fougeray case inconsistent with Mr. Corbin's claim. All that was decided in that case was that the cause should be retained for future

disposition. What is proper procedure was not dealt with.

Returning to the matter of needs for improvements, Messrs. Griggs & Harding (at p. 25 of their brief) refer to the sum of $107,659.31 (testified to in February, 1911, as needed by the company) "as the sum which they contemplated expending for new buildings *to be some time thereafter erected*," and a little later in the brief as "estimated cost of the buildings which it was contemplated might be erected *some time after the Spring of 1911.*" As a matter of fact, the improvements (not buildings alone) were begun in September, 1910, and were in course of construction during September, October, November and December, 1910, and January and February, 1911, up to and during the days of the hearing in the month last named (case, p. 262, ls. 25 *et seq.;* p. 270, ls. 1–13). Messrs. Humphreys & Sumner also (at pages 53–55 of their brief) warp the testimony in the same way, and charge "either inexcusable error or intentional misrepresentation on the part of the defendants" (p. 53); and further say that the result of the way in which Exhibit D 1 of 1911 was prepared would be "to double the apparent cash requirements" for February, 1911.

The point in the "Statement showing needs to March 1, 1911," (case, p. 539), forming part of Exhibit D 1 of 1911, was to display (on the date of making out the statement—early in February) on the one hand how much cash would be received up to March 1, 1911, in addition to what the company then had, and on the other hand, what liabilities and expenses the company would be put to for the month of February, 1911, in addition to what was owing on the first of February. The difference between these gave, as it was correctly termed,

"Estimated liabilities of the corporation on March 1, 1911, above the amount of cash on hand,"—which estimate was $41,774.44 (case, p. 540). The case might be simplified if put in the following form:

Cash on hand February 1		$125,086.73
Deduct indebtedness Febuary 1		53,574.98
		$71,511.75
Add receipts for months of February	$24,704.89	
		$96,216.64
Deduct expenditures (Manufacturing and Trading) for month of February	$53,339.51	
		$42,877.13
Deduct liabilities covering engine, plant, etc.	$84,651.57	
		$41,774.44

In addition to this there was the dividend of $45,000, payable in instalments of $15,000 each on April 1, July 1 and October 1.

Another matter deserves notice, which is avoided by opposing counsel in all their various arithmetical calculations, namely, the "Table showing disposition of earnings for the years 1882 to 1910, inclusive," (case, p. 537). This table shows, in the first column, the net earnings as per the books and accounts of the company since its incorporation, and, in the second column, the dividends declared. The third column shows the actual outlay for improvements, machinery and replacements, which naturally came out of earnings of the company—the figure for the year 1910, of course, including the power plant. This table shows:

Net earnings		$1,454,428.00
Dividends	$850,500	
Expenditures for improvements, etc.	565,349	1,415,849.00
		$38,579.00

—thus leaving only $38,579 not put into improvements or paid out in dividends; in other words, surplus. If this table be examined year by year it will be observed that in 1882 the amounts expended exceeded earnings by $1,161. The next ten years show various amounts carried to surplus. During the eight following years (excepting 1896), there were amounts taken from this surplus to pay dividends and for necessary improvements. Then follow four years in which a total of $41,320 was added; while the next two years (1905 and 1906), took away $63,997. Then follow three years (1907, 1908 and 1909), in which there were additions to surplus, 1909 being only $2,743. Thus we get down to 1910, when the total of dividends and improvement charges appears as $222,333, necessitating the taking from previous unexpended earnings above dividends $148,260, and resulting, as shown in the summary, in a balance of $38,579 of net earnings which have not gone into either improvements, replacements or dividends.

Of all the various calculations and mass of figures submitted in the case, as to the ability of the company to pay an additional dividend now, none shows the true situation more clearly than does this one (case, p. 537), together with the table above given.

Let me guard the Court against careless expressions used by Messrs. Griggs & Harding, like "unused cash"—"cash lying idle in bank." It might

be supposed from these expressions that the various amounts mentioned remained stationary or were separate funds. The fact is that these amounts include *all* the company's *cash*. Apply the tables p. 412, et seq., to counsel's figures.

Similarly, at p. 18 of Messrs. Griggs & Harding's brief, *estimates* made at the close of the year ending November 30, 1905, are spoken of as *payments* before November 30, 1910, whereas $45,000 for the steam plant and perhaps other items had not then been paid and were not even payable up to the time of the hearing in 1911.

There are other inexact and incautious statements in both briefs. It is not my purpose to point them out in detail; but merely to ask the Court to rely on the carefully prepared tables exhibited in the cause rather than on the summaries of counsel.

GILBERT COLLINS,
Of Counsel with Beattie Mfg. Co.

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AMENDED BILL OF COMPLAINT.

(Filed September 20, 1905.)

In Chancery of New Jersey.

To His Honor, William J. Magie, Chancellor of the State of New Jersey:

Complaining, show unto Your Honor, your orators, Alexander Murray, Mary Murray, Agnes Beattie and Josephine Gedney, all of the Township of Little Falls, in the County of Passaic and State of New Jersey, on behalf of themselves and all other stockholders of The Beattie Manufacturing Company who shall come in and contribute to the expenses of this suit in manner following, that is to say:

1. That the said The Beattie Manufacturing Company is a corporation of New Jersey and was duly incorporated and organized in the year eighteen hundred and eighty-two, under and by virtue of an act of the Legislature of New Jersey, entitled "An Act Concerning Corporations" (approved April 7, 1875), and the several supplements thereto and amendments thereof; that the said corporation was originally incorporated and organized by one Robert Beattie (now deceased) (hereinafter called "Robert Beattie the elder,") and his two sons, William Beattie and Robert Beattie, who together subscribed for the entire capital stock of said corporation; that the principal office of said corporation within the State of New Jersey originally was, and still is, located at the Township of Little Falls, in the County of Passaic; that the objects for which the said corporation was formed, as expressed in its certificate of incorporation, were to purchase of the said Robert Beattie the elder the carpet and woolen

manufactory and the tract of real estate whereon the same was erected, and the lands adjoining the same, in the said Township of Little Falls, together with the water power and privileges and the machinery and fixtures in said factory, and, further, to purchase of Robert Beattie & Sons (a firm composed of the said Robert Beattie the elder and William Beattie and Robert Beattie), the goods and stock in said factory and at their store, No. 85 White street, New York City, and to carry on the manufacture and sale of carpets and other merchandise at said manufactory and store; to erect buildings, mills and machinery for the purpose of such manufacture, to improve and rent and sell said real estate and to carry on any other business necessary for the proper management and development of said property; that the total amount of the capital stock of said corporation which was the amount with which said corporation began business, was, and still is, three hundred thousand dollars, divided into three thousand shares, of the par value of one hundred dollars each, and that the whole of said stock was all originally held by the said Robert Beattie the elder and his two sons, William Beattie and Robert Beattie, in the proportions hereinafter stated, to wit, the said corporation on or before the sixth day of July, eighteen hundred and eighty-two, purchased the said properties above mentioned from the said Robert Beattie, the elder, and from the said Robert Beattie and Sons, and issued in payment therefor its entire capital stock as follows: To the said Robert Beattie, the elder, sixteen hundred shares; to the said William Beattie, seven hundred shares, and to the said Robert Beattie, seven hundred shares, as appears by a certificate made by the said Robert Beattie, the elder, William Beattie and Robert Beattie, as directors

and officers of the said The Beattie Manufacturing Company, dated the sixth day of July, eighteen hundred and eighty-two, severally sworn to by them and recorded in the Passaic County Clerk's office, in Book A of Certificates, page 330, and filed in the Secretary of State's office.

2. That upon the organization of the said, The Beattie Manufacturing Company, the said Robert Beattie, the elder, was elected as President; the said William Beattie as Treasurer, and the said Robert Beattie as Secretary; and the said three officers constituted the board of directors of the said company; that upon the decease (hereinafter mentioned) of the said Robert Beattie, the elder, his said son, Robert Beattie, succeeded him as President of said company, and one William H. Beattie, son of the said Robert Beattie, after an interval of a few months thereafter, was appointed Secretary of said company, and the vacancy in the said board of directors, created by the death of the said Robert Beattie, the elder, was filled by one William Dickson, a son-in-law of said Robert Beattie, the elder, to whom the said Robert Beattie transfe red one share of the capital stock of the said company in order to qualify him, the said William Dickson, as such director, and that upon the decease (hereinafter mentioned) of the said William Beattie, the said William H. Beattie was placed upon the board of directors, and became both Secretary and Treasurer of said company, and that since the said decease of the said William Beattie and until the present time, the said Robert Beattie, William H. Beattie, his son, and the said William Dickson have constituted and still constitute the board of directors of the said company.

3. That shortly after the incorporation of the

said The Beattie Manufacturing Company, to wit, on or about the eighth day of August, eighteen hundred and eighty-two, the said Robert Beattie, the elder, departed this life, possessed of, or otherwise well entitled to, sixteen hundred shares of the capital stock of the said The Beattie Manufacturing Company, having first duly made, executed and published his last will and testament in writing, in due form of law, and thereby the said Robert Beattie, the elder, did, among other things, appoint his said sons, William Beattie and Robert Beattie, and his two sons-in-law, to wit, the said William Dickson, and one Edward Gedney, husband of your oratrix, Josephine Gedney, executors thereof.

4. That by the said last will and testament, the said Robert Beattie, the elder, gave and bequeathed to your orator, Alexander Murray, twenty-five shares of the capital stock of the said The Beattie Manufacturing Company; to one Eva Yergerson twenty-five shares of said stock; to one Georgianna Booth twenty-five shares of said stock, and to one Agnes Murray (now deceased), twenty-five shares of said stock, and that your oratrix, Mary Murray, afterwards acquired title to the twenty-five shares of stock so bequeathed to the said Agnes Murray (now deceased), and that your orators, Alexander Murray and Mary Murray, and the said Eva Yergerson and Georgianna Booth, each now owns twenty-five shares of said stock, being the stock so bequeathed by the last will and testament of the said Robert Beattie, the elder, as last above mentioned.

5. That by the fourth clause of the said last will and testament, the said Robert Beattie, the elder, gave unto his said executors three hundred and fifty shares of the stock of The Beattie Manufactur-

ing Company, in trust, to pay the income and dividends thereof from the time of the death of the said testator to his daughter Catherine Dickson, wife of the said William Dickson, for her life, and on her death the said testator gave the said shares to the issue of the said Catherine Dickson, if any, and, if none, then to her heirs at law, to be divided among such heirs in the same proportions as real estate of which she might die seized would descend.

6. That by the fifth clause of said last will and testament the said Robert Beattie, the elder, gave and bequeathed unto his said executors three hundred and fifty shares of the said stock of The Beattie Manufacturing Company, in trust, to pay the income and dividends thereof from the time of the death of the said testator, to his daughter, your oratrix, Josephine Gedney, for her life, and on her death the said testator gave the said shares to the issue of the said Josephine Gedney, if any, and, if none, then to her heirs at law, to be divided among such heirs in the same proportions as real estate of which she might die seized would descend.

7. That by the sixth clause of said last will and testament the said testator gave and bequeathed unto his said executors three hundred shares of the stock of the said The Beattie Manufacturing Company, in trust to pay the income and dividends thereof from the time of the death of the said testator, to his daughter, your oratrix, Mary Murray, for her life, and on her death the said testator gave the said shares to the issue of the said Mary Murray, if any, and, if none, then to her heirs at law, to be divided among such heirs in the same proportions as real estate of which she might die seized would descend.

8. That by the seventh clause of said last will and testament the said Robert Beattie, the elder, gave and bequeathed unto his said executors three hundred shares of the stock of the said The Beattie Manufacturing Company, in trust to pay the income and dividends thereof from the time of the death of the said testator, to his daughter, your oratrix, Agnes Beattie, for life, and on her death the said testator gave the said shares to the issue of the said Agnes Beattie, if any, and, if none, then to her heirs at law, to be divided among such heirs in the same proportions as real estate of which she might die seized would descend.

9. And your orators further show that the said last will and testament of the said Robert Beattie, the elder, deceased, was afterwards, to wit, on the eighteenth day of August, eighteen hundred and eighty-two, duly proved by the said executors therein named, before the Surrogate of the said County of Passaic, as by a certified copy of the same and probate thereof, now in the custody of your orators, and ready to be produced when and where this honorable Court may direct, or the record thereof now remaining in the Surrogate's office of said County of Passaic, in Book H of Wills, page 369, etc., reference being thereunto had, may more fully appear, and that the said executors in said last will and testament named have accepted the trusts to be created, and taken upon themselves the burthen of the administration of the estate of the said Robert Beattie, the elder, deceased, pursuant to his said last will and testament.

10. That your oratrix, Agnes Beattie, is unmarried, and is over fifty years of age, and that the said Catherine Dickson is over sixty years of age,

and is without issue, and that your oratrix, the said Josephine Gedney, is over fifty-five years of age, and is without issue, and that upon the decease of that one of the said three daughters of the said Robert Beattie, the elder, deceased, to wit, the said Agnes Beattie, Catherine Dickson and Josephine Gedney, who shall first die without issue, and leave the said Robert Beattie her surviving, the said Robert Beattie will be entitled to a one fifth interest in the shares held in trust, as aforesaid, for the said daughter so dying, and that upon the decease of that one of the said three daughters who shall next die without issue and leave the said Robert Beattie her surviving, the said Robert Beattie will be entitled to a one-fourth interest in the shares so held in trust for the said daughter so dying, and that upon the decease of that one of the said three daughters who shall last die without issue and leave the said Robert Beattie her surviving, the said Robert Beattie will be entitled to a one-third interest in the shares of stock so held in trust for said daughter so dying, and that in case the said Robert Beattie shall predecease the said last named three daughters of the said Robert Beattie, the elder, deceased, to wit, the said Agnes Beattie, Catherine Dickson and Josephine Gedney, or any one or more of them, the said William H. Beattie and the other children of the said Robert Beattie, will be entitled to the interest to which their father, the said Robert Beattie, would, had he lived, have been entitled to, as aforesaid, and that upon the decease of the said three daughters of the said Robert Beattie, the elder, to wit, Agnes Beattie, Catherine Dickson and Josephine Gedney, without issue, the said Robert Beattie, or his children, will be entitled to not less than two hundred and fifty-seven and one-half (257½) of the said shares so held

in trust for the said three daughters of the said Robert Beattie, the elder, deceased.

11. That your oratrix, the said Mary Murray, has three children living, to wit, your orator, Alexander Murray, and the said Eva Yergerson and Georgianna Booth.

12. That on or about the twenty-first day of March, eighteen hundred and eighty-nine, the said William Beattie departed this life, having first duly made and executed and published his last will and testament in writing, in due form of law, and possessed in his own right of eight hundred shares of the capital stock of the said The Beattie Manufacturing Company.

13. That by said last will and testament the said William Beattie gave and bequeathed to his executors, therein named, to wit, the said Robert Beattie and the testator's wife, Emma G. Beattie, one-third of all his said shares of stock in the said The Beattie Manufacturing Company, to wit, two hundred and sixty-six and two-thirds shares (266⅔) in trust for his said wife during her lifetime, and upon her death to transfer and convey one-fourth part of said shares, to wit, sixty-six and two-thirds shares (66⅔) to the testator's son, Charles G. Beattie, and to transfer another one-fourth part thereof, to wit, sixty-six and two-thirds shares (66⅔) to the testator's son, Robert H. Beattie, and to hold and retain the remaining one-half of said shares, to wit, one hundred and thirty-three and one-third shares (133⅓) in trust for the testator's daughter, Madeline Beattie, during her lifetime, and upon her death to transfer and convey the said one hundred and thirty three and one-third shares (133⅓) to her children surviving her, and if she should die leav-

ing no issue, then the said one hundred and thirty-three and one-third shares (133⅓) to be transferred to the said testator's sons, Charles G. Beattie and Robert H. Beattie. And the said William Beattie, by his said last will and testament, further gave and bequeathed two-ninths part of all his said shares of stock in the said The Beattie Manufacturing Company, to wit, one hundred and seventy-seven and seven-ninths shares (177 7-9) to his said son, Charles G. Beattie, and another two-ninths part of all his said shares of stock in said company, to wit, one hundred and seventy-seven and seven-ninths shares (177 7 9) to his son, the said Robert H. Beattie. And by his said last will and testament the said William Beattie further gave and bequeathed to his said executors, to wit, the said Robert Beattie and the said Emma G. Beattie, the remaining two-ninths part of all his said stock in the said The Beattie Manufacturing Company, to wit, one hundred and seventy-seven and seven-ninths shares (177 7-9), in trust for his daughter, Madeline Beattie, for her life, and upon her death to transfer and convey the said shares in equal parts to her issue, and if she should die leaving no issue then to transfer said shares in equal parts to the testator's said sons, Charles G. Beattie and Robert H. Beattie.

14. That the said The Beattie Manufacturing Company is a private manufacturing and trading company, and that since the time of its incorporation as aforesaid all of its capital stock has been held and owned by the said Robert Beattie, the elder, deceased, and by his descendants, and is now owned by his descendants, and that the said Robert Beattie and his sons now own and hold nine hundred and seventy-six and seven-ninths shares (976 7/9) of the said capital stock, not including

the shares held by the said Robert Beattie jointly with others in trust, as aforesaid ; and that none of the shares of the said corporation have ever been publicly bought or sold or otherwise publicly dealt in, and that the price or value of the said shares has never been publicly quoted in the stock exchanges of the country or elsewhere, and that the said shares are not now and never have been readily saleable in the market.

15. That the board of directors of the said The Beattie Manufacturing Company, as now constituted, do not now own and never have owned collectively in their own right, as much as one-third of the total three thousand shares of the capital stock of said company ; that the said William Dickson is a gentleman of advanced years, retired from active business and physically incapacited, on account of blindness, from taking an active part in the management of the said company, and your orators show that the said William Dickson has not since his election as a director taken an active part in the management of the said company, and has not acquired and does not now possess practical knowledge of the affairs of the said company, nor has he been consulted by the said Robert Beattie or the said William H. Beattie, his co-directors, in regard to the affairs of the said company, nor has he been informed by them in regard to its affairs ; that the said Robert Beattie and his said son, William H. Beattie, since the decease of the said William Beattie, as above mentioned, have constituted, and still do constitute, the dominating factors in the management of the said company, and have controlled, and still do exclusively control, its affairs.

16. That the said Robert Beattie and William H.

Beattie, constituting, as they do, two-thirds of the board of directors of the said The Beattie Manufacturing Company, by means of their said control of the said company, have voted to themselves, and have caused the said company to pay to themselves, annual salaries far in excess of the true or fair value of the services actually rendered to the said company by the said Robert Beattie and William H. Beattie; that the duties required of the said Robert Beattie and William H. Beattie, and performed by them as officers and directors of the said corporation, are very light and insignificant, and that the only services of any value in fact rendered to the said company by the said Robert Beattie and the said William H. Beattie have consisted and still consist of the services they render as agents in managing and superintending said manufactory and other property of said company at the township of Little Falls, and that the same services, as such agents, might be fully, properly and easily performed for the said company by one competent person, and that the total, true and fair value of all the services rendered to the said company by the said Robert Beattie and William H. Beattie jointly has never exceeded, and does not now exceed, the sum of twelve thousand dollars per annum, whereas the said Robert Beattie and William H. Beattie jointly have been in the habit, as your orators are informed and believe and charge the fact to be, of drawing at least the sum of eighteen thousand dollars per annum as salaries for the services they have rendered.

17. That by means of their said control of the affairs of the said company, the said Robert Beattie and William H. Beattie have prevented and still do prevent your orators and the other stockholders of the said company from obtaining a proper

knowledge and information in regard to its affairs, and have refused, and still do refuse, to make a statement or report to the stockholders, showing the earnings and profits of the said business and the expenses in running the same, but have fraudulently concealed from the said stockholders every and all information in regard to its said affairs, and your orators show that the books of account and records and other writings and papers belonging to the said company, and its principal office and the safe therein, wherein the said books of account and records and other papers belonging to the said company are kept, are within the exclusive control and possession of the said Robert Beattie and William H. Beattie, and that the said Robert Beattie and William H. Beattie have refused and still do refuse to your orators access to the said books of account and the said records and other writings and papers, and have refused, and still do refuse, to your orators permission to examine the said books of account and the said records, for the purpose of ascertaining the true status of the affairs of said corporation and the true amount of the profits earned thereby, and the amount of its legitimate expenses, and the exact amount of the salaries drawn by the said Robert Beattie and William H. Beattie respectively, and that the said Robert Beattie and William H. Beattie have pursued, and still do pursue, a policy of extreme secrecy towards your orators and the other stockholders of said company in regard to its said affairs, for the fraudulent purposes hereinafter more particularly set forth.

18. That the said company, during its entire existence as aforesaid, has been and still is a highly prosperous concern doing a large business, and has earned and still is earning large profits upon its

said capital stock; that said company has earned in total net profits, during its said existence, a sum far in excess of the total amount paid to its stockholders in dividends during the said period, the exact amount of which said excess will appear by the books of account and other records of the said company, and that the said undistributed profits are not required for any legitimate purpose of the business itself, but are reserved, as your orators charge the fact to be, in order to absorb the same for the benefit of the remaindermen, who will be entitled to large portions of said stock upon the decease of the present life tenants or life owners thereof.

19. And your orators further show and charge the fact to be that the said The Beattie Manufacturing Company has during the past six years earned in net profits over and above the entire expenses of conducting its said business, a sum amounting to more than four hundred thousand dollars, and that during the same period of the last six years, the said company has only paid to its stockholders in dividends a sum not exceeding one hundred and eighty six thousand dollars ($186,000), and that the said company has accumulated and now has in its treasury a large cash surplus amounting to the sum of over three hundred thousand dollars ($300,000), and the said surplus is not used in the business of said company, nor is it required for said business, but is upon deposit in various banks and trust companies in the city of Paterson, in the State of New Jersey, and in New York city and elsewhere at low rates of interest, and your orators are unable to state with greater particularity the names of the said banks and trust companies and the amounts deposited by the said The Beattie Manufacturing Company with each bank, but your orators show that the said surplus will appear by

the books of account and other records of the said company upon an examination of the same.

20. That the said company has not required and does not require, and has not in fact used as a standing working capital in the conduct of its business, a sum in excess of sixty thousand dollars in cash; and your orators show that neither the stockholders nor the board of directors of the said company have ever fixed any amount to be reserved out of the profits of the business as a working capital, notwithstanding which, the said profits remain undistributed by way of dividends or otherwise, among those entitled thereto.

21. That, from time to time, the said company has sold and aliened various parcels of its said lands for cash and other considerations, and that the said company, by deed dated the tenth day of January, eighteen hundred and ninety-five, recorded in the Passaic County Clerk's office on the twenty fifth day of September, nineteen hundred, in Book R 14 of Deeds, page 152, sold and conveyed certain water rights mentioned in said deed, to the Mayor and Common Council of the city of Newark, for the consideration expressed in said deed, of twenty-five thousand dollars, the receipt whereof the said The Beattie Manufacturing Company thereby acknowledged; and that the said company, by deed dated the thirtieth day of November, nineteen hundred and one, and recorded in the Passaic County Clerk's office on the twelfth day of November, nineteen hundred and four, in Book V 16 of Deeds for said county, at page 15, etc., sold and conveyed to the East Jersey Water Company certain other water rights and parcels of land and realty mentioned in said deed, in consideration of the sum of three hundred and thirty thousand dol-

lars, the receipt whereof the said The Beatty Manufacturing Company acknowledged in said deed; and your orators show that the said East Jersey Water Company paid to the said The Beattie Manufacturing Company part of said purchase money of three hundred and thirty thousand dollars, to wit, the sum of fifteen thousand dollars in cash, and that it gave to the said The Beattie Manufacturing Company its bond conditioned for the payment of the balance of said purchase money, to wit, the sum of three hundred and fifteen thousand dollars, on the first day of December, nineteen hundred and eight, with interest thereon at and after the rate of four per cent. per annum, payable semi-annually, secured by a mortgage of even date with said last mentioned deed, recorded in the Passaic County Clerk's office in Book X 6 of Mortgages at page 413, etc., covering the property so conveyed as aforesaid and being purchase money mortgage.

22. That the total value of the said factory of the said The Beattie Manufacturing Company and of the tract of real estate whereon the same is erected, and the lands adjoining the same, and the water rights and privileges still remaining unsold, together with the machinery and fixtures and the stock on hand in said factory, and the other assets of the said company over and above its total liabilities, not including, however, the said bond and mortgage of the East Jersey Water Company, and not including the sum of about three hundred thousand dollars of undistributed profits, largely exceeds the sum of three hundred thousand dollars, the total anount of the authorized and outstanding capital stock of said company.

23. That the said Robert Beattie since the decease of the said William Beattie, as aforesaid, has

gained, and still holds, his control over the affairs of the said company, by means of the shares of its said capital stock which he holds in trust jointly with the said William Dickson and Edward Gedney, on the one hand, and the said Emma G. Beattie, on the other hand, as aforesaid, and that the said Robert Beattie has caused the said shares so held in trust to be voted at the annual meetings of the said company, held since the decease of the said William Beattie, in favor of his own election as President and director of the said company, and in favor of the election of his said son William H. Beattie as Secretary and Treasurer and director of said company, and that the said Robert Beattie and William H. Beattie, by means of their said control over the affairs of the said company and by concealing from the stockholders the true state of its affairs and the amount of its net annual profits and the true value of its assets over and above the amount of its total liabilities have prevented the said company from paying to its said stockholders the dividends to which they have been legally entitled as aforesaid, in order and to the fraudulent end that the surplus accumulated as aforesaid, which is absolutely unrequired by the needs or exigencies of the said company, shall not be paid out to the stockholders in said company until after the decease of the said Agnes Beattie, Catherine Dickson and Josephine Gedney, the said Robert Beattie well knowing that in the event of the decease of the said Agnes Beattie, Catherine Dickson and Josephine Gedney without issue, he, the said Robert Beattie, or his children, will necessarily inherit and become entitled to a large portion of the said shares so held in trust for the said Agnes Beattie, Catherine Dickson and Josephine Gedney as aforesad.

24. And your orators show that owing to the private character of said company, the accumulation of the said surplus as aforesaid has not increased the saleable or market value of your orators' shares in the capital stock of the said company.

25. That the said board of directors of the said company has failed to declare and to cause the said company to pay to its stockholders such dividends as those to which they have been and still are entitled out of the net profits of the business; that neither the stockholders nor the board of directors have ever specified any sums to be reserved as a working capital by said corporation, nor have they declared dividends among its stockholders of the whole of its accumulated profits exceeding the amounts legally reserved from time to time as working capital, and that the said failure to declare dividends has been and still is brought about by the said Robert Beattie and William H. Beattie, who have constituted and still do constitute a majority of the board of directors as aforesaid, and that the said Robert Beattie and William H. Beattie are causing the said company to withhold its said accumulated profits for their own ends and for the fraudulent purpose hereinbefore set forth.

26. That your orator Alexander Murray is the owner in his own absolute right of twenty-five shares of the capital stock of the said The Beattie Manufacturing Company, and that he has owned the said shares since on or about the eighteenth day of August, eighteen hundred and eighty-two, and that he has also a contingent interest in remainder in the three hundred shares of stock held in trust for his mother, the said Mary Murray, for life, with remainder to her issue; that your

oratrix, the said Mary Murray, is the owner in her own absolute right of twenty-five shares of the capital stock of said corporation, and has owned the said shares since on or about the eighteenth day of August, eighteen hundred and eighty-two, and that she has also an equitable life interest in three hundred shares of said stock; that your oratrix Agnes Beattie has an equitable life interest in three hundred shares of said stock, and that your oratrix Josephine Gedney has an equitable life interest in three hundred and fifty shares of said stock, and that the said equitable life interests in said respective shares of stock so vested as aforesaid in your oratricies Mary Murray, Agnes Beattie and Josephine Gedney, have belonged to your said oratricies since on or about the eighteenth day of August, eighteen hundred and eighty-two, and that all of your orators have been entitled to receive the dividends upon their said respective shares of stock since on or about the eighteenth day of August, A. D. eighteen hundred and eighty-two, as dividends have from time to time been declared by said corporation, payable to its said stockholders, and that they are now entitled to receive by way of dividends pro rata, according to their said respective number of shares such sum or sums as should have been by law paid to its said stockholders by the said The Beattie Manufacturing Company out of its profits, accumulated during the period in which your orators have respectively owned their said shares, but which have been illegally withheld by said corporation from its said stockholders, as above set forth.

27. That the said Robert Beattie and William H. Beattie give out and pretend that in managing and controlling the affairs of the said The Beattie Manufacturing Company, as aforesaid, and in drawing

and receiving their said salaries, they have in all things performed their duties as officers and directors of the said company ; and they further pretend that the said company during its existence, as aforesaid, has been only moderately successful and has not earned and is not still earning large profits, and that the said company has not earned in total net profits during its said existence a sum in excess of the total amount of dividends paid to the stockholders during its said existence, and that the accumulated cash surplus now in the treasury of the said company is only an inconsiderable amount, and is required and used as a working capital in the conduct of its said business, and they further pretend that the said company has paid to your orators and to its other stockholders the full amount of dividends to which the said stockholders have been legally entitled, whereas your orators charge the contrary of such pretences to be the truth, and that so it would appear if the said defendants hereinafter named would set forth, as they ought to do, a full and true account of the total net profits of the said company during its said existence, and of the total amount of dividends paid to its said stockholders during the said period, and of the amount of the accumulated cash surplus now in the treasury of the said company or on deposit to its credit, and where the same is deposited, and at what rate or rates of interest, and for what purpose, and of the value of its total assets over and above its total liabilities.

28. And your orators further show and charge the fact to be that the said Robert Beattie and William H. Beattie threaten and intend to continue to draw and receive their excessive salaries from the said company, and the said company intends to

continue to pay said excessive salaries to them unless they and the said company are restrained therefrom by this Honorable Court.

All which actings, doings and pretences of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orators in the premises.

In consideration whereof, and forasmuch as your orators are entirely remediless in the premises according to the strict rules of the common law, and can only have relief in a court of equity where matters of this kind are properly cognizable and relievable.

To the end, therefore, that the said defendants, Robert Beattie, William H. Beattie, William Dickson, and The Beattie Manufacturing Company, may, without oath, full, direct, true, perfect and distinct answer make to all and singular the said matters hereinbefore stated and charged, as fully and particularly as if the same were herein repeated and they thereunto distinctly interrogated according to the best of their respective knowledge, information and belief, and that the said defendants hereinafter named may be decreed to make a full and true discovery and disclosure, and that an acconnt may be taken of the total net profits of the said The Beattie Manufacturing Company, during its said corporate existence, and of the total amount of dividends paid to its stockholders during said period, and of the amount of the accumulated surplus now in the treasury of the said company or upon deposit elsewhere or in whatsoever form or wheresoever the same may be, and of the amount and value of the total net assets of the said company over and above its total liabilities, and of the amount of the annual fixed charges

of the company, including salaries, and the annual expenses, and that the said defendants do grant to your orators an inspection and copy, or permission to take a copy, of all and every of the books of the said corporation, whether of original entry or otherwise, by whatsoever name or names designated, known or styled, and all papers, documents and writings containing or showing, or in any way relating to or concerning any of the business and affairs, purchases, sales, receipts, commissions, disbursements, expenses, salaries, income and profits, and all the business and transactions of whatsoever name, nature and character of the said The Beattie Manufacturing Company, from the day of the date of its incorporation to and until and including the date of said inspection, and that your orators and their attorneys and counsel, with such agents, clerks, accountants and experts as they or their attorneys or counsel shall choose to assist them therein, may have and be given full and free access thereto, and to all thereof, and full inspection thereof, in order that they may make full and complete examination, abstract and copy thereof, as they may be advised, and that the said defendants, Robert Beattie, William H. Beattie and William Dickson, constituting the board of directors of the said company, and the said The Beattie Manufacturing Company, be decreed to declare a dividend of all the net earnings and accumulated profits of the said company as there shall appear upon such account not needed for the legitimate purposes of the company's business, and to pay said dividendsto the stockholders of said company upon demand, and that they may be decreed to declare such reasonable dividends and to do so from time to time as the financial status of the business may warrant, with leave to your ora-

tors to apply to this Honorable Court for relief in the premises, if it be necessary for them from time to time to do, and that the fair value of the services annually rendered to the said The Beattie Manufacturing Company by the said Robert Beattie and William R. Beattie, may be ascertained by this Honorable Court, and that the said Robert Beattie and William H. Beattie may be decreed to restore to the treasury of said company for the benefit of said corporation what this Honorable Court may find to have been an excessive amount drawn by them in respect of such salaries, that is to say, in excess of what they have fairly earned, and that the said Robert Beattie and William H. Baattie may be restrained by the order and injunction of this Honorable Court from causing The Beattie Manufacturing Company to pay, and that the said The Beattie Manufacturing Company may be restrained by said order and injunction from paying to the said Robert Beattie and William H. Beattie salaries in excess of the true and fair annual value of their services as so ascertained by this Honorable Court, and that your orators may be allowed their costs, disbursements and counsel fees herein, and that they may have such other and further relief in the premises as to this Honorable Court may seem meet and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orators not only the State's writ of injunction issuing out of and under the seal of this Honorable Court, to be directed to the said Robert Beattie, William H. Beattie and The Beattie Manufacturing Company, restraining the said Robert Beattie and William H. Beattie, and each of them, from causing The Beattie Manu-

facturing Company to pay, and restraining the said The Beattie Manufacturing Company from paying to the said Robert Beattie and William H. Beattie salaries in excess of the true and fair annual value of their services as ascertained by this Honorable Court, but also the State's writ of subpoena issuing out of and under the seal of this Honorable Court, to be directed to the said defendants Robert Beattie, William H. Beattie, William Dickson and The Beattie Manufacturing Company, commanding them, and each of them, by a certain day and under a certain penalty therein expressed, to be and appear before your Honor in this Honorable Court then and there to answer all and singular the said premises, and to stand to, abide by, and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience. And your orators, as in duty bound, will ever pray, etc.

HUMPHREYS & SUMNER,
Solicitor for and of Counsel
with Complainants.

ANSWER.

Filed October 18, 1905.

The answer of the defendants The Beattie Manufacturing Company, Robert Beattie, William H. Beattie and William Dickson to the bill of complaint of Alexander Murray and others, complainants.

These defendants admit that The Beattie Manufacturing Company was incorporated in the year eighteen hundred and eighty-two, as set forth in the bill, with a capital of three hundred thousand dollars, and that Robert Beattie held sixteen hundred (1600) shares; William Beattie, seven hundred (700) shares, and Robert Beattie, Jr., seven hundred (700) shares, and that on the death of Robert Beattie, Sr., his son, Robert Beattie, Jr., succeeded him as President, and that this defendant, William H. Beattie, was appointed Secretary of the company, and this defendant, William Dickson, was elected a director, and that after the death of William Beattie, William H. Beattie was elected Treasurer of the company.

These defendants admit that Robert Beattie, the elder, died July twenty-ninth, eighteen hundred and eighty-two, and that he held at the time of his death sixteen hundred (1,600) shares of the stock of the company, and that he gave his shares, as in the bill set forth.

These defendants admit that Agnes Beattie, Catherine Dickson and Josephine Gedney are of the ages in the bill stated, and without issue, and that upon the death of each of said three daughters of Robert Beattie, deceased, the shares held in trust for her benefit for life will pass to her heirs at law; but whether said Robert Beattie will be entitled to inherit any part of the said shares will

depend upon his survivorship as to each of his said three sisters. These defendants show that those of his said sisters who shall survive the one who shall first die will, as heirs, inherit equally with the said Robert Beattie and with the children of William Beattie, the said shares of the one dying, but these defendants do not admit that Robert Beattie, or his children, will be entitled to two hundred and fifty-seven and one-half (257½) of the shares held in trust, because such inheritance depends on such contingencies that it is impossible to determine who will be the heirs of the said tenants for life, or in what proportions they will inherit.

These defendants admit that Mary Murray has three children living, as stated in the eleventh paragraph of the bill, and deny that William Beattie died March twenty-first, eighteen hundred and eighty-nine, and say that he died in eighteen hundred and ninety-nine, and that he left a will and disposed of eight hundred (800) shares of stock of The Beattie Manufacturing Company which he held in his own right, in the manner stated in said will, but for greater certainty these defendants pray a reference to the said will for the terms and effect thereof.

These defendants admit that nine hundred and seventy-six and seven-ninths (976 7-9) shares of the stock of said company are held by these defendants, Robert Beattie, William H. Beattie and Robert Beattie, Jr., and they admit that other shares are held by Robert Beattie with other trustees, in trust, and they admit that the said shares have not been sold on the market.

These defendants admit that the total number of shares owned by the directors in their own right in the company is less than one third of the total

number of shares ; they admit that William Dixon is a gentleman of advanced years and retired from active business and that he is blind, but they deny that he is thereby incapacitated from taking an active part in the management of the company ; and they deny the statement of the bill that he has not taken an active part in the management, and deny the statement that he has not acquired and does not possess practical knowledge of the affairs of the company, and they deny the statement that he has not been consulted by his co-directors in regard to the affairs of the company, and that he has not been informed by them in regard to its affairs ; and they deny the statement that his co-directors have, since the decease of William Beattie, exclusively controlled the management and affairs of the company ; and these defendants say that the said William Dickson is almost daily at the office of the company and is consulted by the officers of the company and by his co-directors on all matters of importance or out of the usual course of business.

These defendants deny that Robert Beattie and William H. Beattie, as directors, have fixed annual salaries in excess of the true value of their services, or that they have fixed any annual salaries at all ; and they say that the salaries of the president and treasurer of the company were fixed in the year eighteen hundred and eighty-eight, during the lifetime of William Beattie, by the board of directors, at ten thousand ($10,000) dollars each, and have never since been changed, and that although these salaries are no more than a reasonable and fair compensation for the service, yet that the said Robert and William H. Beattie have not accepted from the company the full amount fixed, but in-

stead thereof have for several years drawn an annual salary of eighty-five hundred ($8,500.00) dollars each.

These defendants deny that they, or any of them, have prevented, or do prevent, the stockholders from obtaining a proper knowledge of the the affairs of the company, and deny that they refused, or do refuse, to make any statement or report showing the net earnings and profits, and deny that they have concealed from the stockholders information proper to be given regarding the affairs of the corporation.

These defendants deny that the books and papers are kept within the exclusive control of Robert and William H. Beattie, but say they are properly kept within the exclusive control and possession of the company, acting through its directors and officers.

These defendants deny that they have refused to any of the complainants an examination of the books and records, and they deny that they have adopted any improper policy of secrecy or have adopted any other method in dealing with the books and papers of the company than such as is usual in manufacturing corporations and such as is their duty in the discharge of their offices.

These defendants admit that the company has been prosperous and has done a fair business, and that it has, for most of the years of its existence, earned profits on its capital stock.

These defendants admit that the company has earned in net profits more than the amount paid in dividends, but deny that the sum so earned is properly to be characterized as far in excess of the total amount paid.

These defendants deny that the undistributed

profits are not required for any legitimate purpose of the business, or that such profits are reserved to be absorbed for the benefit of the remaindermen, and they say that the surplus reserved is invested in the business and property of the company and is necessary to be used for the proper conduct of the company's affairs.

These defendants deny that during the last six years the company has earned in net profits over four hundred thousand ($400,000) dollars; they admit that the payment to its stockholders in dividends is about one hundred and eighty-six thousand ($186,000) dollars.

These defendants deny that the company has accumulated and has in its treasury a cash surplus exceeding three hundred thousand ($300,000) dollars which is not used for the business of the company, and they say that the cash on hand varies during the year, according to the demands of business, and amounted on September 1st, 1905, to about one hundred and fifty thousand ($150,000) dollars; and they deny the statement that the company does not require a sum in excess of sixty thousand ($60,000) dollars in cash capital to conduct its business, and say that a much larger sum must be held to answer the contingencies of the business, and to secure the company in such position that it can maintain permanent dividends, without regard to the vicissitudes of trade, and other unforeseen events.

These defendants admit that various conveyances of land have been made and that the proceeds thereof have been invested in improvements on the property or are held on mortgage.

These defendants admit that the total value of the factory and real estate and machinery and

other assets of the company exceeds, above its liabilities, three hundred thousand dollars, if valued in connection with the going business, but not otherwise.

These defendants deny the statement of the bill that the stockholders or directors have never fixed any amount to be reserved out of the profits of the business as a working capital, and they say that by authority of the stockholders, the directors have annually, for the last five years, directed that the earnings and surplus of the company, in excess of the dividends paid, should be reserved as working capital.

As to the matters stated in paragraph twenty-three, these defendants say that the directors now in office were elected by unanimous vote of all the stockholders who voted, and they deny all improper motives or purpose in the management of the company, and say that their declaration of dividends and all other acts in the management of the company are with a view to the interests of the company and of its stockholders.

These defendants cannot answer whether the accumulation of a surplus has or has not increased the market value of the shares in which the complainants are interested in the company, because the shares are not in the market for sale, but believe that sales could be made at fair prices of the stock representing the value of the property.

The defendants admit that Alexander Murray is the owner of record of twenty-five (25) shares of the stock of The Beattie Manufacturing Company, and that he may hereafter acquire an interest in the shares held in trust for his mother contingent on his survivorship. They admit that Mary Murray owns of record in her own right

twenty-five (25) shares and has a like contingent interest, and that the other complainants have the interest for life stated in said bill under the will of Robert Beattie, deceased.

The business of manufacturing carpets at Little Falls was established more than sixty years ago by Robert Beattie in his lifetime, and grew from a small beginning to a substantial and profitable business. For a number of years before the year eighteen hundred and eighty-two it was carried on by Robert Beattie and by his sons William and Robert in partnership, and it was increased from year to year by the enlargement of the plant and employment of more labor. In eighteen hundred and eighty-two the company was formed, and soon after Robert Beattie, the elder, died. The management necessarily continued in the hands of William and Robert who had been brought up in the business and had been actually carrying it on before the death of Robert Beattie. After the incorporation, as before, the policy of the management was to maintain the growth and increase of the plant and the business. Competition was increasing and it was only by development that the company should hold its own in the trade. There are years of good profit and years of poor business. From time to time expensive changes in machinery are necessary, both to economize manufacture and to make new products demanded by the market. At times opportunities arise to purchase raw material in large quantities at low rates and a cash surplus is necessary, not only to carry on the business to the best advantage, but also to insure a steady payment of dividends without regard to the vicissitudes of trade. Since the organization of the company the dividends have from time to time increased, and it is the desire and intention of the directors to so

conduct the affairs of the company that the dividends shall not fall below ten per cent. (10%) in any year, even though not earned in that year. Since the company was organized the dividends have been as follows:

For 1882, 2%; 1883, 3%; 1884 and 1885, 4%; 1886, 5%; 1887, 1888 and 1889, 10%; 1890, 12½%; 1891, 10%; 1892, 12½%; 1893 and 1894, 10%; 1895 and 1896, 7%; 1897, 10%; 1898, 12%; 1899 to 1902, 10%; 1903, 12%; 1904, 10%.

The last six years have been years of more than average prosperity, but the year 1905 will probably not be equal to the average. This is due to the necessity of changing from the manufacture of carpets to the manufacture of rugs, which involves expensive alterations in machinery. The experience of the company and of the partnership which preceded it shows that dull years and losses must be expected and provided for.

These defendants say that the dividends which have been declared are such as are proper in the prudent and conservative management of the company and not less than the directors would have made if they were the owners of all of the stock.

All which matters these defendants are ready to maintain and prove, and pray to be hence dismissed with costs.

COLLINS & CORBIN,
Solicitors for Defendants.

REPLICATION.

Filed November 3, 1905.

IN CHANCERY OF NEW JERSEY.

BETWEEN

ALEXANDER MURRAY ET AL.,
Complainants,

and

THE BEATTIE MANUFACTURING COMPANY ET AL.,
Defendants.

Replication.

The said complainants join issue upon the answer of the said defendants, The Beattie Manufacturing Company, Robert Beattie, William H. Beattie and William Dickson to the amended bill of the said complainants herein.

HUMPHREYS & SUMNER,
Solicitors of Complainants.

ORDER OF REFERENCE.

Filed November 8, 1905.

IN CHANCERY OF NEW JERSEY.

BETWEEN ALEXANDER MURRAY ET AL., *Complainants,* *and* THE BEATTIE MANUFACTURING COMPANY ET AL., *Defendants.*	*On Bill, etc.*

Upon reading the consent at foot hereof, it is, on this eighth day of November, in the year of our Lord one thousand nine hundred and five, on motion of Humphreys & Sumner, Solicitors of the Complainants, ordered, that the above stated cause be referred to Eugene Stevenson, one of the Vice-Chancellors, to hear the same for the Chancellor, and to report thereon to him and advise what order or decree should be made therein.

W. J. MAGIE, C.

We hereby consent to the entering of the above order.

COLLINS & CORBIN,
Solicitors of said Defendants.

TESTIMONY.

CHANCERY CHAMBERS, Tuesday, October 9th, 1906.

IN CHANCERY OF NEW JERSEY.

BETWEEN
ALEXANDER MURRAY ET AL.,
Complainants,

and

THE BEATTIE MANUFACTURING COMPANY ET AL.,
Defendants.

Transcript of shorthand notes of testimony, etc., taken at the Chancery Chambers, Jersey City, New Jersey, in the above stated cause, on Tuesday, October 9th, 1906, before Vice-Chancellor Stevenson.

Messrs. JOHN B. HUMPHREYS, JOHN W. HARDING and WM. A. SUMNER for the complainants.

Mr. CHARLES L. CORBIN for the defendants.

Mr. HUMPHREYS—I offer in evidence a certified copy of the certificate of incorporation of The Beattie Manufacturing Company, dated June 24th, 1882.

The same is marked Exhibit C 1.

GEORGE E. PETERSON, sworn for the complainants, testifies as follows:

Direct examination by Mr. Humphreys.

Mr. HUMPHREYS—I also offer in evidence a certified copy of the last will and testa-

ment of Robert Beattie, dated 8th day of July, 1882.

The same is marked Exhibit C 2.

Mr. HUMPHREYS—I also offer in evidence a certified copy of the last will and testament of William Beattie, deceased, dated 18th day of March, 1891, proved 17th of April, 1899.

The same is marked Exhibit C 3.

Mr. HUMPHREYS—I also offer in evidence, if there is no objection, a memorandum of agreement, dated July 6th, 1882, between Robert Beattie and The Beattie Manufacturing Company. It is acknowledged on July 6th, 1882, before Mr. Wm. H. Corbin. It is called a memorandum of agreement in the body of it.

The same is marked Exhibit C 4.

THE COURT—This instrument which you have put in evidence conveyed the entire property of the partnership to the corporation in consideration of sixteen hundred shares of stock?

Mr. HUMPHREYS—Yes.

Mr. CORBIN—Not if that is Robert Beattie's conveyance. His sons had an interest in the partnership. He conveyed his interest in the partnership and his land which he owned in fee.

Mr. HARDING—Did the land just embrace the fixtures, the machinery itself; who owned the machinery, not the fixed machinery?

Mr. CORBIN—I think that went with the building. It was all settled up by giving them each sixteen hundred shares.

Mr. HUMPHREYS—I also offer in evidence a deed dated 16th of March, 1884, from Beattie and wife to The Beattie Manufacturing Company.

The same is marked Exhibit C 5.

Mr. HUMPHREYS—This is a conveyance from the two sons of Robert Beattie in confirmance of the agreement made in the lifetime of Robert Beattie, confirming the title by the other instrument which I put in evidence.

I also offer in evidence a bill of sale from Robert Beattie et al. to Beattie (partners), to The Beattie Manufacturing Company, dated July 6th, 1882, conveying all the goods and stock in the factory operated by them at Little Falls, New Jersey, and at their store, 85 White street, New York City. The consideration is $140,000.

The same is marked Exhibit C 6.

Mr. HUMPHREYS—I also offer in evidence a mortgage from the East Jersey Water Company to The Beattie Manufacturing Company, dated November 30th, 1901, as a security for the payment of the sum of $315,000 on the first day of December, 1918, with interest at 4 per cent., recorded in the Clerk's Office of the County of Passaic, in book X 6 of mortgages for said County on page 413.

The same is marked Exhibit C 7.

By Mr. Humphreys (to the witness).

Q. Mr. Peterson, where do you reside? A. In Paterson.

Q. And what is your business? A. I am a public accountant and certified public accountant.

Q. And what does that mean—certified accountant? A. I hold a certificate from the State that I have qualified before the board of accountants, which were appointed under the act of about four years ago, and am recorded at Trenton as such.

Q. And how old are you? A. Fifty-four in January next.

Q. How long have you been in business as a public accountant? A. I have been in the business thirty-seven years altogether.

Q. Were you engaged by the complainants in this suit to make an examination of the books of account of The Beattie Manufacturing Company from July 1st, 1882, to November 30th, 1905? A. Yes, in conjunction with Mr. Lewis's report.

Q. As I understand it, Mr. Lewis had already made a report, and you were instructed to verify the report? A. To verify that report and say what I have to say about it.

Q. And did you go over Mr. Lewis's report and verify it? A. Yes.

Q. Have you prepared analyses of the various accounts of the Beattie Manufacturing Company tending to show the earnings of the company from its commencement down to the present time and the expenses of running the business and the net profits also and what has been done with those net profits? A. Yes.

Q. And showing how much had been paid out in dividends and how much has been reserved as a reserve fund? A. Yes.

Q. I hand you this package of sheets and I ask

you if those are the ones that you have made. Oh, you have a copy there? A. Yes.

Mr. CORBIN—Have you an extra copy?

Mr. Humphreys hands Mr. Corbin copy of paper.

Q. Are those sheets that are shown together, are those the papers which you have prepared and do they agree in every case with the books of the Beattie Manufacturing Company? A. In every case, excepting the manufacturing accounts, where I have transferred some of the items from manufacturing account to profit and loss, but the ultimate results of profit and loss are precisely the same.

Q. Will you turn to pages four and five of these sheets and tell me if those pages do not contain an analysis of the manufacturing account? A. Yes.

Q. Now, on the credit side of that account do these sheets show the amount of sales made in each year from 1882 to 1905? A. The total of that account of each year there represents the sales as near as it is possible to get the figure.

Q. And on the other side of the account? A. It is given all on one side, Mr. Humphreys; it is merely on the top; the totals represent the sales, the total represents the sales.

Q. Do those sheets also show the amount of manufacturing expense and the cost of material? A. Yes, as they are analyzed on the books, with a few exceptions. They are not thoroughly analyzed.

Q. What do you mean by not thoroughly analyzed? A. There may be some items charged to profit and loss.

Q. This account is thoroughly analyzed, is it not?

A. As far as I could possibly do it under the circumstances.

Q. Will you explain to us what you mean by stating as far as you could make it correct; it is correct? A. Wherever there were any glaring items that really belonged to the profit and loss I transferred them to the profit and loss account, and if I found any in the profit and loss account that belonged to the manufacturing account I transferred them.

Q. Then you were merely correcting Mr. Lewis's account in that respect? A. Mr. Lewis did not give these items at all.

By the Court.

Q. Can you illustrate what you did in the way of correction? A. Yes. Suppose I found the aggregations in that manner in the last four or five years. I found items such as selling expense charged to profit and loss; I transferred those and charged them to the manufacturing account, and I can look up the other items. Might I have Mr. Lewis's account for a moment, Mr. Humphreys?

Mr. Humphreys hands witness paper.

THE WITNESS—The selling expense on freight were the principal items which I transferred from this account to the manufacturing account.

Q. Would the transfer that you made in any way affect the exhibition of profits. A. In no way; no, sir.

By Mr. Humphreys.

Q. What was your object in making the transfer? A. My object in doing that was to find out

what the gross profits were—if they were needed for any purpose in ascertaining the percentages of profit.

Q. Referring to pages four and five of the account does the difference between the cost of the material and the manufacturing expense appearing in the account on the one hand and the amount of the sales on the other, does that indicate the amount carried to the credit of profit and loss on manufacturing account? A. Yes.

Q. Those items did not represent absolutely net profits, did they? A. No.

Q. Why not? A. Because the other expense—of the salaries and other expenses.

Q. And what account were they charged to? A. The profit and loss account.

Q. Then these balances on pages four and five represented the net profit arrived at by deducting from the sales the cost of material and the cost of manufacture? A. Yes, and the cost of selling also.

Q. Well, taking the year 1882 as an example—

By the Court.

Q. One moment. Just explain that a little more fully, Mr. Peterson, how you reached that statement of profit? A. I charged the manufacturing account first of all, with the amount of material used; then with manufacturing, labor, with commissions on sales and discount, freight, and all other expenditures which go to produce the material before it is sold, the article before it is sold.

Q. But not such expenditures as taxes and insurance? A. Not such expenditures as taxes and insurance and salaries, or anything that is non-productive. That account is supposed to present the actual cost of the amount for which you realize the

figure sales; that is what it is intended to represent in any case.

Q. The actual cost— A. Of the article which was sold, and the sales are supposed to be represented by what you realize for that article; the actual cost of manufacture of that article and everything pertaining to the cost of the manufacture should be charged to that manufacturing account.

Q. How about the wear and tear of the machinery? A. That should really go into that account, too.

Q. Did it? A. No; it did not; that went into the profit and loss account; I could not ascertain that figure; it would have been an enormous job, because the repairs include repairs not only on the machinery, but on the buildings and everything else in connection with the place.

Q Do I understand that your statement on pages four and five exhibits the profit ascertained, as you have described, for the year of 1882 to 1905? A. Yes.

Q. And then, have you added all these amounts together for those twenty-three years? If you have, you will have a large sum which will indicate the profit defined as you have defined it? A. Yes.

Q. Then, in order to get at the entire actual net profit, you would have to deduct a large number of other items which you say you left out; now, are all those items in your profit and loss account? A. Yes.

Q. Then, by adding together the different amounts in the profit and loss account for the twenty-three years, and deducting the sum from the prior amount, you will have the final net profits, will you? A. Exactly, yes.

By Mr. Humphreys.

Q. Still referring to pages four and five and taking the year 1882 as an example, what does the statement show the amount of the sales was? A. $143,036.90, the total figure.

Q. And what does the statement show the cost of material and manufacturing expense was in that year? A. $118,666.40.

Q. And what was the total amount carried from that account to the credit of profit and loss for that year? A. $24,370—in all those cases, the exact same balance that is on the ledger.

Mr. CORBIN—That is, that figure appears in the books?

THE WITNESS—Yes.

Q. Taking the year 1905, what does that year show as to the amount of sales. A. $450,311.61.

Q. And what was the amount of the cost of material and manufacturing expense? A. $355,428.54.

Q. What amount was carried to the credit of profit and loss? A. $94,883.07.

Mr. CORBIN—Does that figure appear in the ledger of the concern?

THE WITNESS—No, sir; but the figure in the profit and loss account does; you see, I changed some of these, but it does not affect the final figure of profit and loss.

Mr. CORBIN—That does not come from the books?

THE WITNESS—No, sir; but the final figure in the profit and loss account does.

Q. Will you turn to pages six, seven and eight of the statement, and tell me if that don't show on the credit side the balance brought finally from the credit of merchandise account which you have just been speaking of. A. Yes.

Q. So that you turn to page four of the report and you will find the balance credited to profit and loss account in respect of the year 1882 as $24,370.50; I want to show that the various amounts that have been stated in the profit and loss account have been actually so carried, and I ask the witness to look at that page four in that year 1882 which shows the sum of $24,370.50 as being carried to the credit of profit and loss account; do you find that? A. Yes.

Q. And then turn to page six and show that the same amount, if there credited under the year 1882 as merchandise account, $24,370.50? A. Yes.

Q. And is it the same with all the other years? A. Yes.

By the Court.

Q. What is the same? A. The figures are all transferred to the profit and loss account.

By Mr. Humphreys.

Q. Does the credit side of this profit and loss account on pages six, seven and eight, does that show anything else than the balance of profit made out of merchandise? What else does it show? A. Rents, interest and other extraneous profit.

Q. So that this profit and loss account shows on the credit side all the profits earned by the company in any manner, both on merchandise account and on any profits other than real estate? A. It shows the profits on the merchandise account and all other income.

Q. Now, on the debit side of this profit and loss account, what appears? A. Expense account, rent, repairs, insurance, interest, the main stable account, taxes, bad accounts and depreciation.

Q. And do those contain all expenses and charges that properly have come out of profit that were not charged in the merchandise account? A. Yes.

Q. So that the difference between the debit side of the profit and loss and the credit side would be the net profits earned by the company in each year? A. Exactly.

Q. So when credits appear to the credit of the profit and loss account, in some of the years, do they include this mortgage to the East Jersey Water Company the interest on that? A. Yes.

Q. Now, will you turn to page 10 of the account, please, and tell me if that does not contain a summarized statement of these same net profits which appear in the profit and loss account? A. Yes.

Q. And that page shows then that the total net profits earned by the company from December 31, 1882 to November 30, 1905 amounted to $1,106,-104.35? A. Yes.

Q. Does that agree with the books of the company? A. Yes, certainly it does.

Q. Does it agree with Mr. Lewis's report? A. No, not quite.

Q. Will you explain in what respect it differs from Mr. Lewis's report?

Mr. CORBIN—We don't need that, do we?

Mr. HUMPHREYS—I don't care.

Mr. CORBIN—You expect to use this statement instead of that report?

Mr. HUMPHREYS—Yes.

Mr. HARDING—You might give the result of it.

Q. Just tell us what the difference is between Mr. Lewis' report and yours? A. It arose through items of the East Jersey Water Company's interest and other items being transferred direct to the dividend and reserve accounts and not passing through the profit and loss account. It made no difference in the ultimate result. For instance, Mr. Lewis's report showed total profits of $1,059,096.33. He showed the general reserve to be $251,295.52, and real estate reserve $204,653 64; bad account reserve $17,155.19; total reserve $473,104.35; and dividends paid, $633,000.00. The total would be $1,106,104.35.

Q. Now, then, that agreed with the calculations as to what the profits should be? A. Yes, but of course that being held in reserve and those dividends being paid, the total amount amounting to $1,106,104 35 that profit must have been made.

Q. And your investigation shows that it was made? A. Certainly, the profit was all right, but it did not happen to be put through the profit and loss account.

Q. How did Mr. Lewis omit those items? A. Because he checked it up, this East Jersey Water Company, there was $12,600 in the year 1898—transferred direct to the dividend account.

Q. That appears in your account but didn't appear in Mr. Lewis's calculation? A. Didn't appear in Mr. Lewis's calculation.

Q. Because it was carried direct to dividends? A. Yes. Then the doubtful reserve of $4,994.29, that Mr. Lewis considered as wiped out, when it was not. It is a component part of this bad reserve account which is at present there. That made a dif-

ference that year of $17,594.29. Otherwise, he had it at $18,000.00 in that statement of it, and it should have been $35,594.29. In the next year there was $12,600 of the East Jersey Water Company, and $670.74 of the doubtful reserve account treated in the same way, which made the profit instead of $22,800, $36,040.74. The next year was 1901. There was $6,3 0 of the East Jersey Water Company, and $500 of doubtful debts treated in the same way, which made the profit $46,300.

Mr. CORBIN—What page is that?

THE WITNESS—Page 10—$46,300 instead of $35,000. 1902, doubtful reserve $5,000, not included in profits. 1903, doubtful reserve $5,000, not included in profits.

By the Court.

Q. What really makes up that item you speak of doubtful reserve. Just explain what it means, $5,000 there denominated doubtful reserve. A. In 1905, there is a bad account reserve of $17,155.19. That is part of the surplus.

Q. Is that the sum total of accounts that were deemed bad? A. No, that is the sum total of the amount which was transferred as a reserve for bad debts, less what had been charged to that account and charged off as bad debts. Still, it is a fund which is not disposed of and was taken in Mr. Lewis's report.

Q. But I don't understand it is a fund that is set by to meet doubtful accounts? A. Yes, it is. 1905, there was $598.31 of receipts credited to reserve direct.

By Mr. Humphreys.

Q. Without passing through profit and loss ac-

count? A. Yes. And there were $2,259.43 charged to reserve direct.

Q. And that you have deducted, have you, that last item? A. Yes, thus making the profit for 1905 instead of $34,734.43, $33,073.31. Those really make no difference in the result at all, except that it shows the profit must have been that much more in order to divide up that much more. It shows all the figures here.

Q. And will you turn to page one and two of the account. Those pages show the balance sheets for each year, do they not, from the year 1882 to the year 1905? A. Yes.

Q. And the assets appearing on page one and the liabilities on page two? A. Yes.

Q. Take the year 1882, in the first place, when this company was incorporated and when it started with a capital stock of $300,000.00, all of which was issued in the acquisition of its assets. Will you show what the assets were that represented that $300,000.00 and how the liabilities are stated in the account, pages one and two? A. The assets were, real estate, $139,903.63; machinery, $69,408.75; stock of merchandise, $92,931.23; cash, $2,535.34; R. Beattie & Sons, $63,298.59; new building, machinery, improvements, etc., $1,655.68; accounts and bills receivable, etc., $11,786.31; total assets, $381,519.53.

Q. How is that represented by the capital stock on page two? A. The liabilities of accounts and bills receivable, $81,519.53, and the balance, and these assets, the capital stock of $300,0 0.00.

Q. So that the capital stock at $300,000.00 was the value of all the assets? A. The net value, after deducting the liabilities.

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By the Court.

Q. This you derive from the books? A. Yes.

Q. You have no means of verifying any of those entries? A. Well, the books are balanced and correctly and well kept all through, but as to verifying them and going into all these accounts, it might take a very, very long time.

Q. Then, we have this situation of affairs, that the difference between the entire assets of this going business in July, 1882, and its liabilities, was exactly the round sum of $300,000.00? A. That is when it was incorporated.

Q. Is it not plain that that is an arbitrary figure? A. Certainly, there has to be in those cases, some reduction or increase in some part of them in order to make the exact amount of the capital stock.

Mr. CORBIN—That is what they paid for their plant?

THE WITNESS—Yes.

Q. Do you know whether these different items that you have read off here and which appear on page one of this chart, whether those items were taken from the books of Beattie & Sons, the firm? A. I found these items in the journal entry opening of the books of the new concern. The journal has all those.

Q. Did you learn how they happened to hit upon this division of exactly $300,000.00 among themselves? A. No, I did not go into that item at all.

By Mr. Humphreys.

Q. You never examined the books of R. Beattie & Sons? A. No.

Mr. CORBIN—They put that value on it and assumed the debts.

THE COURT—What I am desiring to have explained is a mere matter of bookkeeping, how they happened to split up the $300,000.00 which they state as the value of the equity in all this property, for the purpose of a stock issue among these different items.

Mr. CORBIN—They took it from their partnership books, no doubt.

Q. Then, as a matter of fact, the partnership books did show that the aggregate value of the assets, less the liabilities, was exactly $300,000.00.

Mr. CORBIN—You see you have a peculiar element of land in there.

By the Court.

Q. Then, Mr. Peterson, let me call your attention to the item of real estate here which is $139,903.63. How did you find, or did you find, from what source that item came? A. No, sir. I took the opening of the books of The Beattie Manufacturing Company, with the entry that was made to open them.

THE COURT—Mr. Corbin, you are suggesting that the real estate was used as the balancing item?

Mr. HUMPHREYS—The documents that have been offered in evidence, the deed from Robert Beattie, Sr., shows that for conveying the real estate he received sixteen hundred shares and Robert Beattie & Sons were conveyed the residue.

THE COURT—I am only trying to find out what is the difference between the items

in the aggregate here. Mr. Corbin suggests that the books were open by transferring up all the other items and then putting in the real estate at such figure as would make the difference between assets and liabilities amount to exactly $300.000.00.

Mr. HUMPHREYS—Your Honor will observe that this real estate item included the water rights which have since been sold.

By Mr. Humphreys.

Q. Will you turn to the year 1905 and tell us what the balance sheet shows in that year in regard, first of all, to the assets? A. Shall I read them out individually?

Q. Are all the other years made up in the same way as the year 1882? A. Exactly the same way.

Q. I notice on page one, Mr. Peterson, that there is an item "R. Beattie & Sons," which appears as an asset and which commenced with the deed of R. Beattie & Sons. amounting to $63,000.00 and odd dollars, and which indebtedness continues through all the years up to 1900, being largely reduced in the year 1899. Did you ascertain what the nature of that indebtedness was and what it represented? A. That represents the amount of goods sold by Robert Beattie & Sons on account of The Beattie Manufacturing Company, less their commissions aad their discounts, and whatever payments they get; it represents the balance due The Beattie Manufacturing Company by Robert Beattie & Sons, for goods sold for their account.

Q. Then, during all these years Robert Beattie & Sons financed the company and sold its goods for it? A. Yes, up to 1899.

Q. Now, on page eleven, what does that statement show? A. It shows the salaries paid during the period.

Q. Salaries paid to him and between what periods? A. To the officers and one other beside the officers.

Q. What was the total amount paid to William Beattie, deceased? A. $127,915.65.

Q. Now Robert Beattie? A. Robert Beattie, $184,583.32.

Q. And all the other parties, the amounts paid to them are also stated in your chart? A. Yes.

Q. And the amount that each received each year? A. Yes, those are the salaries paid or credited to their accounts.

Q. What do pages twelve and thirteeen show? A. They show the dividends paid for the period and to whom paid.

Q. They show the total dividends paid altogether from 1882 to 1905, is that right? A. Yes.

Q. And then have grouped the amount which you think the various parties received in respect of their holdings of stock? A. The amount which their shares called for, but I have not gone into any transfers of Mr. Beattie's stock at all, because I did not think it was necessary for the purpose that you wanted this.

MR. CORBIN—Haven't got the trust estate in?

Mr. HUMPHREYS—Yes, page thirteen, the trust estate.

Q. And there is a summary on page thirteen showing the total amount received by the various stockholders by way of dividends? A. Yes.

Q. Now, page fourteen, what does that show?

A. That is an account of the receipts for interest and rents, etc.

Q. The receipts— A. For interest, rents and items for stone quarry.

Q. In fact, everything except what was earned out of the actual business? A. Yes.

Q. And that shows those receipts for the year? A. Yes.

Q. I see the first item is rent. Is that rent for buildings? A. I presume so.

Q. Do you know what the stone quarry items represent? A. No, sir.

Q. The Brown Brothers item, what does that represent? A. Brown Brothers item represents money deposited with them, and the same with the Union Trust and with the Colonial Trust Company and with the Paterson Deposit Company.

Q. What does the East Jersey Water Company represent? A. That represents the interest on the $315,000 mortgage.

Q. Have you made an examination of the accounts of The Beattie Manufacturing Company in order to ascertain what the monthly cash balances were which were held in the various banks from month to month, from the year 1899 down to the year 1905? A. Yes.

Q. I notice one column on page fifteen and which is headed "Cash." What does that column indicate? A. That represents the balance in the current accounts in the banks and the balance of their cash book also.

Q. Independently of the moneys in the Trust Company? A. Independently of the moneys deposited.

By the Court.

Q. I don't understand that? A. In this Colonial

Trust Company, Brown Brothers, Union Trust Company.

Mr. CORBIN—You have got cash in Brown Brothers account, in Union Trust Company, and the total; and then you have got another item of cash.

THE WITNESS—That represents the other bank account which they are using in their business, in another bank.

Q. The first column, which is headed "Total," indicates the total amount on deposit in trust companies? A. And in Brown Brothers.

Q. And the column furthest to the right here, entitled "Cash," that shows the amount on deposit in their ordinary bank, subject to check? A. Yes.

By Mr. Humphreys.

Q. Taking the heading of Brown Brothers, I see in November there was a certain amount on deposit with them, but in December there is no amount underneath their name. What does that indicate? A. On November 30th, there was in Brown Brothers, $54,206.62; the Union Trust Company, $77,543.61; making a total of $131,550.23; now, then, in December there was no change in that, so I bring it down in the total account without putting it under Brown Brothers. In January that was changed. There is a new figure for Brown Brothers, and the same figure for the Union Trust Company, which makes it $113,665.10; in the next month of March, there was $1,000 drawn out of Brown Brothers, which left the total $115,665 10 These figures remain unaltered then until August, when Brown Brothers became $20,000. Those figures under Brown Brothers and Union

Trust Company show the balances then in their hands at any period. Where they are unaltered the balance remains the same and the totals are altered.

Q. So that to ascertain the total cash in the hands of the Beattie Manufacturing Company at any time you would have to add the amount appearing under the head of "total" to the amount appearing under the head of "cash?" A. Yes, certainly.

By the Court.

Q. Do I understand you to say that all the changes in the accounts with Brown Brothers and the Union Trust Company are indicated on this statement? A. Yes.

Q. You give the balances on certain dates named, for instance, November 30th, 1899, December 31st, 1899, January 31st, and so on, and whenever there is a change of any kind, you have a change here? A. Yes.

Q. For instance, between January 31st, 1901, and February 28th, 1901, there was no change? A. No change at all, not until November 30th, when the interest was added to these two, and that increased these balances there.

Q Why are those dates put in when there was no change? A. Because I wanted to show the total here in comparison with the cash on hand.

By Mr. Humphreys.

Q. Turn to pages seventeen and eighteen, what do they indicate? A. That was the summary showing the cash balances which were summarized in this figure here.

Q. Will you just explain that. Begin at the commencement and show the Court. A. Now, in 1900, November 30th, the balance on hand was

$29,955.84; November 30th, 1899, was $26,955.84.

Q. Up to December 31st, 1900, what were the receipts? A. The total cash deposits were $27,006.73.

Q. Then you have added those together and you find then the total cash? A. Added those together, making $53,962.57.

Q. What is this item of disbursements? A. That is the credit side of the cash book, or the payments; they were $48,789.24, leaving a balance of $51,073.33.

Q Is that carried on throughout all the years? A. Yes.

Q. And that agrees with the previous account? A. That makes up this figure here of the cash.

By the Court.

Q. About what balance did they keep in their bank, where they kept their current account, subject to check? A. The balances varied every month right along.

Q. Well, then, this account that they kept in their bank—by the way, what was their bank, do you know? A. The Paterson National principally, I think.

Q. More than one bank? A I think there was another bank in New York, although I am not sure.

Q. The balance that they maintained, or had from time to time in these two banks, where they kept their ordinary account subject to check, varied greatly from day to day and month to month? A. Certainly; naturally it would vary.

Q. Sometimes getting up to $110,000? A. Yes.

Q. And sometimes getting down to $853.59? A. Yes.

By Mr. Humphreys.

Q. When the cash came down to $857.59 was that the time when the company was being financed by The Robert Beattie & Sons? A. No; none of this is at that time. This account is all since that; because there was no cash in hand before that, except petty cash.

By the Court.

Q. What was the date of that change? A. In 1900 the account was closed off altogether.

Q. The corporation began to attend to its own financial business in 1900? A. Yes.

By Mr. Humphreys.

Q. What does page nineteen show? A. That is a copy of Brown Brothers, Union Trust, the Colonial Trust and the Paterson Safe Deposit & Trust Company account from 1900 until 1905, from which that other statement is made up.

Q. Then all these statements that you have drawn up are taken from the books of The Beattie Manufacturing Company, and correspond in their total results with those books? A. Exactly.

Q. Can you tell what the expense account is made up of on pages six to nine? What is that item of expense, profit and loss account? A. As far as I could ascertain that expense includes office salaries, office expenses and general expenses, such as telephone and stationery and printing and everything of that class.

Q. Now, look at page three. I don't think I drew your attention to that before. What does that represent. A. That represents the quick assets and liabilities and working capital for each year.

Q. What do you mean by quick assets? A. As-

sets that are convertible into cash in order to run the business.

Q. Assets that you regarded as equivalent to cash? A. Yes; that are usually regarded as quick assets in any manufacturing concern.

Q. And you show how much of this kind of assets they had on hand from year to year, with the liabilities that they had to meet? A. Yes, showing the working capital.

By the Court.

Q. Just explain that a little more fully. Take your first column and explain what these items are? A. I want to show you the first sheet, as well, sir. Now, in the assets of July, 1882; on page one, we have real estate, machinery, stock of merchandise; cash, Beattie & Sons; new buildings and improvements, and accounts and bills receivable. From that I took out the real estate and machinery. I put in the stock of merchandise in here, cash in here, R. Beattie & Sons, and accounts and bills receivable. Those are the convertible assets that they are using in the business.

By Mr. Humphreys.

Q. I see for the year 1882 there are two columns. A. They were taken half yearly at first, and I followed them as they had been taken there.

Q. And these liabilities would be paid by R. Beattie & Sons? A. They sent bills apparently on to R. Beattie & Sons, and they paid them and sent them back and got credit for them.

By the Court.

Q. How about this figure then that you put in the statement of the assets, "R. Beattie & Sons, $63,298.59." Was that the balance due from R.

Beattie & Sons after all these liabilities had been paid? A. No, that was the balance due from R. Beattie & Sons in July 1st, 1882?

Q. After deducting their commissions and expenses? A. Yes, I presume so. That first part, I don't know how they ran the thing, but that was the balance that was transferred over from the old firm.

Q. Will you just examine this sheet and see what the relation between the quick assets and the liabilities was from 1882 to the end of your period? A. Yes.

Q. How it ran—how it varied? A. It all appears right here.

Q. Just state it and explain it. A. In the year 1882, the quick assets were $170,551.47; the liabilities were $81,519.53; that was liabilities outside of the capital stock. The working capital was $98,031.94.

Q. That is to say, the difference? A. The difference. Shall I give each figure for each year?

Q. No, you can give one in the middle and one toward the end. A. In 1885 the quick assets were $251,826.23 and the liabilities $100,618.83. The working capital was $151,207.40. In 1905 the quick assets were $529,429.50; the liabilities were $81,257.76. The working capital was $448,171.74.

By Mr. Humphreys.

Q. That word working capital is your own term? A. That is the general term used, the difference between the quick assets and the liabilities.

Q. These quick assets did not include the $315,000.00 mortgage? A. No, sir; they didn't include the Long Island real estate.

By the Court.

Q. They did include the bad debts? A. They

have been written off each year. Before the ascertaining of these figures they have been taken off the accounts receivable, so much every year for bad debts, and carried to the profit and loss account.

Mr. HUMPHREYS—I offer in evidence this analysis prepared by the expert Mr. Peterson.

Mr. CORBIN—You see this is not a statement made up from the books. It varies widely from the books in many particulars, and I don't quite see upon what basis we are to take it. The witness has admitted that he attempted to exercise business judgment in regard to the business management of the company and to determine, without any personal knowledge in regard to it, whether a certain charge, for example for bad debts, ought to be allowed and has decided that it should not be allowed and has credited the amount in profits, and in that way we haven't got here a statement from the books at all. We have got a written arbitrary statement based on facts which were not within the knowledge of the witness. I take it that the function of a witness is to prepare a statement from the books and not to determine the question of fact. We have here so many of these items, some of which he has referred to, that I should consider that it was a statement extremely misleading and futile.

THE COURT—Am I to understand that counsel consider that the books which this

witness has examined have been offered here in evidence and received?

Mr. HUMPHREYS—Yes, we gave notice to produce the books.

THE COURT—They have not been offered in evidence. The orderly procedure would be to have the books offered in evidence and then have the expert give in convenient form the result of his examination from the books. The instruments of evidence are the books.

Mr. HUMPHREYS—I am willing to offer the books.

THE COURT—If all these books are considered as having been offered and received in evidence and if the witness is giving the result of his examination, I see no reason why this table that he presents should not be examined. It is not an instrument of evidence. It is nothing more than a memorandum of his examination. It is to enable the tribunal which is to pass on the testimony of the witness to do so conveniently. I will take it as a memorandum of the witness.

The same is marked Exhibit C 8.

THE COURT—The witness testifies to the result which he obtained by examining the books which are now here before the Court theoretically, and he explains by this paper that he makes a slightly different form of statement from that which some other expert made, whose report is not before the Court. I think his paper is proper to be received for the

purpose for which such statements always are understood to be received.

Mr. CORBIN—It ought to be clearly understood that this statement is not taken from the books.

THE COURT—The witness has explained how far he has taken the statement from the books.

By Mr. Humphreys (To the witness.)

Q. Will you please explain whether these figures which you have put down in this statement, whether they are taken from the books of the Beattie Manufacturing Company? A. They are taken from the books and agree exactly with the books. The only difference is in that transfer of the merchandise and profit and loss account which is really an unnecessary thing, so far as this case is concerned. The actual profit is exactly the same. The actual reserve is exactly the same.

By the Court.

Q. Only you think that your method of showing the figures by which this result is reach is correct, and you think Mr. Lewis made a mistake? A. I don't say that Mr. Lewis made a mistake exactly, sir, but he showed the profit a certain amount, and he showed a surplus of a certain amount, and the dividend a certain amount.

Q. Did that appear on the books of the company? A. The profit and loss account as it appeared on the books was copied by Mr. Lewis; the only thing that he omitted to do was to take in the profits which had been transferred direct to the dividend account and reserve account; and that was the Jersey Water Company. But in these results there

is not one cent difference between them and the results the books actually show.

By Mr. Humphreys.

Q. The only difference, as I understand it, is that some of the charges which appear on the books direct to profit and loss account you have picked out and charges first of all to the merchandise account. A. Yes, it makes no difference. They are keeping the books in that form now themselves.

By the Court.

Q. How about the books of the company? How did they deal with these items? Did they charge them direct to the dividend account and didn't run them through the other account? A. Exactly.

Cross-examination by Mr. Corbin.

Q. Isn't it a fact that you have taken what was carried to the account of doubtful debts and put it into the account of profits, thereby swelling the profits apparently? A. I had to do that, sir, because that was held as a reserve.

Q. Then you took it out of the reserve and added it to the profits? A. No; I didn't take it out of the reserve, but I put it on to the profits to make them agree.

Q. You found in the books certain items that were put to the account of doubtful debts? A. No; I found that there was a reserve—an amount transferred from profit and loss to a doubtful debt reserve account.

Q. If those debts were doubtful and uncollectible, then that item would not be any part of the profits? A. Those were not debts, sir; that was an amount transferred to provide for bad, doubtful debts.

Q. Now, then, you assume that all those ac-

counts receivable were good in making up your statement of net profits? A. I assume whatever they said were good.

Q. You took their accounts receivable and treated them all as good before you rejected their estimate of bad debts and treated them as profits? A. No, sir: that was not an estimate of bad debts, but that was a sum reserved to provide for bad debts.

Q. Their books showed $18,00 ' of profits and make the profits $35,594; now, you do it by taking their reserve for doubtful debts and adding it to the net profits? A. Certainly; because they have not disposed of that figure; they held it in reserve; it is in their books now.

Q. But they also reserve it as against doubtful debts, and you make no such reserve in getting those net profits? A. The reserve is created by transferring it from the profit and loss account.

Q. As against bad debts? A. Yes; and until the bad debts are charged against that account it is a surplus.

Q. That change you have made in their method of stating it in their books? A. No; I have not changed it at all.

Q. You gave a different figure for net profits than they did? A. Yes.

Q. Take another figure; turn to page three; you show a balance of working capital of $401,407.12; now, the books show $432,343.16; do they not? A. The books don't show the working capital at all.

The COURT—What year are you directing the attention of the witness to?

Mr. CORBIN—1903.

By the Court.

Q. I want you to return to this figure that you

had before you a moment ago—$35,000 in profits; your attention was called to this figure on page ten of your statement, indicating the profits for the year 1899, your figure being $35,594; now, in the column next on the same page, I understand the figure $18,000 indicates the profits as taken from the ledger of the company; is that correct? A. Yes.

Q. And the figure on the same line in the next column, $17,594.29; that, I understand, indicates the amount of profits you found, according to your method of dealing with the books, recorded in the books, over and above the $18,000? A. Yes.

Q. Now, explain that; explain where you found that $17,594.29 of profits, which were not entered as profits in the books? A. In that profit and loss account; I have a copy of the ledger C here; page 350; I have a copy of the profit and loss account here for 1899; the balance on it is $18,000, their net earnings; but there was transferred to doubtful debts reserve, $4,904.29; these are the doubtful debts written off; it was transferred to the reserve, which is part of this $17,000; therefore it increased the profits.

Q. Wasn't this what was in fact done—that the company found that they had $4,994.29 of bad accounts? A. No, sir; because if it was so they would not have written them off on the accounts receivable on the other side.

Q. What were they? A. They didn't write them off.

Q. Were they accounts that they thought might turn out bad? A. Providing for the bad accounts that they expected to write off.

Q. If subsequently those accounts did turn out bad, what entry would be made the following year or the year after? A. They would charge that account with the amount that they wrote off, and, if

it did not consume all that amount, that would be wiped out.

Q. Let me put this case: Supposing, as a matter of fact, that in the course of the next year, or two years, or three years, it should be demonstrated that $2,000 of these doubtful accounts were uncollectible and they were then written off; wouldn't that prove that your statement of profits here for the year, $35,594.29 is just $2,000 too much? A. No, sir; because that $2,000 would be charged up against that reserve and reduce that reserve by that amount; there is a copy of their doubtful reserve accounts; these sums were transferred from profit and loss each time; all these items here, and that account was charged in 1904 $34,065.89, leaving a balance on the reserve account which is part of the reserve at present in the books of the company; that balance of $17,000.

Q. Then, at the end of a long period, you might surcharge their statement of profits with this amount, $17,155.19? A. But it is there as a reserve; it is not charged to profit and loss.

Q. I cannot understand how you claim the right to infer from these books that they made in the year 1899 in addition to the $18,000 of profits which they admit they made on their books $17,000; now, you say that you have added to the profits what they charged to the reserve account, $4,994.29? A. Yes.

Q. I understand that that was charged as a fund to meet debts that might be bad? A. Exactly.

Q. Suppose the fund was exhausted—suppose the debts all turned out bad? A. Then they would be wiped off and taken off their accounts receivable and charged to this account.

Q. Then your profits would have to be diminished

by the same amount? A. My profits would have to be diminished by the same amount.

Q. The result is while, according to your method of bookkeeping the profits were $35,000, if a large number of these doubt debts in fact during the next two or three years turned out bad your statement of profits would have to be diminished by the amount of the bad debts? A. Certainly.

Mr. CORBIN—In other words, he has not showed their net profits as the books show them.

Q. Now, then, in addition to that item, what else enters into this $17,000? A. $12,600 received from the East Jersey Water Company for interest, credited direct to dividend account.

Q. And those two items make up the $17,000? A. Now, the books show that you have this reserve and the books show that you paid $633,000 out in dividends, so if you have got that left after paying the dividends you must have made $1,136,104.35.

Q. I think I understand your testimony with the exception of the way you deal with the amount that is charged off from year to year to meet doubtful accounts? A. They deal with it exactly the same way in the books.

Q. In order to find out, as a matter of fact, what they made you must take the whole period, must you not, and find out what the bad debts, in fact, were, and then the difference between the bad debts, as actually ascertained at the end of twenty-three years, and the amount which from year to year has been charged to this account; that can be restored to profits. A. That is charged off against this account, thus reducing this account, and charged to profits.

Q. But it is still true that if a portion of the $4,994.29 of doubtful debts, in fact, turned out bad, then your total statement of profits, $35,000 and more, should be lessened, should it not—diminished. A. Certainly.

By Mr. Humphreys.

Q. Had the company a bad debt account as well as a doubtful debt account? A. No; that is the only account, but it exactly agrees with the books of the company because they show they had that reserve and that they paid these dividends and that they must have made that profit.

Q. Just repeat that? A. They have a reserve of $473,104.35; they have paid dividends of $633,000; therefore, they must have made profits of $1,136,-104.35.

Q. You say total reserve $473,104.35? A. Yes.

Q. What is that reserve? A. That is the total profits not divided, according to the books.

Q. It agrees with Mr. Lewis's statement? A. No, it does not agree with Mr. Lewis's statement; that agrees with Mr. Lewis's statement, but this is the figure that he gave as the profits.

Q. Mr. Lewis's statement shows the reserve so much and the total reserve so much, making a total profit of that? A. Yes.

By the Court.

Q. What is that item to general reserve? A. They have two reserve accounts; one was a general reserve fund and one was the improvement reserve and the bad account reserve. They all amount to the one thing really.

By Mr. Corbin.

Q. Making these additions to profit, would your

accounts differ from the statement made by Mr. Lewis? A. Only in that one figure of profits; not in the surplus account or the general results.

Q. In adding this figure from the doubtful accounts, adding it to the profit account, you make a larger appearance or showing of profits than the statement in the books? A. Oh, not a larger result; the result is the same.

Q. The result is that you indicate a larger amount of net earnings than the books indicate? A. No, not than the books indicate, but than are put through the profit and loss account of the books.

Q. A larger amount than the profit and loss account indicates? A. Yes; but that is merely an error in bookkeeping.

Q. You assume, for the purpose of saying that this is an error, that there are no bad debts in the accounts receivable? A. No, I don't assume that at all; I assume that they have still $17,155.19.

Q. It is a question where you shall put it. You saw fit to put it in the place where they show a large net earning? A. No, sir; not at all. That has not been written off to profit and loss. Mr. Lewis puts it in the same place.

Q. You write it off? A. No, I could not, because they haven't done it in their books. They have written some bad debts off but they have left that balance not written off; when they have written that off, of course, it will disappear.

By the Court.

Q. Can you tell how many of the bad debts which this reserve fund in 1882 was created to meet, were afterwards written off as uncollectible? A. Yes; there was $3,465.99 and $13.95; that left a balance of $17,155.19.

Q. I don't understand you? A. The transfers altogether were those amounts, which amounted to—they extend from 1899 to 1905.

Q. I asked from 1882. A. There was no account of this kind then; that was the start of this reserve account.

Q. Is this figure $35,599.29 for 1897 or 1898 (page 10)? A. It is for 1899.

Q. Do I understand that you can tell how much the corporation has written off as bad from 1899 down to 1905? A. Off that account?

Q. No, altogether. How many bad debts has it contracted and written off? A. In 1900 they wrote off $10,314.92; 1901, $7,192.50; 1902, $250.76.

Q. Now, each of these years they had a reserve fund to meet these debts, didn't they? A. They have provided this reserve fund to meet that debt.

Q. And you add that reserve fund each year to the profits? A. No, I don't add it to the profits, but I don't take it from the profits.

Q. But, it is in your profits, according to that statement? A. Yes.

Q. How does that get out of the profits? A. The only item taken out of that reserve fund is $3,465.85, and one other small item of $13.00. They go right direct to profit and loss. There was no reserve kept until 1899; but there wasn't enough in that reserve in 1899 to provide for the bad debts in 1899.

Q. What is the figure which represents the profits as you figure them, from 1899 to 1905? A. Do you want each item?

Q. I think it would be well to foot that up and give us the profits as you calculate them from these books from 1899 to 1905? A. $340,450.71. That is right.

Q. How much of that appears on the books of the company as profits? I don't ask you whether you

get these profits from the different accounts. I understand your testimony in regard to that—but how much of that do they put down to profits? A. You mean what of that the company's profit and loss account for this period showed?

Q. Yes. A. $293,442.69.

Q. And what is the difference? A. $47,008.02.

Q. And how much of that is made up by the interest payment, the annual payment from the East Jersey Water Company? How much of that difference? A. $31,500.

Q. And how much of that difference is left to be otherwise accounted for? A. $15,508.02.

Q. And is that figure the correct amount of the actual amount set off as a special reserve to meet doubtful debts? A. No, sir.

Q. Now, then, go on and analyze it further and explain what else is in it? A. That made the difference of $15,508.02. Now, there were differences in amounts transferred to the reserve fund of $1,647.17, which would add to that, bring it up to $17,155.19, which is the amount of the bad account reserve at present—I mean in November, 1905.

Q. I don't understand you, Mr. Peterson. You have first given me the correct amount of profits, as you find them from the books of the company, making all corrections which you think proper, and you stated next the amount which the company's bookkeeper show as the profits in the profit and loss account. Now, I ask you to explain the discrepancy in your figures—the difference between your figures and the figures of the bookkeeper, the company. That difference you gave us amounted to about $47,000; I then asked you how much of that difference is explained by the annual payment from the East Jersey Water Company, and you gave the amount, I think, it was, $31,000, and now there is a differ-

ence between that and the $47,000 which you stated to be accounted for in that difference is $15,508.02. I think you said that? A. Yes.

Q. Now, I want to know whether there is anything in that $15,508.02 excepting the aggregate of these reserves that you have surcharged off that? A. Yes.

Q. How can there be any such item as you have just mentioned as $1,600.00? A. There are items transferred direct to the reserve fund besides these items on the other side of the account, which increased the figure of $15,508.02 to $17,155.19, which then leaves the amount of the reserve.

Q. Perhaps I can get what I want if I ask you this: How much of that $15,000 is the aggregate of the amounts charged to this special reserve account, of which this figure $4,994.29 is the amount set off to the reserve account in 1899? Was the total the $15,000? A. More than that, sir, because now, in the first place, we have the figure of $47,008.02. There are certain charges; we take the $31,500 of the Jersey Water Company; that left $15,508.02; now, there are items charged to reserve account direct, which should have been charged to profit and loss account, amounting to $1,647.17. That is on the other side of the account, that should have been charged to the profit and loss. That increases the $15,508.02 to $17,155.

Q. I want to know how that can be increased. You have stated your amount of profits as you found it from the books? A. Yes, and I have reduced it, I have reduced my profits in one year. I have reduced it below what they have it in the books.

Q. Just give me your profits for these six years from 1899 to 1905 inclusive? A. $340,450.71.

Q. That is what you say is the aggregate amount of profits drawn from the books? A. Yes.

Q. When the books are properly handled and intelligently corrected by an expert? A. Yes.

Q. The data you get from the books, and that is the result? A. Yes.

Q. Do you want to diminish that figure in any way? A. No, that is the right figure.

Q. Now, then, you give us the amount of profits which are recorded in the books in the profit and loss account, and that amount is $47,000 less? A. Yes.

Q. Now, I am trying to find out what elements enter into your statement of profits do not enter into the statement of profits which the company's bookkeeper makes in his profit and loss account. I understand the item of the East Jersey Water Company; that is a separate matter and perfectly clear. You say they transferred that direct to the dividend account? A. Yes.

Q. I don't understand your explanation of the items that were set off from year to year to this reserve account to meet bad debts. My inference was the rest of the $47,000 that you found for profits in excess of what they found after dealing with the East Jersey Water Company payment, the rest of it consisted in the aggregate of these reserve charges. Is that correct or not? A. The rest of it, after charging to the profit and loss items which have been charged in these accounts. There were items at the other side as well as receipts. There were disbursements which should have been put through the account which have been put in the profit and loss account. I think I can show you the figure in a moment. (After figuring.) If you will kindly look at this, sir, you can understand it better. That year there was added $12,600—1899, $12,600 there, and $4,994.39 in 1899.

Q. Added to what? A. Added—these were in-

cluded in the reserve fund and dividend accounts, and not put through the profit and loss, added to that $18,000.

Q. The aggregate of these two items is the $17,000 item? A. Now, then, that amount, the differences to that amount, amount to $52,773.34. On the other side I have these deductions: $3,465.89 to charge to profit and loss; $13.95, and that interest there, making $5,720.32, which I have charged on the other side, leaving the $47,058.02.

Q. Can you take your statement of profits for each of these years and state how much of the figure the total amount you obtained, would be, adding the amount of the special reserve for bad debts? A. Yes, in 1899, $4,994.29; 1900, $640.74; 1901, $5,000; 1902, $5,000; 1903, $5,000.

Q. What is the total amount? A. $20,635.03.

Q. Now, do you know how much of that was actually required to pay the bad debts, or expenses, or anything else? A. The amount charged against that account for bad debts up to 1905, November, was $3,477.84.

Q. What is the difference? A. $17,155.19, the surplus that is there now.

Q. If we want to find out exactly what the profits were for those six years, and we started with the amount as shown on the profit and loss account as profits, you take that figure each year and then add the annual payment made by the East Jersey Water Company for the period that it was paid, and then add this sum of $17,000, then we would have the total profits, would we not? A. Yes.

Q. Providing there was no outstanding bad debts which are payable out of the $17,000? A. We would have the total profits as shown by the books,

because they had not written off the bad debts.

Q. The only correction then to be made would be made when there was an ascertainment of the bad debts? A. Exactly.

Q. How much of the debts that were secured by this special account during these six years finally turned out to be uncollectible? A. That is, bad?

Q. As a matter of fact, that is not always ascertainable for some time? A. No, sir; exactly.

By Mr. Corbin.

Q. Have you observed that in the year 1900 there was an item of $10,095.53 charged off for bad debts? A. Yes.

Q. So that the item of bad debts evidently made a very substantial difference in this business? A. You can't tell, of course. You can never tell what it may be, sir.

ROBERT BEATTIE, sworn for the complainants, testified as follows :

Direct examination by Mr. Humphreys.

Q. Where do you reside, Mr. Beattie? A. Little Falls.

Q. Are you the president of The Beattie Manufacturing Company? A. I am.

Q. And who was the founder of that business? A. Robert Beattie, my father.

Q. Will you tell us the names of the children whom your father left surviving him and their ages? First, how many children have you living? A. Four.

Q. And how old is the eldest? A. About forty-two or three.

Q. Is that a lady or is it a man? A. Lady.

Q. Is she married? A. She has been.

Q. Have you any grandchildren living? A. Yes.

Q. How many? A. One.

Q. And how many married children altogether? A. Two.

Q. Your late brother, William Beattie, when did he die? A. In 1899.

Q. And did he leave a widow surviving him? A. He did.

Q. What is her name? A. Emma G.

Q. And what children did he leave surviving him? A. Two sons and one daughter.

Q. What are their names? A. Charles G., Howard and Madeline.

Q. And is William H. Beattie, the secretary of the company, is he one of your sons? A. He is.

Q. Have you got the stock book of this company with you? A. I think my son has it.

Q. How many years ago was it that your father founded this business at Little Falls? A. About forty years.

Q. And was it a small concern when he started it? A. It was.

Mr. CORBIN—When did your father start the business?

THE WITNESS—He started in about, I think, probably 1838 or 1839, but in 1842 in Little Falls.

Q. When did he start it? A. I think 1838 or 1839.

Q. And when were you born? A. 1842.

Q. And when did you enter into partnership with your father first? A. In about 1864 or 1865.

Q. Up to that time the business was conducted by your father exclusively? A. No.

Q. Who was it conducted by? A. William Beattie was a partner in 1862.

Q. Before then, before William Beattie became a partner, was the business conducted by your father exclusively? A. Yes.

Q. What was the nature of his business at that time, previous to the partnership? A. Making carpets by hand—on hand looms.

Q. Did he sell his own carpets? A. I think he did.

Q. Did he own the present building where you now carry on your business at that time? A. At that time, not all of it.

Q. About how much? A. He owned at that time, I think, about one-quarter of the water power and one-quarter of the real estate, which he afterwards bought.

Q. Then, when your brother entered into partnership with your father, what was the understanding then—what were the terms of the partnership. What were they to do? A. What were the terms? There were, really, none; it was very informal; there was nothing in writing at all.

Q. Was there any change made in the selling of the carpets after the partnership was formed? A. Yes; after some time after.

Q. What was that first firm called? A. Robert Beattie & Son.

Q. And then, afterwards, when you entered into it, it became? A. Robert Beattie & Sons.

Q. Was there any written partnership when you entered into the business? A. Not then.

Q. Was there one afterwards? A. Yes.

Q. When? A. I think in 1879.

Q. Have you got that partnership agreement? A. Yes, I have.

Q. Can I see it? A. Yes (hands paper to Mr. Humphreys).

Q. This is an agreement with reference to the formation of the corporation? A. That was before that; yes.

Q. Now, Mr. Beattie, after you became a member of the firm, did the firm conduct its own manufacturing and also selling? A. Did I what?

Q. Did you conduct the business of manufacturing as well as selling? A. I did.

Q. When the firm was first started? A. Yes; I think when it was first started

Q. What part did you take in that business? A. Manufacturing.

Q. And what part did your brother William take? A. The selling.

Q. And had you previously worked for your father before the partnership was formed? A. Oh, yes.

Q. On a salary? A. Yes; on a salary.

Q. What salary did you receive?

Mr. CORBIN—I object to all this.

Mr. HUMPHREYS—I want to show the history.

THE COURT—I don't think the history of this business started by the original Beattie will help us.

Q. Who owned the real estate that the corporation afterwards acquired? A. Robert Beattie. We conceded that to him in that agreement.

NOON RECESS.

By Mr. Humphreys.

Q. What were the reasons which led up to the

incorporation of the Beattie Manufacturing Company? A. I cannot tell what my father's thoughts were.

Mr. CORBIN—That document which was produced should be marked in evidence.

THE COURT—It will be admitted then.

Document produced by the witness marked C 9.

Q. At the time the company was incorporated, Mr. Beattie, what was done to arrive at the fair value of the property to be turned over to the company? A. There wasn't anything; it was just guessed at.

Q. Was there no appraisal made of the real estate? A. No.

Q. You simply guessed at the values? A. We guessed at the value.

Q. This paper which has been offered in evidence and marked Exhibit C 3, was that the paper that was signed by Robert Beattie on the formation of the company (handing witness Exhibit C 3)? A. Well, that is his signature.

Q. Now, I see this paper has a clause in it to this effect: "And formal deed thereof is to be given as soon as it can be properly prepared and executed, the company, however, takes possession this day." Was the more formal deed executed in the lifetime of Robert Beattie? A. No.

Mr. Humphreys read C 3.

Q. Then, after the death of Robert Beattie, a more formal deed was given by you and your brother to the Beattie Manufacturing company? A. Yes.

Q. Which is this document marked C 5? A. Yes.

Q. What was the water power that was conveyed

to the Beattie Manufacturing Company? A. It consists of the water running down the river, the dam and so forth.

Q. Do you operate your mill by water power? A. By water power.

Q. Exclusively? A. Yes.

Q. And how much of that water power have you now belonging to you? A. Well, we have nominally three hundred horse-power.

Q. And how much have you sold to the East Jersey Water Company? A. We have sold all but three hundred horse power.

Q. And how much is that that you sold? A. I don't know. That varies according to the time of the year.

Q. What consideration did you receive from the East Jersey Water Company for the water power that you sold to them? A. I think it was $315,000.00.

Q. How much cash? A. Probably fifteen, maybe twenty thousand dollars; it was five thousand dollars a year that they paid for the option. I don't know how many years it run before they took it.

By the Court.

Q. Were you personally acquainted with the different items that went into the transfer to the corporation at the time of its organization, July, 1882, the real estate, the machinery and stock and so forth? A. Yes.

Q. So that you could form an estimate of their value? A. Yes.

Q. Did you also know the liabilities of the concern? A. Yes.

Q. At that time did you place a valuation upon them yourself? A. No, I don't think I did. It was first decided how much we should be incorporated

for, and then we divided up the real estate and the other things just to equal that.

Q. How did the par value of the stock, $300,000, compare, in your judgment, with the actual cash value of the property conveyed? A. Well, I think it was much less than the actual value at that time. It was worth more at that time.

By Mr. Humphreys.

Q. To whom else have you sold water power besides the East Jersey Water Company? A. We didn't sell power to the East Jersey Water Company; we simply sold the right to use the water.

Q. To whom else did you sell the right to use the water? A. We sold also, I think it was the Newark Water Works.

Q. How much did you get from them? A. Either twenty or twenty-five thousand dollars.

Q. How much did you get in cash from the East Jersey Water Company? A. $315,000.

Q. That was a mortgage, wasn't it? A. Yes.

Q. You received a mortgage from the East Jersey Water Company of $315,0 0?

Mr. CORBIN—Five thousand dollars a year was paid for the option to purchase, running for three years, and then when the purchase was executed a contract was given and interest was paid on that; finally, after some years, a mortgage was given for that $315.000, which took the place of the contract, and a deed was given.

Mr. HARDING—Did all the payments amount to $40,000?

Mr. CORBIN—The books show. It is all in evidence.

By Mr. Humphreys.

Q. Was the machinery that was conveyed to the company, was that the property of Robert Beattie, Sr., or Robert Beattie & Sons? A. It was the property of Robert Beattie & Sons.

Q. What buildings were there on the property? A. Well, there was one stone building—I don't know the exact size; and one frame building—two frame buildings used as mills—one—there was only one; one was used as a storehouse. That was all in the manufacturing part of it. There was one brick two story building besides.

Q. Has the company erected a number of buildings since then? A. Yes, we have.

Q. And what is the value of the buildings there now, approximately? A. I couldn't tell.

Q. Could you give me no idea? Can you turn to the books and tell me what is the cost of the buildings? A. I think the books will show that.

Q. Can you turn to the books? A. (Not answered).

Q. Has the company made many sales of its real estate? A. Yes; some.

Q. To what extent? A. Not to any very great extent.

Q. I find among the deeds that the company executed a deed for a tract of two and thirty-three hundredths acres, immediately adjacent to the factory, upon which your residence is? A. Yes.

Q. A deed to you? A. Yes.

Q. What consideration did you pay for that? A. The consideration was an agreement made with my father before the company was formed.

Q. An agreement in writing? A. No, it was not in writing.

Q. Who was the agreement between? A. We didn't suppose it to be necessary to put in writing.

Q. What was the agreement? A. The agreement was that I should take what land I pleased, any place I should select, and take $10,000 to build a house, my brother having already built his house —out of the firm of R. Beattie & Sons.

Q. And who was that agreement made between? A. Robert Beattie.

Q. With whom? A. With William Beattie and myself.

Q. A verbal agreement? A. A verbal agreement, yes.

Q. When was that agreement carried out? A. William Beattie's had been carried out before the death of Robert Beattie. Mine was not carried out until afterwards.

Q. Until after the incorporation of the company? A. After the incorporation of the company.

Q. And how was it carried out then? A. By the company giving me a deed for the property.

Q. Was there any meeting at which the directors passed any such resolution? A. I rather think so.

Q. Can you produce the minute book and show it to me? A. The minute book is there.

Q. What was the consideration between you and your father which induced him to make that agreement? A. What consideration?

Q. Yes; what did you give him for it? A. I don't understand that exactly.

Q. What consideration did your father receive from you for his promising to give you this property? A. Well, I don't know.

Q. Was it a mere gift? A. I don't know how I would answer that.

Q. Was it a promise that he would give you the property? A. Yes, for some years.

Mr. CORBIN—What did he want you to do?

THE WITNESS—He wanted me to build a house.

Mr. CORBIN—And he wanted you to stay there in the business?

THE WITNESS—Yes.

Mr. Humphreys objects to Mr. Corbin's examination.

THE COURT—We will proceed regularly.

By Mr. Humphreys.

Q. Did you ever give your father any consideration for that promise? A. Not in money.

Q. In what form did you give him anything? A. Well, I had been there in business with him for twenty odd years, and I don't think that I ever got the worth of my services; in fact, I know I didn't; and in addition to that, there was another reason which I don't care to state.

Q. Has the value of the company's lands in the village of Little Falls increased in the past few years? A. We don't find it so.

Q. Have you tried to sell it? A. Whenever a customer comes—no, we don't try to sell it particularly.

Q. Who is the present secretary of the company? A. William Beattie.

Q. How long has he been secretary? A. He has been secretary for twenty-three years.

Q. Has the company held regular elections during its corporate life for the election of directors? A. Yes, regularly.

By the Court.

Q. Is Mr. William H. Beattie, the secretary, your son or the son of your deceased brother? A. He is my son; William H. Beattie, secretary.

By Mr. Humphreys.

Q. Have the officers been re-elected every year or held over? A. I think they held over six months when we changed our meetings from July to December.

Q. During your brother's lifetime you and he held control of the company? A. Yes.

Q. He was your elder brother? A. Yes, and only one.

Q. How was it that you became president and not he? A. He was treasurer and had been before, and I don't think that he wanted to be president and treasurer both.

Q. And at the meetings of stockholders you and he voted regularly to elect yourselves as directors? A. Certainly.

Q. During the lifetime of William Beattie, how were the thirteen hundred shares of stock held in trust by the four trustees under the will of Robert Beattie voted? A. They were voted the same way.

Q. Who voted them? A. Sometimes one and sometimes another.

Q. Sometimes—who do you mean by sometimes one and sometimes another? A. Sometimes William Beattie, sometimes the three of us would be there.

Q. What part was ever taken by Mr. Gedney and by Mr. Dickson in voting the stock? A. Oh, Mr. Gedney, none.

Q. Does the minute book show who voted at the different elections? A. I guess the books will show.

Q. Upon the settlement of your father's estate, were the thirteen hundred trust shares transferred to the trustees in the stock book? A. They were.

Q. How often did you meet with your co-trustees and discuss the question of voting this stock? A.

Every time we had an annual meeting when they were there.

Q. Why didn't you consult Mr. Gedney about voting? A. Well, Mr. Gedney was too big a man at that time to consult. He refused to have anything to do with it.

Q. How were the 444 shares that were held by you and your brother's widow in trust, voted? A. They were voted by Mrs. William Beattie and myself.

Q. Did you ever consult Mrs. William Beattie about voting? A. Yes, and I had fracases several times.

Q. Have you ever talked to her on the subject? A. I knew just how she wanted it voted.

Q. Did you ever explain to her how her interest was as a life-tenant was in that stock? A. No, because she knew.

Q. Did you ever explain to her that it was to her interests to have dividends paid out of the profits? A. No, she knew all about it.

Q. How do you know she did? A. Because I have heard her talk about it.

Q. What have you heard her say?

Mr. CORBIN—Aren't we getting a little too far off?

THE COURT—I think so.

By Mr. Humphreys.

Q. Since the death of William Beattie in whose hands has been the management of the business? A. In mine and William H. Beattie's.

Q. And you appointed this executive committee, yourselves as an executive committee, didn't you? A. Yes.

Q. And you practically attended to all the busi-

ness without consulting any one else. A. There was nobody else to consult.

Q. Did you ever consult with Mr. Dickson? A. Yes, always when he was there.

Q. How old a man is Mr. Dickson? A. That I don't know. I have heard that questioned a good many times. Some say he is eighty and some say he is eighty-five. I don't know.

Q. He is totally blind, I believe? A. Yes.

Q. How long has he been in that condition? A. I think about four or five years.

Q. And what experience did he ever have in the carpet business? A. None.

Q. How did he come to be a director? A. He came to be a director because we wanted somebody to represent the interests of the other people, that is, of the four sisters.

Q. Was it for that purpose, or simply that you wanted some one to make it the third director? A. For both

Q. Did he subscribe for any stock? A. No.

Q. You gave him a share? A. Yes.

Q. And that was all his interest in the company? A. That was all.

By the Court.

Q. How was he connected with your family? A. He is a brother-in-law.

By Mr. Humphreys.

Q. He was your sister's husband? A. Yes.

Q. What period in the year do you make the largest shipments of your goods? A. I think probably in June, July, December and January.

Q. And how do you sell your goods, the goods that you ship in July? When do you date the bills for them? A. The first of September.

Q. And how soon have they to be paid? A. Four months.

Q. And if they are paid before the four months, there is a discount? A. There is a four per cent. discount.

Q. At what periods in the year do you take in the most of your money in your business? A On the 10th of March, or the 10th of September, or within fifteen or twenty days after that.

Q. Then the receipts of the company would be very large at these particular periods? A. They would be in September and the first of October, and the same with March and along the first of April.

Q. Then, they would accumulate and furnish moneys to run the business with? A. They would.

Q. What salary is paid to Robert Beattie, Jr.? A. At the present time $2,000.

Q. What services does he perform for the company?

Mr. CORBIN—I object to that. There is no issue on that in the bill.

Q. What relation are you to Robert Beattie, Jr.? A. He is my son.

Q. What services does he perform for his salary?

Mr. CORBIN—I object to that.

Mr. HUMPHREYS—I think the whole question as to how these people have been running the business is relevant.

THE COURT—If you wish to attack the acts of these managers you should specify what you object to. This is something that is not charged in the bill and is not the basis of any claim that is made.

Q. What are the nature of the services rendered

by your son, William H. Beattie? A. Well, the services are too numerous to mention.

Q. What has been the company's policy in regard to charging off for depreciation of machinery and buildings?

THE COURT—In ruling as I did a moment ago, I assume that this bill does not charge that Mr. Robert Beattie, Jr., the son, is an officer and a director, and that the salary which has been awarded to him is in excess of his services.

Q What has been the company's policy in regard to charging off for depreciation of machinery and buildings? Have you been liberal in your deductions every year? A. No, I don't think we have taken off enough. Some years we didn't take off any, and, of course, afterwards, took off more to make up for it.

Q. Latterly you have taken off a good deal? A. Yes, to make up for some years that we didn't take off any.

Q. You have made large repairs on the buildings from time to time, spent a great deal of money in repairing the buildings? A. Only what we had to.

Q. You have, as a matter of fact, expended a great deal of money? A. Yes.

Q. And haven't the amounts that you have expended in repairs been sufficient to overcome the depreciation in the real estate? A. No, I don't think so.

Q. The land itself has risen in value? A. No, I don't think so.

By Mr. Harding.

Q. In the certificate of incorporation, which has

been offered in evidence, which was signed by you as one of the incorporators, in the first paragraph of second sub-division, I find that among the objects for which the company is formed are as follows: "First, to purchase of Robert Beattie the carpet and woolen manufactory;" and then under section three, is: "To carry on the manufacture and sale of carpets or other merchandise at said manufactory and store." I understand from that that the firm that was then existing turned over to the corporation all of the business of the firm both manufacturing and selling. Is that right? A. I believe it is.

Q That was your understanding of it? A. Yes.

Q. Well, I wish you would give me a little more particularly a statement as to what the selling business consisted of at the time the whole thing was transferred over to the corporation, how it was run, who did it? A. William Beattie.

Q. That is your brother deceased? A. My brother.

Q. Was he in charge of the store over there in New York? A. Yes.

Q. From the accounts that we have, there are some things that I don't fully understand. Now, I notice when the business was turned over, according to the statement which has been offered in evidence here, called the first page of the balance sheet, 1882, I find the item here of assets on this first page, "R. Beattie & Sons, $63,298.59." I infer from that that at time of the organization that represented goods that had been sold at the store? A. Yes.

Q. They were turned over as assets to the company? A. Yes.

Q. And such an item of assets is carried down to within a few years ago all the way through this

account. Now, can you tell me whether or not at the time of these items of assets, if the amount due from R. Beattie & Sons, whether any of that $63,-298 represented money that had actually been paid or part of it was money actually paid? A. Paid to who?

Q. To R. Beattie & Sons—money in hand? A. I don't understand that question.

Q. What I want to know is whether that sum would represent the amount of goods which had actually been sold, part of which had been paid and part of which might be paid in the future? A. I guess that is what it represented.

By the Court.

Q. Beattie & Son were the commission house for the mill; were they? A. Yes.

Q. And the entire product of the mill was shipped down to New York for sale? A. Yes.

Q. And Beattie and son sold the goods; and did they guarantee the accounts? A. No, sir.

Q. And made their regular statements? A. Made their regular statements.

Q. That figure of $63,000, that represented the invoice value of all the goods that you had shipped down to them? A. I can't say what was there.

By Mr. Harding.

Q. All of these dates are the dates of invoices; the first one is July 1st, 1882; but I want you to state, if you can generally, whether or not that represented the amount of sales, and how much of it, if you could tell us, whether part of it had been paid or not, or whether it represented the sales for money to be paid as it became due? A. I think it was money due the company from R. Beattie & Sons.

By the Court.

Q. And the item, stock merchandise, $92,931.28, did that include the stock of goods down in New York? A. No; I think not; now this is The Beattie Manufacturing Company's account altogether; there is what R. Beattie & Sons was due us at that time.

Q. Take this first—stock merchandise, $92,-931.23. A. Yes.

Q. Does that figure represent the goods at the mill? A. At the mill only?

Q. At the mill only? A. No; I think it means all goods not sold.

Q. It included the stock of goods that you had sent down to New York? A. Yes; both in our own place and in New York.

By Mr. Harding.

Q. This represents the goods sold through R. Beattie & Company? A. Yes; it represents the balance they owed us.

Q. In every case? A. In every case.

By the Court.

Q. Did that include the accounts that were not yet paid? A. Accounts and cash, and everything they had.

Q. I mean that figure $65,000; that was the total sales? A. Yes.

Q. And a portion of that might not be collected? A. Probably so.

Mr. Corbin—The goods were charged for when sold?

The Witness—Yes.

Mr. CORBIN—Before collections?

THE WITNESS—Yes.

By Mr. Harding.

Q. Now, I notice by this statement of ours that such an asset continued in favor of the company from R. Beattie & Sons down to the year 1899? A. 1899.

Q. So that R. Beattie & Sons continued during that period to sell your product? A. They did.

Q. Now, tell me just who it was that had charge of that selling? Was it William Beattie alone? A. William Beattie.

Q. Alone? A. He was in charge of it.

Q. Well, now, in selling these goods, what arrangements did you have with the company as to what you got for selling? A. They were to give five per cent.

Q. Was that charged? A. That was charged.

Q. And I understood you to say in response to the Vice-Chancellor's question that they did not guarantee the accounts? A. We didn't guarantee the accounts.

Q. Didn't guarantee the debt? A. No.

Q There was a trade discount, I think you said to Mr. Humphreys? A. Trade discount.

Q. And R. Beattie & Sons; did they credit themselves with all the trade discounts? A. No, sir; how could they credit themselves with it?

Q. Wasn't the company charged? A. The company was charged.

Q. With all the trade discounts that were allowed afterwards to customers, after these charges were made? A. Yes.

Q. I don't know that I fully understand it; did William Beattie—did he spend all his time in this

selling end of it at New York, during this period down to 1899? A. All his time.

Q. All his time was spent over there selling? A. Yes.

Q. Is that—which William Beattie was it? A. That was my brother.

Q. While he lived? A. While he lived.

Q. And when did he die? A. In 1899; early in March.

Q. Well, the thing that I don't understand is why it is that if you turned over all the business of R. Beattie & Sons, according to your certificate of incorporation here, both manufacturing and selling at the store, why there should have been a separate business of selling over there by R. Beattie & Sons; why wasn't that business turned over to the corporation? A. Well, when three persons have a mind to incorporate, I think they can do just as they please; they can employ commission merchants; nobody interested but themselves.

Q. The point is then, that you people had no special agreement between the corporation and the firm, but you simply went on and did that way according to your notion of it? A. No, you see that in the minutes there was a resolution passed to employ them as agents at the commission of five per cent which was thrown to us as a sop, to get us to go into the corporation.

Q. But the business of R. Beattie & Sons was turned over to the corporation, according to your certificate of incorporation? A. A portion of it was. If you say, the bill of sale, a portion of it was.

Q. Who received the profits of commission? What members of the firm of R. Beattie & Sons received the profits of the selling? A. Robert Beattie & William Beattie.

Q. And you constituted the partnership yourselves? A. Yes.

Mr. CORBIN—After your father's death? Your father was in the firm?

THE WITNESS—He was in the firm.

Q. Your father died within a year after the organization of the company? A. No, he died within thirty days.

Q. Did you have any particular articles of partnership providing the exact terms of your partnership at the time of the organization of this company?

Mr. CORBIN—Anything that brings out the history for the purpose of throwing light on the controversy, well and good; but I don't think he ought to raise issues about that partnership.

THE COURT—I don't see that it has any relevancy.

Mr. HARDING—The point we are making is that the good will of that partnership was turned over to the company and after Robert Beattie's death there was a dissolution of the firm. It bears on all the issues in the case.

THE COURT—Well, I will take it.

Q. Was there any special agreement between Robert Beattie and the other members of the firm of Robert Beattie & Sons in existence at the time of the incorporation of the Robert Beattie Company?

Mr. CORBIN—Do you mean a written agreement?

Mr. HARDING—Yes.

THE WITNESS—A special agreement?

Q. Was there any written agreement? A. No, I think not.

Q. You had no agreement that in any way provided for the death of Robert Beattie, did you? A. No.

Q. Now, I notice, after the formation of the company, and with the year 1882, while the item charged against Robert Beattie & Sons is $6 3,298.59, the cash item of assets is only $2,535.34. I would like to have you tell me just what was done with this money, whatever money was collected, representing this account of Robert Beattie & Sons for goods sold? Did Robert Beattie & Son collect the money? A. They collected the money in their own names.

Q. Did they deposit it? A. Yes.

Q. Where, generally? A. Some bank in New York City.

Q. It was deposited and kept in their names all the way through? A. Yes.

Q. What use was made of it? A. They paid all the bills of the Beattie Manufacturing Company out of it.

Q. They paid it from their own individual checks? A. Yes.

Q. They paid bills directly? A. They paid bills directly. We sent our bills down there every week or ten days, O. Kd. and they paid them.

Q. Did R. Beattie & Sons carry on any other business than selling the goods of R. Beattie & Company? A. No. I think they did at one time for a few months.

Q. After the formation of the company? A. Yes.

Q. How long a time? A. It might have been a year.

Q. Immediately after the formation of the company? A. No, some time after.

Q. In the meantime was any use made of this money that was collected by the R. Beattie & Company for the purpose of paying bills, except for the purpose of paying bills? A. Yes, we deposited sums.

Q. Sums at interest in New York, for The Beattie Manufacturing Company? Where did you do that? A. In New York. I think the first was with Brown Brothers.

Q. Whose name was it in? A. The Beattie Manufacturing Company.

Q. It was deposited in the name of the company? A Deposited in the name of the company.

Q. Well, did you ever use it to make any use of it for the Robert Beattie & Company in any way, except for the business of the company? A. Did we ever use any of it?

Q. Yes? A. All the money down there?

Q. Or any of these money that is represented by these items of assets which I have read to you, beginning with the asset of $63,298? A. Yes, I think so; one time we did.

Q. What use did you make of it? A. We used it to settle a debt at the North River Bank which Mr. Gedney had and which, by the way, he was indicted for, and we secured his bail, but we loaned to his wife $15,000.

Q. Now, you have mentioned one incident of not a great deal of importance for the purposes of this case. A. You asked me the question.

Q. Was there any other instance; have you ever used it for any other purposes? A. Not that I know of.

Q. Do you know whether or not it has been used for any other purposes? A. No; I do not.

Q. Don't know whether it has been or not? A. Yes, I might bring in another instance, but there is no use of bringing anybody else in. He was in Court here a little while ago. I don't want to go into other business.

Q. Have you ever used it for the purposes of R. Beattie & Company in its other business? A. Never.

Q. Has the Beattie Company been credited with all interest? A. With all interest, and the books will show it.

Q. Now, I find in the year 1893, the 31st day of July, in your Ledger B of the Beattie Manufacturing Company that that sum of $59,518.93 appears to have been drawn from Brown Brothers and given to the credit of R. Beattie & Company. Can you tell why that money was drawn from Brown Brothers on interest and put to the credit of R. Beattie & Company? A. Yes; because we needed the money, and you will find later on where they put it back

Q. Anticipating some such answer as that I looked to see what the balance was in the hands of R. Beattie & Sons at that time. Take the end of November, 1892, preceding this time and I see R. Beattie & Company account; then it appears that they owed the Beattie Company $274,446.66; and in the following November it was $309,649.30. In view of these large amounts for goods sold do you still think it was necessary to draw that sum from the banking company for the purposes of the business? A. Yes; you can't tell whether that is in cash or accounts. That is just the time that the accounts are becoming due.

Q. I have given you a whole year? A. You have given me November every time.

Q. But between those two years these are the different sums? A. You have given me November every time when they have got the most cash, when all their bills are about coming due.

Q. Whose bills? A. The Beattie Manufacturing Company.

Q. You mean the bills payable by them? A. No; bills payable by customers—bills receivable.

Q. But I understood you to say that you took this sum from Brown Brothers for the purpose of paying bills for the company? A. At what time of the year was that?

Q That is in July? A. That is about the time we want money.

Q. When do you begin to manufacture, as a general thing, for the trade? A. We send our men out about the 8th or 10th of May, and everything is dated the 1st of September. Now, when it gets along the latter part of July and August, that is the time we are shortest of money; and the same in January and February, along about there, when it is getting near the 1st of March.

Q. I don't find any other occasion when there was any such sum as that drawn, either before or after. Do you know of any special reason for doing it at that time? A. No, nothing special.

Q. I wish you would state to me, if you can—I understood you to say that you thought that at the time when the company was organized that the property that was turned over was of more value than the amount of the stock issue, and you stopped there. Could you give us any idea of what you think the value of that property was at that time? A. No, I cannot; it is only a guess, that is all.

Q. Do you mean to say that at that time no thought was given to the value of the property? A. No; the only question that came up was what shall we incorporate for, and that was the sum fixed on, and they got at the value of the machinery and other things pretty close on that and that was put in to make up the difference.

By the Court.

Q. When you say the other you mean the real estate item? A. Yes.

Q. In your judgment, what was the value of this real estate item as compared with this figure, $139,903? A. I think it was $140,000 in round numbers.

By Mr. Harding.

Q. That included the real estate on which there was a plant—that is, the factory? A. Yes.

Q. And a lot of other real estate? A. Yes.

Q. Can you tell me to day, generally, Mr. Beattie, what you consider, first, the value of the plant itself, the real estate now I mean, that goes into the plant itself, the factory, and all the other real estate? I wish you would compare these two? A. How do you mean compare them?

Q. I wish the value of each of them separately? A. That I would have to take some time to think over.

Q. How much time would you want to think over it? A. Oh, I don't know.

Q. Have you thought of the value of the real estate apart from the real estate included in the plant? A. The real estate we have got outside of the plant is not very valuable.

Q. What does it consist of? A. It consists of meadow land, not really good for building purposes.

Q. About how many acres, Mr. Beattie? A. I think we may have 350, maybe 400—something like that—some of it good for nothing.

Q. Does the rent that is referred to in this statement, that has been testified about—is that rent from the property separate from the plant? A. Yes.

Q. And do you derive any revenue from it at all except from rent? A. That is all.

Q. Can you give me a general notion about what that real estate is worth, the real estate separate from the plant? A. No, I cannot give you any idea.

Q. About three hundred acres of land? A. I think four hundred acres of land.

Q. Can you give me an idea about what it is worth an acre? A. No.

Q. Would you say it was worth $500.00 an acre? A. No, not to take it all together.

Q. Would you say it would average $300.00 an acre? A. No, I don't think it would. There are great portions of it that are absolutely worthless.

Q. Do you think $300.00 an acre would be a fair value for it? A. If you should make us an offer for it, we might consider it.

Q. You said $300.00? A You said $300.00.

Q. I ask you if you said three hundred? A. You said three hundred.

Q. Tell me about how many acres there are? A. Three hundred acres.

Q. Have you recently made any estimate as to the value of the plant itself, including the building, the fixtures and all the machinery? A. Yes, we make an estimate every year. I think that is $450,000.

Q. And do you think that is a fair value for the building, fixtures and machinery at the present time? A. Oh, it is more than its value.

Q. What is its value in your opinion? A. I

couldn't tell. It makes a difference whether it is a going concern or a standing concern.

Q. As a going concern? A. As a going concern, then it makes a difference about the management, a great difference.

Q. Well, do you hesitate to give us a value? A. No.

Q. Will you give it to us? Give us what you think it is worth as a going concern. Now, I am including the factory buildings, fixed machinery and movable machinery. A. I won't give an estimate; I cannot.

Q. There was some property, according to your books, taken by the firm of R. Beattie & Sons on Long Island? A. Yes.

Q. What was that property taken for? A. That was taken for a debt owed to R. Beattie & Sons.

Q. For goods of the company that were sold? A. Really, I don't know much about that.

Q. Who does? A. W. H. Beattie had full charge of that, but I don't know the details of it at all, only in a general way.

Q. Do you know this much about it, to know whether or not it was taken—are you sure it was taken over for a debt due to the company—when it was first taken over. A. No, it was for a debt due to R. Beattie & Sons.

Q. But what I mean is was it for goods of the company that were sold or shipped for a private debt of R. Beattie & Sons? A. No. I don't think it was. They were selling other goods at that time.

Q. What do you think about that? A. Think about what?

Q. Whether or not it was taken over for a debt of R. Beattie & Sons different from the business or not. A. I think it was apart from the Beattie Company.

Q. How did it happen to be turned over to the Beattie Company, then? In other words, how did the Beattie Company acquire this indebtedness? A. Well, on William Beattie's advice, I concluded to give up the selling end and make a different selling arrangement, and we closed out the thing down there and turned everything over to The Beattie Manufacturing Company.

Q. You turned it over at its face value to the R. Beattie & Company? A. Yes.

Q. Was it worth its face value at that time? A. Not at that time; it is now.

Q. What consideration did you have for turning over this debt contracted in favor of R. Beattie & Sons for less than its face value to the R. Beattie Company? A. Because we turned over everything we had down there to The Beattie Manufacturing Company. We put that in at a price that we thought it would realize, and it has.

Q. How about interest? Doesn't realize it if you carry interest on it also, has it? A. That I don't know.

Q. Don't you know that it has not? A. No, I do not.

Q. Are you familiar with what it brought? A. Only in a general way.

Q. Are you familiar with the selling of it? A. No, I am not.

Q. Has it been sold? A. All sold.

Q. All together or in parcels? A. All together.

Q. When was it sold? A. I think this Spring; I am not sure.

Q Do you know personally about it?

Mr. CORBIN—How is it material?

THE WITNESS—I don't know personally.

Mr. HARDING—I think it is important on an accounting.

Q. When was your attention first called to the sale of this property?

Mr. CORBIN—I object. I submit that we cannot go into the details of all these transactions of the company.

THE COURT—It seems to me you are going into unnecessary details here. We are trying to find out what the accumulated profits of this concern are, and you seem to be trying charges of misfeasance against the officers.

Mr. HARDING—Not as a charge of misfeasance against the officers, but we are also asking that the salaries of these gentlemen be reduced; and if they, acting as partners of the firm and also officers of the company in which they charge salary for the value of their services, have sold a piece of property from the company, and have not properly accounted for it, why, I think it is one of the things that throws light on the question of the accounting. It may be remote, but I think it has some bearing on the case.

THE COURT—I will let you go a little further. Proceed.

Q. Do you know about who sold the property? A. Yes, I know the real estate dealer.

Q. Who was it? A. His name was Johnson.

Q. Was it sold—did you act for the firm personally in selling it? A. I didn't act at all.

Q. Who did act for it? A. W. H. Beattie.

Q. Is there a contract of sale now between you and the East Jersey Water Company for the remaining water rights? A. Yes, they have an option on it.

Mr. HARDING—Have you that contract?

Mr. CORBIN—Why not let the fact of it appear.

Mr. HARDING—I understood there is an option to sell it for $200,000?

THE WITNESS—It is to be sold 1915.

Mr. HUMPHREYS—We offer in evidence agreement dated February 15th, 1898, between The Beattie Manufacturing Company and the East Jersey Water Company, whereby The Beattie Manufacturing Company, in consideration of $10,000 thereby paid, and of $320,000 to be paid as hereinafter stated, agrees to sell unto the East Jersey Water Company, and to grant and convey to them the following property and rights described in the deed; to divert a certain amount of water; and then certain lands are described.

The same is marked Exhibit C 10.

By Mr. Harding.

Q. I understood you to say that when the money was drawn from Brown Brothers & Company and given over to the credit of Beattie & Sons, that it was necessary to pay bills. I understood you to say that? A. Yes.

Q. I suppose you have the bank books, of course, of R. Beattie & Sons, the firm, to show your bal-

ance during this period, haven't you? A. I don't know. I haven't seen them in a long time.

Q. They are in existence, aren't they? A. They may be.

Q. Where were they kept? A. They were all brought to Little Falls. What has become of them I don't know.

Q. You have no objection to producing them, have you, for the purpose of verifying the oral statement which you have just made as to the necessity of drawing that money?

Mr. CORBIN—I don't see any propriety in going into an inquiry about Robert Beattie & Sons' account. The whole thing was closed out in 1899; the business relations ended; there is nothing in it at all that warrants an inquiry.

THE COURT—I will allow it.

Q. Have you any objection to producing those bank books and the books of account of R. Beattie & Sons for the purpose of finding out the necessity of making this withdrawal from Brown Brothers that we have referred to? A. For how long back?

Q. Well, for as long as you have them. A. Back to 1864.

Q. No; back within the last ten years, if you have them. A. I think we can produce some of them.

Q. Will you produce what you have?

Mr. CORBIN—I object to their being produced. We have got enough books in the case.

Q. Will you produce them also for the purpose of showing whether or not you never have used

the balances that were in your hands as R. Beattie & Sons, except as you have stated?

Mr. CORBIN—I object to producing the books.

THE COURT—I will allow it.

Q. Will you produce those at the next hearing, if you have them? A. If we have them.

Q. Perhaps you can also throw some light on another subject that we would like to learn about if we can; I notice that in this statement, which we have produced and on page six, called the analysis of profit and loss account, the first item that runs all through the years is an item called "expense;" it begins with $2,063.40 in the last part of 1882 and the first part of 1883 it begins $2,120.92, making about a little over $4,100 for that year; then we go on to the following year of 1884, it runs to $3,124.-74 and runs on down varying from two to say, five thousand dollars about, until the year 1902, when it gets to be about $7,801.67, and then the year 1903, $7,596.49; then, in 1904, $7,582.49, and in the year 1905, $14,208; now, can you give us any reason for the increase in the expense account? A. No; I cannot; the books are here; it would be better evidence than I can give.

Q. Can you tell us at all why that should be increased in the last year from $7,582.49 to $14,000? A. No; I cannot.

Q. I notice that the amount of sales, during all this period, do not seem to have increased very much since the year 1882? A. That can be very easily explained; they increase very materially up to 1893, 1894, 1903 and 1904, when we lost two different kinds of business, which was the largest

amounts of business that we did; they both dropped out.

Mr. HUMPHREYS—I see, by an examination of this Exhibit C 10 (contract of 1898), that The Beattie Manufacturing Company sell the right to withdraw certain water for $330,000, of which $15,000 was paid in cash and $315,000 was to be paid in a mortgage, and The Beattie Manufacturing Company also reserve the right to retain from the East Jersey Water Company sufficient water to run its mill to the amount of three hundred horse-power, and then afterwards the East Jersey Water Company agrees that it will ultimately buy that power that is reserved, for $200,000.

Cross-examination by Mr. Corbin.

Q. By what books were settlements made between the company and R. Beattie & Sons by the company's books, or by the firm's books? A. By the firm's books in all cases.

Q. Between the firm and the corporation? A. Between the firm and the corporation—the corporation books.

Q. Now, when were the goods charged to R. Beattie & Sons by the corporation; when they were sold or when they were collected for? A. When they were sold.

Q. So that, at the time of the charge, Robert Beattie & Sons did not have the cash in hand? A. No; not for those goods.

By the Court.

Q. Did they render monthly statements of sales? A. Monthly statements of sales.

ROBERT BEATTIE—Cross

By Mr. Corbin.

Q. And you said that the practice was to pay the bills through Robert Beattie & Sons? A. No; the company's bills were paid by R. Beattie & Sons.

Q. When did that practice begin? A. Oh, long before; it commenced right away; it had been going on that way for twenty years.

Q. Had it begun before the corporation was formed? A. Yes.

Q. And that continued, did it? A. Yes; it continued.

Q. You have been questioned about the drawing of a certain sum in 1893 from Brown Brothers & Company; do you recall any transfer of account to the Chemical Bank? A. No; I cannot say for sure; I cannot say for sure; I have an indistinct idea.

Q. You cannot tell for what purpose that particular money was withdrawn? A. No.

Q. Wasn't there some alarm about the responsibility of Brown Brothers leading to the withdrawal of funds? A. I believe William Beattie had some little doubt about them, or some little talk.

Q. He could have withdrawn this money? A. Oh, yes.

THE COURT—What is the date of that withdrawal, Mr. Corbin?

Mr. CORBIN—Some time in 1893.

Q. At the time when you first became your father's partner what arrangement was made about profits? A. Well, there wasn't any particular arrangement made.

Q. How did you get anything out of the concern? A. Well, we drew up to a certain amount, a sort

of a limit to it, but we stretched the limit some times.

Q. What you didn't draw, what became of that it went into the concern? A. Stayed in the concern.

Q. Was the business increasing all the time? A. Yes.

Q. Was it a growing business? A. Yes.

Q. Try and recall some of the improvements made. What was the first mill built after you went into the partnership? A. The first one was a felt mill.

Q. How large was that? A. It was about, probably, sixty by one hundred and fifty.

Q. Brick mill? A. Brick mill.

By the Court.

Q What do you call it? A. Felt, for gun wads.

By Mr. Corbin.

Q. There were three large buildings when you started? A. Yes, three.

Q. The old white mill, the stone mill and the hand loom and weave shop? A. Yes.

Q. Did you increase the number of employees down to the formation of the corporation, after you went into the business? A. Yes.

Q. Did your father continue to take an active interest in the business down to the time of his death? A. He took no active interest in the business after about 1872.

Q. The last ten years, who had charge of the mill? A. I had full charge of it.

Q. And your brother of the selling? A. My brother of the selling.

Q. And he lived there at Little Falls, did he not? A. Yes.

Q. Was there any discussion between you and your father about your conducting the business, or continuing in the business? Any inducement offered you to stay there? A. Yes, there was several times.

Q. This matter of the house, had that anything to do with that? A. Yes; that he urged on me for some years, but money wasn't so plentiful then. I was not in any hurry and I let it go.

Q. He built for your brother? A. Yes.

Q. When did your brother get title to that house? A. In 1886.

Q. After your father's death? A. Yes.

Q. And he had lived there for a number of years? A. He had lived there since 1872.

Q. And you had not received any lot or house? A. No.

Q. At the time that was conveyed to him, you also had the lot conveyed to you? A. Yes.

Q. Did the company build the house for you? A. No.

Q. You simply got the lot? A. That is all.

Q. At the time the corporation was formed was this matter of the house brought up then? A. Yes, it was talked of then.

Q. Your father urged you to take it then? A. Yes.

Q. And you deferred action, did you? A. I kept putting it off.

Q. Now, what became of your father's house where he lived? Is that close by the mill? A. That is close by the mill.

Q. And is that a part of what he conveyed to the company? A. Yes, he conveyed that to the company.

Q. Your mother survived him? A. Yes.

Q. And how long did she live there? A. Two years.

Q. And then she died? A. Yes.

Q. Since that who has lived there? A. Mrs. Murray, my sister.

Q. Any rent charged them? A. None.

Q. Then have they lived there rent free in the company's house since? A. Yes.

By the Court.

Q. Who has lived in that house? A. Mrs. Murray.

Q. And her children? A. Yes.

By Mr. Humphreys.

Q. Wasn't that left by the will of Robert Beattie, Sr., to Mrs. Murray? A. Yes, but he didn't know that he had conveyed it to the company before that.

By Mr. Corbin.

Q. Now, this land owned by the company, how much is used by the manufacturing business? A. Probably five acres.

Q. Then the rest is not used in that business? A. That is all that is used in the business.

Q. Now, the water power, how much was the entire fall that you had there at Little Falls, on your land? A. Thirty six feet, I think.

Q. How much did you use on your mill? A. Fourteen.

Q. And how much horse-power did you use when the corporation was formed, about? A. I should think, probably, one-half of what they are using now—about 150.

Q. You are now using 300? A. We are using all we have got, about 300.

Q. You need all you got now? A. Yes, and more.

Q. Now, the whole flow was capable of developing much more power than 300? A. We don't own the whole of it now.

Q. There was on what you did then own? A. Yes.

Q. So that you had power more capable of development than you did develop? A. Yes.

Q. And the East Jersey has made a much larger development in power? A. Yes.

Q. Now, then, your father's death was unexpected? A. Yes, very.

Q. He was in good health at the time the corporation was formed? A. He was in good health.

Q. He died less than a month after the corporation was formed? A. I think the thirtieth of July—less than a month.

Q. After his death what was the movement of the business—did it increase? A. Yes, it increased as the books will show.

Q. What was the particular branch of the business which was large and profitable? A. The felt business and the plush business.

Q. Did that plush and felt business require as much capital as the carpet business? A. No, there was no great delay to that. That was pretty much all cash.

Q. What was this felt made for? A. For gun wads.

Q. For how many customers? A. Only one.

Adjournment to Wednesday, October 10th, 1906.

CHANCERY CHAMBERS, Jersey City, Wednesday, October 10th, 1906.

Further testimony of witnesses in the above stated cause, taken at the Chancery Chambers, Jersey City, New Jersey, Wednesday, October tenth, 1906,

ROBERT BEATTIE, recalled—Cross

before his Honor, Vice Chancellor Stevenson, pursuant to adjournment heretofore stated.

Present—Counsel as heretofore stated.

ROBERT BEATTIE, recalled for further examination, testified as follows:

Cross-examination continued by Mr. Corbin.

Q. Have you had a statement made up from the books showing the amount of sales and net earnings as shown by the books? A. We have.

Q. What was the year when the largest profits were made by the company? A. 1887.

Q. What was the amount of sales then? A. $551,244.59.

Q. What were the net profits? A. $93,631.93.

Q. Now, then, will you state the dividends that were declared at the various years. A. In 1882, for six months, 2 per cent.; that is, we began in July. In 1883, 3 per cent.; 1884, 4 per cent.; 1885, 4 per cent.; 1886, 5 per cent.; 1887, 10 per cent.; 1888, 10 per cent; 1889, 10 per cent.; 1890, 12 1/2 per cent.; 1891, 10 per cent.; 1892, 12 1/2 per cent.; 1893, 10 per cent.; 1894, 10 per cent.; 1895, 7 per cent.; 1896, 7 per cent.; 1897, 10 per cent.; 1898, 10 per cent.; 1899, 12 per cent.; 1900, 10 per cent.; 1901, 10 per cent.; 1902, 10 per cent.; 1903, 12 1/2 per cent.; 1904, 10 per cent.; 1905, 10 per cent.; I think that in 1899 instead of 12 per cent. is 12 1/2 per cent.

THE COURT—Do these figures correspond with the table that was presented by Mr. Peterson yesterday? These are mere matters of bookkeeping. If there isn't any dispute about it, it would seem to be unnecessary to bring it out by this wit-

ness. If there is no disagreement I should suppose counsel would put in the table.

Q Do you recall how many men you had working in 1882? A. No, I cannot.

Q. Was there any increase during the period down to 1893, in the number? A. From 1882 to 1893?

Q. Yes? A. Yes.

Q. And was there an enlargement of your buildings during that period? A. We increased our buildings.

Q. Now, what happened in 1893? A. In 1893 there was a great falling off in the trade. The plush business practically dropped out. Of course, it kept on for a little while, but the great bulk of it dropped out; also our felt business.

Q. Why did the plush business fall off? A. One branch of it, or the biggest part of it, because it was used for furniture covers, and they got something else.

Q. And did the trade cease to use the article? A. The trade ceased to use the article altogether.

Q. In 1887, what was the business that was done; what articles did you manufacture principally? A. In 1887?

Q. In 1887, when you had that largest trade; how much was carpets and how much was other articles? A. Less than one-half of it was carpets.

Q. The statement shows the figures? A. The statement shows the figures.

Q. And the rest was plush and felt, was it? A. Plush and felt.

Q. And that you have already stated was more profitable than carpets? A. Yes; it was much more so.

ROBERT BEATTIE, recalled—Cross

Q. What effect did it have on the number of employees, after the falling off in 1893; did you keep the same number of employees or drop some? A. No, we had to let a good portion of them go, but afterwards they came on again for carpets.

Q. Then you had to build up your carpet trade? A. We started in to build up the carpet trade at once.

Q. Turning to 1894 and 1895, what was the amount of your net earnings? A. In what year?

Q. In 1894? A. $17,755.

Q Then your ten per cent. dividend was more than your net earnings? A. Yes.

Q. What were your net earnings in 1895? A. $21,667.

Q. That, also, was less than a ten per cent. dividend? A. Yes.

Q. In 1896, what were your net earnings? A. $31,195.

Q. And you still declared a seven per cent. dividend? A. Yes; seven per cent.

Q. Then, the following year, you increased your dividend to ten per cent. What were your net earnings in 1898? A. $20,760.

Q. But you declared a ten per cent. dividend? A. Yes.

Q. You had to take part of that out of surplus? A. Yes.

Q. What were they the year 1898? A. The year 1898 was $20,760.

Q. And 1899 how much? A. $18,000.

Q. You declared a dividend of ten and twelve and one-half per cent. in that year? A. Twelve and one-half.

Q. And in 1900 you began to receive interest on the East Jersey mortgage, did you not? A. Yes.

Q. Now, what was your net earnings in 1900

apart from the East Jersey Water Company interest? A. $10,200.

Q. And the total, including it, $22,800? A. The total income was $22,800.

Q. In 1901, what were your sales? A. $499,-893.31.

Q. That was the largest you had made since 1887? A. Since 1887.

Q. But what were your profits without the interest; weren't enough to pay the dividend then? A. No.

Q. Now, in 1902, what was your sales? A. $561,261.61.

Q. Now, that was the largest in the history of the business? A. Yes.

Q. What were your profits, leaving out the East Jersey interest? A. $42,343.99.

Q. Now, is that a satisfactory profit on that amount of business? A. Not hardly.

Q Ought to get 10 per cent., hadn't you? A. Ought to get that.

Q. Now, take the next year, 1903; what were—what new branch of business did you enter into then? A. Into rugs.

Q. What was the object of entering into the manufacture of rugs? A. Because the sale of carpets was getting smaller.

Q. And what is the difference in the process of manufacturing rugs? Can you use the same machinery? A. No, not altogether.

Q. In what widths are the carpets made? Does the question of the width of the loom enter into it? A. Well, it does and it does not. You can make them on a three-quarters loom, or you can get wider looms.

Q. Why do you have to change the machinery?

A. You have to change all your printing machinery.

Q. You have larger patterns? A. Have larger patterns. You have to have printing machines that will print the longer lengths, and when I say about the looms, there is a demand for a seamless rug which we thought there was more money in than one with a seam, and we put in wide looms.

By the Court.

Q. Is the weave the same? Are the rugs woven in the same way as carpets are? A. Woven in the same way, only with a wider loom. The rug carpet is 27 inches wide and the rugs are 9 by 12 And we got looms to weave 9 feet wide.

Q. Were the carpets that you made commonly known as Brussels carpet or ingrain? A. Neither —tapestry filling.

By Mr. Corbin.

Q. Now, from that time what kind of trade have you been trying to build up? A. Since that time the rug trade.

Q. And carpets also? A. Carpets at the same time. We keep that, too.

Q. You think that is necessary for the successful conduct of the business? A. Certainly; there is no doubt that rugs will have their day, and carpets will come in again.

Q. But you are making both now? A. We are making both.

Q. The trade calls for rugs? A. It calls for rugs more than they do for carpets.

By the Court.

Q. Has there been a change about carpets and rugs? A. There seems to be.

ROBERT BEATTIE, recalled—Cross

Q. When did it set in? A. About three or four years ago.

By Mr. Corbin.

Q. In 1903 your sales were how much? A. Sales of what?

Q. Total sales. A. $523,708.

Q. Now, then, what were your net earnings in that year, leaving out the East Jersey interest? A. 60,445.99.

Q. Now, what was the showing in 1904? You had $523,000 in 1903. A. $356,676.

Q. That was a falling off? A. That was a falling off.

Q. What was the reason of that? A. It was generally from the carpet trade.

Q. And what were your net earnings from the business? A. In 1904? $42,318.

Q. Now, coming to 1905, what were your total sales? A. $482,977.

Q. Now, that was an increase in the magnitude of sales? A. Yes.

Q. And what were your net earnings then? A. $22,134.

Q. Is that a satisfactory earning? That wasn't a satisfactory showing? A. No, that was not satisfactory.

Q. What was the effect of that falling off of trade on your cash balances? A. That would naturally increase them.

Q. That is to say, it threw the money on your hands? A. Yes.

Q. That made your cash balances larger that year? A. Yes.

Q. In putting in this rug machinery, how much did that cost you? A. I cannot give exact figures. I think between—it may reach $70,000.

ROBERT BEATTIE, recalled—Cross

Q. And that came out of your cash surplus? A. Yes.

Q. If you hadn't had that accumulation thrown on your hands, would you have had any cash to handle your business and put in that machinery? A. No, I don't think we would.

Q. Now, in 1905, how do you account for that poor showing of profits in that volume of sales. A. By the low price of carpets and the high price of materials. Wool especially had gone up from 70 to 80 per cent., and the goods cost more and we got no more for our carpets, and in some cases less.

Q. Is there more profit in rugs than in carpets? A. There seems to be.

Q. Will you give me the figures of the amount of rugs sold in these three years? There is a memorandum, I think, on the top of your paper, 1903? A. 1903, $37,700.

Q. 1904? A. 1904, $77,000.

Q. 1905? A. 1905, $152,000.

Q. In 1906, how is it, more? A. We expect it to be more.

Q. How about the carpets, are they as large as they were last year? A. I think the carpets will be a little better this year than they were last.

Q. If that is so, this will be one of your years of large sales as compared with the previous? A. Yes.

Q. Now, you have said that the carpets cost more. What is the most expensive of the material entering into the manufacture? A. Wool.

Q. What is that, imported wool? A. All imported.

Q. From what countries? A. Principally from Russia and East India.

Q. And how does that price compare with what you paid at the beginning of your business, of the

incorporation of the business? A. Well, I should say it was double. That is, price, do I understand you?

Q. Yes. Do you get as much for the carpets now as you did then? A. No.

Q. What are the other elements entering into the manufacture? A. Everything has increased in price, jute and cotton.

Q. Jute and cotton. They are higher? A. They are higher.

Q. How about labor? A. Labor is higher, too.

Q. Can you carry on your business now with the machinery and plant that you had in 1882, at a profit? A. No.

Q. Could you, in your judgement, carry on a profitable business with carpets alone now, without the rugs? A. Well, that is a question.

Q. You think it is wise to introduce the rugs? A. Yes.

Q. Now, take the question of salaries? Do you remember what year it was that the salaries were raised to $10,000? A. No, I do not.

Q. How did it relate to the dividends paid? A. We were paying ten per cent. at the time.

Q. It was after you had raised the dividends to 10 per cent. that the salaries were made $10,000? A. Yes.

Q. What was the occasion of the payment of $8,500.00 instead of $10,000? A. Well, at that time, the bottom seemed to have dropped out of business entirely; I reduced labor from 10 to 15 per cent.; the paid ones I reduced 15 per cent., the others ten—ten down to five, the lowest. I reduced the president and treasurer's salary at the same time 15 per cent.

Q. That was done by your order? A. That was done by my order.

ROBERT BEATTIE, recalled—Cross

Q. There is nothing in the minutes about it apparently? A. Nothing in the minutes. I simply cut it off.

Q. It has remained there since, has it? A. It has remained there ever since.

Q. You have stated that on the death of William Beattie in 1899, the method of selling of the company was changed? A. Yes.

Q. Now, how do you sell now, on commission? A. No.

Q. You have your own salesmen? A. We have our own selling force in connection with another manufacturing concern.

Q. They sell— A. They sell a little different line of goods—that is, it is carpets and rugs, but a different line from ours. We sell together and divide the expense.

Q Is that advantageous in the marketing of goods? A. Yes, it is

Q. How so? A. In the marketing?

Q. Yes. Is it of any advantage to your agents in selling goods to have this double line? A. Yes, the larger line they have they are more likely to sell.

Q. And this other concern's goods don't compete with yours? A. They don't compete with ours.

Q. You divide the expense? A. We divide the expense.

Q. You think that is an advantageous method of selling? A. Yes, advantageous to the company.

Q. You have an office in New York? A. Yes.

Q. What is the office of your son William H. Beattie? A. He is secretary and treasurer.

Q. And he was made secretary some years ago and treasurer on the death of your brother? A. Secretary in 1883, I think, and treasurer on the death of my brother.

ROBERT BEATTIE, recalled—Cross

Q. Now, in addition to his duties in this office. What is his work? Where does he carry it on, what place? A. At Little Falls.

Q. In the Mills? A. In the mills.

Q. And in what part of the mills is he engaged in the business? A. Now, he is in the mills principally. He probably spends from an hour to two hours in the office a day.

Q. Who buys the goods—who buys the supplies? A. He buys some of them, I reserve the wool to myself.

Q. You are in the habit of buying the wool? A. I am in the habit of buying the wool.

Q. And who gives the orders to the foremen in the various departments? A. William Beattie—W. H. Beattie.

Q. What, in your judgment, is the value of his services to the business? A. I think his services are worth $10,000.

Q. Do you think you could replace him with a man equally serviceable for that money? A. I don't think we could get anybody that would take the same interest in it and spend the same time in it that he does.

Q. And he has been in the business a long while? A. Over twenty years.

Q. And he is capable of doing this work? A. Yes, perfectly.

Q. Now, who looks after the selling, or supervises the selling department? A. He does.

Q. That takes him to New York sometimes A. Occasionally, probably once a week or ten days.

Q Where do you spend your time? A. I spend my time at the mill altogether.

Q. In what part of it? A. Looking after everything. Looking after—my great hobby is looking

after small things that people overlook. That has been my hobby all my lifetime.

Q. What do you mean by that? A. I mean by getting the best results out of everything we have got.

Q. You mean the use of material? A. The use of material, looking after the waste of material.

Q. How do you look after that, inspect the waste? A. Inspect the waste, and we know exactly how much and how many yards of carpet we ought to get out of what we call print. If the number of yards are not there then I want to know where it has gone and stop it.

Q. You have had experience in the business so that you know how much ought to come? A. I have been in the business ever since it started.

Q. And you also can tell what is waste? A. Yes.

Q. You know how the machine ought to be operated? A. I do.

Q. You have also been familiar with the water power from the beginning? A. From the beginning—I don't mean from the beginning.

Q. From the time they used power looms? A. Yes.

Q. And the improvements made there, is that under your orders? A. All of them.

Q. Now, when it comes to the settling of doubtful questions, who settles them? A. I do.

Q. Are you there every day? You are practically there every day? A. I am there every day, except, of course, in vacation time.

Q. What hours? A. Of late years, from eight to six. Before that, ten years ago, from daylight to dark, or all night.

Q. Are there a number of processes in this manufacture? A. Yes, quite a number.

ROBERT BEATTIE, recalled—Direct

Q. You make the yarns? A. We make yarns and start from the beginning, except that cotton we buy, the cotton yarns and the jute yarns. The wool part we make.

Q. You could buy the wool yarns? A. That we manufacture.

Mr. CORBIN—I am going on with my direct examination. I make him my witness.

Mr. HARDING—We have no objection to that.

Direct examination by Mr. Corbin.

Q. Now, then, in order to keep up 10 per cent. dividends, what in your opinion is necessary with regard to the development of that business? A. I don't understand your question.

Q. Do you think that the plant in its present condition will earn 10 per cent. dividends without a further improvement? A. Not without further improvements.

Q. What improvements do you consider are probably necessary? A. Well, the first thing, we cannot increase until we get more power. That will necessitate putting in a steam plant. We are at the limit of our power now.

Q. You have reached the limit? A. We have reached the limit.

Q. Then, 300-horse power is no longer adequate? A. No.

By the Court.

Q. Your machinery is very heavy machinery, is it? A. Very heavy machinery.

Q. Requires an enormous amount of power? A. Especially the rug looms. They are enormous.

ROBERT BEATTIE, recalled—Direct

By Mr. Corbin.

Q. You have stated that the margin of profit is smaller? A. Yes, smaller in carpets.

Q. You have got to increase the business to keep up the same profit? A. (Not answered.)

Q. Now, it is in evidence that your remaining horse power from the water must be turned over to the East Jersey Water Company in 1915, but before that time comes, will it be necessary for you to supply other power? A. I think it will.

Q. How soon? A. We ought to have it now.

Q. You contemplate putting it in soon? A. We have been getting estimates for three or four months, trying to determine how best to do it.

Q. And what will it probably cost? A. That I don't know. W. H. Beattie had all to with that, that is, he got the figures. I haven't seen them. I don't recollect what they were.

Q. If you put that plant in would you think it wise not to put any more in than you have now? A. Oh, no; when we lose the 300 and we want more now, it would not be wise at all to put in 300.

Q. You would put in a plant capable of more than 300 now? A. Why, sure.

By the Court.

Q. Why so, Mr. Beattie, if you are going to have 300 horse-power until 1915, that is nine years off, and you are simply short now to a certain extent, why wouldn't it be better to put in a comparatively small power plant and then duplicate and increase it in 1915? A. For the reason now that our 300 horse-power in the summer-time, we don't have 300. There are portions of the year we have more, but it would not be wise to put in 300 when we know in 1915 we would have to put in more. You

can run a large engine more economically than you can a smaller one.

Q. You think it would be better when you put in the steam power now at the present time, it would be the wiser course to put in a power plant capable of supplying over 300 horse-power? A. Now, it would be wise to put in a steam power plant running up to 600 horse-power.

Q. At the present time? A. Yes, at the present time.

Q. Even though you have 300 horse-power for the next nine years? A. Even though we have 300 horse-power, but the East Jersey have the option of taking that at any time.

By Mr. Corbin.

Q. By supplying you with an equivalent amount? A. Yes.

Q. You think it would be better to put in an entire power plant now rather than to put in a part of it now and a part of it later? A. I don't think there is a question about that, as to economy.

Q. It would be wasteful to put in a part of it now? A. Yes.

Q. At the time that you lost the plush and felt business was there any machinery specially adapted to that business? A. Yes, there was two different plants.

Q. What became of all that machinery? A. It has all been thrown out since. It wasn't thrown out at once, because I thought it might possibly come up again, and we kept it two or three years, some of it seven and eight years, hoping against hope that we might get something for it; it was finally thrown out altogether to make room for rugs.

Q. That has become of no value? A. It is of no value except for old iron.

Q. How about your carpet machinery, does that become obsolete? A. Our carpet looms are pretty well out of date. They are not exactly out of date; they do fairly well, but there are new ones that do better.

Q. Then you do have to make changes from time to time? A. Yes.

Q. Was there an old worsted plant there? A. For making worsted?

Q. Yes. A. Yes.

Q. What has become of that? A. Scrap.

Q. No longer needed? A. We bought a new plant.

Q. Now, Mr. Beattie, in exercising your judgment in regard to dividends, did you keep dividends down in order to swell the interest of the remaindermen? A. I did not.

Q. What guided you in determining the amount of dividends? A. I determined dividends by what I thought we ought to pay keeping in mind that I wanted a surplus enough there to guarantee them. There were five or six people entirely dependent upon it, and I wanted to guarantee the dividends so I knew I could pay them whether we earned them or not.

Q. You are one of the trustees under your father's will, and executor? A. Yes.

Q. Did you ever take the commissions on the estate. A. No.

Re-direct examination by Mr. Humphreys.

Q. You say that you have a selling force that sell not only the goods of The Beattie Manufacturing Company, but the goods of another concern? A. Yes.

ROBERT BEATTIE, recalled—Re-direct

Q. Who compose that selling force? A. One Alexander Murray, C. W. Winant, a Mr. Banta—I don't know his initials—yes, A. R. Banta—Mr. Weeks, and Mr. Wall.

Q. And does your son preside over that business? A. No.

Q. What had he to do with the selling? A. We also had a manager down there, a Mr. Toby. He consulted with him when prices were made in the Spring and Fall, as to what price should be made, consulted with him about what styles of patterns we ought to make—several different things.

Q. Do you receive commissions from this other concern after the sale of goods? A. No, I don't understand what you mean.

Q. What other concern was it for whom you sell? A. Ferth Carpet Company.

Q. Don't they pay you for selling their goods? A. They paid for the expenses of selling the goods.

Q. What did those expenses include? Did they include any renumeration to your son? A. Not a cent.

Q. I see, Mr. Beattie, that there was on the 30th of November, 1905, a large sum of money to the credit of an account called "general reserve account," and another called real estate improvement reserve." What is the distinction, if any, between those two accounts? A. I don't think there is any, except in bookkeeping.

Q. Why was it called "real estate improvement reserve?" A. I don't know how that started, except by our bookkeeper.

Q. Neither account has been drawn upon at all except occasionally for the purpose of declaring dividends? A. I think not.

Q. And they practically both represent undistributed profits? A. I don't know about that.

Q. What do they represent? A. That I cannot tell.

Q. Well, it is part of the surplus of the company, is it not? A. It is part of the surplus of the company.

Q. The surplus was all earned by the company, was it not? That started with their capital stock? A. Yes.

Q. So that these amounts must represent undistributed profits, do they not? A. Probably so.

By the Court.

Q. Did a large part of that accumulation come from the profit obtained when you made the sale to the East Jersey Water Company? A. I don't think so.

Q. Is that matter kept in a separate account? A. That is a separate account.

Q. Do you know in what account it appears? A. The East Jersey?

Q. Yes? A. I don't think—I think it is down in the books, there. I don't know exactly what account it is.

By Mr. Humphreys.

Q When did it first become necessary for you to put in this steam power that you are contemplating? A. We have been talking about it for two or three years, knowing that we would have to get it very soon.

Q. You have been able to operate your factory all right during these three years, have you not? A. Not satisfactorily.

Q. When did you first of all solicit estimates for the work? A. I think a year ago.

Q. Before this suit was brought? A. Oh, this suit had nothing to do with it.

ROBERT BEATTIE, recalled—Re-direct

Q. I ask you whether it was before or after this suit was brought? A. I don't know.

Q. You say that you spend all your time at this factory working? A. Yes.

Q. You never take a vacation? A. Sure.

Q. How often? A. About once a year.

Q. For how long? A. Sometimes twice.

Q. For how long each time? A. Well, altogether from five to six weeks during the year.

Q. Mr. Beattie, did you bring with you to-day the books of Robert Beattie & Sons, as we requested you yesterday? A. No; I did not; I understood there were two here; after making inquiry up there, I understood that they did bring two down.

Q. What books are they? A. Two ledgers.

Q. Where are the other books? Are the bank books and check books? A. I don't know whether they are here or not; I brought two down with me this morning; all I could find.

Q. You were subpoenaed to bring them, were you not? A. If you can find them you can bring them.

Q. Do you know where they are? A. No; I do not.

Q. Where did you look for them? A. I didn't look personally; I got somebody to look for them.

Q. Who would know where they are? A. Nobody in particular.

Q. Who else had the custody of them? A. Oh, they were brought up there and stored; some in the cellar, some in the attic of the office.

Q. How long a time have you spent in looking for them? A. Personally, no time at all.

Q. How long has any one else, acting for you, looked for them? A. That I can't tell you; you can ask the other peeple when they go on the stand.

ROBERT BEATTIE, recalled—Re-direct

Q. Will you tell us who looked for them? A. I think W. H. Beattie and our bookkeeper.

Q. What is your bookkeeper's name? A. Towey.

Q. Where are the two ledgers that you have? A. Some are in the trunk.

Q. Will you produce them, please?

Mr. CORBIN—We cannot go into an account of Robert Beattie & Sons.

Mr. HUMPHREYS—We want to show what Robert Beattie & Sons did with the moneys belonging to The Beattie Manufacturing Company they collected from time to time, and whether they used it for their own purposes.

THE COURT—Suppose they did?

Mr. HUMPHREYS—Then they would be chargeable with interest in this case.

THE COURT—Then that would be a profit which the concern ought to have made, but didn't make, because, possibly, of some error in the managers; do you offer that as bearing simply upon their compensation?

Mr. HUMPHREYS—It bears upon their compensation; yes.

THE COURT—Anything else?

Mr. HARDING—We want to show the amount of cash that was on hand to the credit of the corporation all the time. We wish to show by their books how much cash was on hand for the purpose of finding out what the different surplusses were at the different periods; how much

dividends should have been declared at the different times.

THE COURT—This is prior to 1899?

Mr. HARDING—Yes; prior to 1899; but it throws light on the amount of cash available all the way through.

THE COURT—Do you claim that upon this bill filed in 1905 a compulsory dividend should be ordered in respect of profits that were made in years prior to 1899, if cash at the time those profits were made, was available for their payment?

Mr. HARDING—Yes.

THE COURT—Even though the situation is entirely changed?

Mr. HARDING—Yes; we shall claim that we were entitled to a vested right in certain surplusses.

THE COURT—The question is whether you claim on this bill, filed in 1905, a compulsory dividend will be ordered because ten years ago profits were made and cash was on hand and not distributed.

Mr. HARDING—We shall claim that under the old corporation act they were compelled to distribute dividends, and we shall claim that the standing of that company and the amount of money on hand at particular periods when dividends were declared, is an important question in the case in determining what the surplus was. It throws light on the business; how much available cash, during all the time, they had on

ROBERT BEATTIE, recalled—Re-direct

hand. And more than that. We think it bears on the question of salaries.

THE COURT—I don't think you quite answer my question. I want to get your view; precisely what your view is. Assume it to be true that for a period of time prior to six or eight years ago large profits were made. from year to year, in excess of the dividends which were declared and paid. Assume, further, that these years the company not only made larger profits that they distributed, but that they had the profits in the formof cash, so that they might have made a distribution without contracting loans and without converting assets into money at a loss. Assume, therefore, that the company violated, first of all, its general duty under general equitable principles to its stockholders in failing to make adequate distribution of its profits. And assume, further, that they violated the hard and fast rule in existence at that time under the statute. As a matter of fact, no stockholder complained, and this course of business was continued for a long period of years. In October, 1905—I think that is the date of filing of the bill. Well, some time in 1905, the stockholders, or some of them, for the first time wake up to their rights and file a bill. Now, admitting it to be true that the stockholders may assert their rights in 1905, if they have not permanently waived them by their conduct, that

they can file a bill and invoke any statutory rule on their behalf, which is still in existence or which applies to their corporation, whether it is in existence generally or not, and also that they can apply the general equitable rules, or invoke the general power of the Court of Equity to compel distribution of dividends which are unreasonably withheld. Now, then, can the Court, in entertaining such a bill and in granting that relief, go back and consider the amount of dividends which ought to have been distributed years ago which were not distributed and which the stockholders did not ask to have distributed in any way? What has that old condition to do with the present condition? Are we not confined in dealing with this bill to the amount of profits which this corporation now has on hand capable of distribution and which it reasonably ought to distribute? Isn't that the exact issue?

Mr. HARDING—Our conception of it is, that except for the principle of estoppel, we ought to have a distribution. I don't think that we have stood by in a case of this kind; I don't think there is sufficient knowledge on the part of, for instance, Mrs. Beattie, and perhaps some of the other complainants, to say at this time that they have acquiesced in it.

THE COURT—You will understand that I am not suggesting that if any portion of these profits unreasonably withheld fif-

teen years are now in the possession of the corporation capable of distribution, that they should not be distributed. It may be that if all these prior profits have been kept in the shape of money, all exist to-day in the shape of money, that it would be reasonable to have a dividend of 250 per cent. declared. But the question is whether we are not to deal with the existence of the profits to-day in the form in which they exist to-day, without regard to the form of the profits fifteen years ago.

Mr. HARDING—I don't see how you can change or judge the present except by the past. We will have to learn how the profits were accumulated and the whole system of the business. All the way through this case it seems to be necessary to determine year by year just the standing of this company—just what was earned. Now, we have this peculiar position in this case. That here is a certificate of incorporation in which the whole business of R. Beattie & Sons is turned over to a corporation. It appears from the evidence of Mr. Robert Beattie that they continued that firm business by selling the goods over in New York and kept that firm in existence, and one of the brothers, William Beattie, deceased, devoted all of his time and attention to that business there. Now, from the time of the incorporation there was an asset turned over in 1882 of something

like $60,000 that is said by him to be an item that was then turned over for the corporation for the sale of goods. That was continued all the way down while this arrangement continued until 1899, and that account was as high, sometimes, as over $300,000. We have no evidence whatever to show what that—

THE COURT—Is that the account that you have just referred to, the amount of which was $65,000?

Mr. HARDING—Yes; kept growing all the time. At the present time we have no light upon the subject at all as to how that fund was handled, as to what the amount of it was in cash. It appears, so far as Mr. Beattie was concerned, that the firm of Beattie & Company kept that deposited somewhere in their own name, and they simply paid the bills of that corporation from that fund all these years. We have no statement whatever to show us how much cash there was available all this time. At the time they did it, that is during all this period of time, for instance, you will remember once, in 1893, they drew from Brown Brothers & Company a large fund that was there earning money on deposit, and they say there was some necessity for doing it. But at the same time this Beattie Brothers account just before that was about $300,000; just after that it was over $300,000; and we wish to show now that they had a bal-

ance in cash at that time in the account, I think we have a right to say, between two and three hundred thousand dollars all the time available, and which was used by them for the purpose of paying the current indebtedness of this corporation. But it does seem to me that that is one of the important things that we should get at in this case and find out what that asset was all this time.

THE COURT—Do I understand that you will attempt to show that they not only made profits which they did not distribute and that they had the profits in cash?

Mr. HARDING—And that they did it without our knowledge. According to their own statement they went on and carried on this partnership business, making their profit of five per cent. on it and at the same time giving William Beattie a salary of $10,000 and part of the time at $8,500 a year. We shall claim that there is no estoppel in the case because there is no acquiesence in it and it is a fact we are now learning. Now, we wish to find out about this in this case. It is one of the necessary incidents in this case to get at that.

Mr. CORBIN—Now, it seems to me that if it be true that the company has lost money by reason of the appropriation of its funds by Robert Beattie & Sons, a bill might be filed if it is not too late. Of course, it would have to be filed in the aspect to make good to the corporation any such loss; but how can the Court order a dis-

tribution of the funds which they think might be obtained in that manner. Of course, as the case stands, the presumption is that the transactions of Robert Beattie & Sons were lawful and the evidence shows that those transactions are contained in the corporation books, and that settlements between the firm and the corporation were made by the corporation books, not by the firm books, and that all sales as made were entered in the corporation books. They were nothing but commission merchants and these goods belonged to the Beattie Company and were simply delivered to them for the purpose of sale and when sold, were entered on the books as a credit and a charge against the commission merchant, and as a credit in favor of the company. Now, then, it is shown that a substantial sum of money was retained, not turned over by the commission merchant, was retained in their account and interest paid on it which the corporation books show when these deposits were made, and that was the continuance of an old practice. Now, if there is anything in that transaction out of which it can be shown that the company lost any money, it may be made the basis of a suit, but it cannot be made an issue in this suit. The Court cannot order the distribution because profits were made which the company never had. That would involve a separate bill. When the money was collected in such a suit, if it ever was, when the right was estab-

lished, then we would look at the condition of affairs to see whether more dividends should be declared. How can it possibly be that we must enter into the investigation of a concern wound up in 1899, and the books are lost, how can we enter on that for the sake of finding out whether the company should declare more dividends? Why, if we found it out, if we found a half million dollars had been stolen from that company by Robert Beattie & Sons, and had never been accounted for, we could not raise the dividends in this case a dollar until after that money had been collected.

Mr. HARDING—This case has been tried up to this point on the theory all the way through of determining how much was paid year by year and a witness for the defense in the case has been testifying to the amount of dividends which have been paid from year to year—

THE COURT—I am satisfied it would be dangerous to exclude this testimony at this point. There are a great many questions that are yet to be developed, and I think it would be unwise to exclude the testimony, whatever my own tentative view may be in regard to the ultimate effect of it.

By Mr. Harding to the witness.

Q. Will you state which the two ledgers are which you have produced in response to our subpœna? A. Two bank books.

ROBERT BEATTIE, recalled—Re-direct

Q. I have two bank books, did you produce these? A. Yes.

Q. These seem to be the books, one of them is the Chemical National Bank of New York, and the Central National Bank of New York. This account begins in 1891. Have you examined this book? A. I have looked through it, yes.

Q. From 1891 down to 1895 (showing the witness book)? A. (Not answered.)

Q. And the book of the National Bank begins in August, 1892, and comes down to 1894. Are these the only bank books that Beattie & Sons deposited in at this time, during this period? A. What time?

Q. Well, from 1891 down to 1895? A. No, I think they deposited in the Bank of the Metropolis.

Q. Are those books here? A. I think so.

Q. Did you deposit in any other institution or anywhere else besides the Bank of the Metropolis and these other two banks? A. Robert Beattie & Sons?

Q. Yes. A. No.

Q. Previous to the year when the deposits began, according to those books there, did you deposit in the same three banks before these books began? A. No, not altogether.

Q. Where did you deposit before that? A. We deposited some in the North River Bank.

Q. I have a ledger here beginning in the year 1885, and another one from about 1893 to to 1899. These ledgers contain various accounts besides those of the Beattie Company. I suppose those are the other persons with whom you did business as R. Beattie & Sons? A. The persons with whom the Beattie Manufacturing Company did business through R. Beattie & Sons.

Q. What do you mean by that? A. I mean that those were the goods they sold to the different peo-

ple belonging to the Beattie Manufacturing Company.

Q. Did you sell goods during this time for anybody else? A. Yes, I think we did.

Q. What other people? A. We sold an ingrain account.

Q. For whom? A. For Van Derventer & Horn.

Q. Did you sell for any other persons? A. No.

Q. What other books were kept by the firm of R. Beattie & Sons besides these two ledgers? A. I don't know.

Q. Weren't you at all familiar with the bookkeeping? A. I never saw the books from the time they started until 1899.

Q. Didn't they have journals? A. I think they did.

Q. How did they enter their original entries? A. They were single entry books.

Q. What books were they? A. I don't know.

Q. What were the original books of entry? A. I don't know.

Q. The books were kept in New York at first. A. In New York.

Q. When did they come over to the company's office? A. In 1899.

Q. Who brought them over? A. I cannot tell you who brought them.

Q. Do you know anything about their being brought there? A. They probably came by freight.

Q. Do you know anything about their coming there? Who ordered them brought there? A. Myself and my son.

Q. William H. Beattie? A. Yes; we changed the selling arrangement and brought those books home.

ROBERT BEATTIE, recalled—Re-direct

Mr. HARDING—We will offer these books which we have in evidence.

Bank book Chemical National Bank offered.

Mr. CORBIN—I object to the offer on the ground that these matters relate to subjects not within the jurisdiction of the Court under the pleadings.

THE COURT—I will admit the books subject to the objection.

The same is marked Exhibit C 11.

Bank book Central National Bank offered and marked Exhibit C 12.

Ledger marked on the back "No. 4, R. B. & Sons," marked Exhibit C 13.

Another ledger marked on the back "No. 5, R. B. & Sons" offered and marked Exhibit C 14.

Q. Will you give me the name of the firm or person with whom you sold goods; for whom you sold goods? A. Oh, I cannot do that.

Q. Give me the name of the person you have already named, Van Der—something? A. Van Derventer & Horn.

Q. Did R. Beattie & Sons ever advance money to that firm? A. Not to my knowledge.

Q. Do you mean to your personal knowledge? A. Not to my personal knowledge.

Q. In a business way, as a member of the firm, don't you think they did? A. Yes, I think they did, advanced their own money.

Q. What do you mean by that? A. Advanced their own.

Q. Did they advance any of the money that was drawn from the account of R. Beattie & Sons? A.

Surely, R. Beattie & Sons were getting their five per cent. They had some money there. They accumulated some money there.

Q. How often did you advance to this firm? A. That I don't know. That was left entirely in the hands of William Beattie. The selling part I had nothing to do with at all.

Q. Was this firm in anywise connected with the taking over of the Long Island property? A. Yes.

Q. In what way? A. Van Derventer & Horn turned that over to pay their debt to R. Beattie & Sons.

Q. It was originally then the debt of Van Derventer & Horn given over to R. Beattie & Sons, and then you turned it over to the company? A. Yes, I want to correct that Van Derventer & Horn. It was originally Van Derventer & Horn, but it was this time Augustus Van Derventer alone. Mr. Horn wasn't in it at that time.

Q. I understood you to say in response to your counsel that you had had it particularly in mind to get the company on a basis so that it could always pay 10 per cent. dividends? A. Yes.

Q. Well, have you expressed this to anybody, that the company never should pay any more than 10 per cent? A. No, I have not. It has paid more than 10 per cent.

Q. I am talking now, have you recently ever made any such statement? A. No.

Mr. CORBIN—There is a witness that we might call as an expert on the value of services and he is a man that is quite busy. We would like to call him over, with the consent of our friends that we might put him on out of order.

Mr. HARDING—Yes, we should be very glad to.

Mr. HUMPHREYS—It will be admitted by counsel in this case that the holdings of stock in the Beattie Manufacturing Company at the incorporation of the company were as follows: Robert Beattie received 1,600 shares. Robert Beattie, Jr., received 700 shares. William Beattie received 700 shares; making the total number of shares issued 3,000. The shares of Robert Beattie, Sr., were divided by the terms of his will as follows: To Agnes Murray, deceased, daughter of Mary Murray who subsequently acquired this daughter's share, 25 shares; to Georgianna Booth, 25 shares; to Eva Yergerson, 25 shares; to Alexander Murray, 25 shares; to Robert Beattie, 100 shares; to William Beattie, 100 shares. Then to Robert Beattie, William Beattie, E. E. Gedney and William Dickson, trustees in trust as follows: For Mary Murray, for life, with remainder over, 300 shares; to Agnes Beattie, for life, with remainder over, 300 shares; for Josephine Gedney for life, with remainder over, 350 shares. and for Catherine Dickson for life, with remainder over, 350 shares. Making altogether 1,300 shares held in trust.

After the death of the elder Robert Beattie his sons became the owners of 800 shares each, namely, the 700 shares which each received at the incorporation of the company, and the 100 shares re-

ceived by the will of their father. William Beattie, deceased, still owned 800 shares at the time of his death, which he left by the terms of his will as follows: To his son Charles G. Beattie, 2-9 of 800, or 177 7-9 shares; to his son Robert H. Beattie, 2-9 of 800 shares, or 1777-9 shares. Then to Robert Beattie and Emma Beattie, the testator's widow, in trust as follows: For his widow Emma G., 1-3 of 800 shares, or 266 2-3 shares; and in trust to his daughter Madeline, 2-9 of 800 shares or 177 7-9 shares; making the total shares so held in trust 444 4-9 shares.

The present holdings of stock are as follows: Mary Murray, 25 shares; Alexander Murray, 25 shares; Eva Yergerson, 25 shares; Georgianna Booth, 25 shares; Robert H. Beattie, son of William, 177 7-9 shares; Robert Beattie, E. E. Gedney and William Dickson, trustees, 1,300 shares; Robert Beattie, 751 7-9 shares; William H. Beattie, 200 shares; Robert Beattie, Jr., 25 shares; William Dickson, one share. Robert Beattie and Emma G. Beattie, trustees estate of William Beattie, 266 6-9, trustees of same estate for the benefit of Madeline, 177 7-9.

WILLIAM H. BEATTIE, sworn for the complainants, testifies as follows:—

Direct examination by Mr. Harding.

Q. You are the secretary and treasurer of the Beattie Manufacturing Company? A. Yes.

Q. I understand from your father that you are familiar with the bringing over of the books of R. Beattie & Sons to the company after the death of William Beattie, deceased? A. Yes, I brought them over, at least I took charge of it.

Q. Can you tell me what the books of R. Beattie & Sons were which was brought over? A. All the kinds of books?

Q. Tell me the different books that were brought over? A. Well, I didn't make a complete list, but as far as I recall there were the ledgers, I think these two ledgers we have here, and two cash books, several memorandum books, I don't know what those were; we never used them; and a number of stubs, bank books, pass-books, order blanks—well, in fact, the whole office outfit even to the desks.

Q. You were supposed to have brought over all of the books? A. Yes.

Q. There must have been sale books of the goods sold? A. There may have been. I don't recall just what the books were.

Q. What would be the book containing the entry of the sales? A. A sort of a memorandum book. Their system of bookkeeping was rather crude.

Q. Well, as near as you were subpoened to produce these books, what books have you found? A. Why, we found the two ledgers, and we have two cash books which our counsel advised not to bring all of them until he found how far the Court would allow these books.

Q. So you have two cash books that are not produced to-day? A. Yes.

Q. Have you any check books or stubs? A. No, about two years ago when we built our vault, we sorted them out. I think we burned them.

Q. What years do these cash books cover that you

have not produced? A. I think about the same period these ledgers cover.

Q. Where did you find these books that you did find? A. Recently, you mean, in looking for them?

Q. Where did you find these books which you produce? A. We found them lying around the office. I believe they were in the vault.

Q. Were they not all placed together when they came over together in 1899? A. No.

Q. Any use of them made since 1899? A. I think the only use we made of them was to see how they agreed with our accounts. We took off the accounts and collected them, the accounts that were due the company.

Q. How carefully have you looked to produce all the rest of the books or to find the rest of them? A. Our space in which the books might be kept is limited, but we spent about an hour or a hour and a half looking through this limited space.

Q. Is there any other place to look, where you might find the rest of them? A. I don't think so.

Q. Can you give us any reason why any of them should be lost? A. I don't think they are lost. I think they are destroyed.

Q. Why should they be destroyed? A. Because they were in the way.

Q. Why weren't these destroyed? A. I couldn't tell you why these particular books were not destroyed.

Q. Will you produce the two cash books tomorrow, if necessary? A. We will, certainly.

By Mr. Humphreys.

Q. Have you got the minute book of The Beattie Manufacturing Company here? A. On the desk, sir.

Q. When does that book commence? A. With the formation of the company.

Q. Does it continue down to the present time? A. Present day, yes.

Mr. HUMPHREYS—I offer the book in evidence.

Mr. CORBIN—Including the by-laws?

THE WITNESS—Yes, I think they are in it.

The same is marked Exhibit C 15.

By Mr. Humphreys.

Q. That includes all the meetings of the stockholders and directors? A. Yes.

Q. You have received estimates from different parties for installing a steam plant at Little Falls? A. No, we have not exactly steam power. We have received estimates from one party for the establishment of a steam power in connection with an electric plant to distribute our power by electricity to the different rooms.

Q. How much power did they estimate to give you? A. That would be about 600 horse-power.

Q. And what was the price of it? A. I think about $35,000.

Q. So, if you purchased that in order to install that power, how many boilers? A. The boilers were not included in that estimate.

Q. What does it cover? A. It covers steam turbine engine, generator, and a series of motors around on the different main shafts, for a fair distribution of power.

Q. What would it cost to install 300 horse-power there? A. I don't know.

Q. About half—as much as six hundred? A. I think probably more than half. Yes, I don't think it runs in direct proportion.

Q. Are their any periods in the year when you are unable to run your mill on account of lack of water power? A. Yes.

Q. How long during the year does that occur, how often? A. Well, we are hampered more or less for power always at low water. I believe very recently we have been obliged to shut down. I was was not at home at the time. I think we were obliged to shut down in the afternoon, some power looms, in order to run the balance.

By the Court.

Q. When the water is very low doesn't the river yield the 300 horse-power? A. No, your Honor, it does not.

Q. How far below does it get? A. Well, sometimes it gets as much as twelve or fourteen inches below the top of the dam.

Q. It follows from that that the reservoir is not full? I don't exactly understand what you mean. A. We take our water directly from the river practically, not through a reservoir. Our penstocks are really pushed out into the river. We have what might be called a short reservoir of perhaps 20 or 25 feet, but that in turn draws right from the main pond.

Q. When the water is very low so as to make you short of your 300 horse-power do you have the entire flow of the river going through your turbines? A. All that the East Jersey Water Company don't take through their pumps.

Q. The East Jersey Water Company pump their water above your mill ? A. Yes.

Q. I asked you at low seasons do you have the whole flow of the river, all the residue going through your turbines ? A. All the residue, yes.

Q. None is arrested through a dam ? A. No.

By Mr. Humphreys.

Q. Were you in the habit of furnishing your stockholders at the annual meetings with statements of the company's affairs? A. Our stockholders? Recently at our meetings there has been read a statement of the estimated assets and liabilities.

Q. Have you the statement that was read to the stockholders at the meeting in 1905? A. I think I have a copy of it. I don't know whether I have the identical statement. I don't know whether Mr. Corbin has it or not. (Produces paper.)

Q. This is the statement that was read to the stockholders on December 1st, 1905? A. I believe it is, yes.

The same is offered in evidence and marked C 16.

Q. Who drew up this statement? A. Mr. Robert Beattie and Mr. Towey and myself.

Q. From what data did you draw it up? A. From the books.

Q. I see you have the first item real estate and machinery $450,000. How did you make that up? A. That is estimated by Robert Beattie.

Q. And do you know how much of that represented real estate and how much machinery? A. I couldn't tell you to-day.

Q. Did it include the water power? A. I think it included everything.

Q. Included the mortgage of $315,000? A. I think so, yes.

Q. Do you think now to-day that $450,000 is a fair value to place upon the real estate, machinery and water power and then $315,000 mortgage belonging to the Beattie Manufacturing Company?

A. I don't know whether it is or not. I haven't made any estimate.

Q. Then what is your opinion? A. I haven't any opinion on it.

Q. I suppose the merchandise is taken directly from the books, is it not? A. Yes, I think so.

Q. And the cash? A. Cash.

By the Court.

Q. About that first item, Mr. Beattie, in view of the fact that the company holds a mortgage from the East Jersey Water Company for $315,000, and also a contract which obliges the East Jersey Water Company to buy the remaining power for $200,000, do you think that possibly can be a correct item? A. Yes, I think so, at the present time. The $200,000 which the East Jersey Water Company are bound to pay at some future time cannot be counted at the present time as being in hand.

Q. Then you exclude that from consideration? Now, including the mortgage for $315,000, if you include that, do you think that $450,000 can possibly be an adequate valuation of all the real estate, the machinery of the company of every kind, including the water power—water rights? A. I think that perhaps it is a conservative estimate.

Q. That would leave then, taking the $315,000 mortgage off, $135,000 for all the machinery, exclusive of the water rights, of all the real estate and machinery? A. $135,000.

Q. That does not strike you as out of the way? A. For a going concern, yes; but for a standing concern that I would not be prepared to say. It is rather low for a going concern.

Q. Have you an idea, or can you give us an estimate, of what the value of the real estate and

machinery of the company is to-day, leaving the water power out of mind altogether? A. No, I should not like to do it off hand. I think it would require quite some thought.

Q. Do you think you could estimate its value as a going concern? A. To-day, at the present moment?

Q. Yes. A. No, I should not like to put a figure on it at all without considering it.

By Mr. Humphreys.

Q. I see, Mr. Beattie, that you carried the real estate on your books on November 30th, 1905, at a valuation of $188,618, and your machinery on the same day at a valuation of $132,660, and I understand that that represents the value of the machinery after you have written off every year what you thought it was depreciated in value. Now, do you think those are some indications of the value?

Mr. CORBIN—Has it been written off?

THE WITNESS—It has not been written off.

Q. It has been written off as you thought it proper? A. Not altogether as I thought it was proper.

Q. You wrote off a certain depreciation every year, and you didn't think it improper, did you? A. No, sir.

Q. Then this represents the machinery as you hold it on your books, after you made deductions from time to time for depreciation, as you thought proper? A. Well, yes, that is right.

Q. Do you think when you are giving your stockholders information as to the value of your real estate and machinery—why didn't you give them the figures from your books instead of figures

which had no reference to your books? A. First and foremost it is not my estimate.

Q. Why was it done by you and the others? A. Because it was thought to be fair, a fair statement, one that they perhaps could better understand than a written formal accountant's statement.

Q. This statement does not give the stockholders any information as to the profits? A. I think it does, taking it year by year, it shows the profits.

Q. This particular statement of 1905 standing alone gives no information? A. Nothing.

Q. Will you produce the statement which you gave them in 1904? A. (Produces paper.)

Q. Was this also prepared by you and your father? A. Yes, by the same parties.

Offered in evidence and marked C 17.

Q. I see in this statement you also place the real estate and machinery at $450,000. Had you not purchased machinery between December 1st, 1904, and December 1st, 1905? A. I believe we had, yes.

Q. And why didn't you make any difference then in the two statements on account of that fact? A. Well, our old machinery—we didn't consider the matter, for the reason that our old machinery was becoming of very questionable value.

Q. Will you hand me any other statements, please, that you have in your possession, as presented to the stockholders at different meetings? A. (Produces papers.)

Mr. HUMPHREYS—These are statements for the years 1899, 1900, 1901, 1902 and 1903, and they are offered in evidence.

The same are marked as follows: 1899, C 18; 1900, C 19; 1901, C 20; 1902, C 21; 1903, C 22.

Q. Have you any explanation to make, how it is in every statement from the year 1899 to the year 1905, the only information you gave your stockholders as to the value of the real estate and machinery, was that it amounted in each case to $450,000? A. No explanation, no. We thought that was a fair estimate for it.

Q. Those figures were not taken from your books? A. Certainly not. Those figures were estimated.

Q. Will you indicate, please, from these statements how the stockholders were to learn what the profits were that were made in any year? A. (After figuring.) They would take the difference between the surplus of assets over liabilities and add the dividend to it. You understand this is an estimated statement.

Q. Taking the year 1905, as the basis of your calculation, the difference between the year 1904 and 1905, what were the assets in 1904, as you estimated them? A. According to that it is surplus over liabilities.

Q. No, what were the assets? A. The assets were $977,119.08.

Q. And what were the liabilities? A. The liabilities, $367,064.98.

Q. Then you mean if your liabilities, capital, accounts payable, and the dividends— A. Yes.

Q. Making what balance? A. Making a balance of $610,054.10.

Q. That is in 1904. What were the figures in 1905? A. 1905, $979,828.01.

Q. That was the assets? A. Yes, at least they are so figured there.

Q. What were the liabilities? A. The liabilities are $379,657.76.

Q. Making a balance of how much? A. Making a balance of $600,17[illegible].25.

Q. Now, then, how do you find out the profits from these two sets of figures? A. You do not from those two sets. There is apparently something wrong with them.

Q. What is wrong with them? A. Really I cannot tell you that without going into them.

Q. Could the stockholders have formed any idea from those statements as to what the profits were in 1904? A. I don't believe they could from those two, no.

By the Court.

Q. What is the list you refer to? A. 1904 and 1905.

By Mr Humphreys.

Q. Can you show from the year 1903 and 1904 how the stockholders could have arrived at profits? A. No, I think perhaps if you would call Mr. Towey's attention to that when he goes on the stand he perhaps can explain it. I cannot do it at the present moment. There is evidently something wrong about these figures.

Q. What became of these lots in Astoria? I understand you know all about these transactions? A. Yes.

Q. Will you please tell the Court what the transaction was for the sale of these lots? A. The lots were sold to a party in New York City.

Q. How many lots were there? A. Ninety-four lots, I think.

Q. And were they all sold? A. All sold, yes.

Q. And who purchased them? A. Well, the contract for sale was made with the Webster Realty Company, I think they called themselves.

Q. Have you got the contract for sale? A. No.

Q. How much were they to pay for them? A. $45,000.

Q. And how was it to be paid? A. I think $2,500 on the signing of the contract to sell, $7,500 to be paid on the signing of the deed and the passing of the title, and $35,000 on bond and mortgage.

Q. Has the deed passed yet? A. The deal is probably completed at the present time, that is, the title has passed.

Q. What was the amount of the debt that you carried that property to secure? A. Well, it was about $40,000, but I am not prepared to state the exact figures. They will be found on the books.

Q. Now, as I understand it, that was a debt that Robert Beattie & Sons owed to the Beattie Manufacturing Company? A. That was an account that came with Robert Beattie & Sons' books.

Q. It was a debt that was due in the first place, to Robert Beattie & Sons from an outside firm? A. I cannot speak positively about that. I am not personally familiar with the business of Robert Beattie & Sons.

Q. But you are familiar with this sale? A. With this sale entirely, yes.

Q. And that was all the cash that was to be received for that property? A. That is all the cash, yes.

By Mr. Harding.

Q. I understand that there are accounts, sales-books—rendered from Robert Beattie & Sons to the company—account sales. A. Why, they rendered account sales monthly, I think.

Q. I just understood from your father that they are in the office? A. There may be a few of them. There is no complete record of the sales in that way.

We have a small bunch of them, of what they called account sales.

Q. We would like to examine these also, whatever you have You have no objection to that, have you? A. None whatever.

Q. Have you some of the salesbooks, the salesbooks kept there at the store by the firm? A. I don't think we have. If we have we will bring them. We will bring all we have.

Q. We would like to examine them? A. We will bring all we have.

Mr. HUMPHREYS—I would like to offer the stockbook in evidence also.

THE WITNESS—There are the old and the new book.

Mr. HUMPHREYS—Both of them, beginning with certificate One.

The same is marked Exhibit C 23.

New stock book beginning with certificate No. 1 to William Beattie, marked Exhibit C 24.

Cross-examination by Mr. Corbin.

Q. This item of $450,000 for plant in the statement was carried right at the same figure during all these years was it, from 1899? A. Yes.

Q. So that the increases shown were the increases in the other items? A. Increases in cash and in accounts receivable, etc.

Q. Working capital? A. Yes.

Q. And in the funds available for dividends? A. Yes.

Q. If you were to build a steam plant there you would need in addition to the engines, a boiler house, would you not? A. Yes.

Q. And coal plant? A. Coal plant.

Q. In connection with the engine? A. Yes.

Mr. CORBIN—If there is no objection, I will go right on and make him my witness.

No objection.

By Mr. Corbin.

Q. What is your age? A. Forty-two.

Q. How long have you been in the carpet business? A. About twenty-six years.

Q. What was your work when you began as a boy of sixteen? A. Why, I began as a box boy putting in boxes, drum, printing.

Q. Paid by piece work? A. Yes, on piece work.

Q. Then what next? A. I worked at that for some time and then I was made a printer. That is the next.

Q. On wages? A. On piece work.

Q. For how long? A. Well, perhaps a year or more.

Q. What next? A. Then I was second foreman in the room for a year perhaps.

Q. In what room? A. In the printing room.

Q. Where next? A. I went into the weave shop and worked there as a weaver for some months.

Q. As a weaver on a loom? A. Yes.

Q. What was that, piece work? A. Yes.

Q. You were paid the same as the other workmen? A. Just the same; yes.

Q. Where did you go then? A. I went into the worsted and carding room.

Q. How long were you there? A. Well, perhaps six or eight months, or thereabouts.

Q. Was that the same method of payment? A. No, I was paid wages then.

Q. The same as the other employees? A. The same as the other employees.

Q. Where did you go then? A. Then I went to the setting room.

Q. What is that work? A. That is where the patterns are put together; the different threads are brought together to form the pattern.

Q. How did you work there? A. The same as the others.

Q. You were under the charge of the foreman? A. Yes.

Q. Working for wages? A. Yes.

Q. Then what next? A. Then I became Mr. Clark's assistant three or four years.

Q. Mr. Clark was the superintendent? A. Mr. Clark was the superintendent; yes.

Q. And was that your position at the time the company was formed? A. At the time the company was formed; the corporation.

Q. Yes? A. No; I think I was a printer when the corporation was formed.

Q. So you continued to work for the corporation? A. Yes.

Q. But you were then Mr. Clark's assistant; and then what next? A. I presume I gradually outgrew Mr. Clark and became his superior officer.

Q. You were made secretary, it appears, in 1883? A. Yes.

Q. When were you made a director? A. In 1887.

Q. On the death of William Beattie, in 1899, you became Treasurer? A. Yes.

Q. After you left this place of assistant to Mr. Clark, what were your wages? A. Well, in 1899?

Q. I think you might prove the earlier figures? A. It went from $1,500 a year gradually up to, I think, $3,500.

Q. When you were made Treasurer of the company what did you get? A. I was then getting $3,500 a year.

Q. And what was the salary made? A. My salary for the first year I was Treasurer was $6,000.

Q. And what after that? A. $8,500.

Q. And that was the most you ever got, was it? A. Yes.

Q. As Secretary you knew what the salaries fixed were? A. Yes.

Q. They were fixed in 1887, the minutes show, by resolution; when were they reduced? A. They were reduced in 1894.

Q. How did they come to be reduced? A. They were reduced by order of the President. There was a general reduction of fifteen per cent. in the factory, President and Treasurer.

Q. Since 1899, what have you been doing in the mill? A. Well, I have been in the mill overseeing the work.

Q. What hours do you go there? A. Varying from quarter to seven to half past seven in the morning and staying until six o'clock at night.

By the Court.

Q. Do you give your whole time to this work? A. Practically my whole time.

Q. Have you any other business? A. I occasionally have to go to Auburn, New York, for a day; that takes me one day; perhaps once a month, or once in six weeks.

Q. Is that visit connected with the business? A. It relates to something else; perhaps six days a year.

By Mr. Corbin.

Q. You are then the general manager of the business? A. Yes.

Q. To whom do you give orders? A. To the overseers of the various departments.

Q. How many departments are there? A. There are probably ten or twelve without stopping to count them.

Q. What do you have to do with the selling? A. I supervise it in a general way.

Q. How about the buying? A. I look over the buying of everything excepting the wool.

Q. Who looks after the bills? A. I pay the bills and sign the checks; look over the accounts.

Q. The matter of determining the designs you usually make, and it is an important matter, isn't it? A. Yes.

Q. Who settles any question? A. The President, Robert Beattie, settles that, as a rule.

Q. And who passes on the credits? A. Well, I pass on the credits subject to the President's decisions in matters of doubt.

Q. Who has got the final responsibility? A. He has the final responsibility.

Q. And what is his work in the mill? A. Well, his work is largely given to detail in the mill.

Q. He goes about in the different departments? A. Goes about in the different departments.

By the Court.

Q. How many men are there in your employ? A. In the neighborhood of four hundred.

By Mr. Corbin.

Q. How many did you have when the company was formed? A. On carpets?

Q. In your employ? A. The entire number in our employ was 275.

Q. And how many of those on carpets? A. 178 on carpets.

Q. What was the history of the employment of men? Did the number increase? A. Oh, yes; the number has increased.

Q. How was it in 1893, when there was a decrease? A. In 1893, when our plush business and felt business dropped out, naturally there was a decrease in the number of hands, but we have grown from that time to the present on carpets alone.

Q. So now you have more than ever? A. Yes.

Q. When matters of any doubt arise, does the President have the final decision? A. He has the final decision in all matters of doubt.

Q. And is he consulted continually about work in the mill? A. Yes.

By the Court.

Q. What is the next salary after the salary of the President and Treasurer of $8,500? A. The next salaried officer?

Q. Yes. A. There is no salaried officer.

Q. What employee or agent gets the highest salary below these two? A. Our agent in New York.

Q. And what is his business? What are his duties? A. His duties are to look after the selling of the goods.

Q. Has he anything to do with the manufacturing in Little Falls? A. No, sir.

Q. What do you pay him? A. Three thousand dollars it costs us; I think his salary is six thousand and that is divided in half.

Q. And what employee comes next? A. I think Robert Beattie, Jr., comes next.

Q. What does he do? A. He assists in the office looking after the pay-roll business.

Q. He is a clerk in the office, is he? A. Not entirely; no, sir.

Q. What else does he do besides clerk in the of-

fice? A He has outside work—just a moment—he looks after the houses outside, gets necessary help for us; looks after that and goes around the different rooms looking up waste questions, etc.

Q. And what is his compensation? A. Two thousand dollars a year.

Q. And is he an officer also? A. No.

Q. Stockholder? A. Stockholder; yes.

Q. But not an officer or director? A. Not an officer or director.

Q. What employee comes next? A. I think our head bookkeeper comes next.

Q. What compensation does he get? A. Just a moment; I think our color mixer comes next.

Q. What compensation does he get? A. I think he gets $40 a week.

Q. That is quite a responsible and delicate position, isn't it; it requires special skill? A. Well, more or less so; not as much as it was formerly.

Q. Who comes next? A. I think our head bookkeeper comes next.

Q. And what is his compensation? A. $1,500 a year.

Q. And the next? A. I really cannot go much further without looking it up.

Q. Can you tell how much further you go before you strike the ordinary wage earner? A. We strike the superintendents; I mean the heads of the different rooms just about that point.

Q. What do you pay them? A. $27.50 a week.

Q. There is no officer or agent of the corporation, then, connected with the works at Little Falls—the manufacturing end of the business—who gets above $1,500 a year, excepting yourself and Mr. Robert Beattie and Mr. Robert Beattie, Jr. A. No others, I think. Possibly, yes, I think the color mixer gets above $1,500.

Q. Well, leaving him out? A. Leaving him out; that is entirely subject to memory; I may recall somebody later.

Q. Can you say whether there is any high priced agent or employee there? A. I don't think there is.

Q. Would you know if there was? A. I would know, yes, but I might not recall him at the present moment. I don't think there is anyone else.

Q. Is there a man, possibly, who may receive a salary over $2,000 that you may recall? A. No, sir; there is no one receiving that salary.

By Mr. Corbin.

Q. How long has Robert Beattie, Jr., been at work in the mill? A. I should say seven or eight years; nine years, perhaps.

Q. Did he begin in the actual work? A. Yes, he did.

Q. He has been thrown in the details of the business? A. Yes.

Q. In the absence of yourself and the president is he competent to take charge there? A. Yes.

Q. He has done that work? A. Yes.

Q. You have had him in the direction of things there? A. Yes.

Q. Now, in 1882, what mills did you have there? A. In 1882 we had three buildings, I think; the stone building—what we call the old white mill.

Q. That is the oldest of all? A. The oldest of all; and the brick building, called the felt mill. I believe there was an old frame storehouse that had formerly been a hand loom shop.

Q. And then did you have a weaving shop? A. Well, that was built later.

Q. How large was that? A. Sixty-five by one hundred and seventy-two, I think.

Q. One story brick? A. One story brick, with power.

Q. What else did you put in there? A. We put in a finishing room and storehouse.

Q. Dimensions? A. Same size, 65 by 172.

Q. What else; go on and give the list? A. Another brick building for weaving, 27 by 172; a three story worsted mill of brick, 65 by 150. We also re-built the old white mill in brick; we built a storehouse—one story—about 65 by 150; a two story room for scouring wool, all 20 by 80, and a lot of tenement houses.

Q. How many? A. Oh, twenty or more.

Q. Did you extend any other buildings? A. We extended the extension to the stone mill; we raised two stories.

Q. How large? A. 50 by 130.

Q. Do you need any more buildings besides these for a steam plant? A. We shall need, from the present outlook, a new drum-room for printing machines.

Q. How about your office? A. Well, now, our office is large enough for the present.

Q. Now, have you put in new water-wheels? A. Since 1882?

Q. Yes A. I think we have about doubled our power since then.

Q. This statement that we have had in use here, prepared under your direction; this is prepared from the books? A. Yes.

Mr. CORBIN—I suppose this had better be offered in evidence.

THE COURT—What is this paper?

Mr. CORBIN—Statement showing the total sales each year—sales of carpets and

rugs each year, net earnings, dividends, interest from the East Jersey Water Company, cash on hand November 30th, merchandise, accounts receivable, accounts payable, amounts of dividends in dollars, and the balance which would represent working capital, the balance between the cash, merchandise and accounts receivable, less dividends and accounts payable, which balance would be the item which the expert has called working capital.

Mr. HARDING—The difficulty about that is that Mr. Corbin examined his witness about the first three items, total sales, net earnings and carpets, and as I went along I didn't find any difference between this and our statement; but all the rest of it here with reference to cash and merchandise, there has been nothing said about.

THE COURT—Do I understand that this is a statement prepared by the bookkeeper from the books?

Mr. CORBIN—Yes.

Mr. HARDING—I don't wish to stand in the way, but I don't know anything about it.

Mr. CORBIN—I went over it with the expert and found that the figures did not vary.

THE COURT—I would suggest that you put the bookkeeper on and let it be proved and let the Court have a copy, and then the examination of the witness would be intelligible.

By Mr. Corbin.

Q. What did you have to do with making this up? A. It was actually done by Mr. Towey.

Q. You gave him directions? A. Yes.

Mr. CORBIN—Are you willing to admit this paper as a statement from the books?

Mr. HARDING—No, I cannot say that.

MARTIN TOWEY, sworn for the defendants, testified as follows:

Direct examination by Mr. Corbin.

Q. Are you a bookkeeper for the Beattie Manufacturing Company? A. Yes.

Q. How long have you been so? A. About two years and four months or more.

Q. Have you made up a statement since the formation of the company, showing the sales, net earnings, etc.? A. Yes.

Q. Have you the statement there? A. Yes.

Q. Where did you get these figures from? A. From the ledgers and cash books, etc.

Q. And all these items are obtained from the accounts kept by the company? A. Yes.

Q. And are these totals correct, according to the books? A. Yes

Q. Now, the last figure on that list is called "balance." What is that the balance of? How do you obtain the balance, by taking what items? A. That represents the difference—

Q. First you add together what items? A. Add the cash, merchandise and accounts receivable.

Q. And deduct from it what? A. Accounts payable and dividends.

Q. Then the balance is practically working capital, isn't it? A. Yes.

Q. It is made up of the balance of accounts receivable, merchandise and cash not required for dividends or payment of debts? A. Yes.

Mr. CORBIN—I will offer that in evidence.

Mr. HUMPHREYS—It corresponds with page three of Mr. Peterson's report. There are some minor differences.

The same is marked Exhibit D 1.

WILLIAM H. BEATTIE, recalled for further examination, testifies as follows:

Direct examination continued by Mr. Corbin.

Q. When did the company carry on its most profitable business? A. During the year 1887.

Q. Along about that period did it continue? A. Yes, it continued along for a period of three or four years.

Q. That was in what kind of manufacture, what was the profit from? A. Well, the profit then was largely from plush and felt.

Q. Now, in 1893, what was the course of trade? A. Well, there was a great falling off in business in 1893.

Q. And that continued. Did it ever revive? A. Trade was poor for several years.

Q. What new line of business did you go into? A. Well, we went into rugs about three years ago, three or four, I mean—I am not quite sure as to the exact time.

Q. That was a definite policy that you determined to make them? A. Yes.

Q. How does that compare with carpet business for cost of manufacture? A. Well, it takes more capital and more machinery.

WILLIAM H. BEATTIE, recalled—Direct

Q. What has been the progress of your business in rugs? A. Well, we have grown steadily in rugs from that time.

Q. The president gave the figures. How does this present year compare with last year? A. This is the best rug year we have had.

Q. How much do you suppose you will make this year? A. You mean how much profits?

Q. What will your sales amount to? A. I suppose nearly $200,000, I should think.

Q. That is an increase on last year? A. Yes.

Q. Would your business be profitable without the rugs? A. No, I think not, at the present time.

By the Court.

Q. Were you giving the total sales of rugs—when you gave that figure $200,000, or profit on rugs? A. No, I should think our total sales of rugs would amount to that, perhaps more. That is only an estimate.

By Mr. Corbin.

Q. What changes have there been in the price of materials since you began, during your experience in the business? A. Wool is very much higher than it has ever been within my recollection.

Q. How about other products, or other materials? A. Labor is higher, and cotton and jute are both higher; cotton is not at its higher point, but it is very high. Jute is the highest I have ever seen it.

Q. Wool you say is very much higher? A. Very much higher, yes.

Q. What is your experience as to the need of capital in the purchase of material, of wool, for instance? How do you buy? Do you buy as you need it? A. No, we buy when we can, when we can find it.

Q. Do you buy by the cargo, or how do you buy? A. In any quantity up to a year's supply.

Q. Why not wait until you need it before buying? A. We couldn't get any if we did that, probably. We would run the chances of not getting it. We are obliged to buy it when we see it.

Q. How large a stock do you lay in? A. In some cases we buy a year ahead.

By the Court.

Q. Wool? A. Wools, yes.

By Mr. Corbin.

Q. Was that formerly necessary? A. Oh, no, we used to be able to go in the market and buy wool in any quantity you wanted it at any time.

Q. You can no longer do that? A. No, sir.

By the Court.

Q. Why not? A. Owing largely, I think, to the shortage of wool. It is very scarce.

Q. Is all your raw material imported wool? A. Imported wools, yes.

By Mr. Corbin.

Q. How about your cash balance? Is there any uniformity about the amount? A. No, they run widely different.

Q. What causes them to vary? A. Well, in our business we begin charging goods out about, for instance, the first of May.

Q. You begin to sell them? A. We begin to sell them then, and we date those goods the first of September.

Q. You get your pay then? A. Yes, four off ten days, September first, or four months' note; and we charge out a certain amount in dollars and cents

every month and draw on our cash in bank until our next pay day. Of course, we do have some money coming in between, but it is small.

Q. Now, the amount of sales at $50,000 a month, you would then have credits out for four months ahead, $200,000? A. Yes, they would average perhaps about four months, that is, as between May first and September first, you would average that at two months and on the payments there are about half of them discounted, perhaps. You would average that at two months. There would be about four months we carry on our books.

Q. The larger business the larger capital you would carry on your books? A. Yes.

Mr. HUMPHREYS—We object to Mr. Corbin leading the witness.

THE COURT—Yes, the question is not proper.

Q. Of course, the expenses are running on daily? A. Yes.

Q. But you get your money back at these dates? A. Yes, on or about these dates.

Q. Then your cash is lowest when? A. The eighth, 9th or 10th of September, or March.

Q. How low did it get last September first. A. September first, we had cash, $93,257.98.

Q. How much is it now? A. The present balance is $170,339.76.

Q. Did you get last summer as much carpet trade as you looked for? A. No, we did not.

Q. Suppose you had as much as you contemplated, would you have had that balance? A. No, we would not have had this $93,000.

Q. It would have made a substantial difference? A. Yes.

Q. When you require money for your expendi-

tures, from what bank did you draw it? From what accounts? A. We have two bank accounts, two current bank accounts, one in Paterson and one in New York.

Q. Then what trust company accounts? A. Well, we have the Colonial Trust Company account, Brown Brothers; I think that is all.

Q. There is some shown on the expert's statement. Those you have discontinued—the others? A. Yes; we have closed those out.

Q. Those are interest bearing accounts, are they? A. Yes.

Q. Do you draw on them? A. Well, we have drawn on Brown Brothers; I don't think we have drawn any yet on the Colonial Trust.

Q. As you need money you draw it out? A. Yes.

Q. Where do you put it in the bank? A. In our current bank account.

By the Court.

Q. Did the amount of cash which you stated is on hand September first—$90,000—include the money in the trust companies? A. Yes.

Q. Total amount? A. That is the total amount of cash we have.

By Mr. Corbin.

Q. All subject to cheque. A. Yes.

Q. You could draw it all out in a day if you chose to? A. Yes.

Q. But to save that interest you don't disturb that account? A. We don't disturb that; we leave that until we need it.

Q. I don't think I asked you about the cost of your future steam plant. Oh, yes, I think I ques-

tioned you about that. A. Some one questioned me about it.

By the Court.

Q. I will ask you a question about that. I think you testified that a new power plant sufficient to provide six hundred horse-power would cost about $35,000. A. Yes.

Q. And then Mr. Corbin asked you about the necessity of having the boiler plant and a coal plant? A. Yes.

Q. Appliances for running the power plant; did the $ 5,000 include those items? A. No; that don't include the boiler plant; that was simply the turbine engine and a generator, and a certain number of motors.

Q. Can you show here, from any estimate that you have made, about what the total expense would be of installing this new power plant which would supply six hundred horse-power, distributed as you describe in different places by motors, with the appurtenances of every kind, coal sheds, and everything else necessary for the operation of the plant? A. I should think $45,000 would do it.

By Mr. Corbin.

Q. Is there any increase needed in the rug plant? A. Yes.

Q. What? A. Well, we must enlarge it.

Q. Need a new building? A. It will require new buildings; yes.

Q. And new machinery. A. New machinery.

Q. What will that cost to keep up the rug plant? A. Well, in the neighborhood of $30,000 to $35,000, I should think.

Q. Can you give us a statement of the output of the business for the last three years showing sep-

arately carpets and rugs in round numbers? A. I think I have it here (producing memorandum). In 1903, 237,548 yards of three-shoot carpet, value, $272,198.98; two-shoot carpet, 199,371 1/2 yards, value $150,511.17; rugs, $37,700.75; 1904, three-shoot, 129,582 3/4 yards of three-shoot, value $132,-775.07; two-shoot, 108,200 yards, value, $83,304.22; rugs, $77,877.19; 1905, three-shoot, 164,327 yards, value, $175, 468.60; two-shoot, 88,242 yards, value, $73,695.55; rugs, $152,889.01.

Q. That indicates a marked falling off in carpets and increase in rugs? A. It indicates—yes, a falling off of carpets and an increase in rugs.

By the Court.

Q. What did you say was the total of the sales in 1905? A. In 1905 the total of all three of these items?

Q. Yes, the two kinds of carpets and the rugs? A. $402,053.16.

Q. Well, on this statement, made by your bookkeeper, the total sales are set down for 1905 at $482,977.53? A. Well, in addition to carpets, I think these figures are made up—in addition to carpets we sell noils, a by-product of our worsted. We have also sold some worsted in the meantime which would come in.

Q. I wish you would take this statement, Mr. Beattie (D 1) and explain this apparent discrepancy. There seems to be two columns here at the left—the first two columns—and the first one is entitled "total sales" and the second "sales of carpets, etc., rugs." Now, where the figure in the first column differs from the figure in the second column, is it caused by these other things that you have mentioned that you sold? A. Let me explain. This, in the first place, is only made to show the rise—

the increase in the rug plant. The figures were taken off hurriedly and this, perhaps, is not absolutely correct.

Q. What was the total that you made? A. The total that I made here was $402,053.16.

Q. That was the total of the three items for 1905? A. 1905, yes.

Q. Well, how do you explain this figure, $482,977.53 in the column entitled "sales of carpets, etc., rugs, 1905?" A. Carpets and rugs, yes. I I don't know anything to say that my figures are absolutely correct here. This was taken off simply to show the comparative increase in the rug business.

Q. Can your bookkeeper prepare another statement corresponding with this D 1, which would show how these sales are divided between carpets and rugs and other things? A. Yes; he could do that.

By Mr. Corbin.

Q. This figure about the sale of carpets and rugs includes worsted and noils, does it not? A. I think very probably it does.

Q. The total sales are no more than the sales under the head of carpets and rugs? A. Apparently, according to that statement, the bookkeeper has given only the carpets and rugs.

Q. It says carpets and so forth, and that included the rugs, and so I put the rugs in. A. Yes, it included the rugs.

THE COURT—Is the correct title of this statement "sales of carpets and rugs?"

Mr. CORBIN—Yes.

By the Court.

Q. Are the net earnings in the third column of Exhibit D 1 the earnings, the profits from the sales of carpets and rugs alone, or are they the entire net earnings on the whole business of the corporation? A. Excepting where it is marked East Jersey interest, it is the entire earnings.

Q. So we take the last item in the column for the year 1905, the total net profits of the entire business of the company of every kind for that year, leaving out the interest paid from the East Jersey Water Company, was $22,134.43? A. Yes.

Q. That includes the gains on sales of carpets, rugs, by-products and everything else? A. Yes, that includes everything.

Q. And if you made a sale of a piece of land would any part of the proceeds go into that statement of profits? A. No, sir; I should think not. I should think it would go to real estate account.

MR. CORBIN—If there is no objection by counsel, I would like to call Mr. Collier.

FREDERICK J. COLLIER, sworn for the defendants, testified as follows:

Direct examination by Mr. Corbin.

Q. You live in New York? A. No, sir; I live in Hudson, New York?

Q. Are you connected with any carpet manufactory? A. With two.

Q. How long have you been engaged with them? A. I have been connected with the Ferth Carpet Company at Ferth Cliff, Orange County, New York, for about twenty years—nineteen years. I organized the company as the attorney for the Ferths, Englishmen who established a branch at

Ferth Cliff; and for the past four years with the American Axminster Industry at Auburn, New York. I might add that I have acted, and am acting, as the attorney for both of those companies and am a director in them.

Q. You have been a director in those companies for some time? A. Yes, ever since they have been established.

Q. And you have been familiar with the salaries paid in that business? A. Yes.

Q. You know something about the Beattie Manufacturing Company? A. In a very general way only.

Q. How about the magnitude of the sales of your companies as compared with them? They sell about half a million a year? A. Well, the Ferth Carpet Company sells now about a million and a half a year, I should say, but the growth has been gradual from probably $250,000 a year up to the present amount, a million and a half, in the fifteen to twenty years it has been established.

Q. And the other company? A. The other company has only been established about four years, and I really could not tell you now, without referring to the books, as to the total sales, but probably not over $200,000, if that.

Q. From your experience and knowledge of this line of business, what would be, in your judgment, a fair salary for the president, acting as general manager of the business, and for the treasurer, also acting as active manager of the business, both being experienced in the details of the manufacture, for a company like the Beattie Company, with sales of half a million or upwards per year?

Mr. HARDING—We object on the ground that this witness has first testified that he

only knew about the affairs of the Beattie Company in a general way. He has shown that he is merely a director of another company, without showing that he has intimate knowledge of it; and moreover, the mere fact that he is in a carpet concern does not show that he has any knowledge of the services that are rendered to the Beattie Company.

Mr. CORBIN—I have stated what these are. That is an assumption.

THE COURT—As I understand the question is substantially this: What, in your judgment and knowledge of the carpet manufacturing business, would be a fair salary for the services of the president who gives all his time to the management of the factory turning out all the goods in all departments, where the total product was about half a million dollars annually? Is that substantially the question?

Mr. CORBIN—Yes, assuming the president to be a man of experience and knowledge of the business.

THE COURT—He is not setting a price upon the services of Robert Beattie at Little Falls. He is only testifying generally as to the management of carpet companies.

Mr. HARDING—The difficulty about it is that he does not show any special knowledge of the business.

THE COURT—You might ask the witness a little further as to his knowledge of the salaries that are paid in that business.

By Mr. Corbin.

Q. You are familiar with the salaries that have been paid in that business? A. I am familiar with the salaries paid in the companies that I have mentioned, that I am connected with.

Mr. CORBIN—I don't see how we can go any further than that.

THE COURT—I will allow the question for what it is worth.

Question read to the witness.

THE WITNESS—Do I understand from that question that you wish me to give testimony as to the value of the services of all those who have charge of the business outside of the regular employees?

Q. That is the case. But what I specially call your attention to is the president, actually managing the business, spending his whole time in the factory, in the neighborhood of 400 employees, and the treasurer, who is also acting as active manager of the business, spending his whole time in the factory; and both of them looking after the purchase of goods, the orders to their workmen, and the sale of goods, and all the details of the business, the whole responsibility falling on these two. Practically, I believe they are the only salaried officers? A. Do I understand you to mean the salaries of the two.

Q. Yes, you can put it that way, if you like, or separately? A. I should answer that question by saying that in my opinion, salaries aggregating from $20,000 to $25,000 would not be excessive, provided, of course, the business is being conducted successfully.

By the Court.

Q. You assume, I suppose, in your answer, that these two officials do all the work which is generally done by high priced employees and that there is no agent or employee who receives more than the usual salary for clerical work or for wages? A. That is what I am assuming; does not include bookkeepers, I mean, and the other men in the office, at all, of course.

Cross-examination by Mr. Harding.

Q. You are an attorney and counsellor at law, Mr. Collier, of the State of New York? A. Yes.

Q. And I suppose you are actively engaged in the practice of your profession? A. Yes.

Q. And you happen to be a director of this company in which you are interested? A. Yes.

Q. And you are familiar with these two companies? A. Yes.

Q. Not particularly familiar with any other carpet producers about the country, are you? A. No, sir.

Q. Have you any idea about how many manufactories of carpets and rugs there are in this country? A. Only from hearsay.

Q. And your idea of the salary of an officer, I think, agrees with the opinions of most of us about it, but it depends how successfully they are in the business, and so your estimate is based in this case upon that assumption? A. Yes, certainly.

By the Court.

Q. What does the management of the Ferth Company cost, the management that corresponds with the management which you have put a price upon? A. Oh, it costs at least twice that.

Q. Does the president there take an active part as a manager? A. Yes.

Q. What salary does he get as compensation for his services as president and as general manager?

THE WITNESS—If the Court please, I hardly am justified in answering in detail that question. If necessary, I would have to plead my right as an attorney.

THE COURT—You don't want to disclose it for business reasons?

THE WITNESS—No, because they are Englishmen.

Q. Well, go further, can you give us the total expense of the management of the companies, including the salaries of the president and secretary and treasurer, and including everybody until you strike the bookkeepers and foremen and wage-earners? A. Well, I should say that as far as the Ferth Carpet Company is concerned, it would be very near $50,000.

Q. And how much in the other case? A. Well, as I said a few moments ago, it is a new industry, and in fact, they are considering the advisability of reorganizing and it has not been on a basis where large salaries could very well be paid, although contracts were made at the beginning based upon the earnings somewhat, but they have not materialized, and so the salaries received have not been as much as we anticipated. I might say, for the information of the Court, that the principle employed by the Ferths, the payment of salaries, which they endeavor to carry out in the case of the American Axminster Industry to which I referred, and which is also being carried out by the Mackintosh Toffee Company, also an English concern in this country,

is to give the employees a fair salary, and then a percentage upon the profits, so as to encourage them to make the business as large and profitable as possible, and that really is the system in the companies that I represent in this country.

By Mr. Harding.

Q. Could you tell us, Mr. Collier, about the percentage of net profits on the investment of this Ferth Company, at present? A. Well, I don't wish to disclose the net profits of the Ferth Carpet Company in Court. It would hardly be just, except to state, as I have here, that including the percentage paid on the business, the total salaries aggregate $50,000.

Q. I understand then you have the knowledge but you do not wish to disclose it on account of your professional situation? A. Professional situation entirely.

Q. But you have given to the Court an estimate of the value of salaries out of particular business? A. Yes.

Q. And you have based it largely upon your knowledge of the Ferth Company. A. Yes.

Q. And you have gone further and have said that you have based it upon the idea of moneys earned? A. Yes.

Q. Now, I would like to know, after you have make that statement, I would like to have you disclose to us what the earnings on the net investment of the Ferth Company has been? A. The net percentage paid in salaries?

Q. No, the earnings of the company? A. I decline to answer.

By the Court.

Q. Have you any objection to disclosing what

dividends have been paid? Dividends are not a private matter? A. They are so considered by them. This is a close corporation, the capital stock being held almost entirely by these gentlemen abroad.

By Mr. Harding.

Q. Without regard to the admission of the price, of the amount of the dividend?

THE COURT—The failure of the witness to make these statements, whatever may be the reasons, of course, affects the value of his testimony.

MR. HARDING—He ought to go farther.

THE COURT—I won't advise the witness to answer.

By Mr. Harding.

Q. Let me ask you one thing, if you haven't any objection to stating it: Are you willing to state whether or no this company is not earning more than 20 per cent. a year on its investment? A. I do not wish to state that.

Q. You will not swear that it is not, from your knowledge earning more than 20 per cent. a year on its investment? A. I will not swear that it is or that it is not.

Q. Are any of the matters of the Beattie Company in anywise connected with this firm to which you have referred, the Ferth Company? A. No, sir; they are not interested in it in any way directly or indirectly.

Q. Or in the other company, the Axminster Company? A. In the Axminster Company they are.

Q. Where is that? A. At Auburn, New York.

Q. In what way are they connected with it? A. They are stockholders and directors.

Q. What do they manufacture? A. Rugs—Axminster rugs.

Q. Similar to those manufactured by the Beattie Company? A. Entirely different.

Q. Are both of the Beatties directors in this new company? A. Yes.

Q. Do they hold any office? A. Yes.

Q. What office? A. Mr. Robert Beattie is Vice-President and Mr. William H. Beattie the Treasurer.

Q. How often does this company have its meetings? A. Once a month.

Q. Do either of the Messrs. Beattie have anything to do with the manufacturing of the company, or the management of it in any way? A. Only in a general way, as I understand it.

Q. What is the general way? A. I mean by that, advising, of course, they are a long distance from that plant; they are not there every day, of course, or every week, to practically superintend.

Q. Where is that company located? A. Auburn, New York.

By the Court.

Q. Who is the superintendent in charge? A. Mr. Goodman is the superintendent.

By Mr. Harding.

Q. Do you know what the product of that company is, this last year? A. No, I do not.

Q. Do you know what Mr. Goodman's salary is? A. No, I do not, no.

Q. Any idea what it is? A. I have a general idea.

Q. Give us your general idea? A. I am under the impression—but this is only an impression—that it was $15 .00 a month and a percentage on the net profits.

Q. Who is the President of this company? A. Mr. A. F. Ferth.

Q. What duties has he to perform? A. That is, he lives in England; he is the same Mr. Ferth that is connected with the Ferth Carpet Company.

Q. Mr. Robert Beattie is Vice-President. A. Yes, but that is only within—it is three months that he has been elected Vice-President. The former Vice-President that had the matter in charge lived there at Auburn, a Mr. George H. Nye, and he resigned about three months ago.

Q. How long have the Beatties been connected with this company? A. Since its inception.

Q. When was that? A. Three or four years ago.

Q. Do you know what the capital stock of this company is? A. Yes, $100,000.

Q. Is their plant at Auburn? A. Yes.

Q. Did they take over any existing business when they were incorporated? A. No, sir.

Q. They built their building, did they? A. Bought one.

Mr. CORBIN—I object to this.

THE COURT—You are travelling far afield now.

Q. Can you tell us whether there are any other salaries of that company to any of the officers, excepting the salaries paid to the superintendent, $150.00 a month. A. Yes, at the time we organized the company, there were agreements as to salaries to Mr. Ferth—although directing it abroad, still having been in the carpet business all his life—

and his services being very valuable in that line—agreement as to the salary of Mr. Ferth, and agreement as to the salary of the Vice-President and the treasurer.

Q. What were the Vice-Presidents to receive? A. They were to receive, I think, four or five thousand dollars a year apiece. That was in starting the business.

Q. Has the present Vice-President received such a sum?

Mr. CORBIN—It seems to me that they cannot pry into the business of another company.

THE COURT—It has a bearing, I suppose.

Q. Is the Vice-President receiving any salary?

Mr. CORBIN—I object to that.

THE COURT—I allow it.

THE WITNESS—I don't know that he is.

NOON RECESS.

WILLIAM H. BEATTIE, recalled for further examination:

Direct examination (continued) by Mr. Corbin.

Q. It appears that there are held in trust some 1,300 shares, of which it is probable that some 230 shares will come to your father or his children. As director of the Beattie Manufacturing Company in voting upon the declaration of dividends, was your action controlled by the desire to swell the value of the remaindermen's interest in this trust stock? A. Not at all. We never considered anything as to the remaindermen; in fact, never thought of the value of the stock until this present bill was filed.

Q. Until the suggestion was made. A. Until it was made in this bill.

Cross-examination by Mr. Humphreys.

Q. How did the sales of the Beattie Manufacturing Company compare with the sales of the Ferth Company in magnitude? A. I am not familiar with the sales of the Ferth Carpet Company, sir.

Q. As I understand it, the combined companies do all the selling for both of these companies? A. Yes.

Q. And also for the Axminster Company? A. Yes.

Q. And the Beattie Manufacturing Company pays half the expense and the Ferth Company pays the other half? A. Yes.

Q. What does the Axminster Company pay? A. I think it is a three per cent. commission.

Q. For selling? A. Yes.

Q. Is that the usual commission for selling? A. There is no usual commission for selling that particular line because it is the only line of the kind made in this country.

Q. Do the combined companies guarantee the accounts of the Axminster Company? A. No; they guarantee nothing.

Q. If the Ferth Company's sales are more than $1,500,000 and the Beattie Company's sales less than $500,000 would it be equitable for them to divide the expense under these circumstances? A. Yes.

Q. Why? A. We should like to have one-half to say in the management of the selling company.

By the Court.

Q. Does the Beattie Manufacturing Company get

half of the three per cent. commission? A. Yes; that is divided.

Q Is that divided between corporations or the individuals? A. I presume it is credited on their books to the selling expense, so that one-half of it is really credited to the Beattie Company and one-half to the Ferth Company.

By Mr. Humphreys.

Q. Where does the commission that the combined companies earn upon the sales of the Axminster Company appear in their books—in what account? A. I cannot tell without reference to that account. We will have to refer that to the bookkeeper.

Q. I don't fully understand your explanation of how it would be beneficial to the Beattie Company to sell not only the Beattie Manufacturing Company's goods but also the Ferth Company's goods, if they each divide the expense, if the sales of the Ferth Company are three times as much as those of the Beattie Manufacturing Company? A. Well, the arrangement was made when they were about equal.

Q. It was a fair arrangement at that time? A. It was a fair arrangement; yes.

Q. When was that made? A. In 1899, I think.

Q. Since then the Ferth Company's business has grown very large? A. Yes.

Q. It has been a very successful company? A. Yes; that has been quite successful.

Q. It does three times the business of the Beattie Manufacturing Company, does it not? A. I think it does, yes, according to the testimony of Mr. Collier.

Q. Do you think it is still fair for the Beattie Manufacturing Company to pay half the expense of selling not only its own goods but also the Ferth

Company's goods? A. Yes; I think it is desirable that it be done.

Q. Have you any contract for any particular time? A. None.

By the Court.

Q. Have you any written contract which regulates the business? A. None whatever—verbal contract.

By Mr. Humphreys.

Q. What kind of rugs did the Beattie Manufacturing Company start to make two or three years ago—three or four years ago? A. A seamless rug; that is, a nine foot rug. It had, really, one seam at that time.

Q. That is not a tapestry rug? A. No; that is a tapestry brussels rug.

Q. Have they ever manufactured any tapestry rugs? A. Yes.

Q. When did they start to do that? A. About, perhaps, eight or nine months ago; possibly a year, I don't know.

Q. That is, since this suit was brought, was it not? A. Yes.

Q. Did the company purchase any machinery for the purpose of manufacturing tapestry rugs? A. Some; yes.

Q. How much money did they spend on that machinery? A. Well, for tapestry rugs alone I don't know that they spent any money. The machinery that they bought for making tapestry rugs could be used also in making some other sizes of rugs which it was desirable to make, but I should think those drums cost about $6,400.

Q. What machinery have you paid for since No-

vember 30th, 1905? A. It would be necessary to look at the books. I cannot tell you that.

Q. Will you look at the books? I will ask you, while he is getting the books—you said it would be necessary to buy more machinery in order to keep up your rug business? A. Yes.

Q. How much money do you expect to have to spend for such machinery? A. I should think it would be $25,000 or $30,000; possibly $35,000.

Q. When you have made that purchase will your plant be then complete? A. That is a very difficult matter to tell whether it would be complete or not.

Q. Are you a stockholder in this Axminister Company? A. I am.

Q. And a director? A. I am, yes.

Q. And your father is also a stockholder and a director? A. Yes.

Q. Do you receive any salary from the Axminister Company? A. I do not.

Q. Does your father? A. No.

Q. Has he ever? A. Not that I know of.

Q. Have you ever? A. No.

Q. Your father is the Vice-President of that company? A. Yes.

Q. I understood from the expert witness that was on the stand, that there was an arrangement that the Vice-President should receive a salary? A. I don't think you understood any such thing; possibly you did, but I didn't understand it so.

Q. Do you know positively that he does not receive a salary? A. I know positively that he does not, yes.

Answering question on previous page as follows: "What machinery have you paid for since November 30th, 1905?" Since the first of November, $19,109.10.

WILLIAM H. BEATTIE, recalled—Cross

Q. What did you purchase with that money? A. The books will show that.

Q. Was it machinery? A. Yes.

Q. For rugs? A. For rugs, yes.

Q. And that was since November, 1905? A. Yes, I believe so.

Q. Have you made any other purchases of machinery since that date? A. I don't know.

Q. Have you made any unusual purchases of merchandise since the 30th of November, 1905? A. No, I think not.

Q. Nothing unusual? A. Not that I know of.

Q. Can you tell me what the amount that has been paid out for the merchandise since November, 1905, is? A. I cannot.

Q. Can you, by referring to your books? I presume it can be gotten from the books. Our accountant can get it from the books.

Q. You prefer I ask your bookkeeper? A. Yes.

Q. These moneys that you have drawn out of Brown Brothers this year, some $56,000. What were those moneys drawn out for? A. For our needs in the business.

Q. I know—but what particular things? A. All things; things of all kinds, to pay our bills with.

Q. How was it it was kept for all these years without drawing anything out of it until this year? A. I presume, of course, because we didn't need it before.

Q. I want to find out whether the needs for drawing this money wasn't this machinery, this $19,000 worth of machinery, and also some unusual purchases of merchandise? A. It must have been that, but I am not prepared to say.

Q. Isn't it possible? A. Possible.

Q. Isn't the fact that the money laid there all these years without your requiring it, doesn't that indicate that there must have been some extraordi-

nary need for it this year? A. It certainly would indicate that there was a need for it, yes.

By the Court.

Q. Referring to this statement from the books, D 1, can you say what date in each year these items should bear? Was this statement made as of the 30th of December or the first of January? A. This is of the 30th of November.

Q. That is the end of your fiscal year? A. That is the end of our year, yes.

Q. In the fourth column, the figure indicates the amount of cash which you had at that time? A. The cash in bank at that date.

Q. Including everything, I think you said that it was deposited in the Trust Companies? A. Yes, everything.

Q. I call your attention to the last year here presented, November 30th, 1905. It appears from this statement that the amount of cash which you had in the banks was $211,445.28. I understand that a very considerable portion of that item was in the form of deposits in the trust companies drawing interest? A. I think about $125,000.

Q. Now, at the same time, your accounts receivable were $82,035.06, and the whole column marked accounts receivable indicates that this business was carried on from 1882 to 1905, with the use of a very substantial credit. Why did you allow those accounts receivable to be outstanding to the extent of $82,000, if you had $211,000 in cash in the banks? A. The accounts receivable?

Q. I mean accounts payable; I have made a mistake, sir; I want to call your attention to the accounts payable, from which, it appears, as I said, that you used substantial amount of credit from the very beginning, from 1882 down to 1905, and

on November 30th, 1905, you seem to have owed in all $51,257.76 above ordinary business obligations? A. That, I presume, was made up of items such as labor and bills that were perhaps not due for discount, and there had been certain moneys left on deposit with the company by the stockholders certain balances; I presume that is included in that amount.

Q. You are not sure though? A. I am not positive, but I think that is true, though; just what that item is made up of I am not prepared to say at this moment.

Q. Now, taking the balance of November 30th, 1905, which is stated here as $449,626.21; I want to know whether I understand exactly what that item is as presented on this statement. Is that the difference between the quick assets of the company of every kind, on the one hand, and the obligations of the company, including the stock and the dividends? A. Yes; I think it is.

Q. Then this balance, $449,626.21, shows that the company, after paying all its obligations outstanding and paying the ten per cent. dividend, had a surplus of $119,626.21. Is that right? A. I have not verified those figures; shall I do so?

Q. Yes, please; I want to put it in that form; take out from the $449,626.21 the outstanding obligations; accounts payable, I mean, and the stock and the dividend for the year, you have a surplus of $119,626.21?

Mr. Corbin—It is the capital.

The Court—What you call working capital?

The Witness—Deducting the capital stock from that, sir, leaves a balance of $149,626.21.

Q. After taking the dividend out? A. After taking the dividend out, yes; but the dividend is already taken out in this statement; it is already taken out here.

Q. Then, without going into any question of the meaning of terms, there is what might be called a surplus of $149,626.21? A. Yes.

Q. And in addition to that you have your real estate? A. Yes.

Q. And machinery? A. Yes.

Q. Is that correct? A. Yes; that is correct.

Q. This Exhibit D 1 does not show the machinery or real estate, does it? A. No; it simply shows the cash, merchandise, accounts receivable, accounts payable and dividends.

Q. If you take the whole of the capital, $300,000, out of this $449,626.21, then no part of the real estate and machinery account represents capital? A. No.

Q. You have got that free? A. We have got that free as an asset.

Q. In which, according to this theory, the capital is not invested? A. Yes.

Q. Now, then; this figure, $149,626.21; that sum is not distinguished from the other assets of the company, leaving real estate and machinery out; in other words, it is mixed in with merchandise, cash, accounts receivable; is it? A. Yes.

Q. Well, now, at that time, November 30th, 1905, using your credit then to the extent of $51,257.76, you had $211,445.28 in cash? A. Yes.

Q. Well, would there have been any difficulty in your making a distribution of a part of the $149,626.21, which appears to be a sort of a surplus, a surplus or a surplus of surplus; would there have been any difficulty in distributing any portion of that as dividends to the stockholders? A. Well,

we were obliged to make provision at that time for about three or four months' running; while the amount of cash on hand at that time, $211,000, may seem very large if we were doing a normal business of about $50,000 to $60.000 a month and having to run four or five months before getting in any large amount of money we would have that almost used up; of course, of available cash on hand at that moment, there would appear to be enough to pay a larger dividend; I mean by that, we had the cash with which to do it, had we thought conditions warranted and thought it advisable to do so.

Q. Would there have been any difficulty in considerably extending your credit, which you were then using to the extent of $51,257.76? A. Oh, yes; we could borrow money; our credit is good; I presume it is; we haven't had occasion to borrow.

Q. I thought you said earlier that you were liable to have your cash reduced to the minimum in September and in February? A. In February or March.

Q. Now, would there be any difficulty there, drawing from the books a statement of the cash on hand through all these years in September and February? A. I think not, sir.

Q. I think you said that one year which was mentioned, the cash got reduced in September to about $90,000? A. That is this present year.

Q. Has it ever been lower than that the last ten years in September? A. I don't know, sir.

Q. I call your attention on this statement of cash to the years going back from 1905 to 1896; the figure in 1896 being $174,395.56. Now, then, go back from that point and the figures seem to decrease until you reach 1893, when the cash on hand Novem ber 30 appears to have been $69.87. Did that figure include everything, everything in the banks,

of all kinds? A. I don't know whether that did or not.

Q. As I understand it, Robert Beattie & Sons paid the bills until what year? A. 1899.

Q. Just glance at this statement please, and you will see that in 1899 the cash was $158,506 07, and in 1898, $174,000, in 1897, $157,009 and in 1896, $174,000; and then when you go back a little further you got down to a very small balance, 1893, only, $69.87. Can you explain that? A. I could only explain it by saying that that amount of money was in the account of Robert Beattie & Sons, which had not been turned over to the company. It was not in our books.

Q. Then, would it appear in the column marked accounts receivable? A. It ought to appear in that column, yes.

Q. I call your attention to the fact that at this time when the cash is so low, the accounts receivable appear to be very large. For instance, in 1893, the cash is $69.87, and the accounts receivable are $339,757.10. A. Well, that is presumably Robert Beattie & Sons.

By Mr. Corbin.

Q. That would include what Robert Beattie & Sons owed you? A. Yes.

By the Court.

Q. And right here I call your attention to the fact that the column of accounts receivable shows a marked falling off of the amount during the last four years as compared with the prior years. A. Well, the only way that I could explain that is perhaps in better collections.

Q. And also the fact that Robert Beattie & Sons didn't keep your moneys? A. Our accounts were

all kept at Little Falls during those years—everything kept at Little Falls.

Q. Can you say whether or not there would have been any difficulty or embarrassment to the company in the year 1895 if they distributed $30,000 more to stockholders in the shape of dividends? A. In 1895 that is to far back for me to say at the present moment.

Q. I mean 1905. A. I think it would have interferred to a greater or less extent with our plans.

Q. Can you explain how? A. We had perhaps the cash at the moment, but during the year we estimated that we would do a certain amount of business and we were preparing for that and expected to spend more money than we really did expend, but business fell off again, even in the rug end of it, and we have not realized as much business as we expected to. As I said before, it is quite possible we had the amount of money necessary to pay a further 10 per cent. dividend in hand at that time, but we did not think it was advisable to pay any more than 10 per cent. The conditions were not good. We realized that we would have to spend some more money if we were going to keep up our regular dividend.

Q. Well, I want your judgment as an experienced manager of a large business concern, and therefore I will just call your attention to one or two facts that have to be considered. It would appear that the corporation was in possession of real estate and machinery which was in use as a going concern, manufacturing concern, estimated by the managers of the value of $450,000, free and clear; and that it had large quick assets, the amount of which I do not find stated here on D 1, but quick assets of such an amount, that after paying a dividend of $30,000 and deducting the whole capital

stock of $300,000, at that time there remained $149,626.21; and that at that time there was $211,445.28 in cash in the banks. Now, what I want to know is, whether you think as a practical manager of this business, there would have been any difficulty in paying 10 per cent. more to the stockholders, of course, providing for its distribution through the year, not payable necessarily November first, but payable in two or three installments throughout the year, when it was most convenient for the company to pay. Would there have been any difficulty about that? A. I think there would, yes, as I said before; it would have hampered our plans to a greater or less extent.

By Mr. Corbin.

Q. If you had done the business you contemplated at that time of say, $600,000 or more per year, have you made an estimate of how much that cash would have been reduced, say in September last? A. I did make such an estimate, yes.

Q. What did you find with regard to the condition of the cash in the early part of September? A. I find we would have in the neighborhood of about $35,000.

Q. That is to say, if you had done the business you had contemplated? A. Yes.

Q. But; in point of fact, not doing the business you contemplated, you had more cash? A. Yes.

Q. That is, the carpets fell off during the summer? A. Yes.

Q. How did the business start out; as well as you expected in the Spring? A. It started out very well.

Q. But your expectations were not realized during the summer? A. No, sir.

WILLIAM H. BEATTIE, recalled—Cross

By the Court.

Q. Am I correct in supposing that what you have done here was to very largely increase your capital over the original $300,000? A. I don't understand your question.

Q. Is it your view that since the organization of the corporation with a capital of $300,000 you have, in fact, enlarged that capital—the capital invested in the business? A. Oh, yes; we have enlarged our amount of money invested in the business; we have never increased our capital stock.

Q. Your gains have been largely put into real estate and machinery and goods? A. Well, I don't think any of our money has been put in real estate; under the real estate account, you mean, sir?

Q. No; I am not referring to the bookkeeping? A. No, but some of it has been put in buildings and to be found in the different accounts.

By Mr. Corbin.

Q. Would November 30th, as a rule, be a date when the cash on hand would be higher than at other periods? A. November 30th, is practically, equal to about the highest point; somewhere around there.

Q. Almost the maximum? A. Yes.

THE COURT—Mr. Harding has called my attention to the fact that in the statement which Mr. Peterson prepared the state of the cash is shown in detail from month to month.

Mr. CORBIN—The trouble is that in making up these accounts it has been disregarded that the cash in the trust companies is just exactly on the same foot-

ing as the cash in the bank was, so that we have not got anywhere in these statements by Mr. Peterson the proper showing of the cash on hand at those dates except by going through some calculation.

THE COURT—I understand that these pages show that beginning on page 15. Here we have November 30th, 1899, Colonial Trust Company.

Mr. HUMPHREYS—We rest, except we would like to have an opportunity of examining the books of Robert Beattie & Sons and have the case continued for the purpose of giving testimony as to the result of the investigation of those books.

THE COURT—These are the books which you endeavored to get this morning?

Mr. HARDING—We subpoenaed for all of them but they produced a portion of them. In order to find out what the cash balance of Robert Beattie & Sons is we would have to have the other books, which they say are now in their office.

THE COURT—Subject to that the defendants may proceed.

Mr. CORBIN—I will call the attention of the Court to the particular parts of the minutes, what is in this minute book which we wish. I think the best way would be to read it into the minutes.

From the certificate of incorporation the the purposes of the corporation are, first,

WILLIAM H. BEATTIE, recalled--Cross

to purchase of Robert Beattie the carpet and woolen manufactory and tract of real estate whereon the same is erected and the lands adjoining the same at Little Falls, together with the water power and privileges, and the machinery and fixtures in said factory.

Second, to purchase from Robert Beattie & Sons the goods and stock in said factory and at their store, No. 85 White street, New York City.

Third, to carry on the manufacture and sale of carpets and other merchandise at said manufactory and store; to erect buildings, mills and machinery for the purposes of such manufacture, to improve and rent and sell said real estate, and to carry on any other business necessary for the proper management and development of said property.

Now the By-Laws. Twelfth article of the By-Laws, passed in 1882, reads as follows: "Dividends shall be declared and paid semi-annually, in the months of January and July, of such portion of the profits as the directors shall deem advisable."

That is one of the original By-Laws adopted at the first meeting, held July 6th, 1882.

THE COURT—The meeting for organization?

Mr. CORBIN—Yes.

THE COURT—Were they passed unanimously?

Mr. CORBIN—Yes.

THE COURT—Did all the stock vote?

WILLIAM H. BEATTIE, recalled—Cross

Mr. CORBIN—Yes; three thousand votes.

Now, then, on the 26th of December, 1900, at the annual meeting, present Robert Beattie, Charles G. Beattie, Howard Beattie, Robert Beattie, Jr., William Dickson, William H. Beattie and Alexander Murray, 2925 votes, the following resolution was adopted by acclamation, receiving 2925 votes:

"Resolved, That a dividend of 10 per cent. be paid, one-half January first, 1901, and one-half July 1st, 1901, and that the residue of the accumulated profits of the company be reserved as working capital."

Under the same head the following was offered and adopted by acclamation receiving 2925 votes:

"Resolved, That the By-Laws be amended by adding the following:

"Article 17. The directors may determine, from time to time, the amount to be reserved by the corporation as working capital."

The form of resolution declaring dividend which I have read is that adopted at each subsequent meeting where dividends were declared.

THE COURT—You have read the resolution for the dividend which the stockholders passed.

Mr. CORBIN—That is true.

THE COURT—Was there another resolution passed by the board ?

WILLIAM H. BEATTIE, recalled—Cross

Mr. CORBIN—Yes, there is another resolution by the directors. It was at the meeting of December 24th, 1901 :

"Resolved, That a dividend of 10 per cent. be paid, one-half on January 1st, 1902, and one-half on July 1st, 1902, and that the residue of accumulated profits of the company be reserved as working capital."

THE COURT—Is that a directors' meeting or stockholders' ?

Mr. CORBIN—Directors'.

Mr. HUMPHREYS—What directors were present ?

Mr. CORBIN—"At a meeting of directors held December 24th, 1902."

THE COURT—Who were present ?

Mr. CORBIN—"All the directors, R. Beattie, William Dickson and W. H. Beattie." It was the same resolution.

Also a like resolution at the meeting and dividend of 12 per cent. at the meeting of December 29th, 1903, providing the residue of the accumulated profits of the company be reserved as working capital.

Also December 24th, 1904—the directors declare a dividend of 10 per cent. and that the residue of accumulated profits be reserved as working capital.

December 27th, 1905. Dividend of 10 per cent. declared by the directors, with a reservation that the residue of the accumulated profits be reserved as working capital.

Your Honor will observe that the form of the by-law was that the directors may determine the

amount to be reserved as working capital under the statute.

THE COURT—The by-law, as I heard it, was to the effect that the directors distribute such portion of the profits as they deemed proper in the form of dividends. That is the first by-law.

Mr. CORBIN—The second by-law follows the statute; that is after the statute of 1896.

THE COURT—What was the date of that?

Mr. CORBIN—1900.

THE COURT—Then, I understand you read one minute only of the stockholders' meetings in regard to that matter, and that undertook to authorize a ten per cent. dividend and authorized the retention of the balance of the profits on hand as working capital?

Mr. CORBIN—No, the by-law gave authority for all time.

THE COURT—But I am speaking of the resolution of the stockholders that you read.

Mr. HUMPHREYS—Under the same head, the following was adopted by acclamation, December 26th, 1900, receiving 2,925 votes: Resolved, That the by-laws be amended by adding the following:

"Article 17. The directors may determine from time to time the amount to be reserved by the corporation as a working capital."

Preceding that there was a resolution under the head of new business:

"Resolved, That a dividend of 10 per cent. be

paid, one-half January 1st, 1901, the other half on July 1st, 1901, and that the residue of the accumulated profits of the company be reserved as a working capital."

I would like it stated that at the meeting of the directors held on the 27th of December, 1905, when a dividend of 10 per cent. was declared, that the only directors who were present were Robert Beattie and William H. Beattie.

THE COURT—Counsel consent that the statements prepared by Mr. Lewis, now deceased, an accountant, from the books of the corporation, copy of which is presented, shall be considered in evidence as showing what the books show, subject to any correction which either party may wish to make. The paper is marked, but the first portion of it, consisting of five typewritten pages signed by Mr. Lewis, are not deemed a part of the statement and are not put in evidence.

The same is marked Exhibit D 2.

DEFENDANTS REST.

Mr. HARDING—The only other thing is for our accountant to go through these other books.

THE COURT—I suppose the complainants have a right to see these books if the ruling already made is correct. I cannot see myself the relevancy of this old matter and these old books, for the inquiry that is now being made, the suit that is now being tried. But,

WILLIAM H. BEATTIE, recalled—Cross

nevertheless, we have the fact that there are two causes on trial entirely different in their character, as I have had occasion to point out two or three times in other cases. We have got this suit to enforce the right of the corporation itself to recover moneys which these directors have voted into their own pocket. That is a suit, of course, where the corporation is the actor, actual actor, actual plaintiff, not nominal plaintiff. Then we have the suit brought by the stockholders to compel the corporation and its directors to pay out money in the shape of dividends and establish thereby a liability of the corporation to the stockholders. I have pointed out, I think, in another case—possibly counsel have looked at it—how entirely different these two suits are. But trying them together brings in a very large amount of testimony necessarily covering a long period of time. It is quite difficult in advance of the argument, in advance of the consideration of the whole case, to say that anything that was done by the corporation and its officers during a long period under investigation, is immaterial or irrelevant, and I therefore prefer to err on the right side in allowing these books to go in.

This is a transaction in which the corporation was concerned, in which these defendant officers were concerned, and I think they had better make frank disclosure, even if it is immaterial or turns

WILLIAM H. BEATTIE, recalled—Cross

out to be immaterial. I think I will err on the side of allowing these to go in. They issued their subpoenae duces tecum and when they called for them only a portion of the books were produced ; the others were kept back. I will give the complainants an opportunity to have these books produced. I suggest that counsel might make an arrangement by which they can be produced elsewhere and examined elsewhere.

Adjournment to Wednesday, November 14th, 1906.

Chancery Chambers, Jersey City, Wednesday, November 14th, 1906.

IN CHANCERY OF NEW JERSEY.

BETWEEN
ALEXANDER MURRAY ET ALS.,
Complts.

and

THE BEATTIE MANUFACTURING COMPANY ET ALS.,
Defts.

Messrs. JOHN B. HUMPHREYS, JOHN W. HARDING and WILLIAM A. SUMNER, for the complainants.

MR. CHARLES L. CORBIN, for the defendants.

Further testimony of witnesses, etc., taken in the above stated cause, at the Chancery Chambers,

Jersey City, New Jersey, this Wednesday, November 14th, 1906, in the presence of his Honor, Eugene Stevenson, Vice Chancellor, pursuant to adjournment heretofore had.

MR. HUMPHREYS—I ask Mr. Corbin to produce two letters, one a letter from Alexander Murray to William H. Beattie, and—

MR. CORBIN—I have them here.

Offered in evidence letter dated July 15th, 1905, to William H. Beattie, Esq., and marked Exhibit C 25.

Letter to William H. Beattie, dated July 18th, 1905, offered in evidence and marked Exhibit C 26.

Mr. Humphreys reads Exhibits C 25 and C 26.

GEORGE E. PETERSON, recalled for the complainants, testifies as follows:

Direct examination by Mr. Humphreys.

Q. Did you deliver that last letter to the Beattie Manufacturing Company? A. Yes.

Q. Who did you see there? A. Mr. William H. Beattie.

Q. And do you remember what date that was? Was that the same date as the letter, July 18th, 1905? A. Yes, the date on the letter.

Q. What reply did Mr. Beattie make to you? A. He said he could allow no examination of the books without an order of the Court.

Q. Did he say anything further? A. No.

Q. Since the last hearing, Mr. Peterson, have you attended at the office of the Beattie Manufacturing Company to examine the books of Robert Beattie & Sons? A. Yes.

GEORGE E. PETERSON, recalled—Direct

Q. What instructions had you as to the information you were to try to get from those books? A. I was to ascertain the monthly balances of cash in the hands of Robert Beattie & Sons, belonging to the Beattie Manufacturing Company?

Q. Well, were you able to get that information from the books? A. No.

Q. Why not? A. All the books were not there.

Q. What books did they produce before you? A. There were two ledgers, running from December 1st, 1884, to 1899, the close of the account; two cash books from January, 1883, to 1899; two journals running from 1885 to 1899; one salesbook from January, 1893, to January, 1895; monthly account sales, from January, 1895, to April, 1899; Chemical National Bank book, 1891 to 1896; Central National Bank book, 1892 to 1894; and stubs of check books from 1892 to 1898.

Q. Will you explain to the Court why you could not derive the information you were seeking from those books that were produced to you? A. In the first place, they didn't cover the whole period. The books were missing from July, 1882 (the ledger) to December 1st, 1884.

Q. Was there any reason why you could not have obtained the information from those books during the period that they did cover? A. Yes. I could not ascertain that balance of cash on hand belonging to the Beattie Manufacturing Company without having all the books for that period, and even then it would be a very hard thing to do.

Q. Why couldn't you? A. Because they did business with other firms, and all the cash was mixed up in the one cash book, cash account. They sold for account of other firms as well as the Beattie Manufacturing Company, and the sales were altogether in one salesbook, as far as I could see

from the one produced to me. I would have had to divide up all the cash.

Q. Were the books kept in such a way that you could have made such a division? A. It was possible, if I had all the books with a great deal of labor that it could have been done.

Q. What books were there that were not produced? A. Ledger from July, 1882, to December 1st, 1884, was missing. July, 1882, was the commencement. The cash book from July, 1882, to January, 1883, was missing. The journals from July, 1882, to 1885, were missing. The salesbooks from July, 1882, to January, 1893, and from January, 1895, to 1899. Those composed all the books, if I had those.

Q. What explanation, if any, did either Robert or William Beattie give you as to the absence of those books? A. Mr. William Beattie stated that those were all the books that they had and he didn't know what had become of the rest of them; they must have been either lost or destroyed.

Q. Now, what do you think, would it have been necessary for you to have started out from the commencement in order to find the balance of cash on hand in the hands of Robert Beattie & Sons, belonging to the Beattie Manufacturing Company? A. It would, because—do you want me to state why?

Q. Yes, explain why. A. Because they had a capital in the business; their own commissions coming in were left in the business and formed a capital, and part of the cash was their own, part of it was Van Deventer & Horn's, and part of the cash was the Beattie Manufacturing Company's; so then to get at the balance I would have had to divide it into three distinct accounts.

GEORGE E. PETERSON, recalled—Direct

Q. Were the books kept by double entry? A. No.

Q. Were they kept in a proper manner? A. Well, as far as they went they were, but they were not completed. The cash book was not completed nor the ledgers—were never completed.

Q. Were they kept in such a way that it could have been ascertained from them whether they had actually accounted to the Beattie Manufacturing Company in all their dealings?

Mr. CORBIN—I don't think the witness can draw all these inferences. He should state the facts.

THE COURT—I don't quite see the relevancy of the inquiry, but if the inquiry is relevant, then I think the witness can give his opinion as to whether those books were correctly kept or not.

Question repeated to the witness.

THE WITNESS—Yes, if all the books were produced.

Q. But, in the absence of those books they were not? A. No.

Q. Now, did you have any conversation with either Robert Beattie or William Beattie with reference to the Long Island property? A. Yes, I had a conversation yesterday with Mr. William Beattie.

Q. Were you informed then as to what price they got for the property, finally? A. As to what price?

Q. Yes. A. Well, I asked Mr. Beattie about some fifty-seven lots that were sold apparently, realizing a net amount of $2,700.00, I think it was, or $2,370.00, and he informed me that that was

the equity which they had received after payment of assessments and taxes, which amounted to somewhere around $30,000.

Q. Did he give you any information as to what the balance of the lots had been sold for? A. Yes, he told me they had been sold for $45,000.

Q. Have you prepared a statement, Mr. Peterson, showing the value at which this property was turned over by Robert Beattie & Sons to the Beattie Manufacturing Company and held by that corporation, and the taxes that have been paid in respect of it by the Beattie Manufacturing Company, and the moneys that they ultimately received or will receive when the balance of the purchase money is paid, including interest on the debit side of the account and on the credit side of the account, so as to tell us what profit or loss the Beattie Manufacturing Company have made in the transaction? A. Yes.

Q. Is that the statement (showing witness paper)? A. Yes.

Q. Will you explain that statement to the Court, please?

By Mr. Corbin.

Q. Is that made up from the books? A. Yes.

Q. You got the items from the books? A. All, except the interest item.

Q. From what books? A. The ledger of the Beattie Manufacturing Company.

By Mr. Humphreys.

Q. You calculated the interest on the amounts appearing in the ledger? A. Yes.

Q. Just explain the account? A. Robert Beattie & Sons on the 30th of April, 1899, owed the Beattie Manufacturing Company $38,811.22, for which

they turned over the Long Island property. On August 31st, 1901, the Beattie Manufacturing Company paid cash to R. H. Smith & Company for taxes, $4,567.80. On October 18th, cash also for taxes, $505.19. November 26th, $7.44, 1905; April 14th, $3,000; making a total of $46,891.65. I have calculated the interest on each of those items to October 31st, 1906, at six per cent., and it amounts to $19,314.81; making a total of $66,206.46. The receipts on account of that property (net receipts) were as follows: 1903, April 7th, by cash, A. Klink, $1,094.50; 1903, March 14th, by cash, R. H. Smith, $2,370.00; 1905, March 31st, by cash, W. C. Johnson, $400.00; April 26th, by ditto, $5,000.00; May 9th, by ditto, $154.51; making a total of $9,019.01, to which I have added interest on these credit items at 6 per cent., also, to the 31st of October, 1906; making a total of $10,132.21; and leaving a balance on that basis against the property of $56,074.25.

By the Court.

Q. What do you mean by a balance against the property? A. The difference between what the property cost the Beattie Manufacturing Company with interest thereon, and the amount that they received out of it up to date.

Q. Did you find a gain or loss? A. A loss on that basis of $11,074.25.

By Mr. Humphreys.

Q. That is, after the balance of the lots shall have been sold for $45,000? A. Yes, if that was the sale price.

Q. You were informed that that was the sale price? A. Yes.

Q. That $45,000, is that net, after payment of commissions? A. I don't know.

GEORGE E. PETERSON, recalled—Direct

Q. If there were commissions to be paid on the sale of these lots would that increase the cost or loss from $11,074.25 by the amount of those commissions? A. There would, but there is an amount which might counterbalance that I overlooked. There was a payment within the last year of $7,500.00 on account, the interest of which would cut this figure, but it would not be very much.

Q. How much would that be about? A. If I knew the date of the payment of that $7,500.00—it is not a year.

Q. How much would the maximum amount be? A. About $450.00.

Mr. HUMPHREYS—I would like to offer this sheet in evidence for convenience.

The same is marked Exhibit C 27.

Q. Did you find on the books of the Beattie Manufacturing Company an account entitled "Robert Beattie, new house account?" A. Yes.

Q. What was the nature of that account? A. It was an account for the payment, as I understand, as far as I can understand, for the payment on account of building a new house for Mr. Robert Beattie.

Q. And what was charged to Mr. Beattie to that account for building that house? A. $15,760.25.

Q. Had Mr. Beattie another regular account in the books of the Beattie Manufacturing Company? A. Yes.

Q. Was he in that regular account credited with interest on his balances? A. Yes.

Q. Was this account of Robert Beattie—"new house account"—was that debited with interest? A. No.

Q. Did you find on the books of the Beattie

Manufacturing Company certain accounts entitled "Robert Beattie, Sr., Robert Beattie, Sr., estate account, Mrs. Robert Beattie, Sr., and Mrs. Robert Beattie, Sr., estate account" debited with $4,716.61 that was afterwards charged to profit and loss account? A. Yes.

Q. Can you explain the reason of that? A. No, I asked Mr. Robert Beattie about that and he told me he would have the matter looked into and if it was not right he would have it corrected.

Q. Was there any interest charged against these accounts? A. No.

Q. Did you ask Mr. Robert Beattie whether or not—

Mr. CORBIN—What is the date of that last transaction?

Mr. HUMPHREYS—19 0.

THE WITNESS—It was charged to profit and loss in 1900.

By Mr. Corbin.

Q. No, no, the transaction of the estate account? A. It was charged off to profit and loss in 1910.

Q. What is the earlier date of it? A. It commenced in 1882, right after the company commenced, right away, I think.

By the Court.

Q. What is the amount of the item, the aggregate amount? A. $4,716.61.

Q. How are the items originally charged? A. There are four accounts, sir, there is "Robert Beattie, Sr., Robert Beattie, Sr., estate account, Mrs. Robert Beattie, Sr., and Mrs. Robert Beattie, Sr., estate account."

Q. And did you analyze those four accounts to see what they really were; what the items were. A. No, sir; I did not go into them in detail; I just looked over the accounts and found they were principally cash.

Q. Are those four items that you stated taken from the ledgers? A. Yes.

By Mr. Humphreys.

Q. Didn't you ask Mr. Robert Beattie if those items did not represent moneys that were paid by Robert Beattie to the heirs of Robert Beattie, Sr.'s, widow? A. I asked him what was the meaning of those accounts; I did not understand it, except that it did not appear to me an account that should go to profit and loss, and I asked him the meaning of it, and he said he did not know at the time, but he would look into it, and if it was wrong he would see it was corrected.

Q. I understand that under the will of Robert Beattie, Sr., there was an annuity of some $4,000 to be paid to his widow. Was nothing said by you to Robert Beattie, Jr., to inquire whether that item would not represent moneys paid in pursuance of that legacy in the will? A. I don't know that I exactly asked him about the will, but I asked him were those any charges that should be put to some other account.

Q. Did you mention Mrs. Robert Beattie, Sr., to him? A. I asked him the names and asked him whether they should be charged to profit and loss.

Q. Was there any suggestion that the payments might represent moneys that were paid to the heirs of Mrs. Robert Beattie, Sr.? A. That was the inference; that they were charged to the heirs of Mr. and Mrs. Robert Beattie.

Q. Did you make for me a statement showing—

this is merely explanatory of the chart that you have already put in—one phase of it, a statement showing the total profits from 1882 to 1905 in one column, and showing how much of those profits were received out of rents and interest and other income which was extraneous to the manufacturing business, and then showing how much came out of the manufacturing business; that is to say, the difference between what came out of the total rents, net profit, and in juxtaposition to that, showing the salaries which Robert Beattie and William Beattie received in each year, and the dividends paid in each year? A. Yes.

Q. Was this statement taken from the books? Was that the paper (showing witness paper)? A. Yes.

Statement offered and marked Exhibit C 28.

Q. Did you also prepare for me a further statement from the books of the Beattie Manufacturing Company, showing in one column the capital and surplus which the company had in every year from 1882 to 1905, and the dividend paid in each year opposite each amount, and a calculation of the rate per cent. on the capital stock of that dividend on the par value of the capital stock, and also a calculation of the rate per cent. of that dividend on the surplus and capital stock combined; also, showing the average rate per cent. of the total dividends on the surplus and capital stock combined? A. Yes.

Q. Is this the statement that you refer to? A. Yes.

The same is marked Exhibit C 29.

Cross-examination by Mr. Corbin.

Q. This estimate you make here of capital and

surplus on the exhibit just offered, C 29, is taken from your own statement previously offered, was it not? A. Yes.

Q. You didn't find those figures in the books? A. Yes, I did.

Q. Did you find the figure, $1,128,104 in the books? A. No; but I found the figures which compose that.

Q. You didn't find that figure in the books? A. I found the figure that composed that item in the books.

Q. You made it up as you have made it up in this statement? A. Yes.

Q. There is no such capital account in the books? A. Yes; the surplus account represents that figure.

Q. There is no such figure in the books? A. Not in that figure.

Q. They have no such estimate of the entire capital account? A. Yes, in these three surplus accounts.

Q. That is to say, by adding certain figures together? A. By adding certain accounts together, the balance on their ledger of the surpluses represents that figure.

Q. That includes— A. Their different reserve accounts.

Q. It is made up as you have shown it in this statament? A. Yes.

Q. When you called on Mr. William Beattie last July with that letter referred to was Mr. Murray with you? A. No, sir.

Q. And didn't Mr. William Beattie tell you that he could not permit you to see the books—without an order of the Court? A. Yes.

Q. That is what he told you? A. Yes.

Q. But you said he said that he would not permit the books to be seen without an order of the

Court. But what he did tell you was that he couldn't permit you to examine the books? A. He could not permit an examination of the books.

Q. Did you ask him whether he would permit anybody else to see them? A. No, sir; I did not.

Q. I turn now to the account of the Long Island transaction. That account shows that the proceeds of sale repaid the principal, does it not, of the original debt? A. That the proceeds of the sale repaid the original debt.

Q. Repaid the principal of the original debt? A. Yes.

Q. And it repaid interest at less than six per cent., does it not? They got back the principal invested and over $8,000? A. Between $7,000 and $8,000.

Q. The difference between $19,314 and $11,074— a little over $8,000? A. The total amount of the account was $46,891.

Q. You got interest there at six per cent.—$19,314.81? A. Yes.

Q. And they fell short of getting all that interest back by $11,074? A. Yes.

Q. Then the difference shows that they got back in interest something over $8,000? A. Yes.

By the Court.

Q. What rate would that be? A. About three per cent.

By Mr. Corbin.

Q. You referred to an account for Robert Beattie's new house. That is the payments were made on account of construction? A. Yes.

Q. And charged up? A. Yes.

Q. And then charged to his account? A. Yes.

AGNES BEATTIE, sworn for complainants, testifies as follows:

Direct examination by Mr. Humphreys.

Q. You are one of the complainants in this suit? A. Yes.

Q. And you are entitled, under the will of your father, to an equitable interest in 300 shares of stock that are held in trust by your brother, Robert Beattie? A. Yes.

Q. And you have, from time to time, received dividends upon that stock? A. Yes, I have.

Q. And have you, since the death of your father, had any personal knowledge at all of the affairs of the Beattie Manufacturing Company? A. No; I have not.

Q. Have you had any knowledge as to the amount of money they made from time to time? A. No; I have not.

Q. Have you placed reliance on your trustees to look after that interest? A. Yes, I have always.

Q. Have you ever made application to them for a statement of the affairs of the company? A. I asked once for one.

Q. Whom did you ask? A. I asked my nephew first.

Q. William H. Beattie? A. Yes.

Q. And what did he say to you? A. He told me he couldn't give me one.

Q. Did he say why? A. He said he couldn't give me any.

Q. Did he say he gave no statements to any stockholders? A. Yes; he said they gave no statements, and he couldn't give it.

Q. Did he say anything about giving statements to other stockholders? A. No; he did not.

Q. Did he say whether or not he gave statements to other stockholders? A. No; he did not.

Q. Did you ever receive any statement from him of any kind whatever? A. I received statements of my own money that I have drawn.

Q. The amount of dividends? A. The amount of dividends I have drawn.

Q. Were you in the habit of drawing these dividends when they were declared, or did you leave them to your credit? A. I left them; just as I wished them I drew them—when I wanted them.

NO CROSS-EXAMINATION.

MARY MURRAY, sworn for the complainants, testifies as follows:

Direct examination by Mr. Humphreys.

Q. You are one of the complainants in this suit? A. Yes.

Q. And a sister of Robert Beattie? A. Yes.

Q. He is also your trustee, I believe? A. Yes.

Q. Who holds 300 shares of stock in the Beattie Manufacturing Company in trust for your benefit? A. Yes.

Q. Have you, since the death of your father, in 1882, had any knowledge—

Mr. CORBIN—You put it as if he were the sole trustee.

Q. Well, he is one of the trustees? A. Yes.

Q. Have you, since the death of your father, had any personal knowledge whatever about the affairs of the Beattie Manufacturing Company? A. I have not.

Q. Have you ever received any statement from any of the directors as to the condition of the company? A. Not any; no.

Q. Were you aware of a large surplus being heaped up during all these years? A. I was not.

Q. You took what dividends that were given to you? A. Yes.

Q. Relied on the good faith of the trustee? A. I did.

NO CROSS-EXAMINATION.

JOSEPHINE GEDNEY, sworn for the complainants, testifies as follows:

Direct examination by Mr. Harding.

Q. You are one of the complainants in this suit? A. Yes.

Q. And one of the beneficiaries of your father's trust, of which Robert Beattie and others are trustees? A. I am.

Q. Did you ever have any knowledge of the affairs of the Beattie Manufacturing Company since its organization? A. I did not.

Q. Did you know how much money they made or what surplus they had or anything about the condition of the affairs of the company whatever? A. No.

Q. Did you ever receive any statement whatever showing the condition and affairs of the company? A. No.

Q. Did you rely upon your trustees protecting your interest in the company? A. I did.

NO CROSS-EXAMINATION.

ROBERT BEATTIE, recalled for further examination, testifies as follows:

Direct examination by Mr. Harding.

Q. Mr. Beattie, something has been said by Mr.

Peterson about an account that appears on the books of the company in the name of "Robert Beattie, Sr., Robert Beattie, estate account, Mrs. Robert Beattie, Sr., and Mrs. Robert Beattie, Sr., estate account," making a total of $4,716.61, which Mr. Peterson says has been charged to profit and loss. Can you tell us what that account is? A. I suppose it is the debts of Robert Beattie and Mrs. Robert Beattie that were paid after their death.

Q. Well, by the will of Robert Beattie, it was—I find this clause: "First, I give to my wife $4,000 per year to be paid to her in quarterly installments during her life, commencing three months after my death." The third clause: "The above gift to my sister and wife I charge upon the property which I give by this will to my sons William and Robert Beattie, Jr." By that, you and your brother were charged with paying the annuity to your mother? A. Certainly.

Q. I want to know whether or not this account that has been referred to, or any part of it, represents money that was paid to your mother for an annuity, or to her heirs? A. Represents what?

Q. Did you pay any money to the heirs of your mother or to your mother during her life, for that annuity, pursuant to this provision of the will? A. Yes.

Q. Was any of that amount you paid a part of this account, $4,716.61? A. No, I think not.

Q. Do you know about that? A. No, I do not.

Q. Are you willing to swear that you did not pay this annuity which you were bound to pay under the will out of the money of the company to the heirs of your mother? A. Say that over again.

Q. (Question read to the witness.) A. No, we did not.

Q. Mr. Peterson has said—I repeat what he said,

because you may not have heard him—that he had some talk with you about it and you said if there was anything wrong about charging it off, that you were going to make it right. Did you say that to Mr. Peterson? A. Yes, I did.

Q. What did you mean by that? A. What did I mean? I meant that I had already—it should have been paid by Robert Beattie and William Beattie. I charged up to myself what my share was with interest from the time it should have been paid.

Q. Was that for your mother's annuity that you were talking about now? A. For my mother's and my father's.

Q. Do you mean to say that your father owed the Beattie Manufacturing Company some money at the time of his death? A. Why, no.

Q. Why should you pay over the—did the Beattie Company owe him some money? A. No, we did not.

Q. Tell me if you can what this account represents. I cannot understand what it represents? A. It represents noneys that was paid out, that the estate owed, which should have been charged to William Beattie and Robert Beattie, but mistakenly was carried on the books that way.

By the Court.

Q. Do I understand that you recently since your attention was called to it, have charged your account with your share. A. Yes.

Q. How about the other share? A. The other share I can only demand from the heirs of William Beattie.

Mr. HARDING—So far as I am concerned, I am satisfied with the answer to that extent.

ROBERT BEATTIE, recalled—Cross

By Mr. Humphreys.

Q. When did you charge yourself? A. Since Mr. Peterson called my attention to it—I think the same day.

Q. That is only the other day? A. I think the same day.

Q. That was only a few days ago? A. That was six weeks ago.

Q. Since the commencement of this suit? A. Yes.

Cross-examination by Mr. Corbin.

Q. That is something that ought to have been done at the time? A. It ought to have been done at the time.

Q. And the bookkeeper looked after these things? A. Yes.

Q. You had a trusted bookkeeper at that time? A. I always trust them.

Q. And he was supposed to understand the terms of the will? A. Our bookkeeper had full understanding of it at that time.

Q. And he was a very competent man, wasn't he? A. Yes, very.

Q. By some oversight this was not properly charged to your account? A. It should have been carried to our account.

By the Court.

Q. Do you know how the mistake came to be made? A. I do not.

Q. Did you direct the original entries at all? Did you direct the way in which the entries should be made originally? A. No, I did not.

Q. Did you know, in fact, the way in which these entries were made originally, until recently? A. I didn't know.

ROBERT BEATTIE, recalled—Re-direct

By Mr. Corbin.

Q. Was it the practice of the members of the firm of Beattie & Sons to draw money as they needed it from the firm accounts? A. Before the corporation?

Q. Before the corporation? A. Well, they drew as they wanted it.

Q. Your own accounts were kept on the firm books, practically? A. Altogether.

Q. And when you formed the corporation you went on the same way of doing business? A. Went on the same way, yes.

By the Court.

Q. Did the corporation from time to time pay debts of the stockholders, officers interested, and then have the amounts charged against them on their books? A. Yes, right along.

Q. So that the corporation kept an account with each one of the officers and stockholders, didn't it? A. Yes, and with the stockholders. It was a sort of family concern, and kept right on for years.

Re-direct examination by Mr. Humphreys.

Q. Can you tell how it was that the amount to the debit of these accounts was transferred to profit and loss account? A. No, I cannot tell.

Q. The effect of that was to make the Beattie Manufacturing Company pay those items? A. Yes.

By Mr. Corbin.

Q. Was that with your knowledge? Was the charging of that up in 1900 to the profit and loss account, done with your knowledge? A. In 1900?

Q. Yes? A. No, it was not.

WILLIAM H. BEATTIE, recalled—Direct

By Mr. Humphreys.

Q. Can you tell us what these items represent, these items of $4,716.61? A. One item was $1,000, is an error, charged, I think, against Robert Beattie's account, when it should have been charged against Mrs. Robert Beattie. That is, the whole amount is $3,716.61 instead of forty-seven.

Q. What were the charges for? A. Charged for various items, grocery bills, household bills, different things.

Q. And all those items should have been paid out of this annuity under the will? A. They should have been paid out of the annuity.

Q. And did you charge the whole of this amount of $4,716.61 to that account? A. To my account, no, sir.

Q. How much of it? A. Half of it.

Q. What became of the other half? A. The other half is a debt to the estate of William Beattie.

By Mr. Corbin.

Q. Have you made a claim against that estate for it? A. No, I have not.

Q. Do you intend to do so? A. I intend to.

WILLIAM H. BEATTIE, recalled for further examination, testifies as follows :

Direct examination by Mr. Corbin.

Q. Mr. Beattie, Mr. Peterson has referred to his request that he should be allowed to examine the books July, 1905. Did you tell him that you would not allow anybody to examine the books? A. I don't recall that I did.

Q. Your refusal was to him personally? A I refused Mr. Peterson.

WILLIAM H. BEATTIE, recalled—Direct

Q. Mr. Beattie, have you examined the books to find out the state of your cash on the first of November of this year? A. I have, yes.

Q. And what was the amount in the trust companies? A. The total amount in the trust companies was $87,108.72.

Q. And how much other cash? A. We had cash in our current bank accounts of $47,909.63.

Q. Making a total of how much? A. $135,018.35.

Q. And do you know how much you are likely to receive between now and the first of March? A. Well, we have on our books which was due up to March first, or on or about that time, $70,599.36.

Q. Are you likely to receive much more than that from current business? A. Well, we may receive some. I cannot count on it.

Q. Much? A. Not an appreciable amount.

Q. It is not the time of year when you receive much? A. No.

Q. What is the total of the cash to carry you to the first of March? A. Including the receivables?

Q. Yes. A. $205,617.71.

Q. Of that, how much is it likely that you will have left on the first of December, as near as you can forecast it? A. That is all cash alone?

Q. Yes. A. Well, we will have less than $135,000 cash.

Q. And what were the prospects then, between then and the first of March following? A. Well, we don't get very much money in during that period.

Q. I mean as to the outgo. What are the prospects as to the cash balances? A. Oh, as to the cash. Well, we will need at least $40,000 a month.

Q. That would take pretty nearly all of that money? A. Yes, pretty nearly all of that money.

Q. You haven't allowed for a dividend out of

that? A. No, not out of that. The dividend is not declared now.

Q. If you take $30,000 out for a dividend what is the prospect as to the cash on hand in March? A. We declare our dividends one half on the first of January and one half on the first of July—it would be $15,000.

Q. So there ought to have been enough out of the interest even to pay that? A. Yes.

Q. What has caused this diminution in cash since our last meeting here? A. Well, we have been paying out money.

Q. Been doing an active business? A. We have been doing quite an active business, yes.

Q. Then you have had these unusual expenses for improvements, have you not, in the course of the year? A. During the course of the year, yes.

Cross-examination by Mr. Humphreys.

Q. Did you receive the letter that was read, which Mr. Murray sent you on July 15th, 1905, asking as a stockholder for leave to examine the books? Did you receive this letter (showing witness Exhibit C 25)? A. Yes, I received those letters.

Q. Did you make any reply to it? A. None that I recall.

Q. Why not? A. I didn't think it was necessary.

By the Court.

Q. Mr. Beattie, I don't quite understand one matter that you have been testifying to. Did you say there has been a change in the financial condition of the company in respect of cash, particularly during the last six weeks, since the last hearing? A. No more than there would be in the ordinary course of business. No, I don't think there is very much change.

WILLIAM H. BEATTIE, recalled—Cross

Q. Now, I understand you to say that the total amount of cash in the trust companies and banks is $135,000? A. In the trust companies there are at the—that is, on November first, $87,108.72.

Q. How much in the banks? A. $47,909.63.

Q. And what does that aggregate? A. $135,018.35.

Q. Now, you have $135,000 cash on hand. You say your good bills receivable which you will collect in by the first of March are about $75,000? A. $70,000.

Q. Making the total of what is practically cash now, $205,000? A. $205,617.

Q. Do I understand you to say that you think the amount of cash on hand will be diminished by December first? A. It will be diminished by the amount of the monthly bills.

Q. What do you think it will be? What is your forecast? How much do you think you will have in the banks on December first? A. I think we will have as much as $120,000 in the trust companies and the banks. We have $135,000 on the first of November.

Q. And will that be in part supplied by a portion of these bills receivable, aggregating $75,000, which you will have collected? A. Yes, will keep coming in.

Q. What is your estimate of the good bills receivable that you will have on December first? A. Well, I don't think I made an estimate on that, sir.

Q. Can you make an estimate now, from your knowledge of what you collect monthly? A. Do I understand the amount we will have standing on our books on December first?

Q. Yes, which will be collectible on or before March first. A. There will be no more collectible on or before March first. All the goods we are

shipping at the present time is with the March dating.

Q. How much do you think there will remain? A. So that this total of $205,617.71 represents the amount that we estimate that we would get in; that is all the cash in sight, counting our bills receivable as cash—up to the first of March.

Q. I understand that. What I want you to now state as near as you can, is what the corresponding figure will be on December first. You have told us that you think on December first, your available cash will be $ 25,000. Now, what will be the residue of the bills receivable? A. Well, that is a very difficult matter to estimate correctly.

Q. In other words, how much of the $75,000 now outstanding do you think you will collect by December first? A. We may get in five or six thousand dollars of it. You see it is optional with the customers whether they pay in ten days or four months.

Q. Then, your estimate would be that on December first, you will have $120,000 in cash and probably $70,000 in bills receivable, payable first of March, making $190,000 as available cash? A. Well, we will probably add $40,000 of those bills receivable, yes, this month—in that neighborhood —probably more than that, and that will come due on the tenth of March.

Q. Well, then, if you take that item in, you will have on December first available, $120,000 in cash, and how much did you say? A. $40,000 more—there will be about $40,000, which will come due in March.

Q. And if you get in $5,000 on the $75,000 of bills receivable, that will leave on December first, $110,000 of bills receivable, will it, payable up to

the tenth of March? A. In that neighborhood, yes—up to about that.

Q. Then you will have $120,000 and $110,000 in bills receivable, making $230,000 in all? A. Yes.

Q And I understand you to say that in December, January and February, you will require about $40,000 of money? A. Not less than $40,000.

Q. That will be $120,000? A. Yes.

Q. You testified the other day, but it has slipped my memory—when is it that you make the largest purchases of material? A. We have no stated times to purchase material. We have to make them when the material is in sight.

By Mr. Corbin.

Q. You have got your November bills payable—have you figured on that? A. No, not in this, no, sir.

Q. That has got to come out of that cash? A. That comes out, yes.

Q. How much will that amount to? A. I don't know just exactly. I presume in the neighborhood of perhaps $20,000, and our payrolls will come out of this.

By Mr. Humphreys.

Q. What is the value of the merchandise that you have now on hand? A. I couldn't tell you, sir, at the present moment.

Q. Can you tell me approximately? A. No.

Q. Does it differ from other years, in amount—larger or smaller? A. I really couldn't say at the present time. It is too near our stock taking time, the first of December.

Q. When is the last date you took stock? A. December first, 1905.

Q. What do you say? Can you give us any

idea of it? A. No, sir; not at the present moment.

Q. Whether it is greater or less than last year? A. I couldn't tell you at the present time.

By the Court.

Q. As you anticipate running your business for the next year, it is inevitable, leaving out special improvements, that you will have on hand $80,000 or $100,000 in cash all the time, is it not? A. No, sir; I think not. I think by the first of March we will have less than $100,000.

Q. How much less, Mr. Beattie? A. I should say materially less—perhaps, we will have $60,000.

Q. And do you mean after you have paid for these improvements? A. The improvements we spoke of?

Q. Yes? A. No, sir. If we have these improvements to pay for such as the putting in of power, etc., we would not have the $60,000.

By Mr. Corbin.

Q. Mr. Beattie, this book, the cash account—to bring this out a little more clearly—take this book and give us the cash payments and cash receipts each month of the year 1906? A. 1906?

Q. Cash receipts for January, 1906? A. Cash receipts for January, 1906 are, $34,105.56.

Q. Perhaps you had better go back a whole month to December, 1905—cash receipts how much? A. $19,918.54.

Q. For January, 1906? A. $34,105.56.

Q. Go on? A. February, $35,056.28; March, $137,230.12; April, $33,611.09; May, $32,966.21; June, $18,809.05; July, $31,543.12; August, $55,707.59: September, $106,802.03; October, $40,152.46.

WILLIAM H. BEATTIE, recalled—Cross

Q. That is receipts. Now, give us the disbursements for the same period, beginning December, 1905, and continuing for eleven months? A. December, 1905, $68,388.46; January, $48,699.72; February, $37,365.53; March, $44,961.04; April, $56,469.78; May, $72,782 41; June, $35,215.44; July, $41,916.12; August, $65,376.36; September, $29,680.75; October, $75,473.82.

Q. How did you come to have so much for October? A. Well, we bought, I think we bought a year's supply of wool—something like that.

Mr. HARDING—Are you speaking of the amount that was paid for wool?

THE WITNESS—Yes.

By the Court.

Q. This is 1905, is it? A. This present year, 1906.

By Mr. Humphreys.

Q. During the period that this cash account covers that you have testified to, if any moneys were deposited in the trust companies during that period, it would appear on this credit side of this cash account and be included in these items? A. Yes, I believe it would.

Q. And if any money was received or drawn from the trust companies during that period it would appear among the receipts? A. I think it would.

Q. In other words, if you transferred any money to or from the trust account it would appear as a receipt or an expenditure in these items? A. It would ordinarily.

Q. And if there were any cross entries necessary to be made, it would not necessarily consist of cash, they would also appear in the cash account, would

they not, as receipts or payments? A. Well, they might.

MARTIN TOWEY, recalled for further examination, testifies as follows:

Direct examination by Mr. Corbin.

Q. Did you hear this examination of Mr. Humphreys? A. Yes.

Q. In that period are there any cross entries? A. No, sir.

Q. No cross entries? A. No, sir.

Q. Is there any cash drawn for Brown Brothers that appears in there, and if so, how much? A. In March, 1906, there is $10,000; July, $10,000; in August, $36,000. Also, in April, there is a deposit of $ 0,000.

Q. That is, from this account into Brown Brothers? A. From this account into Brown Brothers.

Q. Is that all? A. That is all.

Q. The rest of it represents the current business of the concern? A. Current business.

By the Court.

Q. Let me see if I understand that. After correcting the cash account, as stated by Mr. Beattie, which appears on page 48 of this book, by taking out the items that you have specified, $10,000 on one side of the account—and how many items on the other side—aggregating what? A. $56,000.

Q. $56,000 on the other side—if I understand you, do you say that this statement of cash on page 48 will show, when thus corrected, the actual receipts, the actual disbursements of the business. Is that correct? A. Yes.

Q. Can you give now, making the correction, the total cash receipts and total disbursements for

the year, for that year beginning November first, 1905, and ending with October, 1906? A. The total cash receipts were $624,238.56, and deducting the amount received from Brown Brothers or drawn from Brown Brothers, $56,00 , leaves a balance of $568,238.56. The total payments were $576,328.97; deducting the amount deposited in Brown Brothers, $10,000, leaves a balance of $`66,328 97.

Q. Now, what is the difference between the receipts and the disbursements? A. The difference between the receipts and the disbursements of cash received, exclusive of what was taken from Brown Brothers, is $1,909.59.

Q. On which side is the balance, or the difference? A. That would be a credit balance, or rather would be a surplus of receipts over expenditures—rather a balance of receipts over expenditures.

Q. The receipts, you say, exceed the expenditures by this $1,900? A. Yes.

Q. Is that for twelve months or eleven months? A. It is for eleven months.

Q. Why didn't you take in the twelfth month? A. Well, I only went back—I started at the beginning of the business year, December. I can go back to November if you wish

Q. Well, now, can you tell from your knowledge of the business, whether there were any exceptional disbursements during those eleven months? A. No, sir.

Q. I don't understand that there was only a profit of $1,900 during those eleven months. That is correct. That figure has nothing to do with profits—the $1,900? A. No, sir.

By Mr. Harding.

Q. What do you mean to say, that there was extraordinary disbursements for this time, or that

you didn't know? A. Well, you will have to read the question over again.

(Question read to the witness as follows: "Well, now, can you tell from your knowledge of the business, whether there were any exceptional disbursements during those eleven months?")

THE WITNESS—It means that I don't know of any exceptional disbursements.

By Mr. Humphreys.

Q. Wasn't there about $19,000 of machinery purchased during that year—paid for? A. I don't recall whether that was during that time or a part of—prior to this period, that is covered by those figures.

Q. You don't know anything about that account, then; during that period, how it is made up? A. I know that it is just as I have stated, that these are the totals of the receipts and the disbursements.

Q. You don't know anything about whether there were any special payments made during that year or not? A. No, I don't know.

By Mr. Harding.

Q. You haven't made special examination for that purpose? A. No, sir.

By the Court.

Q. Can you turn readily to any place or places in these books and ascertain the profits during these eleven months? A. No, sir.

By Mr. Corbin.

Q. That requires an inventory to get at the profits? A. Yes, it requires taking stock.

MARTIN TOWEY, recalled—Direct

Q. And you are accustomed to taking one every year? A. Yes.

By Mr. Humphreys.

Q. When is the next annual meeting of the company—when would that be? A. I don't know sir.

MR. CORBIN—The last Wednesday in December is the date.

CHANCERY CHAMBERS, Jersey City,
Thursday, February 16, 1911, 10 A. M.

IN CHANCERY OF NEW JERSEY.

BETWEEN
ALEXANDER MURRAY AND OTHERS,
Complainants,

and

THE BEATTIE MANUFACTURING COMPANY AND OTHERS,
Defendants.

On Bill, &c.

Transcript of testimony taken in the above stated cause, at the Chancery Chambers in Jersey City, on Thursday, February 16, 1911, before his Honor, Eugene Stevenson, Vice Chancellor.

PRESENT:

JOHN B. HUMPHREYS, Esq., and WILLIAM A. SUMNER, Esq., of Messrs. Humphreys & Sumner, for the complainants.

JOHN W. HARDING, Esq., of Messrs. Griggs & Harding, for complainant Josephine Gedney.

HON. GILBERT COLLINS and ABEL R. CORBIN, Esq., of Messrs. Collins & Corbin, for the defendants.

THE COURT—Are counsel ready in this case of Murray against the Beattie Manufacturing Company? How far apart are you in the amount of dividends to be declared?

JUDGE COLLINS—I haven't seen their figures; we have ours. I think we can get along with the schedules, probably, all right.

THE COURT—What is the figure that counsel for the complainants now state; what dividends do they ask for?

Mr. HUMPHREYS—We haven't yet considered that.

Mr. HARDING—It seems to us there should be not less than $200,000 after going over the figures.

JUDGE COLLINS—That we should now divide $200,000.

Mr. HARDING—Yes.

JUDGE COLLINS—I suppose the thing to do, then, is to take the testimony, and it is for the complainants to begin.

WILLIAM HENRY HOWARD, sworn on behalf of complainants, testified as follows:

Direct examination by Mr. Humphreys.

Q. Mr. Howard, where do you reside? A. In Little Falls.

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

Q. Are you a chartered accountant? A. Yes.

Q. Of what country? A. Great Britain.

Q. And you are carrying on business now where? A. In Paterson.

Q. And have been carrying on business there for how long? A. Two years.

Q. Have you recently been employed by the complainants in this suit to examine the books of the Beattie Manufacturing Company? A. Yes, I have.

Q. Between what dates? A. Between 1905 and 1910.

Q. And have you made such an examination? A. I have; yes.

Q. And have you prepared extracts from those books for use in this suit? A. Yes, sir.

Q. And have taken them from the books of the company? A. From the books of the company; yes, sir.

Q. Before making an examination of the books what did you do with reference to the chart that was prepared by Mr. Peterson? A. I examined that.

Q. And you continued that down to the present time? A. Down to the present time.

Q. Have you got the statement there before you marked "Beattie Manufacturing Company, Accounts December 1, 1905, to November 30, 1909?" A. Yes; I have a copy.

Mr. HUMPHREYS—I ask to have this marked for identification.

The same is marked C 1 for identification.

Q. What does that contain? A. It contains a balance sheet, statement of profits and monthly cash balances.

Q. Now, turn to the first page of that and tell us what appears on that page? A. Balance sheets.

consisting of assets and liabilities to November 30, 1906, November 30, 1907, November 30, 1908, and November 30, 1909.

Q. And what does the next page contain? A. Statement of profits for the same years.

Q. Take the next page? A. Monthly cash balances from November 30, 1905, to November 30, 1909.

Q. I now show you a paper, endorsed "Beattie Manufacturing Company, accounts for year ending November 30, 1910," which has been marked for identification C 2, and ask you what that contains. A. Balance sheet, inventories, manufacturing account, profit and loss account, receipts for interest and rents, summary monthly cash balances.

Q. How was it that this account relating to the year 1910 was prepared separately from the chart relating to the four previous years? A. It was made after the other one was completed, and, in fact, before December 10.

Q. It was after carrying down the account to November 30, 1910, that this was made? A. Yes.

Q. Now, what does the first page of that contain? A. Balance sheet, assets and liabilities, November 30, 1910.

Q. And the next page? A. Inventories for the years 1906, 1907, 1908, 1909, and 1910.

Q. The next page? A. Part of the manufacturing account and profit and loss account.

Q. And the next page? A. Profit and loss account, and the merchandise account, and rent, and interest.

Q. What is the next page? A. Receipts for interest and rents.

Q. Next page? A. Monthly cash balances from December 31, 1909, to November 30, 1910.

Q. Is that the last page? A. That is the last page.

Mr. HUMPHREYS—I offer both of these papers in evidence.

The same are admitted and designated as Exhibits C 1 and C 2, respectively.

JUDGE COLLINS—May we reserve our cross-examination until the general cross-examination?

THE COURT—In regard to these papers?

JUDGE COLLINS—Yes.

THE COURT—O, certainly.

JUDGE COLLINS—We do not object to the schedules because they are for both sides.

By the Court.

Q. I understand this paper is a statement you prepared from the books of the company? A. Yes.

Q. You made no inquiry beyond the books? A. None whatever.

Q. This item of real estate, $193,444.81 is the valuation of the real estate on the books of the company? A. On the books of the company.

THE COURT—Proceed.

Q. Now, will you please turn to the year ending November 30, 1905, and tell us what the total reserve account was in that year. You will find that in Peterson's chart, but I am referring now to the papers which are now in evidence.

THE COURT—I would suggest to counsel that so far it is proved without objection that

these papers, Exhibits C 1 and C 2, are correct transcripts from the books, that is to say, that they show the totals?

Mr. CORBIN—We shall cross-examine on that, your Honor.

Q. Now, will you turn to this chart prepared by Mr. Peterson, and marked C 8 in the case, and look at the balance sheet and tell me what the total reserve account was on November 30, 1905, that is, the sum of all the reserves. A. $473,104.

Q. Now, turn to the chart relating to the year ending November 30, 1910, and tell me what the reserve account was on that day? A. $639,744.30.

Q. And what increase does that denote between those years? Can you tell me what the total net assets were in the year 1905?

JUDGE COLLINS—I object to that. What is meant by "live assets?"

Q. I mean by that, what was the total of the cash merchandise account and the accounts and bills receivable for the year ending November 30, 1905, as shown by the books of the company and the balance sheet.

JUDGE COLLINS—I object to that. We cannot distribute merchandise as a dividend. Now, then, your Honor will certainly be confused if cash and bills receivable, items of an entirely different character, are blended together.

THE COURT—If the evidence is presented in intelligent shape of course the Court cannot get confused. I think it would be better to prove these different items

and then let the aggregate be mentioned.

JUDGE COLLINS—All this is unnecessary and a waste of time for the witness to state over again what is presented on these sheets.

THE COURT—There isn't much use, Mr. Humphreys, in merely having the witness read off these figures from the schedules. They seem to show all these facts and the rest are matters of argument. However, I shall not rule on that question, if you want the witness to do the figuring.

JUDGE COLLINS—The purpose of these papers was to save testimony.

Mr. HARDING—Ask him what the live net assets were made up of.

JUDGE COLLINS—I would object to that question as characterizing the thing. The documents tells that.

Mr. HARDING—It doesn't tell and we have a perfect right to show it.

Q. Will you turn to the chart of Mr. Peterson and tell us how much cash there was on hand November 30, 1905?

THE COURT—Doesn't that all appear?

Mr. HUMPHREYS—It all appears. May I be permitted to ask the witness what the total live assets were on November 30, 1905?

JUDGE COLLINS—I object to the question as characterizing elements that cannot be characterized by an expert. He can give

the cash, and give the bills receivable, and give the merchandise.

THE COURT—Well, unless an explanation is made to the Court of the term "live assets" the answer of the accountant would not be helpful at all. The witness can answer the question and then explain what he deems live assets—what he includes in his figures.

Mr. HUMPHREYS—I only use the term "live assets" to ascertain what certain items were on November 30, 1905, namely, cash, and bills receivable, and merchandise.

JUDGE COLLINS—That question is unobjectionable put in that shape, but it is unnecessary because your Honor can add.

A. Total live assets, as I have termed them, ending November 30, 1905, are $448,171.74.

THE COURT—Now, give the items.

Q. What do they consist of? A. Cash, merchandise and accounts receivable.

THE COURT—Give the amount of each—how much cash, and so forth.

Mr. HARDING—They are all stated there.

THE COURT—Well, if you are going to have the witness state merely what the paper states—

Mr. HARDING—If your Honor will hear me just a minute and let me make a suggestion.

THE COURT—First, let the witness answer

this question: Give the amount of cash, the amount of merchandise, and the amount of bills receivable.

A. Accounts receivable $80,630.59; merchandise, $137,353.63, cash $211,445.28.

By the Court.

Q. Well, that is more than $448,000, is it not? A. Oh, we take off the accounts payable for that year.

Q. Well, then, what is the amount of the accounts payable? A. $51,257.76.

Q. What is that? A. Accounts payable.

Q. Was there any dividend that year? A. The dividend is in addition to that.

By Judge Collins.

Q. How much was that? A. $30,000 in 1905.

Q. Now, what do you mean by "net live assets?"

JUDGE COLLINS—I object to the question. Counsel said it was an ear mark, and he gave a definition of it.

Mr. HARDING—Is there any reason why we shouldn't have him explain these different items so that your Honor will understand them?

THE COURT—None whatever; but I do not understand that on any one of these schedules do we find the words "live assets." If there is such an item I would like to see it.

Mr. HARDING—That is the reason why we ought to explain it.

THE COURT—You asked the witness what the live assets were and he goes on to explain, and he has gone on to explain,

and he has finished his explanation. What more is to be said about that? He said the live assets amounted to $448,000, and it developed that that included three items, merchandise, cash, and bills receivable; and then he undertook to give the particulars from his statement, manifestly putting in about $80,000 more, and then he explained that that $80,000 was made up of $51,000 of bills payable and $30,000 due for dividends, which made it about even, according to the rough calculation that I followed.

Mr. HARDING—Then the remainder left what is called "net life assets."

Q. Now, then, will you turn to your chart for the year ending November 30, 1910, and tell the Court what the difference between the cash, the merchandise, and the accounts and bills receivable on the one hand, and the bills payable, and accounts payable, and any dividend that was a liability in that year on the other hand?

A. Merchandise $356,335.32
Cash 203,016.52
Accounts receivable 147,324.94

Total $706,676.78

Q. What was the amount of the accounts payable and the dividends?

A. Accounts payable. $39,701.39
Dividends 60,000.00

Total $99,701.39

leaving $606,975.39.

Q. As what? A. Net live assets.

Q. You have given us the merchandise; now, will you please look at the chart of Mr. Peterson and the balance sheets and tell us in what year prior to the commencement of this suit, which was in 1905, the company had the largest stock of merchandise ever on hand?

JUDGE COLLINS—I object to that as irrelevant. What difference does it make?

THE COURT—I doubt its relevancy, but I will admit it.

A. 1903.

Q. And what did it amount to then? A. $206,858.29.

Q. Have you made any examination of the books to ascertain how the volume of business compares for the year ending November 30, 1910, with the year ending November 30, 1903, when you say they had the largest amount of merchandise on hand?

JUDGE COLLINS—That is objected to as irrelevant.

THE COURT—I will take it, but I do not see how this witness can help the Court any by his inferences.

JUDGE COLLINS—Apart from its being irrelevant, I also object to it as not being a particular subject of expert opinion.

THE COURT—So it would seem.

Q. What do the books show as to the increase of the sales, or increase in the amount of sales, in the year ending November 30, 1910, as compared with the year ending November 30, 1903? A. An in-

crease of thirty-three and one third per cent., about.

By the Court.

Q. You are now giving a comparison between the amount of sales which you find recorded on the books for the year ending November 30, 1910, with the amount of sales recorded for the year ending November 30, 1903? A. Yes, sir.

Q. Comparing year with year? A. Yes.

Q. Now, will you turn to the monthly cash balances for the year 1910, and tell us what balance of cash was on hand in every month during that year in any of the banks—in all of the banks together? A. Beginning with 1910—

By the Court.

Q. You are now referring to what exhibit? A. C 2 for identification.

JUDGE COLLINS—I do not see the purpose of it; it is all there on that exhibit. You are putting on the record what you wanted, to save time, to be permitted to put in, in tabulated form.

THE COURT—I really think, Mr. Humphreys, although I am not disposed to rule closely on the evidence, but feel disposed to give counsel pretty full swing, that the testimony of the witness should be confined to explaining entries that appear on these papers. We have all the entries exhibited there in tabulated form.

Q. Will you look at Mr. Peterson's chart again to begin with and afterwards to yours and tell us

what depreciations have been written off from machinery, real estate and buildings during the last ten years.

Mr. CORBIN—Give the page of Peterson's chart.

A. Page 9. Depreciation in machinery $10,487.40.

1901..... $19,805.73

1902..... 44,938.53

Mr. CORBIN—Where do you get these figures? These are not ni Mr. Peterson's tables at all. A. These are back in Mr. Peterson's chart. 1903, $37,174.60.

Mr. CORBIN—That is not on Mr. Peterson's table.

A. (continuing) 1904, nothing; 1905, $15,529.57.

Q. Now turn, to your own figures in 1906 and tell us what has been written off of that for depreciation. A. 1906, $17,490.13.

JUDGE COLLINS—Is that included in this exhibit? A. I don't think it is in that account that you find there.

Q. On page 2 of Exhibit C 1, doesn't that show the depreciation. A. Yes, it shows the totals for the five years.

Q. Give us the totals, separately. A. They are given here from 1905 to 1909, $110,545.87.

Q. What was the depreciation written off in 1910, as shown by Exhibit C 2? A. $40,462.53.

Q. What is the total amount written off in ten years? A. $278.944.

Q. Now, can you tell us how much was written off in last five years for depreciation? A. $151,008.

Q. How much do the books show was expended

in repairs during the last ten years? A. $254,001.74.

Q. How much was expended in the last five years? A. $117,153.

Q. Now, did you make any comparison between the inventory upon which the balance sheet, ending November 30, 1910, was based and the inventory upon which the previous balance sheet of 1909 was based? A. Yes, I did.

Q. I show you this piece of paper, marked C 3 for identification, and ask you if that is your extract of comparisons between the two? A. Yes.

Q. Will you state what, if any, difference you found in the mode of inventory adopted in either case. A. It was taken at a lesser rate than the previous year.

Q. What was? A. The 9x12 and 83x106 rugs.

Q. What kind of rugs were those? A. Axminster, 9x12.

Q. Were there any other differences? A. Yes, Axminster, 83x106. The price in 1908 was $8.96 and in 1910, $8.19.

Q. And other differences? A. Sussex, 9x12, the price in 1909 was $7.73, and in 1910, $7.28. Then Wilton velvet, taken in at 95 cents in 1909, and in 1910, .9357 cents in 1910. Plain fillings, 94 cents in 1909, and 89 cents in 1910.

THE COURT—Mr. Humphreys, is the witness just reading from the schedule?

Mr. HUMPHREYS—Yes. Well, I will offer this paper in evidence.

The same is admitted and designated C 3.

Q. I ask you what the total differences in dollars and cents, consequent upon the difference in price amount to. A. $17,828.42.

Q. All those differences consisted in manufactured rugs? A. Manufactured, yes.

Q. Were you able to make any comparison between the prices of the goods in process of manufacture as in the two inventories? A. No.

Q. Why not? A. I couldn't tell anything about it.

Q. Could you make any comparison between the raw material? A. I didn't make any comparison.

By the Court.

Q. Mr. Howard, will you just take the statement for the year 1910—I think it is Exhibit C 2—and turn to page 6 and explain the third column entitled "Cash." In making up the total amount of cash on hand for the different months you stated the amount on deposit with Brown Brothers in one column, the amount on deposit with the Colonial Trust Company in the second column, and then you say "Cash;" why did you not put that cash in other banks? A. That "Cash" means other bank accounts and moneys in the drawer in the shape of cash.

By the Court.

Q. What were the other banks? A. Paterson National Bank and the Bank of the Metropolis, I think, in New York.

Q. Why didn't you specify those banks? A. I followed along the lines of the previous years.

Q. You don't know why two banks were picked out and the other banks put in one item as cash and money on hand? A. The banks noted there were deposit accounts bearing interest, I think, and the others withdrawal accounts on check.

WILLIAM HENRY HOWARD—Cross

Cross-examination by Mr. Corbin.

Q. Mr. Howard, when you were examining these inventories here of rugs of a certain size that were inventories for less in 1910 than they were in 1909, you didn't pursue your examination far enough to determine what such rugs sold for? A. No.

Q. Or to determine what those rugs cost to manufacture in 1910 and 1909? A. No.

Q. I find on this schedule that you have introduced here, Exhibit C 3 at the bottom: "The following percentages are deducted from 1910 inventory against nothing in 1909" and then it goes on: "Jobs 25 per cent. of $15,014.00, $3,753.60," how did you get at that? A. From the inventory.

Q. You got that from the inventory? A. Yes.

Q. What were the job lots that were sold in the previous year? A. There were no discounts taken off in 1909.

Q. And so far as the inventory shows there were no job lots sold in 1909? A. I couldn't say that; I didn't check what became of the inventories.

Q. Did you compare the prices of these rugs in 1910 with the prices at which they were inventories in the year 1908? A. No.

Q. In making up your statement of what has been characterized here as "net live assets" you take the cash, the merchandize and the accounts receivable and add them together; then you deduct from that the dividends and bills payable, and you get the balance;—now in these bills payable you haven't taken all of the bills payable as shown on the balance sheet, have you? A. I believe so, yes.

Q. How about the item for power plant extension, machinery? You don't show that, do you, the $107,659.31? A. No, it is not in the books of account.

Q. Isn't that entered in the books? A. No.

Q. You say that is not entered in the books? A. A. No.

Q. Where did you get it? A. I have taken the copy of a balance sheet that was presented to me, and when I say it is not entered in the books, it isn't entered in the ledgers; it is only entered as a note in the journal without putting any figures in it at all—simply a problematical figure. I will read the entry in the journal: "Power plant extension, machinery, etc. ordered, etc. $123,420, less paid for or entered as liability $15,760.69, leaving a balance of $10,7659.31 as a contingent to cover accounts due and not due, machinery ordered and to be ordered, buildings in course of completion, etc. and under contract, engines, boilers, etc. now being erected and negotiated for"—I couldn't enter that into any account.

By Mr. Humphreys.

Q. Is that in the journal, what you have just read? A. Yes.

Q. You didn't take that into consideration at all? A. No, not at all.

Q. Don't you consider that a liability, so far as it is contracted for? A. When you have a definite liability you must put it definitely in books.

Q. If you were trying to find out what the available quick assets of a corporation were, fairly, and you found that there had been a large amount of machinery contracted for that was to be paid for, you certainly would deduct that amount for machinery from the assets, wouldn't you? A. You might, on the same principle as if I had $30,000 in orders for goods next month and I take that off as paid for.

Q. If you had ordered them and had got to pay

for them wouldn't you, if you were determining what the assets were, deduct that? A. Not at that time.

Q. The question is whether they should be taken into account to obtain the quick assets? A. If a liability had been entered in the ledger to the credit of somebody, then it would be another matter; but as it is not, I couldn't take it into account.

Q. You are simply answering as bookkeeper; but as an accountant, if you found some machinery had been ordered that was required, then, in fairness, in stating the condition, you would have to deduct that from the assets? A. I didn't find there was any machinery.

By the Court.

Q. If you deducted the cost of the machinery ordered from the assets, you would add the value of the machinery to the assets, wouldn't you? A. Certainly.

Q. Would you add that if you were looking for quick assets, as you call them? A. Well, quick assets at that time; that is a liability that is not payable at the present time; it is contingent; payable in the future; what I am getting at is that if $107,000 worth of machinery were ordered for this plant and had to be paid for—was contracted for and had to be paid for—to put in the plant and utilized as a part of the plant after it was put in—

Q. (Interrupting). You would, in fairness, in determining what the quick assets of the corporation were, take that out of the quick assets? A. Not at that time.

Q. You wouldn't even say that it had been ordered and become a liability? A. No; I wouldn't take it in the quick assets at that time.

Q. Why not? A. Because it is not due and payable.

Q. Don't you consider that machinery is a liability when it is contracted for? A. Well, you might call it a contingent liability; it might possibly be another amount; not that amount.

Mr. HARDING—We haven't objected to this, but it seems to me that the facts are perfectly apparent to the Court and, while this is cross-examination, I don't think counsel should go at great length and take time getting into an argument with the witness.

THE COURT—I will allow it; I do not think the witness can help the Court at all. It is perfectly plain that they may have a million dollars of live assets and entered upon certain engagements for the near future. As a bookkeeper and accountant he cannot determine that; he is dealing with the books. There is something more in this case than the mere ascertainment of what the books show. The Court has to look into what the corporation requires, and that takes into consideration all the things that they are engaging to do. But this witness cannot help the Court on that subject in the slightest degree. He is a mere accountant; he knows his work.

Q. Mr. Howard, you said that you brought Mr. Peterson's tables down to date; did you actually bring them down on the Peterson sheets, or how do you mean you brought them down to date? A. I

continued the balance sheet for 1905, 1906, 1907, 1908, 1909 and 1910.

Q. Just the balance sheet? A. All the accounts following along the same line.

Q. You mean such a continuation as is found in Exhibits C 1 and C 2? A. Yes.

Q. Now, on this Exhibit C 1 there is an account marked "Reserve Fund," beginning with $260,-269.38. Where did you get that figure? How is it made up? A. That is November 30, 1906.

Q. Where did you find that figure? How did you make it up? A. That is in private ledger.

Q. You mean in the private ledger of the Beattie Manufacturing Company there is a figure marked Reserve Fund, $260,269.38? A. Yes.

Q. Is it just one item or an aggregate of several items? A. One item.

Q. I show you the private ledger and ask you to turn to the entry in 1906. A. There it is $260,-269.38, payment to amount of Reserve Fund of that date.

Q. But you don't find in the books any such items as so much money? A. Oh, no; if you make a total there, you will find that the books haven't been brought down.

JUDGE COLLINS—But it doesn't say "Reserve Fund" anywhere; it is interest and profit and loss.

Q. Now, what does this Reserve Fund consist of? A. Principally surplus profits.

Q. What do you mean by surplus profits? A. The balance of the profit and loss account after taking off the dividend.

Q. Well, that includes the machinery that has gone into the factory where the machinery was

purchased out of profits, does it not? A. No; that has got nothing to do with machinery.

Q. Doesn't that include repairs that are made to the factory in a certain year out of profits? A. Repairs are taken out of profit and loss account.

Q. We will suppose that in a certain year the profits are $25,000 above dividends and those profits are appropriated as working capital and are put into the machinery plant; that item appears in this item of Reserve Fund Account that you have here, doesn't it? A. That amount which is transferred is surplus profits and is transferred to the reserve, and if they choose to buy machinery they buy and pay for that machinery and charge it up to machinery account.

Q. The Reserve Fund is an account against that, is it not; it doesn't mean that it is a fund; this money may have been actually expended for machinery, may it not? A. The reserve fund is a difference between the assets and liabilities.

Q. And it may be in the form of cash or it may be in the form of goods manufactured, or it may be in the form of machinery, or it may be in the form of buildings, may it not? A. It may be in the form of assets as shown by the balance sheets.

Q. The balance sheets do show that that was largely put into machinery, do they not?

Mr. HUMPHREYS—I don't think we are disputing you.

Mr. CORBIN—Well, there is a large amount of cash—$200,000 in cash—but I am talking about machinery.

A. Well, it is included in the inventory.

Q. And the plant, too, to some extent; I mean

just repairs and buildings? A. Yes, it is included in that.

Q. New buildings may be put up? A. Yes.

Q. Now, I want to know whether this reserve fund account is this thing that the stockholders set apart or whether it is something else?

Mr. HUMPHREYS—How does he know.

Mr. CORBIN—He ought to know; if he looks at the books he ought to know.

THE COURT—Go ahead if you think it is worth while. Counsel takes a good while to bring out things from this witness. It is perfectly plain where this term Reserve Fund comes from; the witness has explained over and over again what he means by the Reserve Fund; it is the difference between the assets and liabilities, counting in the capital stock and taking that as a liability, and, of course, it is invested in everything. You cannot lay your finger on anything in which this so-called surplus is invested—anything in particular. You have to take everything—real estate machinery and all on one side, and the liabilities on the other, and the difference is this $739,000. Now, what action they have taken is altogether another matter. This witness doesn't know anything about that.

THE COMPLAINANTS REST.

MARTIN TOWEY, recalled—Direct

DEFENDANT'S TESTIMONY.

MARTIN TOWEY, recalled on behalf of the defendant, testified as follows:

Direct examination by Mr. Collins.

Q. What is your profession? A. Bookkeeper for the Beattie Manufacturing Company.

Q. How long have you been such bookkeeper? A. About seven years.

Q. Are you familiar with their accounts? A. Yes, sir.

Q. There were schedules put in evidence in the trial of the main cause, showing various matters deduced from the books; have you continued those schedules down to and including the year ending November 30, 1910? A. Yes, sir.

Q. I show you a copy entitled "Data taken from the books and accounts of the Beattie Manufacturing Company, prepared and submitted by the Beattie Manufacturing Company February, 1911," and ask you to explain what the different elements composed in that schedule are. A. Beginning with the first page is a statement showing working capital as at the close of the fiscal years 1882 to 1910, that is, the cash accounts receivable and merchandise, after deducting items payable.

Q. Take the secoud page? A. Statement of sales, net earnings, dividends and working capital at close of fiscal years 1882 to 1910.

Q. Take the third? A. Table showing the disposition of earnings for years 1882 to 1910.

Q. And the fourth page? A. Statement showing increase in sales of rugs and decrease in sales of carpets for seven years—1904 to 1910.

Q. Fifth? A. Statement showing needs to March 1, 1911.

Q. Sixth? A. Statement of expenditures for improvements, machinery and replacements, under way, contracted for or planned.

Q. Seventh? A. Balance sheet December 1, 1910.

Q. Eighth? A. Trial balances of ledgers February 1, 1911.

Q. Ninth page? A. That is a continuation of page 8.

Q. Now, in-so-far as these sheets purport to be taken from the books have they truly been taken therefrom? A. Yes, sir.

Q. And they are divided into appropriate heads, so that his Honor, the Vice-Chancellor, can get the information that the books show; are they? A. Yes, sir.

Q. I notice that one of the sheets contains a statement of expenditures for improvements, machinery and replacements under way, contracted for or planned; I suppose, from the very nature of the sheet, these items are not all shown on the books, are they? A. No, sir.

Q. From what data is the sheet compiled? A. A section of it here is headed: "Estimate furnished by John W. Ferguson Co. of equipment Power Plant, etc., under contract."

Q. Amounting to $60,000? A. And $20; yes.

Q. Is that under contract at that figure? A. Yes. Not at that figure; it is a percentage contract, I understand.

Q. The Ferguson contract is a percentage contract; how do you mean? A. I believe they have the order to go ahead and install these various machines, belt and shafting, etc., and this is their estimated cost of that installation.

Q. And they are to furnish it at cost and a percentage for their profits; is that it? A. Yes, sir; they furnishing the necessary tools and machinery.

Q. What is that percentage? A. I think it is ten per cent. or twelve.

Q. Does the aggregate of the $60,020 include that percentage, or is that the estimate of cost? A. I believe that is the estimate of cost; I don't know that that does include the percentage.

Q. Now, then, go on with the other items? A. The next item is: "Engine, as per contract, $9,400" and "Boilers as per contract, $4,500." That is a fixed figure for those two items.

Q. Actually contracted for? A. Actually contracted for.

Q. Are they in yet? A. The boilers are in and have been paid for, I think; the engine we have paid something on account of, the amount being $5,640, as shown later on.

Q. That appears in the books, I suppose? A. Yes, sir.

Q. Now, as to the Ferguson estimate, have some of those been actually furnished; is the work in process now of construction? A. I believe the building is nearing completion, and all these various other items are under way.

Q. Now, go on with the other things; the machinery ordered for yarn dryer, drums and looms? A. Those are, practically,—that is, the machines are, I understand,—now in the plant but haven't been erected.

Q. But they are there ready for you? A. Yes, sir.

Q. What about the other machinery aggregating $22,050? A. That is machinery that will be ordered, that will be necessary to complete—to even up the plant after the other items are in.

By the Court.

Q. What was the source from which you got

those figures, $22,050? A. That is an estimate made up in our office.

Q. Who made it? A. Mr. William H. Beattie, I think.

Q. With your assistance? A. Yes.

By the Court.

Q. Do you know anything about it yourself? A. I know that the price of these Atlantic drums, $3,200, is the same as we have already paid for some drums. I think it appears on the other side of the sheet. There is an item there on the other side, "Two pairs Atlantic drums, $3,200." I know this price is right on that because that is what we paid.

Q. And in regard to the other prices your practical experience teaches you are approximately right? A. Yes, sir.

Q. Now, on the other side of the account you have put the payments that have been made or entered on the books, amounting to $15,760.69. A. That is prior to the making up of our balance sheet of December 1st, bringing the total reservation for this liability on the first of December to $107,659.31.

Q. Then to that you have added for further developments certain items; whence were those derived? A. Those have developed since the making of this other figure.

By the Court.

Q. No, but where did you get that figure? A. That is also an estimate made up in the office. It is a rough figure for remodeling the steam room, re-arrangement of electrical wiring, re-arrangement of steam pipes, re-hanging shafting. I understand all those things will have to be done on account of changes in the piping.

Q. Then that is added, making $14,450, which makes a total of $122,109.31 charges. From that you deduct what? A. Items paid during December or otherwise entered on our books as a liability.

Q. Since the balance sheet? A. Yes.

Q. So that the net amount for which the company is answerable is what? A. $84,651.57.

By the Court.

Q. Now, you say that that figure indicates the cash that the company will have to pay in order to have this completed? A. Yes, sir.

Q. Should you not add to all these items, or which you call items, entered as a liability? When they are entered as a liability they are not paid, are they? A. No.

Q. With your pencil, can you give the amount of those items that are entered as liabilities and which have not been paid, but which will have to be paid in order to make this plant fully paid for? A. That will show on one of these other sheets, I think, here.

Q. Just turn to it.

JUDGE COLLINS—I understand, down to November 30, 1905, those items have been taken into account by Mr. Howard. He has taken into account everything entered, but he did not take into account that $107,659.31, because it was, as he claimed, not entered.

By the Court—continued.

Q. Now, just see if you can tell, as a bookkeeper, how much cash, in addition to the $84,651.57 will be necessary to pay for all these improvements.

MARTIN TOWEY, recalled—Direct

JUDGE COLLINS—Including what has been entered.

A. On the eighth page of this table we have—no; I will take the ninth page of the table; there is an item "Creditor's Ledger," the third item, $45,887.10; now, that may include some of this $86,000.

Q. Well, you have no way of giving us the amount? A. That would be in a schedule of our creditors.

Q. Now, let me call your attention to these figures, turning to page six on the right-hand side; you have an item there of $15,760.69? A. Yes, sir.

Q. And that embraces items paid or entered on books as liabilities prior to December 1st, and then you have John W. Ferguson Co. $5,000 and five other items aggregating $15,760.69; now, can you tell how much, for instance, of that item, John W. Ferguson Co. $5,000, has been paid to Mr. Ferguson at the date of this? A. That had been paid.

Q. Now, take the next item—brick, material, etc. $1,372.51. A. I wouldn't say that that had been paid.

Q. Can you tell, even approximately, what portion of the $15,760.69 was not paid at the date of this schedule? A. Why, my impression is that each one of those items, with the exception of the item, $1,372.51, had been paid.

Q. Take the next item, or aggregation of items below amounting to $16,563.27, entitled "Paid during December, or entered as liability;" can you tell what portion of that was paid at the date of this schedule, or what portion was entered as a liability and not paid? A. $6,000, I know, had been paid; we paid the $5,000 in November to Ferguson and we paid this $6,000 in December.

MARTIN TOWEY, recalled—Direct

Q. Take the next item—looms. A. Looms; I am doubtful whether this entire amount had been paid or not; I think most of it had been, if not all of it.

Q. Well, take the next; duties $1,991.70; had that been paid? A. Yes, sir.

Q. Now, take the third aggregation of items entered as paid or entered as liability, amounting to $20,894.47; can you pick out there the amounts that were paid during January and the amounts that were entered as liability and not paid at the date of this schedule? A. The first item of $17 was paid; the $4,500 has, since February 1st, been paid.

Q. Well, how much of it was paid during January; do you know? A. None of the $4,500.

Q. Now, take the next; materials, etc., $561.32. A. I don't recall whether that was paid in January or February.

Q. John W. Ferguson Co. $7,000; how about that? A. That was paid.

Q. In January? A. Yes, sir.

Q. Watts-Campbell Co., engine, $5,640? A. My impression is, that was paid.

Q. Duties on looms, $1,900.05. A. That was paid, yes; we have a book here that gives the date of each one of these items.

Q. Then, practically, at the date of this schedule the amount required to pay for all these improvements would be $84,651.57 plus two or three quite small items? A. Yes.

JUDGE COLLINS—That is exact it; you see it makes no difference, Vice-Chancellor, whether they were paid or not; they were entered as a liability; Mr. Howard has taken those into account.

MARTIN TOWEY, recalled—Direct

THE COURT—You don't seem to understand the point I am after.

JUDGE COLLINS—No; I don't.

THE COURT—I will explain it; for I want to get the help of counsel, and I want them to understand what is passing in my mind. The important matter is to know what the requirements of this corporation are, and we have to take some date. I have taken the date of this schedule, and the testimony shows that large numbers of improvements have been contracted for, partly paid for, partly installed, and more money is to be expended. The question is: How much more cash have they got to pay out, that they must provide for now. It is shown here $84,651.57, but that isn't the whole amount, because that figure is reached after they have deducted the amount entered as liability but not paid. That has got to be paid for, and I want the witness to show what the total amount of the deductions from the cost of the plant consisted of liabilities entered on the books which have not yet been liquidated and for which cash is necessary. I understood the witness to say that all of the $15,760.69, $14,450, and $37,457.74 have not actually been paid, or only a very small portion of it, which stands on the books as a liability to be liquidated. Therefore, we have the total cash they will require to pay for this plant—these improvements—if we take the $84,651.57, and a compara-

tively small figure which, in the rough, would be between five and ten thousand dollars.

JUDGE COLLINS—If your honor will look at sheet five of the schedule, which shows a statement of the needs of the company to March 1st, 1911, you will find the current account as per trial balance February 1st, $53,574.98. That is what they actually need to pay the current liabilities that have been entered up already.

THE COURT—That includes everything; that doesn't include the plant alone, as I understand.

A. That includes everything.

JUDGE COLLINS—Yes; but it also includes these things that are entered as liability.

THE COURT—We are now dealing with the status of these improvements with a view to ascertaining what the extra burden cast upon the corporation is by reason of these improvements.

JUDGE COLLINS—$84,000.

THE COURT—$84,000 plus, apparently.

JUDGE COLLINS—But that plus is included in the item of the current account.

THE COURT—That doesn't aid us at all; I am not dealing with what the general requirements of the business are. Proceed.

Q. Take page five; that shows a statement show-

ing the needs to March 1st, 1911; that is practically derived by estimate, is it not? A. Yes.

Q. The net result is, that above the amount of cash on hand, you will have to have for actual estimated liabilities of the corporation on March 1st, 1911, $41,774.44? A. Yes, sir.

Q. Besides the dividend for the year 1910 to the extent of $45,000 payable March 1st? A. Yes, sir.

JUDGE COLLINS—We offer in evidence this schedule, subject to cross-examination, and we will have to call Mr. Beattie to prove some things.

Admitted in evidence and marked Exhibit D 1.

Q. There might be a little confusion—the carpet and rug comparison, that you have made, was made up from gross sales, or net sales? A. From gross sales.

Q. Let me just ask you whether it is a fact that in the course of the last five years the business of The Beattie Manufacturing Company has largely changed in character? A. Yes, sir.

Q. What was the change—I mean from what kind of manufacture to what kind? A. The business in carpets and small rugs made by carpet machinery in 1904 was 67% of the total.

Q. And the change? A. This business in rugs, at that time, was 15% of the total business in 1910 the percentages were just about reversed; that is, the business in carpets and small rugs made by carpet machinery was 17%, and the business in rugs was 75%.

Q. Now, has that change necessitated a change in equipment and in machinery? A. Yes, sir; it has

necessitated the throwing out of most of the carpet machinery and putting in rug machinery.

Q. And this work that is now going on is of what general character? A. The work that is now going on, as shown on this schedule marked D 1, under the statement of expenditure for improvement, etc., is for the purpose of equipping the plant with power, power transmission, machinery, etc., and also to bring up the business on rugs to a certain figure.

Q. Is the business, or not, steadily increasing? A. Yes, sir; I would say generally; it was steadily increasing, but it dropped off a little in 1910; it dropped off $45,000 in the gross.

Q. I want to call your attention to the testimony of Mr. Howard; that shows the valuation in the inventory in 1910 as being lower on certain classes of rugs than in 1909; will you please explain that fact? A. The pricing of the inventory between 1910 and 1909?

Q. Yes; the difference. A. Well, I can only account for that as being due to the advance in the actual cost of the rugs.

Mr. HUMPHREYS—Does this witness know anything about that?

Q. Do you know? A. Yes, sir.

Q. Now, as a matter of fact, are the prices in the inventory of 1910 at actual cost price? A. Yes, sir; as near as we can arrive at them, or could arrive at them at that time.

Cross-examination by Mr. Humphreys.

Q. Turn to page 6 of your data. The first item that appears on it is "Estimate furnished by John W. Ferguson Co. of equipment Power Plant, etc.,

under contract;" when was that estimate made? A. I believe it was made sometime in August; I am not certain about the date of it.

JUDGE COLLINS—Mr. Beattie is here; we will call him.

Q. Well, do you know whether the estimate was ever accepted? A. Yes, sir.

Q. When was it accepted? A. Why, my impression is that it was accepted within a few weeks or a few days after it was offered.

Q. And was there any written contract between the Beattie Manufacturing Company and John W. Ferguson Company on that subject? A. Nothing more than the offering of the estimate and the acceptance of their offer.

Q. And when was the work commenced? A. I think the work was commenced in August—August or September.

Q. What does that contract or estimate generally cover, apart from the items as described here; what is the work to be done, generally? A. Apart from this?

Q. Yes, give us the different items, like engine and boiler, etc.; what kind of plant was it they were putting in? A. Apart from this?

Q. No, including that. Take that $60,000 item; what is that? A. That $60,000 is just the total of these figures.

Q. I know, but I want you to tell what the whole work was that was being done then; were they putting in a new power plant? A. Well, they were doing more than putting in a new power plant, I think.

Q. Well, what were they doing? A. They were—Ferguson Company you have reference to?

Q. Do you know how many horse-power it was to be? A. Why, I haven't any exact knowledge as to the horse power of the plant. I think if is—

JUDGE COLLINS—Mr. Beattie will give you that.

At this point Judge Collins informs the Court that he has a case, begun yesterday before Vice-Chancellor Stevens, which will proceed this afternoon and the further examination by the Court is carried on in his absence.

THE COURT—I will say here, Judge Collins, I think before this witness leaves the stand I shall ask him a few questions in regard to the schedule found on page 5. I will then adjourn the hearing over to Saturday, February 18, 1911,at 9.45 in the forenoon, at the Court House in Paterson.

Examination by the Court.

Q. Referring to page 5 of Exhibit D 1, I call your attention, Mr. Towey, to the title of the schedule, which is "Statement showing needs to March 1st, 1911;" did you make that title? A. Yes, sir.

Q. Now, what do you mean by that? A. The purpose of the statement is to show how much cash we will get in up to March 1st from the date of our last trial balance February 1st——what we estimate to get in up to March 1st; that is to say, totaling our receipts up to that time and against that putting our expenditures.

Q. In other words, you start out with cash on hand February 1st of $125,086.73? A. Yes, sir.

Q. And you make an estimate of the amount of cash that you will receive—actual cash—during the month of February? A. Yes.

Q. And then you also, on the other side, make an estimate of the amount of cash that you will want to check out? A. Yes.

Q. That is what this schedule is? A. Yes, sir.

Q. Now, the first item, of course, is definite and absolute—"Cash on hand February 1st?" A. Yes, sir.

Q. The next item—the item of $24,704.89—as I understand it, is the amount that you estimate, based on the experience of the corporation last year, as the sum total of cash that you will collect during the month? A. Yes, sir.

Q. And so that makes your total estimate of cash that you will actually have for use in February $149,791.62; is that right? A. Yes, sir.

Q. Now, on the other side—there is where I want more help—what is that figure $53,339.51; is that one twelfth of the total expenditures for the year? A. Yes, sir.

Q. Based on what year? A. Based on last year, 1910.

Q. You took the sum total of all the outgoes last year in the shape of cash? A. For manufacturing purposes only—not machinery, but for manufacturing purposes only.

Q. For running the business? A. For running the business, yes, sir.

Q. And then you take a twelfth of that and consider that is the amount that you will probably require during February? A. Yes, sir.

Q. Now, then, the next item was $53,574.98, entitled "Liabilities—current account as per Trial Balance February 1st"—I don't quite understand that. What is that? A. We have here on the

8th and 9th pages a trial balance of February 1st, which this item refers to.

Q. Where is that? A. On the 9th page, the first at the left, is that figure $53,339.51.

Q. Well, now, what is that? A. That should be $53,574.98, as shown there. Now, that includes the account of George L. Birkmaier, which is an account payable, sundry accounts as per our company's customer ledger $45,887.10.

By Mr. Humphreys.

Q. Are those accounts payable within the month? A. Yes, sir

Q. Due within the month? A. Most of them have since been paid. It includes $5,200 for wages which were due the payday after February first; it includes a reservation for salaries which are not credited on the books until the close of the year, less advances; and another item of $101.47 from the customer's ledger, totaling $53,574.98, as per our schedule on page 5.

Q. Well, now, turn back to page 5 and we have your estimate under "Expenditures" for February for manufacturing and trading purposes $53,339.51. A. Yes, sir.

Q. And then we have, as you have estimated, outgoes for the liquidation of your other debts, including wages and bills for raw material, etc. Is that it, $53,574.98? A. Yes, sir.

Q. And that makes a total, then, of $106,900? A. Yes.

Q. Are the total expenses, total for the year of that class, or, rather, of those two classes, expenditures for manufacturing and trading purposes and these other expenditures for current expenses of the business—do they amount to $1,275,000 a year?

MARTIN TOWEY, recalled—Cross

Mr. CORBIN—If your Honor, please—

THE COURT—One moment, let the witness answer.

A. No, sir; this table doesn't attempt to show that our expenditures for the year would be a million dollars.

Q. Well, how is it that that can be a just estimate of the requirements of your business for the month of February? A. Because we have to not only take these items—this item of $53,574.98 includes our bills of January, which are payable in February.

Q. O, then, do I understand that this shows the requirements of this month of February and that those requirements are exceptional—extraordinary? A. No, sir; but we pay our January bills in February, and we would also have to make reservation for our February bills up to March 1st. They would be a liability on the first of March.

Q. As I understand it, the object of this schedule is to show the amount of cash that you will actually pay out in the month of February? A. What we will actually pay out or have on our books as a liability to pay out sometimes within a week or two, say, after the first of March.

Q. Well, I don't see how this schedule is helpful, then. Do you know what the total expenditures of these two kinds for the year are? A. There aren't two kinds of expenses.

Mr. CORBIN—Your Honor, I think you misunderstand. These are not expenditures of two kinds. One of those, the item of $53,574.98, is the expenditures for January, the other one is the amount of those bills and of those fixed charges

that went over for the month of January.

THE COURT—One moment, we will stop there. I don't so understand the witness.

Q. Mr. Towey, just turn to this item of $53,574,-98; you refer for its explanation to page 9, where we have the same item, $53,574.98? A. Yes, sir.

Q. And that embraces accounts payable, including wages and salaries? A. Yes, sir.

Q. And of course bills for raw materials? A. Yes, sir.

Q. And the aggregate of those you estimate at $53,574.98 for the month of February? A. No, no, that has all accrued for the month of January, a prior date.

Q. I know, but is not that the amount you estimate as the amount to be paid out on that account during February? A. That is not an estimated amount at all; it is the actual amount.

Q. Well, actual amount to be paid out in February? A. That is the amount of our outstandings, or rather our accounts payable for various purposes, payable early in February. A greater part of that has since been paid.

Q. Never mind what has been paid; that is a fair estimate of the amount of cash that you require during February, as I understand it? A. No, sir.

Q. Well, what is it here for, then? A. It is here only to show a part of the cash required for February.

Mr. CORBIN—On the first of February that was all due, as shown by the trial balance.

A. (Continuing). We not only have that item to pay, but we have also to provide for our actual

manufacturing and trading expenses over the month of February.

Q. Now, turn to the book, page five, under the title "Statement showing needs to March 1st, 1911;" then, do I understand you to say you do not need $53,574.98 in February? A. We do need it; yes.

Q. You say now a portion of that you will pay out in March? A. Not a portion of that $53,574.98; we may pay out a portion of this $53,339.51; that is our manufacturing expenditures for February; we pay out a portion of that early in March.

Q. Well, the aggregate of these two items is $106,900, about? A. Yes, sir.

Q. Now, can you tell how much of that will actually be required in that time to be paid out—to be checked out? A. No; I can't tell.

Q. Then, why do they put it in the schedule entitled "Statement showing needs to March 1st, 1911?" A. Because if we don't actually pay it out, we will have entered it on the books as liability to be paid out early in March.

THE COURT—That is all.

Mr. HUMPHREYS—May I ask only a question?

Cross-examination by Mr. Humphreys.

Q. Turn to page five of the statement showing the needs to March 1st, 1911; I see the first item, aggregating $53,339.51, is made up of a one-twelfth portion of the four items—Expenses, Fuel, Manufacturing, and Repairs, etc.; now, the manufacturing item is $535,130.63; does not that item include the cost of material as well as manufacture? A. No.

Q. What does that item include? Where did

you get the particulars of that item? A There are no particulars on here of that item.

Q. What does that consist of? A. It consists of everything for manufacturing and trading purposes, with the exception of these other three items —Expenses, Fuel, and Repairs, etc.

Q. Does it include the items that you have referred to on page nine for wages and salaries and the amount due to creditors for material? A. Well, it doesn't include those items; you understand this is last year's account, this total of $640,-074.16.

By the Court.

Q. What does it include? State what classes of expenditures are included in this year A. There is no charge for fuel, no charge for repairs, and no charge included in $67,000 of expenses.

Q. Well, what does it include? A. Do you want me to give all the accounts?

Q. No; give us an idea of what the amounts are. A. If you turn to page eight, it will give you a fair notion; it includes raw material under the head of charges for manufacturing and trading accounts, etc., on the right side of the sheet.

Q. You saw raw material is in it? A. In the manufacturing account; yes, sir.

Q. Is the raw material in the $53,239.51?

Mr. CORBIN—In the $53,574.98; the second item.

Q. Haven't you got raw material in both of those figures in that way?

Mr. CORBIN—Why, there may be some of these accounts that were payable on

February 1st; there may have been some of those for raw material; the bills are for two different months, your Honor, and one is estimated.

THE COURT—I understand that perfectly well.

Q. Just turn to page nine, Mr. Towey; you have under the item, "Creditor's Ledger," $45,887.10. A. Yes, sir.

Q. And that, as I understand it, is the total amount that will be payable in February or perhaps Shortly thereafter; I have a little doubt on that. A. No, that is the amount payable about the 10th of February.

Q. The amount of cash you will require to pay your debts due to raw material men? A. Perhaps I could show this a little clearer and make this table a little clearer on this one point by referring to the book. We have got a book here that shows these items paid already.

Q. I think we will leave that until the next session, but while we are at it I would like to have you explain if that $45,887.10 includes bills payable about February 10 for raw material? A. Yes, sir; in January expenses.

Q. Now, turn to your schedule on page 5, "Estimated needs to March 1st, 1911," and take the other item? A. That is February needs.

Q. Very good; these are February needs? A. Yes, sir.

Q. Now, we have got $45,887.10 of cash to be paid in February to your creditors, including the bills due for raw material? A. Yes, sir.

Q. Now, then, take this other item, $53,339.51, which is derived from an estimate of last year's business, and then when you come to the figures

which you deal with in making that estimate you have the amount, $535,130.63. Now, doesn't that include bills for raw material? A. Yes, sir.

Q. For the whole year? A. There is no doubt about that; this statement shows what we will have to provide for up to March 1st.

Q. Then, haven't you got in your raw material twice? A. No, sir.

Q. At the next session I hope you will be able to explain that, for, I confess, I cannot see why you haven't included in your estimate the cash necessary for the month of February—the amount that you will pay out during February? A. One figure is for the month of January and the other is for the month of February.

Q. Well, that throws some new light on the subject. On page 5 this statement, then, is intended to show the entire cash required for expenditures in both January and February? A. This statement on page 5, yes; it covered January, of course.

Q. Just look at the opposite statement showing needs for cash expenditures in January and February; that would be right, wouldn't it? A. If you modify that by saying for January expenditures and February needs it would be right.

Q. Well, that is the same thing, isn't it? A. Yes, sir.

Q. This is what has been necessary, is necessary to-day, and will be necessary until March 1st? A. Yes, sir.

Q. For paying debts? A. For cleaning up the accounts; yes, sir.

Q. And it also includes an estimate of some expenditures you will not make until March? A. That we will not make until, perhaps, the first few weeks in March.

MARTIN TOWEY, recalled—Cross

THE COURT—Anything further just now?

Mr. HUMPHREYS—No.

THE COURT—The witness will resume the stand on Saturday morning, at the Court House in Paterson, at 9.42.

County Court House, Paterson,
Saturday, February 18, 1911, 9.45 A. M.

All counsel present as before.

MARTIN TOWEY resumes the stand for further cross-examination.

By Mr. Humphreys.

Q. Mr. Towey, will you turn to page (1) of your data: which purports to give a statement showing the working capital as at the close of fiscal years from 1882 to 1910, and which shows the working capital for the year 1910 to be $499,316.08 as against $605,582.64 of the previous year. Is not that arrived at—the working capital for 1910—after deducting the item of $107,659.31, which appears on the balance sheet at page 7; as account of engine-room, etc., not entered, $107,659.31—the item appearing there? A. The item on page 7 is on the opposite side of that account.

Q. I am not asking you anything about the method of bookkeeping; I am simply asking you whether the item of $107,659.31, for the erection of this engine room, which is stated on the balance sheet not to be entered on the books—whether that is not deducted in arriving at your computation that the working capital on November 30, 1910, was $499,316.08? A. There is no item on the balance sheet of December 1st which says, "Not to be entered."

MARTIN TOWEY, recalled—Cross

Mr. HUMPHREYS—I think the question ought to be answered.

Mr. CORBIN—The question is misleading, in which he speaks of this $107,000 for the engine room. As a matter of fact that $107,000 includes machinery.

Mr. HUMPHREYS—That is what it says on the balance sheet.

THE COURT—It is not to be entered—it is not entered.

By the Court.

Q. Mr. Towey, just look at page 7, and there we have the item on the left hand side: "Account of Engine Room, etc., not entered, $108,659.31." Now, the question is whether that isn't deducted, in reaching the amount of the working capital on page 1 of 1910, to wit, $499,316.08. That is the question. A. The item of $147,360.70, which appears on page 1 as accounts payable, which is deducted from the sum of these other three items, cash, merchandise, and accounts receivable for 1910, together with the dividend—that item of $147,360.70 is taken from the liabilities, as shown on page 7, $107,659.31, wherein this item $107,659.31 is on account of improvements, etc., as per journal entry, giving a balance of $499,316.08 as the working capital.

Q. Now, Mr. Towey, why don't you answer the question directly. You have shown a great deal that bears on the point, but the question is, is not that item deducted? A. Well, it is that same item, yes, sir, but it is on the opposite side of the account.

Q. It appears on the accounts payable, does it not? A. Yes, sir.

Q. Although it has not yet been entered as a lia-

bility on the books? A. It has been entered as a liability on the books.

Q. Then what do you mean by the statement on page 7, "Not entered?" A. The item has not yet been entered (witness turning to page 7 of Exhibit D 1). We mean by that on page 7 that we haven't got invoices for the various items making up this $107,659.31.

Q. How do you reach the amount? A. We reach it as per estimate shown here on page 6.

Q. Then do you enter as a liability on the books an account which you estimate as a liability? A. Part of this amount is estimated and part of it is actual, I think.

Q. I want to know—yes or no—I ask you, yes or no, whether this item of $107,659,31 has been entered on the books as a liability or not, as yet? A. Yes, sir; it has been entered on the journal.

Q. Have you got your journal here? A. Yes, sir.

Q. You might show us the journal and show us the entry. A. I think I have a copy of that entry here.

By the Court.

Q. Mr. Towey, that item of $107,659.31, as I understand it, is the sum total of the cost of various things connected with the engine room? A. Yes, sir.

Q. Now, have those things yet been bought or are they to be bought? A. On December 1st a portion of them had been bought and some of them were to be bought at that date.

Q. Do you know what proportion had been bought and what proportion had yet to be bought? A. On page 6 our statement shows $27,450 to be ordered.

Q. Then about $80,000 had been ordered and delivered? A. No, sir; the balance, about $80,000, was under contract. I said $27,450; I should have said $22,050 which hadn't been ordered at that time.

Q. $85,000 then had been ordered? A. $85,000 were under contract as per this estimate.

Q. Now, then, how much of the $85,000 had been delivered at the date to which this statement relates? A. $15,000 had been paid for and delivered or entered on the books as a liability.

Q. And the balance had not been delivered? A. Well, I wouldn't say had not been delivered, but if it had been delivered we didn't have the invoices for them so that we could enter the actual amount on the books.

Q. Very well; then you have got the total cost of these things, as I understand it, amounting to $107,659.31 entered in your liabilities, and you haven't the goods for which this money was expended and to be expended, entered as an asset? A. Yes, sir; we have.

Q. All of it? A. Yes, sir.

Q. Goods that you had ordered and hadn't been delivered, were they entered as an asset? A. On our balance sheet, yes, sir; they were entered as an asset to correspond with the corresponding liability.

Q. Just turn to that and let us see? A. They would have to be to balance up the account. At the bottom of page 7, it says, "On account of engine room, etc., not entered" and across from that, under the head of liabilities under accounts payable is "On account of improvements, etc., as per journal entry."

Q. But those goods weren't actually received—$84,000 of them were not actually received when

you entered them as an asset on the books? A. Some of that $84,000 were actually received.

Q. What proportion? A. I can't tell you that.

Q. Small proportion or a large proportion? A. I should say a large proportion.

Q. Fifty per cent.? A. I wouldn't volunteer guesses.

Q. Have you got the invoices here that you have received? A. No, we didn't bring down the invoices.

Q. Who instructed you to make this entry on the books before you received the bills? A. I can't say that anyone instructed me to do so. I wouldn't ask for instructions before making such an entry, ordinarily.

Q. Were you in the habit of entering on your books as liabilities estimated amounts of liability before you received any bills for the actual amounts? A. When we make up a balance sheet at the close of our fiscal year we always take into account any liabilities that we may have.

Q. This is not a balance sheet at the close of the fiscal year; this is a balance sheet as of December 1, 1910. A. That is the close of our fiscal year, December 1, 1910.

Q. Have you any previous balance sheets that show you have made any such entries in them? A. Yes, sir.

Q. Well, will you produce one? A. I can show you that entry in the journal if you want it.

Q. This particular entry; can you show any in the previous year? A. I don't know whether we have previous balance sheets here in Court or not. If we haven't one our journal will show it.

Q. Well, look at your journal and show some entries of that nature? A. On folio 162 in our journal we have an entry of taxes, old account, charged

$4,539.58, with the reservation "Taxes new account $4,539.58. That is one entry of a similar nature. Then another entry of a similar nature for which we have no invoice would be the payroll account on folio 163.

Q. That would be for wages actually accrued, would it not, that you would charge? A. Yes, sir; certainly.

Q. You would anticipate the rendering of an invoice for work which had not been done and put that in as a liability previous to the end of the fiscal year when the goods were not to be delivered until after the fiscal year? A. If we knew that the goods were under contract—if it were something in the line of construction and if it were under contract as an extension, as this work was, we certainly would put it in our balance sheet.

Q. Independently of the periods when those articles would have to be paid for? A. Not independently of the periods, but knowing that they would be paid for perhaps three days after the balance sheet would be rendered, a portion of it.

Q. A portion of it, how much of it? A. That remains to be seen. They have got to do the work first.

By the Court.

Q. In such a case, do I understand you would put the amount of money required to be paid for the things in your liabilities and the things themselves, at their price, among assets? A. Yes, sir.

Q. If you were going into the construction of a building that would occupy six months, would you do that? A. If it were under way at the time, we would, yes, sir, and we had some means of arriving at its cost—we would put it in our balance sheet. It

would be only natural to put that in the balance sheet.

Q. So that on the 1st of December when you made your balance sheet, if you had just contracted for the construction of a mill for fifty or sixty thousand dollars you would put the mill among the assets and the cost among the liabilities? A. Well, we would put it in as a reservation.

Q. You would put it in the balance sheet, would you? A. Yes, sir; we would make mention of it.

Q. Now, on page 6 of your data there appears first of all an item, "Estimate furnished by John W. Ferguson Co., of equipment of power plant under contract," which adds up $60,020; when was that contract given out? A. I think I stated the other day that my impression was that the contract had been given out in August. For more particulars on that question I would have to refer you to Mr. Beattie, because I didn't have very much connection with it.

Q. At all events, the contract was given out since the opinion in this suit was written out, was it not? A. The actual giving out of the contract?

Q. Yes. A. I don't know when the opinion was written

Q. The opinion was given some time in May last. A. I don't know about that; I can't tell you.

Q. Is there a written contract between John W. Ferguson Co. and the Beattie Mfg. Co. with regard to that item? A. I will have to refer you to Mr. Beattie.

Q. Do you know, or do you not know? A. A written contract showing this estimate, do you mean?

Q. Well, do you know if there was a written contract or not, Mr. Towey?

MARTIN TOWEY, recalled—Cross

JUDGE COLLINS—He testified the other day in regard to that.

Mr. HUMPHREYS—I didn't hear his answer the other day. I am asking him now whether he knows or not.

Q. Will you answer the question? A. I don't know There was a written contract of some kind, but I don't know just what.

Q. Where did you get the figures to enter those entries on your books—from what data? A. What data?

Q. What had you before you from which you wrote those entries? A. We had a good many things before us when we made up this estimate.

Q. I am speaking now in regard to this definite contract between John W. Ferguson Co. and The Beattie Mfg. Co. of $60,020; I want to know where you got those figures from? A. I think the most of these figures were furnished by Mr. Ferguson's office.

THE COURT—Why, it says so here.

Q. I want to know this: Was it in the form of an estimate, or in the form of a contract; or what was it? A. Well, naturally these figures—from the time that they started this work the figures have been changed, and they have been added to, and some things have been left out at different times.

By the Court.

Q. Mr. Towey, didn't you testify the other day in regard to this contract with Mr. Ferguson as to the nature of it? A. Yes, sir.

Q. What was the nature of it—just repeat. A. I think I testified the other day that it was my im-

pression that this contract was a percentage contract; that the Ferguson Company had supplied us with an estimate.

Q. Now, that means, does it, that you make a contract to pay the contractor a certain compensation based on a percentage of the actual cost? A. Yes, sir.

Q. And you rely on him to make the cost right? A. Yes, sir.

Q. Now, this is his estimate of what it is going to cost? A. I wouldn't say that this was his original estimate. These figures here, I think, with the exception of one item here, were taken from the estimate that he has furnished some time during the course of the work. Just when it was I can't say.

Q. Could you produce that estimate?

Mr. CORBIN—We have the original estimate right here. (Counsel producing paper, which is now marked C 4 for identification.)

Q. Now, is the paper which I show you, marked C 4 for identification, the paper from which you made the entry? A. No, I don't think that is the paper. There have been some changes in it since then.

Q. Are those items entered anywhere on your books? A. These items?

Q. Yes, those items making up the $60,020? A. Well, they furnished us this estimate; it is their figures.

Q. Well, do they appear upon your books is my question?

Mr. CORBIN—Here is a letter. (Counsel producing a letter, which is now marked C 5 for identification.)

MARTIN TOWEY, recalled—Cross

Q. Well, now, on receipt of this letter, marked for identification C 5, did you enter on your books the estimated amount of the cost of that work? A. On receipt of this letter?

Q. Yes? A. Our entry was made, I think, on the books November 30—the entry that covers this estimate.

Q. Then the entry was made only for the purpose of striking your balance sheet; it wasn't made at the time the contract was let out? A. It was made for the purpose of showing what our liability on this new work would be.

Q. Now, when was that work to be paid for, do you know? A. As it proceeds.

Q. How much at a time? A. Whatever it has cost—when they make their figures monthly.

Q. Monthly? A. Yes.

Q. Can you say how much of that $60,020 has been paid, or had been paid up to November 30? A. It shows.

Q. It shows on this sheet here. Up to to-day how much has been paid? A. My recollection is this statement shows paid in November, or prior to December 1st, rather, $5,000 to the Ferguson Company. It shows for brick, material, etc., $1,372.51 prior to December 1st. It shows paid during December o entered as a liability—well, it shows paid during December $6,000 and during January—

Q. Where is that $6,000; where does it appear? A. On the statement further down, under the heading, "Paid during December or entered as liability." Then, paid during January (further down on the schedule, page 6,) $17.

Q. That is marked "Paid or entered as liability;" was it paid? A. Yes, sir; paid about January 10, and in February, I think, $12,500. I wouldn't say whether it is $12,500 or $12,000.

MARTIN TOWEY, recalled—Cross

Q. Do you know how long it is likely to take to complete the whole of that work? A. From to-day on?

Q. Yes? A. Oh, I couldn't say; probably a couple of months; more, maybe.

Q. What work, now, is actually under construction that has not been paid for? A. Well, you see, Mr. Humphreys, these payments that have been made are payments on account of all these various items here. Now, I wouldn't say that any one of those—the work under any of these separate headings has been completed. For instance, Engine, as per contract, $9,400; as I understand it, the engine has been delivered and is now in course of erection. Against that $9,400 we have paid Watts-Campbell Company $5,640. I don't know just what proportion of the balance will be payable when the work on the engine proceeds, but the entire amount will not be paid until the engine is running, I believe. On the other items here of shafting $13,150, a portion of the payments that we have made the Ferguson Company cover that. That is now in the course of erection. And the same might be said of various other items here. I don't follow the construction of this engine matter very closely.

By the Court.

Q. Who does? A. Mr. Beattie.

Q. Do all the payments that were made prior to December the first appear on page 5 as liabilities in the accounts as per trial balance to February the first? A. You refer to the item "Current account as per trial balance February 1st, $53,574.98.

Q. Yes; what does that item represent—"Current account as per trial balance as of February 1st?" A. Just what it says there.

Q. Does that refer to accounts which appeared on your books as accounts payable up to the first day of February? A. I think that does; yes, sir.

Q. Now, the other item above that, "As per profit and loss account, estimate one-twelfth of this for month of February;" that was an endeavor on your part to ascertain what the additional accounts would be that would accrue during the month of February, and you arrived at that by taking the average of the entire year's expenses and so on; isn't that right? A. I don't know now.

Q. What is the item of $53,339.51 if it isn't an estimated amount of the bills and accounts payable which will probably accrue during the month of February and would be accounts payable in the month of March? A. The item of $53,339.51 is the total of the amount we estimate as our cost for manufacturing and trading purposes for the month of February.

Q. And when would that be payable? That would not be payable during the month of February, would it? A. Yes, it would, partially. I don't say all of it would be.

Q. But you put it all in as if it would be payable the first of March? A. We have to pay our payrolls as they accrue.

Q. But you don't pay for your fuel and for your material until after the bills are rendered? A. Yes, we do.

Q. Pay in advance, do you? A. Some of them we pay in advance, or we pay them before the bills are rendered.

Q. That is what that item is, estimated amount of total expense of manufacturing during the month of February? A. Not the total expense referred to.

Q. The expense of fuel, manufacturing and repairs? A. No, sir; that item is just as it is stated:

"As per year just closed; for manufacturing and trading purposes;" or, in other words, our manufacturing—our cost, you might say—not only our cost of manufacturing but our cost of trading and selling the goods.

By Mr. Harding.

Q. Excuse me just a minute. It is one-twelfth o $640,074.16 just stated before? A. Yes, sir.

Q. Now, look at page 3 please, which purports to be a table showing the disposition of earnings for the years 1882 to 1910—

Mr. HARDING—Excuse me just a minute. At the last hearing, I understood your Honor to speak of certain things that would have to be added. As I understand the witness now he says under this item of "Current account as per trial balance February 1st $53,574.98;" all those things are taken into account there.

Mr. CORBIN—Oh, no, he does not; he says that is the method of putting the account.

Q. I understand, Mr. Towey, that the item o liabilities, "Current account as per trial balance February 1st, $53,574.98" represents the accounts payable which were due by the company and stood on the books as a liability on February 1st; is that right? A. Yes, sir; that is according to the trial balance shown back on page 9.

Q. Now, this other item is what it purports to be on this sheet, an estimated amount of the expenses, fuel, manufacturing and repairs which will be incurred during the month ending March the 1st?

A. I don't see how a month can end on March the 1st.

Q. Well, ending the 28th of February, then. A. Those items are for the month of February.

Q. What is your answer, that that represents the estimated amount of the manufacturing and trading expenses, fuel, manufacturing and repairs during the month of February? A. That item of $52,339.51 represents the manufacturing and trading costs for the month of February; estimated.

By the Court.

Q. Estimated, and that includes— A. And that includes a further cost of last year.

Q. As I understood you the other day, that includes the estimated cost of the raw material? A. Yes, sir.

Q. So that you have here in these two items, $53,339.51 and $53,574.98 the cost of the February raw material twice, haven't you? A. No, sir.

Q. Once actual and once estimated? A. No, sir.

Q. Explain that please. A. What raw material we have in here—what may be raw material in the second item or in the trial balance of February 1st, is for raw material prior to the first of February. Some of it may have been used up in the January manufacturing purposes, January expenses, January selling charges, January construction charges, January repair charges, January fuel charges, January other items incident to manufacture during the month of January. That is what was left over and hadn't been paid, some of it. Some of the January's items hadn't been paid.

Q. Then I understand these two items on the right hand side of the page, $53,339.51 and $53,574.98, contain a great many items of the same

character and they are for different months? Is that it? A. Yes, sir.

JUDGE COLLINS—One is estimated and the other is actual.

Q. Now, turn to page 3, showing table showing disposition of earnings for years 1882 to 1910, and which seems to be intended to show all the net earnings of this company after payment of dividends—all the net earnings with the exception of $38,579—have been invested in improvements, machinery, and replacements; is that the object of the statement? A. The statement shows that the total earnings have been, for the years from 1882 to 1910, $1,454,428; it shows that there have been declared in dividends $850,500; it shows that there have been expended or reserved for improvements, machinery and replacements, $565,349, which gives the total for dividends, improvements and replacements, $1,415,849, leaving a balance of $38,579 if the total net earnings for those years, which has not been paid out in dividends or expenses, or reserved for improvements and replacements.

Q. Then do you wish the Court to understand, Mr. Towey, that these disbursements for machinery and replacements, as a matter of fact, were paid out of the net earnings of this company? A. I wish the Court to understand that this schedule is made up from the books of the company showing these totals, with the exception of the item of $, which includes this $107,000 which we talked about here in this reserve to cover this engine room and other matter; with that exception it shows what has been paid out.

By the Court.

Q. The other items for the other years are all

actual expenditures, are they? A Yes, sir.

Q. Do you wish the Court to understand that they were paid out of the net earnings of the company? That was my question. A. I don't know where else we could get the money to pay them, Mr. Humphreys.

Q. Well, did you ever sell any lands during the life of this corporation? A. I don't know how much land they have sold; I would say, though, without knowing whether they had sold any lands or not, that these improvements, machinery, and replacements have been paid out of earnings.

Q. And not out of the proceeds of the sales of land? A. I would say so; yes, I should think so; I may not be right on that point, however.

By the Court.

Q. Mr. Towey, were the proceeds from the sales of land entered anywhere in this table? A. No, sir.

Q. You have here simply the net earnings you start out with? A. Start out with the net earnings; yes, sir.

Q. Then you show the dividends, and then you show the amount actually disbursed down to 1910, and then the estimated amount to be disbursed in 1910 for improvements, machinery and replacements? A. Yes, sir.

By the Court—continued.

Q. If you sold any land, where do the proceeds come in? Anywhere? A. My impression is that our accounts won't show that there are any very large items as proceeds from lands.

Q. Now, take the interest on the $315,000 mortgage; where does that come in? A. It is included under this head, "Net Earnings."

MARTIN TOWEY, recalled—Cross

Q. Hasn't any part of the proceeds from the sale of land been used in purchasing new buildings, machinery and replacements? A. I wouldn't say that there was.

Q. Well, what was done with it then? Where is it? A. It is in cash, I suppose.

Q. Now, then; the net earnings that appear in the first column of this sheet; how are they arrived at? Is that the bottom net earnings after deducting depreciation and repairs to machinery and buildings during every year? A. I don't know what you mean by bottom net earnings.

Q. It is the lowest net earnings of the company after deducting all things such as depreciation, repairs, and so on. A. Well, there is no such thing as lowest net earnings, Mr. Humphreys.

Q. I don't want to argue with you; I want to know whether the repairs, depreciation, and so forth, have been deducted, or have not been deducted. A. Well, this is a statement of net earnings and, naturally, to get net earnings we have to take off whatever depreciation there is.

Q. Why can't you answer the question and say that the depreciation, repairs, etc., have been deducted? A. This is net earnings; yes, sir.

By the Court.

Q. As I understand it, Mr. Towey, this column showing the net earnings from 1882 to 1910, inclusive,—the item is reached each year in the usual way by a complete statement of the assets and liabilities? A. Yes, sir, and profit and loss.

Q And these items that appear in the third column as expended for improvements, machinery and replacements, were they the original cost of those improvements or the original cost less the deduc-

tions for depreciation and repairs? A. Why, they were the original cost.

Q. And included in that original cost which you now seek to deduct from the net earnings was the amount which was subsequently written off for depreciation, repairs, etc., which has already been once deducted from the earnings?

JUDGE COLLINS—Your Honor has stated how the net earnings were arrived at. Now, Mr. Humphreys' question is not a question but an argument, which is inconsistent.

THE COURT—Apart from the mere form of the question—this is an intelligent witness and the mere form doesn't seem to be of much consequence. I understand the question is whether the full amount of the expenditures for improvements, machinery and replacements is stated in column 3, whereas in column 1 in reaching the net earnings there has been each year a writing off of a sum to represent depreciation on these same improvements, machinery and replacements.

JUDGE COLLINS—Not on the same improvements.

THE COURT—Well, let the witness answer the question, whether that is so or not.

A. In arriving at the figures in the third column of this statement we didn't make any attempt to see what had been taken off for depreciation for those various years. This was a statement of what was actually expended.

Q. Well, is not the effect, then, of deducting the

amounts that were actually expended for improvements, machinery and replacements from the net earnings, to deduct the amount a second time for depreciation and replacements? A. Not at all.

Q. Explain why not? A. There is absolutely no relation between the two at all; absolutely none.

By the Court.

Q. Explain that, Mr. Towey; it does seem to be so to me; look at this figure on page 3, $365,349, that, together with the dividend account, foots up $1,415,849; is that right? A. Yes, sir.

Q. And now that total is deducted from the total net earnings which amount to $1,454,228; is not that so? A. Yes, sir.

Q. Now, then, have you not just explained already in reaching the net earnings you have deducted an allowance for depreciation and these improvements, machinery and replacements? A. Not depreciation on these improvements.

Q. What improvements? A. The depreciation that is written off is on the machinery, as I understand it, other than improvements. I don't think you will find in any one year where depreciation has been written off on improvements.

Q. This commences with the year 1882, the commencement of this corporation? A. Yes, sir.

Q. Now, what other machinery or improvements existed of which you could have written off for depreciation and repairs other than those that appear there? A. I don't know as there was any depreciation written off.

Q. Let me get at it in this way: In the statement of 1882 which was furnished by Mr. Peterson it appears that the real estate of this company, on December 30, 1882, amounted to $139,903— A. What folio is that on?

MARTIN TOWEY, recalled—Cross

Q. Page 1. I will start with the commencement of the corporation, July 1, 1882. The real estate at that time amounted to $139,903.63, and the machinery amounted to $69,408.75, which, together, makes about $209,000—

Mr. HARDING—$210,966.00.

Q. Now, then, if you turn to the balance sheet of 1910 the real estate is $193,444 and the machinery is $172,251? A. Yes, sir.

Q. —new building inprovements $6,372, and they add up $372,067, and the real estate, as I have said, when the company commenced business amounted to $210,000—real estate and machinery $210,966, which shows an increase only of $161,101. Now, how do you reconcile that with the fact that if you add to this the sum which you say you expended for improvements, machinery and replacements you would get very nearly double that amount.

JUDGE COLLINS—The question is, how do you reconcile that. Do you understand it, Mr. Towey?

A. Why, I think so. I reconcile it in this way. In the first place, we might correct this account here, real estate—which you call real estate. We don't write off any depreciation on our real estate. What is called real estate here should read, "Real estate and building account" and whatever depreciation has been written off covers the depreciation on the buildings, and then to get at the answer to your question, you say back in 1882 that the total of the buildings and machinery was $210,000 and you say that in 1910, as per your accountant's balance sheet the real estate and machinery account is $365,000, and you ask me to reconcile those figures with this

amount of improvements, machinery and replacements purchased over a period of twenty-eight years of $565,349. Now, I would say that a great deal of the buildings and machinery, if not all of the machinery—of course I don't know what they had in 1882—I would say a great deal of the machinery, or perhaps all of the machinery and a great deal of the buildings of 1882 had been thrown out or entirely demolished.

Q. And were written off from profit and loss account, were they not? A. And I would say also, very likely a large portion of this $565,349 had since been thrown out.

Q. Were they written off the profits?

JUDGE COLLINS—It isn't right for him to attempt to give the contents of books that are not here and have him guess whether they were written off or not. If they were written off the books will show.

THE COURT—Well, the books are here in evidence. This is an expert witness who has prepared certain schedules. This is proper cross-examination; the books are in evidence, but he is explaining how these schedules are made up from the books. Of course, he has reference to the books.

JUDGE COLLINS—That is perfectly legitimate, but for them to have him tell from memory without a chance to look at the books is what I object to. If he can tell from memory it is all right.

Q. I will ask you, do you or do you not know whether these depreciations in machinery and build-

ings that you have referred to, whether or not they were written off the profit and loss account in reaching the net earnings in the first column of this page? A. No, not specifically they have not been written off.

Q. What do you mean by not "specifically"? A. If a certain machine is thrown out that is not an item of depreciation that is written off.

Q. I know, but you have written off from time to time through the various years large amounts for depreciation? A. I wouldn't say we have written off large amounts, there have been small amounts written off for depreciation.

THE COURT—Is there any doubt how this is made up? The witness has explained that fully.

Mr. HUMPHREYS—If your Honor understands it that is all I want.

Q. Now, will you get your books for 1909 and show us how you get the item for improvements, machinery and replacements amounting to $52,086?

The witness leaves the stand and returns with the books.

Q. What book is that you have there? A. Ledger D.

Q. Show me where you get the item of $52,086? A. Under the head of machinery account $15,226.-79.

Q. What date? A. For the year ending December 1, 1909.

Q. Show me the item there. A. (The witness exhibits item to counsel).

Q. I see under date of November 30,1909, there is

a credit to machinery account, Depreciation $15,-242. A. You asked me to find that item of $52,086. In the same ledger, folio 193, we have under the heading of "Mill No. 16" $32,134.12. On the same folio, under the heading of "Equipment" in that same mill we have $4,725.26, totaling $52,086.17, as per our entry less the cents.

Q. Well, now, are there any credits to that account?

JUDGE COLLINS—To what account?

Mr. HUMPHREY—Machinery account.

A. For that year you mean?

Q. Yes, for that year A. There is a credit of $5.66 to that account which I have deducted in arriving at this $15,226.79.

Q. Now, what other credits are there on the account at any other period? A. There are various credits.

Q. What is that item there? A. That is the balance carried out.

Q. And the item above that? A. That is depreciation.

Q. And that was carried to profit and loss, but you don't take any account of that in that statement? A. In this statement here?

Q. Yes. A. This statement is the amount of new money that has been paid out during those years for these improvements.

Mr. HARDING—I should like to examine the witness.

JUDGE COLLINS—I object to counsel going over the same ground twice.

Mr. HARDING—I represent other parties.

MARTIN TOWEY, recalled—Cross

JUDGE COLLINS—That doesn't entitle each to cross-examine him upon the same subject over and over again.

THE COURT—Why not? The rule is that when defendants appear by different counsel to take part in the trial, each has the right to cross-examine.

JUDGE COLLINS—Not unless their interests are different. However, it is only to save time that I make the objection.

Cross-examination by Mr. Harding.

Q. Mr. Towey, I call your attention to the fact that in the balance sheet—

THE COURT—Mr. Harding, let me ask you, are you going to interrogate the witness in regard to the schedule on page 3?

Mr. HARDING—I am not going to ask about that at all.

THE COURT—Then, before you begin your examination, I would like to ask the witness a question or two about this table which I do not understand.

By the Court.

Q. Now, Mr. Towey, turn to page 3—the table showing the disposition of earnings—

MR. HARDING—I beg your Honor's pardon; I didn't know what you meant. I was going to ask questions in relation to that.

THE COURT—Proceed, then.

MR. HARDING—It relates to it in an indirect way.

MARTIN TOWEY, recalled—Cross

Q. I call your attention to the balance sheet of 1882, and taking the quick assets, as they have been defined, for that year I find two items of cash which, together, amount to $65,833.93—an item of merchandise. A. It doesn't appear here, Mr. Harding, at all.

Q. It includes the item of R. Beattie & Sons, which we treated as cash.

THE COURT—Is that on Mr. Peterson's statement?

MR. HARDING—Yes.

A. That is not cash, Mr. Harding.

Q. Well, I will assume it is cash. I will take those two items together, making what I call cash that you had on hand of $65,833.93; merchandise, $92,931.23; accounts receivable, $11,786.31. The total of that I make $170,551.47. Out of that the accounts payable were $81,519.53; deducting that last item from $170,551.47 leaves as net quick assets, as they have been defined, $88,031.94 in 1882. Now, take the balance sheet of 1910— A. Just a minute, please.

Q. This appears on Exhibit C 2? A. I have got it, $89,039.04.

Q. Now, the next thing is the first three items of cash, $138,795.97, $9,997.69 and $63,222.86, making a total of cash, $203,016.52? A. Yes.

Q. The accounts receivable in 1910 are $147,324.94; merchandise, $356,335.32, making a total of $706,676.78. Deducting from that total the bills payable in order to get the quick assets—I am not taking out the dividend, however; I will just take that out, $39,701.39; that leaves as the net quick assets $666,975.39 on the 30th of November, 1910? A. Yes.

MARTIN TOWEY, recalled—Cross

THE COURT—That is not taking out the dividend of $30,000?

MR. HARDING—No, that is not taken out.

Q. We have now in 1882 net quick assets representing eighty-eight thousand and odd dollars, which have been swelled in 1910 to $666,000 plus, making a difference of $578,000 or $590,000. Now, tell me—I am not a bookkeeper—if you can, what your books show that that increase in net quick assets came from, whether from what you call earnings of this company or otherwise, and how it came.

JUDGE COLLINS—Ignoring all elements that are necessarily involved in this it is not a proper question to put. It it not cross-examination capable of any intelligent understanding in selecting such a thing and asking him to attempt to evolve from the books problematical theories that the facts don't fit at all. He says there was on certain days what he calls quick assets, and there was on certain other days what he calls quick assets and then he asks what they are derived from. Now, that doesn't help us at all in trying to arrive at what dividend should be declared. It is entirely unimportant how they were derived. It is irrelevant to this proceeding.

THE COURT—So far as I can see I think there is a good deal in these schedules which is irrelevant, but, nevertheless, I cannot say that the question is not a proper question to put on the cross-examination of this witness who has prepared

these tables. The question certainly has a bearing upon these tables.

JUDGE COLLINS—He is not examining on these tables, but on Peterson's.

THE COURT—Well, if the question includes any data which are not in the schedules prepared by the witness I hardly see how it is proper cross-examination.

MR. HARDING—I think I can save trouble by changing the question.

Q. I will ask you, from your books you have here, to tell me what was the cash on hand in 1882? A. $204.95.

Q. Now, I want to know how much was owing to the company.

By the Court.

Q. While we are waiting, just turn to page 3 of thiss chedule; I want you to explain it. I understand you made up that schedule as a table showing disposition of earnings of the company from 1882 to 1910 inclusive, and I understand in the earnings you include the interest on the mortgage of $15,000? A. Yes, sir.

Q. But you did not include any amounts received from the sale of land? A. No, sir.

Q. And the cash that has been received for the sale of land is another matter out of this table altogether. Is there any other income which the company has received during this period besides what is included in net earnings and the proceeds of sales of land—any other moneys received? A. I don't know of any.

Q. And I understand you cannot tell the amount

received from the sale of lands? A. The only item I know of which was received from the sales of land, which couldn't really be credited to the sales of land, but which properly would come from the sales of merchandise, is the Long Island Real Estate Account, and that really didn't come from the sales of land, because the land was gotten for the purpose, as I understand it, of satisfying an outstanding account for merchandise.

By Judge Collins.

Q. Well, did it go into merchandise account? A. That went into real estate account when it was finally cleaned up.

By the Court.

Q. Did you get cash for it? A. Yes.

Q. How much? A. In the neighborhood of thirty-four or five thousand dollars perhaps.

Q. So that we have got, then, as the net earnings all this period $1,454,428? A. Yes.

Q. And we have got the sales of land amounting to $34,000 cash? A. Yes.

Q. Then that would make a total of cash—A. We paid out some money for real estate.

Q. You bought real estate? A. Yes.

Q. How much have you paid out? A. My impression is that we have paid out more than $35,000 way back in 1882. I say $35,000, it is in the neighborhood of that.

By the Court, continued.

Q. Very good. Now, then, turn to the last column—right hand column—on page 3, entitled "Taken from unexpended earnings above dividends;" what does that mean? A. That would be taken from the previous column.

MARTIN TOWEY, recalled—Cross

Q. For what purpose? A. To meet these second and third deficiencies.

Q. What did you say that last column was? A. That is taken from the column preceding.

Q. Yes, I understand; it is deducted down below? A. Yes, sir.

Q. What I want to know is what those moneys were used for? A. To meet the requirements of dividends and machinery and replacements, as shown in the second and third columns—dividends, improvements, machinery and replacements over those years.

Q. Are they not already deducted above, the dividends and improvements? A. No, sir.

Q. What? A. No, sir. For instance, we will take the first item here, or take the second item under "Earnings above dividends" $12,197. Now, following that back to $34,000 total for that year, the profit of that year was only $17,000 and the dividends $30,000 and the amount expended for improvements and replacements was $4,972, showing what amounted to a deficit of $12,197. The same applies to these several other years right down, making $294,835.

Q. Now, then, leaving out the real estate account—that is to say, the proceeds from the sales of land and the amount expended for new real estate would about balance each other; assuming there isn't a great deal of difference between the two sides of the account, we start out here with this schedule to account for the expenditures of $1,454,428 net earnings. As I understand it you have shown during those years to 1910 inclusive, that the total amount of net earnings has been expended as indicated and set forth in this table, and that there is now remaining a balance of $38,579—

JUDGE COLLINS—Pardon me, your Honor, that includes the $107,000.

Q. Oh, yes, I mean what has been expended, including this allowance for the completion of the mill that is to be expended this year. So that you have got now a balance of $38,579, and this amount yet to be paid out on account of these improvements is about how much? You figured it out today or the other day; I am not sure about what the amount is. A. $84,000 on the first of February.

Q. And then that added to the $38,000 will make what? A. Added to the $38,000?

Q. Yes. You have got a balance of net earnings unexpended, according to this schedule, of $38,579? A. Yes, sir.

Q. But in reaching that you included the expenditure of $85,000 that you haven't yet spent? Now, add them together and what do you have? A. $123,000.

Q. Well, then, where did the rest of this cash in the bank come from, nearly $200,000? A. At what time?

Q. At the time to which this schedule relates. It is all right at the present time. A. Well, now, we are taking February against December, which isn't a fair comparison.

Q. You have here, as I understand it, as of December 1—November 30, 1910, a balance of $38,579, unexpended earnings as of that date? A. Yes.

Q. While as of that date you had $200,000 in cash; where did the cash come from? A. The cash was there at that time.

Q. Where did it come from? A. The cash on December 1st was $203,016.52.

Q. Well, now, how could you have spent all

these earnings all these years, fourteen hundred thousand dollars, including interest on your mortgage and still have that amount of cash if you really only have a balance of $38,579 unexpended? A. Our cash on December 1st was $203,016.52; our unexpended earnings was $38,579, as we have shown here. The date that our cash was $203,016.52 we owed, including the amount outstanding for those improvements, $147,360.70, leaving a balance of unexpended earnings at that time on this account on our balance sheet of cash amounting to $55,755.22.

Q. Now, you are deducting all the bills payable, amounting to $147,000? A. Yes, sir.

Q. Were they not deducted in reaching the net earnings of 1910? A. No, sir.

Q. Not deducted in reaching this figure here? A. No, sir.

Q. Why not? A. Because we cannot deduct our bills payable from our earnings; they have no relation to each other—no occasion to deduct them.

Q. Well, I don't understand this. Turn to the schedule, page 3, where you have as the net earnings of 1910 of $74,073? A. Yes, sir.

Q. As I understand it, that is the result of your balance sheet of November 30, 1910, which exhibits all your assets and all your liabilities, including this $147,000 of outstanding liability? A. Yes.

Q. You don't understand my question, then. I do not understand how you could have $203,000 of cash then; I wish you would explain it. A. In our balance sheet—

Q. No, you have just accounted for the $203,000 in cash by—or, rather, you have taken that figure and then you have deducted $174,000 outstanding accounts—bills payable? A. Yes, sir.

Q. And I ask you if you haven't done that al-

ready in stating the net earnings for 1910? A. Suppose we go at this in a little different way. I take it that this $38,579 which is shown here as the balance of unexpended earnings is the amount of earnings that we have got in cash over and above our outstandings on December 1st—that is the amount of earnings which is in cash on that date, December 1st—

Q. With all your debts paid? A. With all our debts paid,—presuming that all our debts are paid. On our balance sheet of December first, the actual condition, as shown by the balance sheet, is cash $203,016. Our outstandings at that time were $147,360, leaving a balance with all our debts paid of $55,755.

Q. Well, did that balance sheet show your earnings? A. This balance sheet, yes, sir. Deducting the $38,579 from that $55,755 will leave a result of $17,176 as being the amount of this cash which would have been received from other sources—real estate account, for instance, and various other places. I take it that that is the solution of the difference between the $38,579 and the difference between the cash and the outstandings as per our balance sheet. In other words, that $38,079 represents the cash profits over all these years since 1882.

THE COURT—Proceed.

Q. I was about to ask you to go back to your books in 1882; you were starting to do it. Give me the amount of cash July 1, 1882, at the starting of the company. A. You want to see that on the books?

Q. You read it to me; get along just as fast as we can. A. What is it you want?

Q. I want your statement of what cash the com-

pany had in 1882 on the first day of July. A. We had no such statement.

Q. Your books will show, won't they? A. I don't know.

Q. Mr. Howard says they will.

By Judge Collins.

Q. Have you got it at the end of the fiscal year? A. We have it at the end of the fiscal year.

Q. Well, what is it? A. $204.

Q. Give me when you begin business how much cash. A. I am not sure that we have the books here that will show that.

Q. Have you got a statement there that shows at the end of the fiscal year?

JUDGE COLLINS—He said $204.

Q. Well, either one will do, whichever you can do the quickest.

The witness leaves the stand and confers with Mr. Beattie.

Mr. HARDING—I don't think the witness ought to enter into a discussion with Mr. Beattie when he is on the stand.

The witness resumes the stand with a book.

Q. Will you kindly tell me, first of all, which you can give us most expeditiously what has been defined as quick assets on the first of July when this company began or the first of December, 1882, which can you give quickest? A. I can tell you from our table at the end of the fiscal year what our working capital was I can give you that.

Q. Well, now, give me the cash you had on hand

the first of July, 1882. A. The first of July, 1882, $2,535.34.

Q. Now, under the account of R. Beattie & Sons, July 1st? A. I should say it was $63,298.59.

Q. Now, then I want the amount of merchandise.

By the Court.

Q. I don't understand; what was that first item you have just given? A. Cash.

Q. I thought you said quick assets.

MR. HARDING—We are making up these items. These are the very things I read from Mr. Peterson's statement.

A. You want the merchandise account?

Q. Yes. A. $92,931.23.

Q. Now, the accounts—bills receivable. A. This book doesn't show the accounts and bills receivable.

Q. It is $11,786.31. A. We haven't any books to indicate what our accounts receivable were at the beginning of the year when we started business.

Q. I have it down in a statement I made $11,786.31. The accounts payable I have $81,519.53. A. We haven't got it in the books. The books don't say what they are.

Q. Where have you the bills payable, then; where did Mr. Peterson get them from? A. I don't know where he got them. If the accounts payable are in this book I can't find them, because it would necessitate taking fifty or one hundred pages and adding them all up.

Q. Could you go to December and give it to us? A. December we have it on our sheet here.

Q. Then I think I will be compelled to go over until December.

MARTIN TOWEY, recalled—Cross

MR. HARDING—Will you admit that these bills are payable?

JUDGE COLLINS—I will let you assume it in your question.

Q. And that leaves $88,031.94 which were defined as net quick assets?

JUDGE COLLINS—He doesn't define it that way; you define it that way.

MR. HARDING—Are you objecting to this, Judge?

JUDGE COLLINS—I am objecting to your putting into his mouth words. You don't need to characterize what it is. What we call them is cash, bills payable and receivable, and merchandise.

THE COURT—Proceed, Mr. Harding.

Q. Now, turn to the last of November, 1910. A. I have 1910 here, yes.

Q. Now, can you give me the cash? A. $203,016.52.

Q. Have you the acccounts receivable, $147,324.94? A. Yes, sir.

Q. And have you merchandise $356,335.32? A. Yes, sir.

Q. And does that make a total of $701,676.78? A. I make it $706,000. Yes, that is right, too.

Q. Is it right? A. $706,000 is right.

Q. Well, we will take your figures if you say that is right, $706,000. Take bills payable from that, which is $39,701.39.

THE COURT—Oh, no, $147,000. A. $147,360.70.

MARTIN TOWEY, recalled—Cross

Q. I am talking about bills payable. A. Accounts payable, yes.

Q. Oh, well, that includes the disputed amount of $107,000. A. Yes, sir.

Q. Just see then what you get after taking that $107,000? A. Yes, sir.

THE COURT—After taking that $107,000 from the $147,000.

MR. HARDING—Take it from the $706,676.78; I am taking his figures now.

Q. I have got your showing in 1910, as I understand it, that for cash and accounts receivable and merchandise you have $706,676.78; that is right, isn't it? A. Yes, sir.

Q. Now, then, you take bills payable at how much? A. $147,360.70, including the reservation for the power plant.

Q. What is that remainder? A. The dividend is included in there.

Q. Well, take your dividend out. A. $499,316.08, as per table 1.

Q. Now, I again ask you, what do your books show that this difference in what I have defined as quick assets of $88,000 and odd dollars in the year 1882, and about $500,000 in 1910 came from, whether earnings or what.

JUDGE COLLINS—I object to that as irrelevant. It has no bearing whatever on this controversy.

THE COURT—It seems to me it is quite remote, but I will allow it. I don't exclude anything.

A. Some of it came from earnings and some of

it came from other items, I take it, from the books.

Q. What are they; examine your books and tell us how you account for this increase in these items which we call net quick assets?

Mr. CORBIN—I submit, your Honor, that that is a matter of two or three hours' work.

A. Two or three months.

THE COURT—The witness, I think, can answer.

Mr. CORBIN—That involves an examination of the books.

THE COURT—Proceed; the question is allowed.

Q. (Question read by the stenographer.)

A. I don't call those net quick assets. On our statement here, Table 1, we show our working capital in 1882—at the close of the fiscal year 1882—as being $79,000. On our statement for 1910 we show it is $499,000.

Q. Now, I shall put to you, sir, a plain question: You find a difference of something like $500,000 in these items between the year—

A. (Interrupting) $400,000.

Q. I said about $500,000. A. It should be four.

Q. Well, whatever it is, let us not hedge about it. I ask you whether or not your books show that that increase has come from anything except profits of the business? A. The books show; yes, sir.

Q. What else? A. From what else it came from?

Q. Yes? A. I don't know what other item; I can't go into the items.

Q. Well, what could it possibly come from? A. Other than the profits of the business?

Q. Yes. A. It couldn't come from anything else, except the sale of their assets.

Q. Sale of assets? A. Yes, of the increase in the cash which forms a part of this working capital; it could come from that.

Q. What assets? A. Any of their assets.

Q. What assets do you know of being sold? A. I don't know of any.

Q. What do their books show? A. I don't know of any assets—any large figure of their assets other than this real estate which we have spoken of here.

Q. Well, do you remember getting $40,000 from the East Jersey Water Company? A. Not in my time.

Q. Well do your books show? A. Now that you mention it I know that there was $40,000 gotten from the East Jersey Water Company.

Q. Where do you find that $40,000 now in your accounts? A. As a part of the reservation on our balance sheet.

Q. Where? A. The reservation is on our balance sheet, December 1st, here $355,000; that is shown there; it is all a part of this reservation.

Q. Now, see if I understand you: Taking your account for the amount paid for machinery, improvements, etc., where you pretend to show that after making all those improvements and taking out dividends you only have $380,000 left? A. That is right.

Q. I want to ask you whether or not the difference between that showing, leaving $38,000 left, on this increase we have just spoken of of quick assets in 1910 over that of 1882 is made up entirely

of sales of real estate? Q. That is, the difference between $411,000 and $38,000 which we show—you ask if that is made up of the sales of real estate?

Q. Yes? A. Couldn't possibly be.

Q. What was it made up of? A. Why, I think I have just indicated that.

By the Court.

Q. How about the interest on the mortgage; has that gone in, too—interest on the $315,000 mortgage? A. I don't think that has gone into this increase of working capital; it is entered on one side of the cash book and goes out on the other side. No part of that cash from the interest on this mortgage is marked here in any way.

Q. I understand it is just like any other profit? A. Yes, sir.

Q. How many years has that been running, do you know; do the books show? A. I think about ten; it doesn't show here.

Q. Then there would be $150,000 of profit which has not been derived from your manufacturing and trading business? A. No, sir; it is included in these net earnings; I don't see how you can put all these items together; don't see how you can go from working capital over to balance of unexpended earnings and jumble all these totals together, and then evolve some result.

JUDGE COLLINS—This is totally irrelevant.

Q. Now, you spoke about taking your inventories; I think you said the basis of your inventories of merchandise on hand is cost; you inventoried them at cost, you said; didn't you, on your direct examination? A. Yes, sir.

MARTIN TOWEY, recalled—Cross

Q. You don't anticipate profits when you make an inventory? A. No, sir; we inventory at actual cost as near as we can get at it.

Q. That includes what? Labor and material? A. Labor and material.

Q. How did labor compare in 1910 and 1909? Any difference between the cost? A. In what way?

Q. I am asking you what your books show? A. The books wouldn't show that, Mr. Harding.

Q. Is there any? A. I can't tell you any difference between the cost of labor; there might be.

Q Is there any? A. I wouldn't say there was or wasn't any.

Q. That is, per item or per operation? A. That depends upon the amount of production we have as to the cost of labor.

Q. You were asked with reference to this inventory, and on Axminster rugs, for example; and Atlantic 9 x 12; I find in 1909 the Axminster was there inventoried at $11.18; that was the cost of them in 1909; in 1910, the corresponding period, you have inventoried them 97 cents less on each rug; just tell me why you should inventory those rugs at nearly a dollar difference, when the basis was cost, between 1909 and 1910? A. I didn't make the figures.

Q. You were questioned about it on your direct examination as to how the inventories were made. A. I was just going to say I didn't make the figures of the inventory; I don't know that I priced the inventory of 1909.

Q. Well, did you have anything to do with making the inventory? A. In 1909?

Q. Yes. A. Yes, sir.

Q. In 1910? A. Yes.

Q. You had a good deal to do with it then? A. Yes, sir.

MARTIN TOWEY, recalled—Cross

Q. Now, then; just tell me why? A. The difference in the cost?

Q. Where was the difference in cost? Was material any higher? Was jute any higher in 1909 than in 1910? A. Jute was higher; I think it was; now let me see; I don't know whether it was higher or not in 1910; it wouldn't make very much difference.

Q. They are staple articles, aren't they? A. You mean staple in price?

Q. Jute I am talking about. A. There might be a difference of five cents between this year and next year, or this year and last year.

Q. What percentage would that be? A. What do you mean? Percentage on the cost of a rug, or on the cost of jute? Might be 30% on the cost of jute; the price of jute runs from six to ten cents.

Q. Do you know whether there was any difference in price? A. I wouldn't say without looking it up.

Q. Now, what other elements went into consideration, when you made the inventories of these rugs, besides wool and jute? Is that the only material, practically, that goes in? A. Of course, cotton goes in.

Q. Your books, I suppose, show whether there is any difference in the prices for materials between these two periods? A. Our invoices show; our books wouldn't show.

Q. Are you prepared to say whether there was any difference in the price of cotton? A. Yes; I know that cotton was very much higher in price than it was in certain periods of 1909.

Q. Higher in 1910? A. Yes, sir.

Q. And that ought to make the rugs cost more? A. Yes, sir.

Q. Do you know anything about it? A. About the prices?

Q. Yes. A. How the market has fluctuated from the beginning of 1909?

Q. Yes. A. I can't tell you now.

Q. But you had to do with making this inventory, didn't you? A. In 1910 I did.

Q. Well, in doing that you were somewhat careful, weren't you, to see that you arrived at the proper value as to the cost? A. Yes, sir.

Q. Of material? A. Yes, sir.

Q. And you are not prepared to tell now whether or not the cost of 1909 fairly compares with 1910, according to these prices? A. I think it does fairly compare.

Q. Why do you think so; is it because you have any knowledge as to the value of these items? A. Yes, sir.

Q. Well, what knowledge have you to show the difference, making the cost now about a dollar less? That would be a difference of about nine or ten per cent. A. Difference in the cost of materials and labor in the production of the goods.

Q. Was there any difference between the cost of labor? A. Certainly.

Q. Is it higher or lower? A. That I can't say, which way.

Q. You can't tell anything about it now? A. I have no specific information.

Q. Who had to do with fixing the prices on the inventories? A. I just said I made the prices on the 1910 inventory.

Q. Did you have all to do with making the prices? A. Yes.

Q. Nobody else? A. Well, of course we had other people give us figures—different people around

the mill there, from time to time as we wanted them.

Q. Although you made this inventory of 1910 you cannot tell me now whether or not the elements that went into the cost of it are any greater or less than they were in 1909? A. I would say that all the elements that would go into the cost of it are as per those prices there. That is, they have changed as per those prices.

Q. There wouldn't be any other elements to take into consideration except the cost of material and the labor, would there? A. Yes, certainly.

Q. What other elements? A. Cost of selling.

Q. Was there any difference in that? A. Certainly there might be.

Q. There might be, but you don't know that there was? A. Well, these balance sheets show here. The raw material portion of that inventory, Mr. Harding, was priced according to the invoices.

Q. When the Ferguson Company made an estimate for you, I can't understand yet whether the percentage basis upon which they were to do certain work was in the nature of a contract by which he was to purchase these things for you or that you were to provide them yourself and they merely charge you ten per cent. for setting up the machinery and let you go out into the market and purchase things or that they should purchase them for you? A. I believe they purchase the most of it.

Q. Now, you have no contract with Mr. Ferguson by which he is to furnish you with any particular thing at any limited time, have you? A. Any limited time?

Q. Any contract that he is to furnish goods at a certain time, or within a certain time. A. Why, there is no time specified within which he must

finish this work. They are pursuing it as rapidly as possible

Q. But you have no contract with him saying that he must furnish you an engine, say, within three months, or to do the mason work within six months, or anything of that kind? A. The engine —I thought there was a specified time within which they must deliver that, and it has been delivered.

Q. As I understand it you have got a sort of arrangement with Mr. Ferguson that if you want anything he will supply it for you and charge you 10 per cent.; isn't that about it? A. Oh, no, what we want there has been pretty well covered.

Q. When was it covered? A. Oh, way back in September—I dare say further back than that. Of course, there have been a few items added since that.

Q. I notice here on page 6, after drawing your balance of one hundred and seven thousand and odd dollars you have added to this for further requirements that have since developed $14,450? A. Yes, sir.

Q. Were those things that were needed, as sepaate things, distinct from the first estimate that Mr. Ferguson made? A. Distinct.

Q. Yes. They are new things? A. Oh, no, they are a part of the same scheme.

Q. When did you determine that you wanted those things? A. Specifically, you mean?

Q. Yes. A. I can't say about that, Mr. Harding.

Q. What? A. I can't tell you just when.

Q. Are you the gentleman—I think you are—that prepared—yes, you are the gentleman that prepared the estimate that was handed to us back in September last, about. Weren't you the gentleman that prepared this estimate then? A. I don't know what estimate you mean.

MARTIN TOWEY, recalled—Cross

Q. The one that Judge Collins gave to us; he gave us a copy in September from the book-keeper at that time as to what would be needed. You are the gentleman that made that out, aren't you? A. I don't know; I will have to see it first.

Q. Don't you remember making one out in September last year; weren't you prepared to testify in September in Court? A. Yes.

Q. Don't you remember Judge Collins handing us some papers? A. I know there were several papers there.

Q. Just get the original you made out.

JUDGE COLLINS—A copy will do.

Yes, if you have a copy (copy handed to counsel). In this statement that was handed out, on the second page, is the estimated condition of cash March 1, 1911. Under the head of Receipts we find three items

Cash September 1st, - - - - - -	$80,502.11
Brown Brothers & Co., - - - - -	61,351.19
Colonial Trust Company, - - - - -	975.19
Total, - - - - -	$142,378.49

Under this is Customers' accounts receivable $224,803.04, making a total of $367,181. Then you have added cash receipts from sales to March 1st, two hundred twenty-four odd thousand, making a grand total of $481,000 and odd dollars. Then you show the expenditures, and you put down for manufacturing purposes, raw material, labor, expenses, repairs, fuel, etc. $280,000. Steam plant, engine and boilers and other extensions under way, engaged for, etc. $115,000, and that makes a total of $395,000. Then taking the difference between $481,181 and this $395,000 leaves $86,181.00 on

hand March 1st. That, I understand, is the amount that you estimated you would have on hand in cash March 1st, isn't it? A. You said eighty-six; this says fifty-six.

Q. You are correct, that is an error. Last September you estimated you would have on hand $56,000. A. Yes, sir.

Q. After making all of these expenditures; is not that right? A. No, you have left out something here, I think.

Q. How much have I left out? You have got here for expenditures $115,000? A. That isn't our statement.

Q. It is a copy of what you have handed to us. If you have any doubt about it we will get the original.

Statement marked for identification "ARB No. 1."

By the Court.

Q. Does that statement showing about $56,000 on March 1st, include or exclude the dividend amounting to $60,000? A. I notice here it says "Dividend payable January 1st;" it doesn't include $60,000. It made arrangements for a dividend of $15,000.

Q. This included the only dividend that would have been paid up to that time. There are two dividends in it, October 1, 1910, and October 1, 1911, and according to your estimate of your requirements then you would have had cash on hand of $56,181? A. If this is a correct copy. I don't know that this is a correct copy.

Q. The point I want to ask you is this: Can you tell me why it should be that on your estimate at that time for your requirements,—that is, after all

your requirements you would have $56,000 on hand, whereas you claim you are now $40,000 short? A. A change in the conditions has brought about that.

Q. What were the changes that brought it about? A. We estimated here, on this statement,—I will have to look it over a little bit first.

Q. I will put this question: Isn't it accounted for partly by this, that you bought an unusually large amount of merchandise after you made that statement that you didn't need? A. No, sir; nothing of the kind.

Q. Didn't you buy in New York over $34,000 of raw material? A. I don't know that we did.

Q. And didn't that $34,000 appear untouched in your inventory? A. If we did buy $34,000 worth of raw material that wouldn't be an extraordinary amount to buy in one month; a great many months we buy much more than $34,000, or, I think, very near $34,000, if not more. I think you will find in some months we have purchased a great deal more than that.

By the Court.

Q. While you are on that point turn to page 1 of your schedule, in the second column, showing merchandise on hand at the end of the fiscal year, each year from 1882 to 1910, and I observe from 1882 up to 1906 there is an increase of $94,000 in 1882 to 291,000 in 1906, and then, for the next year—1906, as well as 1907, '8 and '9, running about the same, 280, 270 and 290 thousand, and we have in 1910 a sudden increase of $80,000—from $276,000 to $356,000. What is the reason for that, do you know? A. The principal reason is—reference to our inventory books will show the figures—but I would say from memory that the principal part of this increase in this inventory is finished goods—completed goods

—that were unsold, and that is due to there being a slump in the sales of the goods. And another large increase is due to lack of water-power up there over a period of four or five months. My impression is that the raw material in 1910 was less. Of course the account will show, but I think the raw material was about the same; I don't think there was any great difference between the raw material—that is, the unused raw material—in 1910 as against some previous years.

Q. A part of your answer I understand and part of it I do not; what is your point about the lack of water power; does that operate so as to increase the amount of goods in process? A. Yes; it did at various stages of the manufacture.

Q. You think, then, Mr. Towey, that, from your knowledge of the books, if the item here in the second column was raw material on hand instead of merchandise, which includes both raw material and goods manufactured and goods in process, there wouldn't be a very great difference? A. That does include—

Q. I understand; if it wasn't for that, if you had simply the raw material stated there wouldn't be much increase? A. That is my impression.

Q. Have you got books showing the raw material account? A. Yes; for that year?

Q. For the different years? A. Yes, sir.

Q. While you are on it turn to it and show us how the raw material ran? A.

In 1906 our raw material inventory was $91,786.81
In 1907 " " " " 40,305.64
In 1908 " " " " 44,465.60
In 1909 " " " " 41,679.40
In 1910 " " " " 74,441.00

Do you want back of 1905?

Q. You need not go back of that. Now, the

whole merchandise item, including raw material, in 1909 was $276,000, and after you made this statement, in September, 1910, I find that merchandise is $356,000. How do you account for that abnormal excess of merchandise after you made your first statement, in September? A. I have just answered that. Oh, since this statement? This statement doesn't show any excess of merchandise.

Q. No; I am asking you how you account for the excess of 1910 over that of 1909—the difference between $356,000 and $276,000; you never had any such amount of merchandise on hand before that at the last of November, did you?

THE COURT—The witness has just been all over that.

Mr. HARDING—I heard what he said, but I want to have him give his reason why there is such a large difference between $356,000 and $276,000 between 1910 and 1909?

A. Why, there is a difference, of course.

Q. How is it accounted for? A. I have just accounted for it.

Q. Well, kindly account for it to me again; I want to see if I understand you. If you have accounted for it you certainly can do it again, can't you? A. I think I stated it was due principally to a large increase in the unsold merchandise, due to a slump in the sales over that period.

Q. Did you ever have any such slump as that before? A. Oh, yes, we have had plenty of slumps. As I said two minutes ago, it was also due to lack of water power and the consequent inability to use up this raw material—to continue the work we had in process.

By the Court.

Q. Then I understand, Mr. Towey, this $80,000 increase you account for as follows: Increase of raw material over 1909 about $33,000, and the remaining $47,000 increase you divide between the increased amount of finished goods you had on hand, owing to the slump in the market and the increase of amount of goods in process of manufacture that you had on hand because you didn't have power to turn your goods out? A. Yes, sir, the difference between the finished goods and that in process of manufacture.

Q. Now, did you anticipate anything of that kind when you made your statement in September when you thought you would have cash on hand of $56,000 after you had all your anticipated expenditures; did you anticipate the water failure and all that sort of thing? A. We didn't anticipate the water failure nor the slump in business, either.

Q. I call your attention to this: That beginning, say, with the year 1900, there was an excess always at the end of the fiscal year of accounts receivable over your bills payable; in 1900 that excess was only about $51,00 ; in 1901, only about $25,000; in 1902, about $37,000; in 1903, about $44,000; in 1904, about $29,000; in 1905, about $29,000; in 1906, $45,000; in 1907, $91,000; in 19 8, $98,000; in 1909, $98,000; in 1910, $107,000. Can you tell why that excess in the amount of bills receivable should have been going so steadily up and increasing so greatly within the last few years? A. At what date is that?

Q. Well, take your bills receivable for 1910. A. What date in 1910?

Q. I am taking these dates, November, 1910, and the excess there of your bills receivable over your

bills payable is $107,000; what is the reason that there should have been this great change?

THE COURT—One moment, Mr. Harding, according to the schedule, page 1, the accounts receivable in 1909 were $172,-579.39, and accounts payable $57,858.67, and in 1910 the accounts receivable and the accounts payable just about balance each other, $147,000, and that takes in $107,000.

Mr. HARDING—I am not taking that in; that is abnormal, that is an unusual thing. The accounts payable that were actually payable is what I want. I am trying to get this witness to account for this, why it is that there should be this great discrepancy in the amounts.

Q. Now, I want to ask you why it is that there should have been this great and complete change in the ratio of the amount of your bills payable and bills receivable? A. Between what dates?

Q. Well, I will give you the dates for the last ten years, starting in with 1900 where the excess in the bills receivable over the bills payable is only $9,000; 1901, $25,000 and remaining about $29,000 until you get to 1907; then, suddenly, the excess jumps up in 1907 to $91,000; in 1908 to $98,000, in 1909, $98,000; and in 1910 $107,000. A. I don't know where you get those figures from; they are not on here.

Q. Take your own table, where is your balance? A. Without taking the figures?

Q. Assuming that those are true, go on and account for it.

MARTIN TOWEY, recalled—Cross

JUDGE COLLINS—I object to it. I object to any assumption.

Mr. HARDING—I will go all over it again if there is any question about these figures.

THE COURT—Can't you make this brief?

Mr. HARDING—I am through with it if I can get the witness to answer.

By the Court.

Q. Look right here on your schedule, page 1, and just correct the 1910 by taking away the $107,000 from the accounts payable, so that the accounts payable for 1910 stand at $40,000; you understand me, do you? A. Yes.

Q. Now, making that correction, say the $40,000 stands for 1910, 1909, $37,000, 1908 and so on; as I understand it what counsel wants to know is why is it that the ratio of the accounts payable to accounts receivable has altered so greatly during the last four or five years. A. I find in going back to 1900—I think Mr. Harding mentioned 1900—that the difference between accounts receivable and the accounts payable was $51,000; in the following year, roughly, it was $271,000; 1902 it was $37,000; 1903, $46,000; 1904, $30,000; 1905, $30,000; 1906, $45,000; 1907, $91,000; 1908, $100,000; 1909, $102,000; 1910, $107,000.

JUDGE COLLINS—Now, he asks you how you account for it.

The Court.

Q. The question is, how do you account for the increase of ratio. A. I understand it, you wish to know how we account for the difference between $51,000 in 1900?

MARTIN TOWEY, recalled—Cross

Q. If you know; we don't want anything you can't know. A. I think this statement shows on the face of it, the difference between, say, 1902, was $37,000—

Q. What I mean to say is—

JUDGE COLLINS—Let him answer.

A. (continuing). The difference between 1902—the accounts receivable in 1910 was $147,000. There is a difference of $50,000.

By the Court.

Q. One moment, Mr. Towey, you are not on the point, evidently. You take these figures from 1904, and you observe there the accounts payable were approximately one-half the amount of the accounts receivable? A. Yes, sir.

Q. And the next year, 1905— A. Two-thirds, or five eighths.

Q. And then pass to the next year and it is about half? A. Yes, sir.

Q. Then you pass to 1907. Then, I understand, is the beginning of the critical period about which you made explanation. You have got there the accounts payable a quarter and the accounts receivable all of a sudden become four times. The business increased. And the next year also four times. A. Yes, sir.

Q. And the next year, 1909, about three times; and then the next year we have two and one-half times about? A. Yes, sir.

Q. Now, as I understand it, you are asked whether you know of any reason why that change of ratio should occur—why the ratio between the accounts receivable and accounts payable should be increased? A. Due to increased business and the fact that there

were more accounts receivable charged up with the datings during those years. The accounts receivable jumped from $67,000 in 1904 to $172,000, an increase of a hundred thousand dollars.

Q. That is the only explanation you have. A. That is the only explanation there can be of that question.

Re-direct examination by Mr. Corbin.

Q. How much time is ordinarily given with the accounts payable; what is your custom about that? A. Ten days.

Q. How much time is ordinarily given on your accounts receivable for the stock sold? A. Starting from the first of May each year we date our bills September 1st; some few of them October 1st. Those accounts are not due, net, until the first of January—the following January. That is, we make those goods beginning in May that will not be paid for until the following January.

Q. Mr. Towey, I call your attention to this Table No. 5; first to the item liabilities, current account as per trial balance February 1st, $53,574.98, and ask you if you have examined into that to see what portion of that has been actually expended? A. Of that first item?

Q. The second item, $53,574.98?

The witness leaves the stand and gets a book.

Q. I want to know what portion of that has been actually paid in relation to the portion that has not been paid. A. Against that account we have a payroll of $7,500.

Q. I am asking you about the second item under liabilities, which says "Current account as per trial

balance February 1st;" now, what portion of that has actually been paid? A. $39,325.98 for customers' accounts.

Q. What other payments have been made? A. $105.70 for Birkmaier account, as on page 9; $5,200 wages accrued, as on page 9; about $1,000 on the salary accounts. That is all.

Q. That leaves about $6,000? A. About $6,000, yes, sir.

Q. What are those accounts that are unpaid in that $53.000? A. The account of John F. Street, $4,000; the account of William Wisner—

Q. What is the Street account; what are the facts about that $4,000? A. We held up a portion of the payment, owing to some difficulty in the quality or size of the yarn; until they have adjusted that matter we will withhold payment of that $4,000. We may be very likely in a position to send them a check for the balance in a week or so, perhaps.

Q. How about the other? A. Wisner's is $2,400.

Q. What is that? A. That is for the purpose of balancing account against previous payment of $10-000 and $12,000.

Q. When do you expect that will be paid up? A. About the same time as the other; as soon as we can get those accounts in shape.

Q. Now, I call your attention to the other item of estimates of $53,339.51, and ask you how much of that has been actually expended and what for? A. I can't give you the date, but we have made a payment of $7,500 early this month.

Q. What was that? A. That was to cover that $5,200, which we show on folio 9, as reservation for wages accrued, and the balance of that payroll for the month of February.

Q. When will your next payroll be due? A. A week from today; on the 23rd, I think.

Q. The 25th is a week from today? A. No, I should say a week from yesterday; that will be the 24th of February.

Q. What will be the amount of that? A. About $7,500.

Q. And there will be another payment about the 7th of March? A. Well, two weeks more, whenever it is.

Q. And bills will come in as against that January estimate up to date? A. Bills amounting to $10,289.05. Our February bills are now on file awaiting payment.

Q. What was your cash balance in bank last Wednesday? A $81,000.

By the Court.

Q. In all the banks, you mean? A. In all the banks and trust companies.

Q. And that also includes whatever cash you may have in your cash drawers? A. I wouldn't say that it did; I don't think it does.

Q. How much would there be in the cash drawer? A. From two to three hundred dollars, perhaps.

Q. Now, in speaking of these inventories for raw material, I wish to ask you whether you have bought wool since the last inventory, which is December 1st? A. I think we have bought some wool; yes.

Q. What is the present condition of wool? A. We are now in the market for wool; negotiations are now pending for both kinds of wool—both types of wool.

Q. What is the fact about the purchase of cotton? A. About the purchase of cotton—we are now in the market for cotton, too.

RECESS UNTIL TWO O'CLOCK, P. M.

MARTIN TOWEY, recalled—Re-direct

Q. Mr. Towey, I show you the tables prepared by Mr. Howard, marked C 1 of this hearing, and call your attention on page 2nd to the depreciation account as shown there and ask you to make such remarks as to the correctness as you desire? A. This table shows a figure of $400,318.47 with the notation opposite as "profit for the four years as above without charging depreciation." I don't consider that as profit in any sense. There is not a profit without charging necessary depreciation. Further up the table, stock depreciation charged to profit and loss amounting to $9,019.38. At the close of the year 1907 there was an entry made in our journal which writes back this $9,019.38 to reserve fund and not to profit and loss account, with the explanation that this is written back into former years' profits over different periods, so as to take it out of the deduction for merchandise, which it was originally, instead of a charged profit and loss account. Bad and doubtful debts are charged here as depreciation, $10,000. This $10,000, by reference to the books, is an account charged to profit and loss, not as depreciation, but as a reserve against the accounts receivable on the date of the balance sheet from which that is taken off for possible bad debts at the time of those accounts receivable.

By the Court.

Q. I don't understand you, Mr. Towey; let me inquire: This item of $10,000, entitled "Bad and doubtful debts," and which is charged here in the depreciation account—do I understand you to say that that was a sum appropriated to meet possible bad debts? A. Yes, sir; against accounts receivable at that time.

Q. Now, I call your attention to C 2, page 3, table marked, "Manufacturing account," and ask

you what you have to say about the correctness of that? A. This account is headed "Manufacturing Account," as stock account, material, etc., $306,468.19; manufacturing labor, $170,605.15, as a manufacturing charge. Commissions on sales, $691.09. We can't possibly consider commissions on sales as a manufacturing charge or in any sense a charge for manufacturing; it is a selling charge. The next item is Discounts allowed, $17,757.28. That, as I understand it, is the discounts allowed customers in the ordinary course of business, and it is properly a deduction from the sales.

By the Court.

Q. Mr. Towey, isn't it manifest that this schedule is not only a manufacturing account but also a selling account—an account of the whole business of manufacturing and selling? A. No, sir; it isn't; it does not include all the items; it only includes part of them, and takes other items in it which are not properly manufacturing items. This item of $17,757.28 is properly a deduction from the sales, giving us the net sales. Selling expenses are entered here as a manufacturing charge, showing the profit and loss account as being credited with $163,619.72, apparently as a pa t of the profit on manufacturing. Our manufacturing profit for this period—our total profit for this period was $74,073.41, as per this table, which we show as net earnings on our Table 3. The only part of that which isn't manufacturing profits is the amounts credited to interest and rents, totalling about $29,000, which leaves our manufacturing profit for the year 1910 $49,000 instead of $163,000—I should say our manufacturing and trading profit $49,000 instead of $163,000, as shown on this table, page 3. Following along this table is a profit

and loss account under the head of expense $15,-052.98. We don't find on our books any such amount under the head of expense account. There is an account here on this table of stable account, $872.70. On our books this account is apparently made up of a charge of $870.20 for stable account and $270 as farm account. Further down on the table is depreciation real estate. On our books this amount of $21,323.47 is for the purpose of covering depreciation on buildings only not depreciation on real estate. There is no depreciation written on real estate at any period.

Q. As distinguished from buildings? A. As distinguished from buildings.

Mr. CORBIN—That is all.

Examination by the Court.

Q. Mr. Towey, will you please turn to schedule 7, showing balance sheet December 1st, 1910. Among the liabilities, doubtful debt reserve $24,-406.29, what is that? A. That is a reserve that has been composed of amounts set up, from time to time, to meet bad debts and which has been charged with bad debts as they have occurred leaving a balance of $24,406.29.

Q. Have you any idea how many bad debts you have got now among your assets here on this balance sheet? A. Of $147,000.

Q. Yes? A. No, sir.

Q. Have you any reason to believe that you have got $24,000 in bad debts? A. At the present time I haven't any information that would lead us to believe that there would be.

Q. You have had experience in this business for some years, haven't you? A. Yes, sir.

Q. Can you tell about what would be the fair

approximate amount of bad debts in that item? A. No, sir.

Q. Can you tell within $5,000 or $10,000? A. That depends entirely upon conditions.

Q. Is it possible that the whole might be a loss, but coming down to what practically happens, can you tell, from your experience, about what would be a fair allowance for bad debts there? A. I would say in times past there has been as high as $8,000 or more charged off from one account as a bad debt; it would take only three of those to wipe this out.

Q. Is your inability to give us any idea due to the fact that you haven't had experience in the collection department? A. No, sir, my inability is due to this: That we at the present time don't know of any circumstances as to the condition of any one of these customers.

Q. I know that, of course you don't; but taking what you know, do you know of any portion of that that is bad? A. No, sir, that is, not a large portion. I know that there are a few accounts.

Q. Very good, nothing of a substantial amount. Now, then, the question is whether, from your experience in this business, you can't give some idea of what the percentage of bad debts in a hundred thousand would be? A. Well, I should say, from what I know of past conditions, and that might run anywheres from five—well, I would say anywheres from two to ten per cent.

Q. Now, then, just turn again, please, to the schedule of liabilities on page 7, and tell me what that item is, Reserve Fund, $410,684.37. A. That is made up of the balance as carried over from the profit and loss account each year after deducting the dividend.

Q. Would it be correct to say that that is the

profits after paying the dividend? A. Yes, sir, practically.

Q. Now, then, take the next item, Water Rights Reserve, $355,000. I observe that that is equal to the $315,000 mortgage and $40,000 which was paid? A. Yes, $40,000 which was paid for these water rights

Q. Now, then, that is carried along among your liabilities; I don't exactly understand that. Why? A. As the reserve. That is carried among our liabilities to make up the difference.

Q. It is a balancing item, isn't it? A. Yes, sir.

Q. I see $315,000 among the assets, but I don't see the $40,000; where is it? A. $40,000 would be in the cash, or in the other invested assets, spread over stock, machinery, real estate, and other items.

JUDGE COLLINS—This reserve fund is carried the same as capital is carried.

WILLIAM H. BEATTIE, recalled on behalf of the defendant, testified as follows:

Direct examination by Mr. Corbin.

Q. Mr. Beattie, you are the Treasurer of the Beattie Mfg. Co.? A. Yes, sir.

Q. And have been such since the last hearing in this case? A. Yes, sir.

Q. I call your attention to tables 6 and 5, the accounts proved by Mr. Towey, and ask you if you made the estimates contained in table No. 6? A. A portion of these estimates I made and a portion of them were made by the John W. Ferguson Company.

Q. You are familiar with all the items on this table No. 6? A. Yes, sir.

Q. What is the object of these items; how do

they arise? A. I don't understand the question.

Q. What is the need of these various items on page 6, in connection with your business? A. Well, the need arises from the fact that we are short of power and we find it necessary to establish a power plant—a steam power plant.

Q. How about this last summer, about the question of water for your plant? A. We were very short of water power last summer.

Q. Have you ever had to shut down the plant for lack of water power? A. Yes, many days.

Q. For what period? A. Well, for many days for the whole day. Many days we could run a portion of our factory until ten o'clock in the morning, and very many days we would have to shut down the whole plant at three o'clock in the afternoon.

Q. For how long a time would you have to shut down the plant for a portion of the day at least? A. Well, we ran from, I should say, about the first or the early part of August until around the holiday time.

Q. Did you have any difficulty with your water power during the year 1909? A. Yes, sir.

Q. When did the board of directors first take action in regard to the installing the steam plant. A. Why, there is a minute book—it will show that.

Counsel refers to the minute book.

Q. First, I will ask you if the installation of this steam plant has been under consideration for any great length of time? A. We have been considering this particular plant since, I should say, about the first of October, 1909.

Q. You say "this particular plant;" what were you considering before that time? A. Before that time we had considered electrical power,—a plant equipped by electricity.

WILLIAM H. BEATTIE, recalled—Direct

Q. And at that time you modified your plants? A. We modified our plans. As a matter of fact, we gave that up for the time being.

Q. What is the necessity of this plant? A. Why, our business has grown to a point where we are actually short of power, even in times when there is water in the river.

Q. What power is reserved to you under the sale to the East Jersey Water Company? A. 300 horse power.

Q. And under that contract I see the East Jersey Water Co., takes the last 300 H. P. in 1915? A. Yes.

Q. Is 300 H. P. adequate to operate your plant at present constructed and as it is being constructed? A. No, sir.

THE COURT—That contract was in evidence, was it not, Mr. Corbin?

Mr. CORBIN—Yes.

THE COURT—What does it say that the East Jersey Water Co. is to pay in 1915?

THE WITNESS—$200,000. That is my recollection.

Q. I call your attention to the directors' minutes of October 27, 1901, and to a resolution—

Mr. CORBIN—Well, I suppose we might as well offer the resolution.

Mr. HARDING—So far as I am concerned I don't say, that I will object.

A. Shall I read it to you?

Q. Yes. A. "Owing to extreme low water in the river and a consequent loss of power, our production

has been greatly curtailed the past summer and is at the present time; the executive committee recommends that appliance to equip with steam power be considered and the employment of a competent engineer to make recommendations as to such equipment.

In accordance with the above recommendation, on motion of Howard Beattie the executive committee was authorized to employ such expert advice as may be necessary."

By the Court.

Q. What is the date of that? A. October 27, 1909.

THE COURT—I understand these minutes are offered in evidence?

Mr. CORBIN—Yes.

Q. Now, what action followed that resolution? A. Why, the employment of an engineer.

Q. Were the plans that you are now carrying out then drawn? A. No, the first engineer was called in with a view to telling us what portion of our plant should be equipped with steam power and what part for electricity, if any. In other words, to look over the plant and advise us how we should proceed.

By the Court.

Q. Where were you to get the electricity from Mr. Beattie? A. Make it.

Q. From the water power? A. No, sir, by steam.

Q. Then were plans drawn on which the present work is being carried out? A. We made a tentative plan at that time, and for some reason our engineer delayed us until along in the Spring; an then we took up the matter with Mr. Barbour, who is not

an engineer—that is, not professionally an engineer, but is a capable man, as capable as an engineer. We took up the matter with him and went into it thoroughly, and from the plan made at that time with Mr. Barbour the present plan was developed.

Q. The present plan was developed from that? A. Yes.

Q. Now, when was the present plan finally developed? A. Why, it was developed about the latter part of June sometime.

Q. And then you proceeded with the work? A. Then we proceeded with the work.

By the Court.

Q. Just briefly state, Mr. Beattie, what this new installation included,—the erection of a building, I suppose. A. Yes, sir; the plan, as it afterwards developed, in the first place anticipated the erection of a steam plant only, but we found we could to advantage tear out a building and put our engine in the middle of the plant, so that we could carry it to different points advantageously; so that this present plan contemplated tearing out a building and establishing another building—another plant—in that space.

Q. And your power then would be distributed by shafting? A. Yes, sir; instead of electricity—that is, by shafting and by ropes.

Q. I show you an insurance map of your plant, prepared some time ago, and ask you to point out to the Vice Chancellor on that what the changes in the buildings are that are being put under way at the present time. A. This building is already taken out. The present plan is to wipe out all of those buildings right from here (witness indicating on the plan buildings No. 5 and No. 4). These buildings through here have all been taken

out, and the establishment of a power plant on the site of that building (witness still indicating to buildings 4 and 5 on the plan).

By Judge Collins.

Q. That is absolutely to come out? A. Yes, sir, or a portion of them are out now.

JUDGE COLLINS—We offer this plan in evidence.

Admitted and marked Exhibit D 2.

Q. I call your attention to a photograph of a portion of the plant and ask you if that was taken before the changes were under way? A. That was taken before the changes, yes, sir.

Q. Will you tell us on that photograph what these buildings are that are removed? A. Indicate them on here?

Q. Yes, mark them with an X. A. Well, those are the only two you can see.

Mr. CORBIN—I offer this photograph in evidence.

Admitted and marked Exhibit D 3.

Q. I show you a photograph recently taken from practically the same position and ask you if that shows the conditions at present? A. That showed the condition yesterday.

Q. When was that taken? A. That was taken yesterday.

Q. That is taken from the same point of view? A. Yes, sir, almost from the same point as you will see.

Q. The building in the front with a high stack is

the new power house, is it not? A. Yes, sir, that is the new power house, that is the boiler house, and that is the engine house.

Mr. CORBIN—I also offer that photograph in evidence.

Admitted and marked Exhibit D 4.

Q. When did you take up the actual matter of construction with the Ferguson Company? A. The actual matter we took up sometime in July. It was brought to a close sometime in August.

By Mr. Harding.

Q. That is, last year? A. 1910, yes, sir.

Q. Now, I show you a letter from J. W. Ferguson, President of the John W. Ferguson Company, dated August 12, 1910, and ask you if you received that letter? A. I did, yes, sir.

Q. Just read it on the minutes. A. Beattie Manufacturing Company, Little Falls, N. J. Gentlemen: We propose to furnish all labor and material and such equipment as you wish to have us purchase for the alterations and additions to your power plant at Little Falls, New Jersey, at actual cost plus twelve per cent., the above percentage to cover the preparation of the plans and specifications, and engineering services, and the use of our equipment.

Hoping these terms will be satisfactory and that you can authorize us to go ahead with the work, we remain, Very truly yours, John W. Ferguson Company, J. W. Ferguson, President.

Q. What reply did you make to that letter? A. We replied to that under date of August 1st. Replying to your letter of August 12th, we accept your proposition for work in connection with our

power plant and would like to have you begin the work as early as possible. Yours truly, Beattie Manufacturing Company.

Q. I ask you if the plans were at once proceeded with there, or what took place after that? A. Well, we had had an understanding as to what should be done at that time; at that time I went to the Adirondacks, and we had an understanding as to what should be done, and when they altered—I might say amended—the plans somewhat, Mr. Hughes came to the Adirondacks to see me.

Q. Mr. Hughes, of the Ferguson Company? A. Yes; Mr. Hughes is the Secretary of the company; we looked over the plans and made perhaps a change or two and sent them back, and they immediately put out a lot of work for bids—for sub-contracts.

Q. I call your attention to the letter dated September 29th, already marked C 5 for identification, and ask you if that was received by you, and if the accompanying sheet, entitled "Estimate of Equipment for Power Plant," was the estimate of the Ferguson Company on the work started? A. Yes; this estimate was made at my request after my coming from the Adirondacks; he had some of the contracts in, and some were not in; some of those are estimated, and some are not.

Mr. CORBIN—I offer both of these papers in evidence, marked C 4 and C 5 for identification.

Admitted in evidence on behalf of the defendant.

Q. When was the work actually begun? A. The work was actually begun in my absence; I am not prepared to say what day, but I should say the latter part of August sometime.

WILLIAM H. BEATTIE, recalled—Direct

Q. I show you a resolution in the minutes, dated June 30, 1910, in regard to this work, and ask you to read it into the record. A. "In accordance with a resolution passed at meeting, October 27, 1909, the executive committee reports that plans and estimates for a new power plant are about ready.

"On motion the executive committee was authorized to proceed as rapidly as possible with the installation of the same and to erect and complete as early as possible."

THE COURT—Is it necessary to go into this great detail? I really cannot see that we gain anything. It seems to be proved that the corporation started in last year to construct a new power plant, and why should we go into all the details of the making of the contract and the examination by the engineer, and all that sort of thing.

Mr. CORBIN—I am doing it because there was rather a rigid cross examination of Mr. Towey who knew nothing much about it on this very subject, and we have the man here on the stand who knows about it, and if our opponents want to know, we will satisfy them.

THE COURT—I don't see myself that it is necessary to go into this. The real point to be ascertained, it seems to me, is the present stage of construction and how much has yet to be paid for in order to finish this plant.

Q. What is the present condition of this construction by the Ferguson Company? A. Well—

Q. In a general way, I mean. What portion is

complete? What is under way? And what is the progress they are making with the work under way? A. I should say, at a guess, it must be about 70% completed; that is just a guess, of course.

By the Court.

Q. By "guess" you mean estimate, I suppose? A. Yes.

Q. Do you know what portion of it has been paid for? A. No, sir; I do not.

Mr. CORBIN—I think that came out in Mr. Towey's evidence this morning.

Q. Nor Mr. Beattie? There are also items on this sheet 6 in regard to certain machinery that is ordered and other machinery required. What are the facts about that? A. Well, you mean the basis of the estimate?

Q. Yes; what that estimate is founded on, in the first place. A. Well, the estimate is founded on the proof brought to the mills that we have.

By the Court.

Q. What is the aggregate? A. It is 27 plus 22 plus 15.

Q. What are the facts in regard to this machinery? A. Well, this machinery we need to square out our plant.

Q. How do you mean, to square out your plant? A. Well, we have a certain number, forty-six, broad looms, and they use up so much material, and we have to have the machines in advance of the looms of such capacity to keep them running, to keep them going, and the machinery that we put in this estimate is the machinery that we think

will be necessary to square out our plant so that we can run it and run forty-six looms as well as about twenty, I think it is, narrow looms.

Q. That will give your plant a capacity of about how many 9x12 rugs a day? A. A capacity of about 250 seamless rugs roughly.

Q. I will ask you whether all the rest of the machinery except that marked "Machinery Required" in the first column and the three items Two Mules, one set of cards, two setting frames in the second column, has been ordered? A. That has been ordered, yes, sir.

Q. What about these other items of machinery required? A. This machinery required is what we estimate will be necessary, as I said before, to square up our plant.

Q. I call your attention to the resolution of the board of directors of March 19, 1909, as follows:

Resolved, That the seamless Axminister capacity be increased fifty per cent. and that Passaic rugs be made in seamless lots to be ready for the market by 1909, and that the looms and other machinery required to accomplish this be purchased as needed; that a building large enough to accommodate the printing and to accommodate finished stock be erected in a suitable location, the whole cost of these extensions not to exceed $100,000. I ask you if this work is done under that resolution? A. It is, yes, sir.

Q. Carrying out the terms of that resolution? A. Yes, sir.

Q. Mr. Beattie, you are familiar with the cost of these various machines that are required to manufacture carpets and rugs, are you not? A. Yes, sir.

Q. And these items of cost that are put down in

the estimate on page 6, are they reasonable and fair as to cost? A. Entirely so; yes, sir.

Mr. CORBIN—I wish to read the minutes, or a portion of them, of a directors' meeting held December 28, 1909, as follows:

"*Resolved*, That a regular dividend of twelve and one-half per cent. and an extra dividend of seven and one-half per cent. on the capital stock of this company be declared, payable as follows: Five per cent. on or after January 1st, 1910; five per cent. on or after April 1st, 1910; five per cent. on or after July 1st, 1910, and five per cent. on or after October 1st, 1910, and that the residue of the accumulated profits of the company be reserved as working capital."

Also from the minutes of the annual meeting of the stockholders, meeting December 29, 1909, as follows:

"On motion, the following resolution was adopted:

WHEREAS, At a meeting of the directors of this company, held December 28, 1909, the following resolutions were adopted."

Then follows the resolution of the board of directors which I have read. Then it goes on:

"*Resolved*, That all the acts of the executive committee during the past year be and they are hereby ratified and approved. Be it therefore

Resolved, That this meeting approve and confirm, and it does hereby approve and confirm, the aforesaid action of the board of directors.

On motion, the following was adopted: *Resolved*, That all the acts of the executive committee during

the past year be and they are hereby ratified and approved."

And then again with the stockholders' meeting. Present in person or by proxy: Robert Beattie, Howard Beattie, Robert Beattie, Jr., George M. Booth, Alexander Murray, W. H. Beattie, representing 2,860⅔ shares of stock.

Q. How many shares are there altogether? A. Three thousand.

THE COURT—What is the date of the stockholders' meeting?

Mr. CORBIN—That was December 29, 1909.

THE COURT—And is it shown that the vote was unanimous?

Mr. CORBIN—It doesn't say here.

THE WITNESS—May I volunteer an opinion?

THE COURT—Not yet. What is the record as to the adoption of the motion; simply it was carried?

Mr. CORBIN—Simply says it was adopted. I will read it:

December 29, 1908. Directors' meeting.

Resolved, That a dividend of twelve and one-half per cent. of the capital stock of the company be declared, payable as follows: Five per cent. on and after January 2d, 1909; five per cent. on and after July 1st, 1909; two and one-half per cent. October 1st, 1909, and that the accumulated profits of the company be reserved as working capital.

Resolved, That all the acts of the executive committee during the past year be and they are hereby ratified and approved."

This was confirmed December 30 by the stock-

holders present—Robert Beattie, Howard Beattie, Robert Beattie, Jr., Alexander Murray and William H. Beattie, representing 2,733⅓ shares of stock. Then the following resolution was adopted:

WHEREAS, At a meeting of the directors of the company, held December 29, the following resolutions were adopted:

Resolved (quoting the same resolution which I have read at the directors' meeting).

Be it therefore

Resolved, That this meeting approve and confirm, and does hereby approve and confirm, the above action of the board of directors.

Meeting of the board of directors, December 26, 1907:

Resolved, That a dividend of ten per cent. on the capital stock of this company be declared, payable as follows: Five per cent. on and after January 2, 1908, five per cent. on and after July 1st, 1908, and and that the residue of the accumulated profits of the company be reserved as working capital.

Then follows the resolution, and asks that the executive committee be confirmed. Then the minutes as follows:

The annual meeting of the stockholders of this company held this day at the office of the company. Present: Robert Beattie, Howard Beattie, Robert Beattie, Jr., Alexander Murray, William H. Beattie, representing 2,725 shares.

On motion the following was adopted: WHEREAS, at a meeting of the directors of the Beattie Manufacturing Company, held this day, the following resolutions were adopted:

Resolved, That a dividend of ten per cent. on the

capital stock of this company be declared payable as follows:

Then the resolution is repeated.

Be it, therefore

Resolved, That this meeting approve and confirm, and it does hereby approve and confirm, the above actions by the board of directors.

Meeting of the directors, December 26, 1906.

On motion, the following was adopted:

Resolved, That a dividend of ten per cent. on the capital stock of the company be declared payable as follows: Five per cent. on or after January 2nd, 1907; five per cent. on or after July 1, 1907, and that the residue of the accumulated profits of the company be reserved as working capital.

On motion, the following was adopted.

Then follows the same resolution as before.

Meeting of the stockholders, December 26, 1906.

Present: Robert Beattie, Howard Beattie, Robert Beattie, Jr. and William H. Beattie.

The vote for directors shows 2,899 votes.

The following resolution was adopted. WHEREAS, At a meeting of the directors of the Beattie Manufacturing Company, held this day at 10.30 A. M., the following resolutions were adopted:

Then it recites the resolution.

THE COURT—The whole resolution is recited, including the reservation?

Mr. CORBIN—Yes, your Honor.

Be it Resolved, That this meeting approve and confirm, and it does hereby approve and confirm, the above action by the board of directors.

WILLIAM H. BEATTIE, recalled—Direct

I read from the minutes of the board of directors of December 27, 191 :

On motion, the following was adopted:

Resolved, That a regular dividend of twelve and one-half per cent. and an extra dividend of seven and one-half per cent. on the capital stock of this company be declared, payable as follows: Five per cent. on and after January 3, 1911; five per cent. on and after April 1st, 1911; five per cent. on and after July 1st, 1911; five per cent. on and after October 2nd, 1911, and that the residue of the accumulated profits of the company be reserved as working capital.

Then follows the approval of the action of the executive committee. I will read from the minutes of the annual meeting of stockholders, December 28, 1910:

THE COURT—Precisely the same resolution as before?

MR. CORBIN—Yes.

THE COURT—Hardly necessary to read it.

Mr. CORBIN—There were present Alexander Murray, Emma G. Beattie, William H. Beattie, Howard Beattie, Robert Beattie, Jr., representing 2,733½ shares of stock.

Then on motion the following was adopted:

THE COURT—Oh, you need not read it. It is the same as the other?

Mr. CORBIN—Yes, reciting the director's resolution and confirming it.

Q. You were present at this stockholder's meeting of December 28, 1910? A. Yes, sir.

WILLIAM H. BEATTIE, recalled—Cross

Q. Was there any vote in opposition to the resolution which I have just read? A. No, sir; none, whatever; it was unanimous.

Q. Were you present at any of the other meetings? A. Yes, I was present, I think, at all of them.

Q. Was there any vote ever recorded at any meeting while you were present against the resolutions which I have read here? A. No, sir.

Cross-examination by Mr. Humphreys.

Q. You say there was no vote ever recorded against it; was there any vote ever given against it? A. Not that I know of.

Q. Did Mr. Murray vote in favor of that resolution? A. Yes, sir.

Q. Sure of that? A. I am quite sure, yes, sir. I don't recall that we ever had a vote against that resolution.

Q. Who put the motion, do you know? A. Oh, I can't tell from memory.

Q. Do you know, as a matter of fact, that Mr. Murray voted aye in favor of that resolution? A. I do not, no, sir, but he didn't vote no.

By the Court.

Q. Who held the 250 shares that were not fairly represented at these meetings? A. For the most part, Mrs. Yergason, I think, was absent. If you would call over the ones who were present I could tell who was absent.

By Mr. Corbin.

Q. In 1910 there were present Alexander Murray, Emma G. Beattie, William H. Beattie, Howard Beattie, and Robert Beattie, Jr.? A. How many votes in all?

Q. 2,233 1/3? A. I think that would be Mrs. Booth and Mrs. Yergason absent. I think for the most part Mrs. Booth and Mrs. Yergason were absent.

Q. In 909 there were present Robert Beattie, Howard Beattie, Robert Beattie, Jr., George M. Booth, Alexander H. Murray, and W. H. Beattie, representing 2,866 2/3 shares of stock? A. Mrs. Yergason was absent there.

Q. Your father was then living? A. Yes.

Q. When did he die? A. The 28th of January, 1910.

Q. In 1908 there were present Robert Beattie, Howard Beattie, Robert Beattie, Jr., Alexander H. Murray, and William H. Beattie, representing 2,733 1/3 shares of stock? A. I should say that Mrs. Booth and Mrs. Yergason.

Q. In 1907 there were present Robert Beattie, Howard Beattie, Robert Beattie, Jr., Alexander Murray, and William H. Beattie, representing 2,725 shares. Who was absent from the stockholders that day? A. I think that would be Mrs. Booth and Mrs. Yergason. There is a discrepancy there, however, that I cannot from memory account for.

Q. This is before Mrs. Murray's death, was it not? A. Yes, it might have made a difference of something like 25 shares, I believe.

Q. In 1906 there were present Howard Beattie, Robert Beattie, Jr., Robert Beattie and William H. Beattie; it doesn't say how much was represented, but the vote shows 2,899 shares were represented; can you tell what stock that represented? A. I should say there were 25 shares of Alexander Murray; 25 shares of Mrs. Yergason; 25 shares of Mrs. Booth and 25 shares to Mrs. Mary Murray that she

owned, I believe, in her own right, and one share of William Dixon, making 101 shares.

Q. I call your attention to the fact that at each one of the annual meetings the minutes of the previous meeting were read and approved.

JUDGE COLLINS—That is our case.

Examination by the Court.

Q. Mr. Beattie, how much cash have you on hand to-day in all the banks? Can you give a balance? A. I haven't the balance at my finger's end, sir; I think it is about $81,000.

Q. Now, I understand that the power plant has been largely erected, and that there is to be paid towards its completion about $29,000? A. I don't know that that figure is right; I haven't gone into that.

Q. That is a very important matter to be gone into; good deal more important than all this financial history you have been going into for hours and hours, and what the Court wants to know is: Can you ascertain from any of these documents or statements here how much cash you will need in order to pay for this power plant which, I understand, will be completed within the next two or three months? A. How much cash?

Q. Yes; in other words, take the total cost of the power plant, when it is all paid for, and deduct what you have paid which, I understood, was about $31,000—

Mr. HARDING—$60,000 is the estimated cost of the power plant we have here.

JUDGE COLLINS—They will need more than that.

Mr. CORBIN—I call your attention to the fact

that in addition to the $60,000 there is another item of $13,000 for engine and boiler, making $79,000. A. I am not sufficiently acquainted with the accounting part of the business to answer that.

JUDGE COLLINS—We will call Mr. Towey back for that.

MARTIN TOWEY, recalled on behalf of the defendant, testified as follows:

Direct examination by Mr. Corbin.

THE COURT—I understood you had concluded your case.

Mr. CORBIN—Your Honor asked Mr. Beattie a question which Mr. Towey is competent to answer.

THE COURT—Oh, well, I won't interrupt the regular order.

Mr. CORBIN—I will just merely ask Mr. Towey to answer your Honor's question.

THE COURT—And you want to put him on the stand; is that your purpose?

Mr. CORBIN—Yes; for the purpose of answering your Honor's question.

THE COURT—I don't want him for further examination but, there being no objection to your going on with the witness, your case will be re-opened.

Mr. CORBIN—We don't care to put him on the stand; we just merely wanted him to answer your Honor's question; that is all.

WILLIAM HENRY HOWARD, recalled in rebuttal—Direct and Cross

Rebuttal.

WILLIAM HENRY HOWARD, recalled on behalf of the complainants, in rebuttal, testified as follows:

Direct examination by Mr. Humphreys.

Q. Mr. Howard, have you made up, since the last hearing, a statement of the monthly cash receipts during the years 1905 to 1910; that is to say, the amount of money that came in in every month in that period? A. Yes.

Q. Is the statement I now show you that statement? A. That is the statement.

Mr. HUMPHREYS—I offer that in evidence.

Admitted in evidence and marked Exhibit C 6.

Q. Have you also made a computation from the books of the difference between the gross assets and the liabilities of this company of what that surplus is composed, and how it has been disposed of A. Yes, sir.

Q. Is that the result of your investigation (showing paper to witness)? A. Yes, sir.

Mr. HUMPHREYS—I offer that in evidence.

Admitted in evidence and marked Exhibit C 7.

Cross-examination by Mr. Corbin.

Q. I find an item on this last table, put there by you of increase in real estate, machinery and new buildings; I ask you if that represents the actual cash that was paid out? A. No, sir.

Q. For real estate, machinery and new buildings, and all the actual cash paid out? A. No, only the difference after writing off the depreciations.

Q. Oh, you have taken it upon yourself to write off the depreciations? A. No; they are written off on the books.

Q. What was the actual cash paid out? A. I couldn't tell.

Q. How did you get this figure, $161,100.85? A. From the balance sheet of 1882 and the balance sheet of 1910.

Q. You take the actual cash paid out? A. I take the difference between the two.

Q. And deduct the depreciation? A. I took the difference between the two figures, as shown by this balance sheet.

Q. You took the actual cash that had been expended for increase in real estate, machinery and new buildings and then deducted the depreciation, did you? A. I took the figure as shown by the books of account; as I understand they are shown in Mr. Peterson's chart in 1882, and compared it with that shown by the books of account in 1910 and the difference is $161,100.85, as shown by that account.

Q. Did you deduct depreciation? A. The depreciation has been deducted from time to time in the books.

Q. You don't show the actual cash paid out for machinery here? A. No.

Q. And you never determined what the actual cash was so paid out? A. No.

Examination by Mr. Sumner.

Q. This item, Mr. Howard, of $161,100.85 which appears in your statement as an increase in real estate, machinery and new buildings also takes account of receipts from sales of real estate during the period the company has been in operation? A. As entered in their books of account.

Q. It does not? A. Yes; as entered in their books.

Q. This figure, $161,000 increase, is arrived at by taking the difference between the total of those items when the company began business, on July 1st, 1882—and as those items now appear upon the balance sheet—and November 30, 1910; is that it? A. Yes, sir.

CASE CLOSED.

ORAL OPINION.

STEVENSON, V. C., (orally):

I think, in this case, that there should be some dividend declared by the direction of the Court. There are one or two of these schedules that I wish to examine immediately, and I shall notify counsel by mail. They will receive notice not later than Monday as to what will be the figure.

I shall only undertake now, in a very crude way, without adequate preparation, to indicate the main principles which I shall apply and the most important considerations to which I have given attention in endeavoring to ascertain what amount this corporation should now distribute. As I said a little while ago, it is a very delicate duty that is imposed upon the Court of Chancery to take the seats of the directors—experts—and say what amount of money can be spared without injury to the business of the corporation. It is only dire necessity that justifies any Judge in performing such a task.

Here are men who have conducted this enterprise for years. They have been bred to the business; they know it thoroughly, they know all its requirements, and the Court of Chancery, or a Judge in the Court of Chancery, is asked, after hearing this testimony more or less confusing and somewhat conflicting to adjudicate this very important matter, affecting vitally the business of the corporation.

Well, it has been conceded that all the stockholders of this corporation are not before the Court in this suit. Some who are in the suit are not represented by counsel, and they neither ask for a compulsory dividend nor do they undertake to re-

sist the declaration of a dividend by the direction of the Court. This dividend affects the corporation, and affects all of the stockholders—not only the complainants here and the defendants.

The complainants may want to plunder the treasury of the corporation. Such a case might arise. On the other hand, we have a case here where very plainly the stockholders in control of the corporation, and who constitute themselves directors and managers, have a very powerful, selfish interest, as has been heretofore pointed out, in accumulating a surplus and in refraining from distributing the profits of the corporation.

The Court has to perform its duty, difficult as it may be; but in the discharge of that duty the Court should use great caution and should be very sure that no action which the directors are compelled to take becomes injurious to the corporation as a whole. It is enough, to justify that statement, to point out again that all the stockholders are not before the Court, and yet the action of the Court directly affects their interests.

Now, it is largely a business question how much money this corporation can safely now distribute, and, as I think I pointed out several times the Court has to act in view of the conditions as they exist when the dividend is to be declared.

It was decided,—whether correctly or not we do not now inquire, but it was decided by this Court that the situation as of November 30, 1905, was such that it was the duty of the directors to declare a very substantial dividend, distributing a very large amount of money to the stockholders. That was the decision of the Court. That decision binds this Court now. If there was any error in that

decision it is for another Court to make the correction.

Now has the situation changed very greatly since November 30, 1905? That is the question. And we have the means here of instituting a tolerably fair comparison of the ability of the corporation to pay dividends on November 30, 1905, and its ability to do that same thing on November 30, 1910. But when we come to the important, crucial inquiry what is the condition of the corporation now, at the time when the decree is to be signed—at the time when this compulsory force comes down on the corporation and compels its directors to declare this dividend—I must say that the proofs are in a very unsatisfactory condition. We are asked to deal with inferences from the past history of the corporation, when it is perfectly plain that actual facts might have been proved.

I do not understand that anyone here today among the counsel, or the parties to this suit, or this Court is able to state how much cash exactly this corporation has on hand today, exactly how much it will have to pay out for machinery or for the construction of the power plant within the next two weeks, or the next four weeks. Almost all the most important elements that ought to be made definite are left somewhat uncertain, because of changes which have occurred since November 30, 1905.

And I must confess that I think the burden was upon the defendant to show the exact situation. However, the word "guess" was used in reference to this judgment which the Court is obliged to make. It was used a short time ago by counsel, and probably has been heretofore used by the Court.

To a certain extent, the judgment which the Court is obliged to make now is in the nature of a guess. All that I can do is to carefully consider all the evidence, consider all the probabilities, and make the best business judgment that I can in regard to what this corporation ought to do. No doubt this judgment involves consideration of the probabilities.

It is absolutely impossible to be perfectly certain in reference to the compulsory declaration of the dividend. The business of the corporation and its assets are shifting and changing all the time. We have to know what will be the probable condition when the installments are to be paid. The Court of Chancery, in advising a decree declaring a compulsory dividend, of course is not confined, in fixing the amount, to the form of cash in hand. It would be perfectly easy to defeat the action of the Court if that were the rule. The Court has to consider what the probable course of the business of the corporation will be for the next three, four, six, eight, or ten months during which the dividends are made payable.

Well, I shall make the best guess I can and determine the total amount, and also determine the dates when the installments shall be payable. I shall endeavor to be exceedingly cautious about fixing the amount for two reasons: One reason is, that the corporation is not to be injured. The whole—all of the stockholders—are involved in this most important matter and they are all to be taken care of. And they are not to be made to suffer for the shortcomings of the defendants here, or for the failure of the defendants to produce evidence which they had in their possession.

I said two reasons. That is one, and another

one is that the decree in this cause will contain a reservation which will permit future applications to the Court. I see no possibility of preventing that reservation in this sort of case. The management is going to remain the same. All of the disqualifications upon the directors interfering with their fair, impartial action with respect to the declaration of dividends, remain upon them just the same, and, therefore, it will be necessary to retain the case in Court.

The Court, in making its estimate of the amount of the profits which are now to be distributed, need not be very careful to include every dollar, or every thousand dollars, or every twenty-five thousand dollars which might properly be distributed. The Court can leave money in the treasury of the corporation safely beyond the requirements of the future business of the corporation, because the decree, as I said, will be open, and at a later date—six months from now or a year from now—the situation of the corporation can again be brought before the Court and further action be taken.

With these remarks explanatory of the considerations which will be controlling, I shall undertake to name the amount of the dividend, and, as I said, counsel will have it by Monday next.

EXHIBIT C 1

COMPLAINANTS' EXHIBITS.

(Hearing in 1906).

C 1.

Certificate of the Organization of "The Beattie Manufacturing Company."

This is to certify, that we, Robert Beattie, William Beattie and Robert Beattie, Junior, all of Little Falls, in the County of Passaic and State of New Jersey, do hereby associate ourselves into a Company under and by virtue of the provisions of an Act of the Legislature of New Jersey, entitled "An Act concerning corporations," approved April 7, 1875, and the several supplements thereto, for the purposes hereinafter mentioned, and to that end we do by this, our certificate set forth:

First—That the name which we have assumed to designate such Company, and to be used in its business and dealings, is "The Beattie Manufacturing Company."

Second—That the place in this State where the business of such Company is to be conducted is the village of Little Falls, in the County of Passaic.

The principal part of the business of said Company within this State is to be transacted in the said village of Little Falls, in the County of Passaic, which is to be the principal place of business of the said Company, and the place where its principal office is to be located. And the place out of this State where the same is to be conducted is the City of New York, in the State of New York.

And that the objects for which the Company is formed are as follows:

(1). To purchase of Robert Beattie, the carpet

and woolen manufactory and tract of real estate whereon the same is *erected* and the lands adjoining the same at Little Falls, together with the water power and privileges and the machinery and fixtures in said factory.

(2). To purchase from Robert Beattie and Sons, the goods and stock in said factory and at their store No. 85 White St., New York City.

(3). To carry on the manufacture and sale of carpets and other merchandise at said manufactory and store; to erect buildings, mills and machinery for the purposes of such manufacture; to improve, rent and sell said real estate; and to carry any other business necessary for the proper management and development of said property.

The portion of the business of said Company which is to be carried on out of this State *is the sale* of the manufactured products of the company.

Third—That the total amount of capital stock of said Company is three hundred thousand dollars; the number of shares into which the same is divided is three thousand, and the par value of each share is one hundred dollars. The amount with which the said Company will commence business is three hundred thousand dollars, which is divided into three thousand shares of a par value of one hundred dollars each, consisting of said property, for the purchase of which all of said shares will be issued.

Fourth—The names and residences of the stockholders and the number of shares held by each, are as follows, to wit.

Robert Beattie, Little Falls, N. J., sixteen hundred shares.

William Beattie, Little Falls, N. J., seven hundred shares.

EXHIBIT C 1

Robert Beattie, Jr., Little Falls, N. J., seven hundred shares.

Fifth—The period at which said Company shall commence is the first day of July, A. D. one thousand eight hundred and eighty-two, and the period at which it shall terminate is the thirtieth day of June, A. D. one thousand nine hundred and thirty-two.

In witness whereof, we have hereunto set our hands and seals the twenty-fourth day of June, A. D. one thousand eight hundred and eighty-two.

ROBERT BEATTIE, L.S.
WILLIAM BEATTIE, L.S.
ROBERT BEATTIE, Jr., L.S.

Signed, sealed and delivered
in the presence of
C. A. BRADY.

STATE OF NEW JERSEY, } ss.
COUNTY OF PASSAIC, }

Be it remembered, that on this twenty-fourth day June, A. D. eighteen hundred and eighty-two, before me Elias Van Ness, Commissioner of Deeds of the State of New Jersey, personally appeared Robert Beattie, William Beattie and Robert Beattie, Jr., who I am satisfied are the persons named in and who executed the foregoing Certificates, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

ELIAS VAN NESS,
Commissioner of Deeds for New Jersey.

Endorsed:

"Received in the Office of the Clerk of the County

of Passaic on the 24th day of June, A. D. 1882, at ....o'clock,....M., and recorded in Book "A" of Certificates for said County, page 320, &c.

WM. M. SMITH,
Clerk.

Filed June 27th, 1882.

HENRY C. KELSEY,
Secretary of State.

C 2.

This is the last will of me, Robert Beattie of Little Falls, Passaic County, New Jersey.

First. I direct my just debts and funeral expenses to be paid as soon as may be convenient after my death.

Second. I give to my wife Agnes Beattie my house and grounds where I now reside at Little Falls to hold during her life and on her death I give the same to my two daughters, Mary Murray and Agnes Beattie, to them their heirs and assigns forever. I further give to my wife all the household chattels, furniture and silver ware belonging to me at the time of my death.

I further give to my wife Four thousand dollars per year to be paid to her in quarterly installments during her life, commencing three months after my death. These provisions for my wife are in lieu of her dower in any and all real estate whereof I may die seized or of which I may ever have been seized.

Third. I give to my sister Elizabeth McClinchy . The above gift to my sister and annuity to my wife I charge upon the prop-

erty which I give by this my will to my sons William Beattie and Robert Beattie, Jr.

Fourth. I give my Executors hereinafter named Three hundred and fifty (350) shares of the stock of the Beattie Manufacturing Company in trust to pay the income and dividends thereof from the time of my death to my daughter Catharine Dixon for her life and on her death I give the said shares to her issue if any, and if none, then to her heirs at law, to be divided among such heirs in the same proportions as real estate of which she might die seized would descend.

Fifth. I give my said Executors Three hundred and fifty (350) shares of the stock of the Beattie Manufacturing Company in trust to pay the income and dividends thereof from the date of my death to my daughter Josephine Gedney, for her life and on her death I give the said shares to her issue if any, if none, then to her heirs at law to be divided among such heirs in the same proportions as real estate of which she might die seized would descend.

Sixth. I give my said Executors Three hundred (300) shares of the stock of the Beattie Manufacturing Company in trust to pay the income and dividends thereof from the date of my death to my daughter Mary Murray for her life and on her death I give the said shares to her issue if any, if none, then to her heirs at law to be divided among them in the same proportions as real estate of which she might die seized would descend.

Seventh. I give my said Executors Three hundred (300) shares of stock of the Beattie Manufacturing Company in trust to pay the income and dividends thereof to my daughter Agnes Beattie from the date of my death for her life, and on her death

I give said shares to her issue if any, if none, then to her heirs at law to be divided among such heirs in the same proportions as real estate of which she might die seized would descend.

Eighth. I give to Agnes, Eva, Alexander and Georgiana Murray, the four children of my daughter Mary Murray Twenty-five (25) shares each of the stock of the Beattie Manufacturing Company, in all one hundred (100) shares to said four children.

Ninth. I give and devise to my sons William Beattie and Bobert Beattie, Jr., all the residue of my property, real and personal, to have and to hold to them their heirs and assigns forever subject to payment of said annuity to my wife and of said legacy to my said sister with which payments I charge said gift and devise to my sons.

Lastly. I appoint my sons William Beattie and Robert Beattie, Jr., and my sons in law William Dixon and Edward Gedney, Executors of this my Will.

In witness whereof I have hereunder set my hand and seal this Eighth day of July, A. D. Eighteen hundred and eighty-two.

ROBERT BEATTY, [L. S.]

Signed, sealed, published and declared by the above named Robert Beattie to be his last will and testament in the presence of us who were present at the time and subscribed our names as witnesses in the presence of the testator and of each other.

JAMES JACKSON,
JAMES W. ROW,
J. H. SANDFORD,
Witnesses.

EXHIBIT C 2

STATE OF NEW JERSEY, } ss.
PASSAIC COUNTY, }

James Jackson and Jacob H. Sandford two of the witnesses in the annexed writing purporting to be the last Will and Testament of Robert Beattie, the Testator therein named, deceased, being duly sworn, doth depose and say that they saw the said Testator sign and seal the said annexed writing, and heard him publish and declare the same as and for his last Will and Testament; that at the time of the doing thereof the said Testator was of sound disposing mind, memory understanding, as far as these deponents know, and as they verily believe; that James W. Row the other subscribing witness thereto was present at the same time with these deponents, together with them subscribed his name thereto as a witness in the presence of the Testator and of each other, and at the request of the Testator and that the Testator died more than ten days ago.

JAMES JACKSON,
JACOB H. SANDFORD,

Sworn August 18th, 1882, before me. }

HENRY MCDANOLDS,
Surrogate.

STATE OF NEW JERSEY, } ss.
PASSAIC COUNTY, }

William Beattie, Robert Beattie, Jr., Edward E. Gedney and William Dickson the Executors in the above writing being duly sworn, do depose and say that the annexed writing contains the true last Will and Testament of Robert Beattie the Testator therein named, deceased, as far as they know and as they verily believe, that they will as the Executors thereof, well and truly perform the same by first paying the debts of said deceased, and then the

EXHIBIT C 2

legacies therein specified, as far as the Goods, Chattels, Rights, Credits and Effects of said deceased will thereto extend, and the law charge them that they will make and exhibit in the Surrogate's Office of the County of Passaic, a true and perfect Inventory of all and singular the said Goods, Chattels, Rights, Credits and Effects, as far as the same have or shall come to their knowledge or possession or to the possession of any other person or persons, to their use or to their knowledge; and that they will well and truly account when thereunto lawfully required.

WILLIAM BEATTIE,
ROBERT BEATTIE, Jr.,
E. E. GEDNEY,
WM. DICKSON.

Sworn August 18th, 1882, before me.

HENRY MCDANOLDS,
Surrogate.

PASSAIC COUNTY SURROGATE'S OFFICE.

I, Henry McDanolds, Surrogate of the County of Passaic, do certify the annexed to be a true copy of the last Will and Testament of Robert Beattie late of the County of Passaic, deceased, and that William Beattie, Robert Beattie, Jr., Edward E. Gedney and William Dickson, the Executors therein named, proved the same before me, and are duly authorized to take upon themselves the administration of the estate of the Testator agreeably to the said Will.

Witness my hand and seal of office, the eighteenth day of August, in the year of our Lord one thousand eight hundred and eighty-two.

[L. S.]

HENRY McDANOLDS,
Surrogate.

EXHIBIT C 3

PASSAIC COUNTY SURROGATE'S OFFICE.

STATE OF NEW JERSEY, } ss.
COUNTY OF PASSAIC, }

I, Charles M. King, Surrogate and Clerk of the Surrogate's Court of the said County of Passaic, in said State, do hereby certify that I have compared the annexed copy of the last Will and Testament of Robert Beattie, deceased, and probate thereof which said last Will and Testament is recorded in Book H of Wills for said County on page 369, &c., with the record thereof now remaining in this office, and have found the same to be a correct copy of the same.

In testimony whereof, I have hereunto set my hand and affixed my official seal this fifteenth day of May, A. D. one thousand, nine hundred and five.

[L. S.]

CHARLES M. KING,
Surrogate and Clerk of the Surrogate's Court.

C 3.

In the name of God, Amen.

I, William Beattie, residing at Little Falls, Passaic County, New Jersey, do make, publish and declare this to be my Last Will and Testament, hereby revoking all other wills by me at any time made.

First—I direct that all my just debts and funeral and testamentary expenses and charges be paid and discharged as soon as conveniently may be after my death.

EXHIBIT C 3

Second—I do give, devise and bequeath to my beloved wife, Emma G. Beattie, my dwelling house and the grounds appurtenant thereto at Little Falls, Passaic County, New Jersey, to have and to hold, her heirs and assigns forever; and I also give and bequeath to her all my household furniture, plate, horses, carriages, harness and all other chattels, used in and about my home at Little Falls.

Third—I do give and bequeath unto my executors hereinafter named, or to such of them as shall qualify as such, one third part of all the shares of the capital stock of the Beattie Manufacturing Company, which I may own at the time of my death, in trust, nevertheless to hold the same; to vote thereupon at any meeting of the stockholders of said company; to receive and collect all dividends thereon and to pay over the same to my said wife so long as she shall live; and upon her death to transfer and convey one fourth part of said shares so held in trust to my son, Charles G. Beattie.

And to transfer and convey one-fourth part of said shares so held in trust to my son, Robert H. Beattie. And to hold and retain the remaining one-half of said shares; and receive and collect the dividends and income thereon, and to pay the same to my daughter, Madeline Beattie, so long as she shall live, and upon her death to transfer and convey the said shares in equal parts to her children surviving her; but if my said daughter shall die leaving no children, nor issue of any children of hers then dead, then my said Executors shall transfer and convey said shares so held in trust for my said daughter in equal parts to my said sons, Charles G. Beattie and Robert H. Beattie.

Fourth—I do give and bequeath unto my son

EXHIBIT C 3

Charles G. Beattie two-ninths part of all the shares of stock in said Beattie Manufacturing Company, owned by me at the time of my death.

And to my son Robert H. Beattie I do give and bequeath two-ninths part of said shares.

The remaining two-ninths part of said shares I do give and bequeath to my said Executors, in trust to hold and retain the same, and to collect and receive the dividends thereon and to pay the same to my daughter Madeline Beattie so long as she shall live, and upon her death to transfer and convey the said shares in equal parts to her children then living and to the issue of any child of hers then dead, such issue to take her stirpes and not per capita.

But if my said daughter shall die, leaving no children, nor issue of any children, then my said Executors shall transfer and convey said shares so held in trust, for her, in equal parts to my said sons, Charles G. Beattie and Robert H. Beattie.

Fifth—It is my will and I direct the entire income and dividends arising from all of said shares of stock shall be paid to my wife for the maintenance of herself and said children, until said children respectively attain the age of twenty-one years, and as they severally attain that age the foregoing provisions of this will for their several and respective benefit shall take effect.

Sixth—I give and bequeath all my interest in the business in the City of New York, and in any and all other business in which I am engaged jointly with my brother Robert Beattie (excepting my shares of the capital stock of the Singac Brick Company) to my said two sons Charles G. Beattie and Robert H. Beattie, share and share alike.

EXHIBIT C 3

But if my said brother shall desire that our partnership business be continued for a time, my executors may in their discretion continue it so long as they deem it advisable so to do, allowing my portion of the capital to remain in the business and said business to be conducted for the benefit of my said sons.

Seventh—I do give and bequeath to my said executors all the shares of the capital stock of the Singac Brick Company, owned by me at the time of my death, in trust, nevertheless to hold the same, to receive and collect all dividends thereon and income therefrom and to pay over said dividends and income to my said wife, Emma G. Beattie, so long as she shall live, and upon her death to transfer and convey one-third part of said shares to my son Charles G. Beattie.

And to transfer and convey one other third part of said shares to my son Robert H. Beattie.

And to hold and retain the remaining one-third part of said shares, in trust, to receive the dividends and income therefrom and to pay the same to my daughter Madeline so long as she may live. And upon her death to transfer and convey the said shares so held in trust for her, in equal parts to her children surviving her, and to the issue of any child of hers then dead; such issue to take per stirpes and not per capita.

But if my said daughter shall die, leaving no children, nor issue of any children, then my said Executors shall transfer and convey said shares so held in trust for her, in equal parts to my said sons, Charles G. Beattie and Robert H. Beattie.

Eighth—All the rest, residue and remainder of

my estate, real and personal, I do give, devise and bequeath as follows:

One fourth part thereof to my son Charles G. Beattie absolutely.

One fourth part thereof to my son Robert H. Beattie absolutely.

The remaining one half part thereof to my said executors in trust nevertheless, to wisely and securely invest the same invested in bonds secured by mortgages upon real estate or in bonds or other securities of the United States or of State or Municipal corporations; to receive the income and interest arising therefrom and to pay the same to my said wife so long as she shall live.

And upon the death of my said wife, to pay the same income and interest to my said daughter Madeline, so long as she shall live, and upon her death to distribute and pay the principal of said trust in equal parts to and among the children of my said daughter then living, and to the issue of any child of hers then dead; such issue to take per stirpes and not per capita.

But if my said daughter shall die leaving no children, nor issue of any children, then my said executors shall distribute and pay the said principal of said trust in equal parts to my said sons Charles G. Beattie and Robert H. Beattie.

Ninth—The foregoing provisions to and in favor of my said wife if accepted by her, shall be in lieu of her dower and all other claims against my estate.

Tenth—I hereby nominate and appoint my brother Robert Beattie, my wife Emma G. Beattie and to be the executors of this my will and I direct that no bond or other security be required to be

given by them or either of them upon qualifying as such executors.

In witness whereof I have hereunto subscribed my name and set my seal this eighteenth day of March, A. D. eighteen hundred and ninety-one.

WILLIAM BEATTIE, [L. S.]

The foregoing instrument was on the day the same bears date, subscribed by William Beattie the said testator and by him declared to be his last Will and Testament in the presence of us and each of us, who at his request and in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

On page 2 at line 5 the words "to transfer and convey" having been written over an erasure before execution.

S. St. J. McCutchen, North Plainfield, N. J.

Chas. E. Horne, North Plainfield, N. J.

PASSAIC COUNTY SURROGATE'S OFFICE.

I, Charles M. King, Surrogate of the County of Passaic, do certify the annexed to be a true copy of the last Will and Testament of William Beattie late of the County of Passaic, deceased, and that Robert Beattie and Emma G. Beattie the executors therein named, proved the same before me, and are duly authorized to take upon themselves the administration of the estate of the testator agreeably to the said Will.

Witness my hand and seal of office, the seventeenth day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

[L. S.]

CHARLES M. KING,
Surrogate.

EXHIBIT C 4

C 4.

Memorandum of agreement made July 6, 1882, between Robert Beattie, of Little Falls, and the Beattie Manufacturing Company.

Robert Beattie agrees, in consideration of sixteen hundred shares of stock this day issued to him & his sons, the certificates of which have been this day delivered, to sell & convey, and he does hereby sell and grant, bargain and convey to said Company, its successors and assigns forever, all the carpet and woolen manufactory and tract of real estate whereon the same is erected, and the lands adjoining the same, at Little Falls, Passaic County, New Jersey, together with the water power & privileges and the machinery and fixtures in said factory. A more formal deed thereof is to be given as soon as it can be properly prepared & executed. The Company however takes possession from this day and becomes the owner in fee from this day forward.

Witness the hand and seal of the said Robert Beattie & the hands of the president, secretary and treasurer of said company and its seal the day first aforesaid.

ROBERT BEATTIE, [L. S.]
ROBERT BEATTIE, (Seal of Beat-
Pres. tie Mfg. Co.)
WILLIAM BEATTIE,
Treas.
ROBERT BEATTIE, Jr., Sec.

Signed, sealed & delivered in the presence of
W. H. Corbin.

Ack'd July 6, /82.

EXHIBIT C 4

STATE OF NEW JERSEY, } ss.
COUNTY OF PASSAIC. }

Be it remembered that on the sixth day of July, A. D. eighteen hundred and eighty two, before me, William H. Corbin, a master in Chancery of said State, personally appeared Robert Beattie (senior) who, I am satisfied, is the party named in and who executed the foregoing instrument, and I having first made known to him the contents thereof he acknowledged that he signed and sealed and delivered the same as his voluntary act and deed. And at the same time there personally appeared before me Robert Beattie (junior) who, being by me duly sworn, on his oath says that he is the secretary of the Beattie Manufacturing Company; that the seal affixed to the foregoing instrument is the seal adopted as the common seal of said Company, that the same was affixed to said instrument and the said instrument was signed by Robert Beattie (senior), president, William Beattie, treasurer, and this deponent, as secretary and as subscribing witness and the said instrument delivered as and for the voluntary act and deed of said company, and in pursuance of the direction of the directors and stockholders of said company.

WILLIAM H. CORBIN,
Master in Chancery
of New Jersey.

ENDORSED:

Robert Beattie to the Beattie Manufacturing Company.

Deed July 6, 1882.

Received in the Clerk's office of the County of Passaic on the 20th day of Feb'y, A. D. 1886, and recorded in Book F 8 of Deeds of said County on page 154, &c.

WM. M. SMITH, Clk.

EXHIBITS C 5 and C 6

C 5.

(Abstract.)

WILLIAM BEATTIE AND EMMA G., HIS WIFE, AND ROBERT BEATTIE AND RUTH, HIS WIFE, *to* THE BEATTIE MANUFACTURING COMPANY.	DEED. Dated, March 25, 1884. Ackd., April 5, 1884. Recd., Feb. 20, 1886, in Book F 8 of Deeds for Passaic County, page 170, &c. Cons., $1 and other considerations.

(Conveys same property as that described in C 4, but by metes and bounds.)

C 6.

Know all men by these presents, That we, Robert Beattie, William Beattie and Robert Beattie, Jr., partners as Robert Beattie & Sons, of the first part, for and in consideration of the sum of one hundred & forty thousand dollars, lawful money of the United States, to them in hand paid, at or before the ensealing and delivery of these presents by The Beattie Manufacturing Company, of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey unto the said party of the second part, its successors, all the goods and chattels particularly described and mentioned as follows:

All the goods and stock in the factory operated

by them at Littls Falls, New Jersey, and at their store, No. 85 White street, New York City.

To have and to hold the same unto the said party of the second part, its successors and assigns, forever. And we do, for ourselves, our heirs, executors and administrators, covenant and agree to and with the said party of the second part to warrant and defend the sale of the said chattels hereby sold unto the said party of the second part, its successors and assigns, against all and every person and persons whomsoever.

In witness whereof we have hereunto set our hands and seals the sixth day of July, in the year of our Lord one thousand eight hundred and eighty-two.

ROBERT BEATTIE, [L. S.]
WILLIAM BEATTIE, [L. S.]
ROBT. BEATTIE, JR. [L. S.]

Sealed and delivered in the presence of

W. H. CORBIN.

EXHIBIT C 7

C 7.

(Abstract.)

	Mortgage.
	$315,000.
	Dated, Nov. 30, 1901.
	Proved, Feb. 25, 1902.
	Recd., Nov. 12, 1904.
	Liber X 6 of Mortgages, p. 413, Passaic County.
	Rate of int., 4 per cent.
THE EAST JERSEY WATER COMPANY,	Int. payable semi annually with the privilege to make payments in installments of $1,000 of any multiple thereof, on any interest day upon giving at least 6 months written notice of election to make such payment, specifying in said notice the amount to be paid.
to	
THE BEATTIE MANUFACTURING COMPANY.	

Covers the property which was conveyed by the Beattie Manufacturing Company to the East Jersey Water Company by deed of even date, with reservations, the mortgage being given to secure the payment of part of the consideration expressed in the deed.

BEATTIE MANUFACTURING COMPANY

BALANCE SHEETS

JULY 1, 1882 to NOVEMBER 30, 1905

ASSETS

	1882 July 1	1882 Dec. 30	1883 June 30	1883 Dec. 31	1884 Nov. 30	1885 Nov. 30	1886 Nov. 30	1887 Nov. 30	1888 Nov. 30
Real Estate	139,903 36	139,903 63	159,242 17	162,508 10	165,508 10	175,508 10	210,380 80	212,703 56	213,784 29
Machinery	69,408 75	75,256 28	77,142 04	78,173 35	62,467 88	56,221 10	60,689 92	67,803 17	71,518 59
Stock Merchandise	92,931 23	94,837 24	81,054 29	107,462 15	106,870 06	117,419 35	140,575 71	97,561 31	120,751 20
Cash	2,535 34	204 95	523 16	591 45	.....	2,199 01	.....	6 80	548 47
R. Beattie & Sons	63,298 59	38,285 84	45,580 37	58,545 50	71,683 69	106,295 65	103,778 85	198,430 54	203,577 75
New Buildings, Machinery, Improvements, &c.	1,655 68	10,997 91	323 95	.....	.....	962 01	.....	.....	.....
Accounts and Bills Rc'd, &c.	11,786 31	7,936 55	8,096 50	9,367 49	15,848 42	25,912 22	21,670 36	23,173 61	24,601 36
Total Assets	381,519 53	367,422 40	371,962 48	416,648 04	422,378 15	484,517 44	537,095 64	599,678 99	634,781 66

	1889 Nov. 30	1890 Nov. 30	1891 Nov. 30	1892 Nov. 30	1893 Nov. 30	1894 Nov. 30	1895 Nov. 30	1896 Nov. 30	1897 Nov. 30
Real Estate	214,007 30	214,502 17	218,081 87	218,267 42	227,036 97	228,681 40	228,681 40	228,636 79	228,451 79
Machinery	71,862 63	73,294 77	73,454 77	75,779 40	79,315 24	82,643 78	99,189 39	99,844 95	102,572 67
Stock Merchandise	117,891 31	161,130 70	170,504 43	174,405 49	155,044 16	111,187 88	100,499 00	114,780 90	162,439 19
Cash	978 00	.....	205 93	.....	69 87	340 85	119 58	136 43	1,890 19
R. Beattie & Sons	199,875 03	235,487 46	260,229 89	27,446 66	309,649 30	342,362 62	293,204 25	166,661 57	139,700 48
New Buildings, Machinery, Improvements, &c.	.....	.....	.....	.....	.....	.....	4,144 11	7,616 38	13,910 76
Accounts and Bills Rc'd, &c.	30,909 17	25,422 79	27,989 49	37,470 73	30,107 80	6,656 83	5,984 81	6,210 23	5,763 26
Brown Bros., Cash	60,000 00	56,808 45	56,975 42	58,401 17	.....	.....	50,000 00	102,450 79	82,125 69
Union Trust Co., Cash	.....	.....	.....	.....	.....	.....	.....	71,808 33	73,962 58
Total Assets	695,523 44	766,646 34	807,441 80	838,770 87	801,223 34	771,873 36	781,822 54	798,146 37	810,816 61

Assets—*Continued*

	1898 Nov. 30	1899 Nov. 30	1900 Nov. 30	1901 Nov. 30	1902 Nov. 30	1903 Nov. 30	1904 Nov. 30	1905 Nov. 30
Real Estate	228,451 79	227,666 79	236,383 12	239,793 93	219,734 68	197,086 22	202,921 29	188,618 96
Machinery	104,078 55	109,939 67	114,818 94	108,943 82	108,792 85	105,333 81	107,670 26	132,660 06
Stock Merchandise	152,332 08	148,198 70	167,166 32	165,541 32	185,377 25	206,858 29	194,487 70	237,353 63
Cash	298 86	26,955 84	42,336 03	52,126 87	79,251 38	121,655 39	110,202 90	78,336 56
R. Beattie & Sons	128,739 55	47,128 25	38,811 22	.....	.....	.....	.....	.....
New Buildings, Machinery, Improvements, &c.	14,740 10	19,345 23	14,811 15	10,701 17	6,700 00	10,043 51	4,320 94	10,170 11
Accounts and Bills Rec. &c.	8,298 51	105,745 60	93,395 68	102,129 98	99,845 56	76,347 63	66,303 87	80,630 59
Brown Bros., Cash	98,383 85	54,206 62	21,312 43	21,800 84	22,298 88	43,306 61	76,789 68	78,729 71
Union Trust Co., Cash	75,441 83	77,343 61	78,110 41	71,604 17	71,283 33	.....	.....	.....
Colonial Trust Co., Cash	.....	.....	.....	.....	.....	51,228 03	52,784 00	54,379 01
Pat. S. T. & D. Co., Cash	.....	.....	.....	.....	.....	.....	25,577 39	.....
Long Island Real Estate	.....	.....	.....	43,891 65	39,502 49	38,407 99	36,037 99	33,483 48
East Jersey Water Co., Mtg.	.....	.....	.....	.....	.....	.....	315,000 00	315,000 00
Total Assets	810,765 12	816,530 31	807,145 30	816,533 75	832,786 42	850,267 48	1,192,096 02	1,209,362 11

BEATTIE MANUFACTURING COMPANY

BALANCE SHEETS

JULY 1, 1882 to NOVEMBER 30, 1905

LIABILITIES

	1882 July 1	1882 Dec. 30	1883 June 30	1883 Dec. 31	1884 Nov. 30	1885 Nov. 30	1886 Nov. 30	1887 Nov. 30	1888 Nov. 30
Accounts and Bills Pay., &c.	81,519 53	56,035 77	65,880 16	72,387 98	60,719 59	88,618 83	78,425 73	62,377 15	65,315 22
Capital Stock	300,000 00	300,000 00	300,000 00	300,000 00	300,000 00	300,000 00	300,000 00	300,000 00	300,000 00
Reserve Fund	.....	5,386 63	6,082 32	12,655 59	27,054 09	42,054 09	73,192 74	134,501 91	165,585 78
Real Estate Reserve	.....	.....	.....	22,604 47	22,604 47	41,844 52	70,477 17	72,799 93	73,880 66
Dividend	.....	6,000 00	.....	9,000 00	12,000 00	12,000 00	15,000 00	30,000 00	30,000 00
Total Liabilities	381,519 53	367,422 40	371,962 48	416,648 04	422,378 15	484,517 44	537,095 64	599,678 99	634,781 66

	1889 Nov. 30	1890 Nov. 30	1891 Nov. 30	1892 Nov. 30	1893 Nov. 30	1894 Nov. 30	1895 Nov. 30	1896 Nov. 30	1897 Nov. 30
Accounts and Bills Pay., &c.	87,715 56	116,257 13	139,420 75	134,684 83	106,333 59	91,384 19	84,666 34	85,794 18	81,923 86
Capital Stock	300,000 00	300,000 00	300,000 00	300,000 00	300,000 00	300,000 00	300,000 00	300,000 00	300,000 00
Reserve Fund	150,000 00	150,000 00	150,000 00	150,000 00	150,000 00	150,000 00	150,000 00	150,000 00	150,000 00
Real Estate Reserve	127,807 88	162 889 21	188,021 05	211,945 88	212,734 08	200,489 17	201,156 20	211,352 19	213,892 75
Dividend	30,000 00	37,500 00	30,000 00	37,500 00	30,000 00	30,000 00	21,000 00	21,000 00	30,000 00
Doubtful Debts Reserve	.....	.....	.....	4,640 16	2,155 57	.....	.....	.....	.....
Water Rights Account	.....	.....	.....	.....	.....	.....	25,000 00	30,000 00	35,000 00
Total Liabilites	695,523 44	766,646 34	807,441 80	838,770 87	801,223 34	771,873 36	781,822 54	798,146 37	810,816 61

	1898 Nov. 30	1899 Nov. 30	1900 Nov. 30	1901 Nov. 30	1902 Nov. 30	1903 Nov. 30	1904 Nov. 30	1905 Nov. 30
Accounts and Bills Pay., &c.	86,111 48	98,882 38	84,056 63	76,245 08	62,553 76	31,988 83	37,064 98	51,257 76
Capital Stock	300,000 00	300,000 00	300,000 00	300,000 00	300,000 00	300,000 00	300,000 00	300,000 00
Reserve Fund	150,000 00	150,000 00	150,000 00	160,000 00	179,943 99	216,989 98	248,208 26	251,295 52
Real Estate Reserve	204,653 64	204,653 64	204,653 64	204,653 64	204,653 64	204,653 64	204,653 64	204,653 64
Dividend	30,000 00	18,000 00	22,800 00	25,000 00	30,000 00	36,000 00	30,000 00	30,000 00
Doubtful Debts Reserve	.....	4,994 29	5,635 03	10,635 03	15,635 03	20,635 03	17,169 14	17,155 19
Water Rights Account	40,000 00	40,000 00	40,000 00	40,000 00	40,000 00	40,000 00	355,000 00	355,000 00
Total Liabilities	810,765 12	816,530 31	807,145 30	816,533 75	832,786 42	850,267 48	1,192,096 02	1,209,362 11

BEATTIE MANUFACTURING COMPANY

QUICK ASSETS AND LIABILITIES AND WORKING CAPITAL

JULY 1, 1882 to NOVEMBER 30, 1905

	1882 July 1	1882 Dec. 30	1883 June 30	1883 Dec. 31	1884 Nov. 30	1885 Nov. 30	1886 Nov. 30	1887 Nov. 30	1888 Nov. 30
Stock of Merchandise.....	92,931 23	94,837 24	81,054 29	107,462 15	106,870 06	117,419 35	140,575 71	97,561 31	120,751 20
Cash	2,535 34	204 95	523 16	591 45	.....	2,199 01	.....	6 80	548 47
R. Beattie & Sons.....	63,298 59	38,285 84	45,580 37	58,545 50	71,683 69	106,295 65	103,778 85	198,430 54	203,577 75
Accs. and Bills Rec'd., &c.	11,786 31	7,936 55	8,096 50	9,367 49	15,848 42	25,912 22	21,670 36	23,173 61	24,601 36
Quick Assets.....	170,551 47	141,264 58	135,254 32	175,966 59	194,402 17	251,826 23	266,024 92	319,172 26	349,478 78
Liabilities.....	81,519 53	62,035 77	65,880 16	81,387 98	72,719 59	100,618 83	93,425 73	92,377 15	95,315 22
Working Capital.....	89,031 94	79,228 81	69,374 16	94,578 61	121,682 58	151,207 40	172,599 19	226,795 11	254,163 56

	1889 Nov. 30	1890 Nov. 30	1891 Nov. 30	1892 Nov. 30	1893 Nov. 30	1894 Nov. 30	1895 Nov. 30	1896 Nov. 30	1897 Nov. 30
Stock of Merchandise	117,891 31	161,130 70	170,504 43	174,405 49	155,044 16	111,187 88	100,499 00	114,780 90	162,439 19
Cash	978 00	.....	205 93	.....	69 87	340 85	119 58	136 43	1,890 19
R. Beattie & Sons.....	199,875 03	235,487 46	260,229 89	274,446 66	309,649 30	342,362 62	293.204 25	166,661 67	139,700 48
Accs. and Bills Rec'd., &c.	30,909 17	25,422 79	27,989 49	37,470 73	30,107 80	6,656 83	5,984 81	6,210 23	5,763 26
Brown Bros., Cash.....	60,000 00	56,805 45	56,975 42	58,401 17	.....	.....	50,000 00	102,450 79	82,125 69
Union Trust Co., Cash	.....	.....	.....	.....	.....	.....	.....	71,808 33	73,962 58
Quick Assets.....	409,653 51	478,846 40	515,905 16	544,724 05	494,871 13	460,548 18	449,807 64	462,048 35	465,881 39
Liabilities.....	117,715 56	153,757 13	169,420 75	172,184 83	136,333 59	121,364 19	105,666 34	106,794 18	111,923 86
Working Capital	291,937 95	325,089 27	346,484 41	372,539 22	358,537 54	339,183 99	344.141 30	355,254 17	353,957 53

QUICK ASSETS &c. *Continued*

	1898 Nov 30	1899 Nov. 30	1900 Nov. 30	1901 Nov. 30	1902 Nov. 30	1903 Nov. 30	1904 Nov. 30	1905 Nov. 30
Stock of Merchandise.....	152,332 08	148,198 70	167,166 32	165,541 32	185,377 25	206,858 29	194,487 70	237,353 63
Cash	298 86	26,955 84	42,336 03	52,126 87	79,251 38	121,655 39	110,202 90	78,336 56
R. Beattie & Sons.....	128,739 55	47,128 25	38,811 22	.....	.....	.....	.....	.....
Accs. and Bills Rec'd., &c..	8,298 51	105,745 60	93,395 68	102,129 98	99,845 56	76,347 63	66,303 87	80,630 59
Brown Bros., Cash	98,383 85	54,206 62	21,312 43	21,800 84	22,298 88	43,306 61	76,789 68	78,729 71
Union Trust Co., Cash.....	75,441 83	77,343 61	78,110 41	71,604 17	71,283 33	.....	.....	.....
Colonial Trust Co., Cash...	.....	.....	.....	.....	.....	51,228 03	52,784 00	54,379 01
Paterson B. D. & T. Co....	.....	.....	.....	.....	.....	.....	25,577 39	.....
Quick Assets.....	463,494 68	459,578 62	441,132 09	413,203 18	458,056 40	499,395 95	526,145 54	529,429 50
Liabilities.....	116,111 48	116,882 38	106,856 63	101,245 08	92,553 76	67,988 83	67,064 98	81,257 76
Working Capital	347,383 20	342,696 24	334,275 46	311,958 10	365,502 64	431,407 12	459,080 56	448,171 74

BEATTIE MANUFACTURING COMPANY

ANALYSIS OF MANUFACTURING ACCOUNT

JULY 1, 1882 to NOVEMBER 30, 1905

	1882 Dec. 31	1883 June 30	1883 Dec. 31	1884 June 30	1884 Nov. 30	1885 June 30	1885 Nov. 30
Stock Account, Material, &c..	72,387 44	92,643 62	58,020 32	64,593 78	52,870 71	79,014 27	66,955 74
Manufacturing Labor	34,590 02	32,385 24	37,898 62	35,917 99	23,227 29	33,864 05	36,182 32
Commission on Sales	6,326 90	6,225 33	8,020 46	7,512 61	6,277 59	9,173 51	8,723 73
Discount Allowed	5,362 04	4,152 96	5,831 88	3,404 06	4,712 53	4,544 28	5,521 85
Fuel and Light	.....	852 12	3,505 52	935 76	3,099 14	939 69	3,806 89
Freight	.....	1,823 76	2,057 04	2,133 91	1,100 48	1,751 39	1,794 07
Total	118,666 40	138,083 03	115,333 84	114,498 11	91,287 74	129,287 19	122,984 60
Profit and Loss	24,370 50	13,112 26	58,876 25	36,464 03	34,683 22	35,312 31	52,460 84
Sales	143,036 90	151,195 29	174,210 09	150,962 14	125,970 96	164,599 50	175,445 44

	1886 Nov. 30	1887 Nov. 30	1888 Nov. 30	1889 Nov. 30	1890 Nov. 30	1891 Nov. 30	1892 Nov. 30
Stock Account, Material, &c..	181,152 51	256,977 82	165,973 24	206,174 19	179,357 80	193,557 67	185,501 04
Manufacturing Labor	97,547 29	107,083 47	97,174 91	95,321 67	94,364 38	96,585 55	100,727 91
Commission on Sales	22,300 75	27,637 44	21,442 33	23,623 02	22,292 45	23,556 74	23,068 17
Discount Allowed	15,347 39	20,031 66	26,161 14	24,159 11	14,535 79	32,516 77	16,836 64
Fuel and Light	4,619 00	4,153 37	8,568 05	5,081 61	7,697 13	7,075 95	7,172 39
Designs	.....	.....	.....	.....	926 23	1,670 49	2,686 46
Duties	.....	.....	.....	.....	11,284 49	6,468 87	9,658 00
Freight	4,073 43	4,885 72	4,036 37	4,616 70	5,114 18	4,885 23	4,821 63
Total	325,040 37	420,769 48	323,356 04	358,976 30	335,572 45	366,317 27	350,472 24
Profit and Loss	124,990 57	133,904 40	109,617 58	117,418 23	124,819 38	108,513 11	113,544 19
Sales	450,030 94	554,673 88	432,973 62	476,394 53	460,391 83	474,830 38	464,016 43

BEATTIE MANUFACTURING COMPANY

ANALYSIS OF MANUFACTURING ACCOUNT

JULY 1, 1882 to NOVEMBER 30, 1905—Continued

	1893 Nov. 30	1894 Nov. 30	1895 Nov. 30	1896 Nov. 30	1897 Nov. 30	1898 Nov. 30	1899 Nov. 30
Stock Account, Material, &c..	163,496 29	147,655 01	146,945 32	112,805 66	103,082 06	90,837 03	169,268 09
Manufacturing Labor	74,174 47	52 290 82	66,059 00	69,524 84	73,686 20	67,707 53	79,459 63
Commission on Sales.....	17,967 34	14,993 75	14,776 36	13,737 25	13,233 75	16,563 33	9,127 54
Discount Allowed	12,963 38	6,276 51	8,249 40	8,320 22	9,288 23	7,042 62	7,888 94
Fuel and Light.....	6,455 03	7,096 90	3,990 50	6,431 64	5,993 01	5,154 30	7,178 25
Freight.....	3,603 72	3,494 00	2,978 46	2,572 77	2,941 49	1,879 08	3,506 59
Designs.....	2,276 76	1,562 70	1,303 36	1,398 00	1,581 27	1,933 00	2,933 11
Duties	.....	727 92	.....	.....	.....	1,441 44	8,767 11
Selling Expenses.....	.....	.....	.....	.....	.....	.....	7,600 36
Block Cutting.....	.....	.....	.....	.....	.....	.....	584 00
Royalties.....	.....	.....	.....	.....	.....	.....	564 37
Total.....	280,937 99	234,107 61	244,302 40	214,790 38	209,806 01	192,558 33	296,867 99
Profit and Loss.....	79,905 46	74,782 29	60,035 00	74,129 02	73,526 96	62,234 82	62,472 33
Sales.....	360,843 45	308,889 90	304,337 40	288,919 40	283,332 97	254,793 15	359,340 32

ANALYSIS *Continued*

	1900 Nov. 30	1901 Nov. 30	1902 Nov. 30	1903 Nov. 30	1904 Nov. 30	1905 Nov. 30
Stock Account, Material, &c..	177,855 15	230,621 95	219,830 18	218,621 48	155,300 11	216,242 40
Manufacturing Labor	99,816 13	112,007 48	111,450 32	102,246 15	76,949 68	93,676 32
Commission on Sales	1,551 08	960 36	.....	.....	.....	.....
Discount Allowed	7,603 74	12,307 88	17,429 97	16,104 98	13,238 45	15,699 39
Fuel and Light	3,728 36	5,546 32	.....	.....	.....	.....
Freight	3,385 14	3,620 06	4,383 73	3,504 40	2,545 13	4,426 47
Designs	2,885 43	2,422 15	3,235 12	3,282 00	3,054 00	4,819 50
Duties	10,069 50	11,592 87	15,220 05	8,650 36	7,698 72	6,304 54
Selling Expenses	12,589 29	13,912 47	14,373 84	13,524 57	13,606 02	13,643 20
Royalties	562 86	643 50	548 26	729 38	477 38	616 72
	.....	91 00	.....	.....	.....	.....
Block Cutting						
Total	320,046 68	393,726 04	386,471 47	366,663 32	272,869 49	355,428 54
Profit and Loss	87,166 88	109,227 60	155,608 29	161,933 36	98,963 01	94,883 07
Sales	407,213 56	502,953 64	542,079 76	528,596 68	371,832 50	450,311 61

BEATTIE MANUFACTURING COMPANY

ANALYSIS OF PROFIT AND LOSS ACCOUNT

JULY 1, 1882, to NOVEMBER 30, 1905

DEBIT

	1882 Dec. 31	1883 June 30	1883 Dec. 31	1884 Nov. 30	1885 Nov. 30	1886 Nov. 40
Expense	2,063 40	2,120 92	1,808 39	2,134 75	2,177 77	2,876 29
Salaries	3,000 00	3,000 00	3,900 00	7,983 32	10,333 32	11,050 00
Repairs	4,778 56	5,272 93	6,311 32	21,080 18	17,564 63	20,318 41
Insurance	1,816 84	345 65	1,453 06	1,871 29	1,284 77	2,561 15
Interest	648 87	1,552 82	1,398 12	2,877 47	2,243 32	2,669 27
Commission	1,332 09	1,037 87	.....	.....	.....	.....
Stable Account	.....	.....	775 33	2,032 56	1,524 25	1,477 77
Taxes	.....	.....	1,654 50	1,663 45	1,901 97	3,347 18
Bad Accounts	.....	.....	4,329 24	.....	.....	1,822 91
Depreciation Machinery	.....	.....	.....	6,940 87	6,246 78	6,743 32
Total Expense	13,639 76	13,330 19	21,629 96	46,583 89	43,276 81	52,866 30
Profit	11,386 63	695 69	38,177 74	26,398 50	46,240 05	74,771 30
Total	25,026 39	14,025 88	59,807 70	72,982 39	89,516 86	127,637 60

CREDIT

Merchandise Account	24,370 50	13,112 26	58,876 25	71,147 25	87,773 15	124,990 57
Rents	655 89	913 62	931 45	1,835 14	1,743 71	2,647 03
Total	25,026 39	14,025 88	59,807 70	72,982 39	89,516 86	127,637 60

(*Continued on next page*)

BEATTIE MANUFACTURING COMPANY

ANALYSIS OF PROFIT AND LOSS ACCOUNT

JULY 1, 1882, to NOVEMBER 30, 1905

DEBIT

	1887 Nov. 30	1888 Nov. 30	1889 Nov. 30	1890 Nov. 30	1891 Nov. 30	1892 Nov. 30
Expense	3,951 92	5,153 10	3,443 85	3,426 16	3,696 41	3,701 53
Salaries	11,838 30	20,936 00	21,453 00	21,500 00	22,000 00	22,500 00
Repairs	22,157 76	17,245 08	18,131 09	18,059 61	15,751 20	17,837 43
Insurance	3,511 45	2,252 59	2,929 18	2,411 92	2,381 00	2,792 04
Interest	1,198 31	1,246 90	360 70	4,552 95	934 21	.....
Stable Account	1,123 54	734 80	859 64	690 96	775 91	520 73
Taxes	1,932 55	1,863 84	2,706 88	2,976 25	2,171 46	2,399 52
Bad Accounts	1,504 93	2,173 66	2,320 78	1,820 65	8,818 10	6,109 53
Total Expense	47,218 76	51,605 97	52,205 12	55,438 50	56,528 29	55,860 78
Profit	93,631 93	62,164 60	68,341 44	72,581 33	55,131 84	61,424 83
Total	140,850 69	113,770 57	120,546 56	128,019 83	111,660 13	117,285 61

CREDIT

Merchandise Account	133,904 40	109,617 58	117,418 23	124,819 38	108,513 11	113,544 19
Rents	3,351 72	3,172 34	3,128 33	3,200 45	3,047 02	3,078 14
Stone Quarry	3,594 57	980 65	....	.....	100 00	.....
Interest	.....	.....	.....	....	.....	663 28
Total	140,850 69	113,770 57	120,546 56	128,019 83	111,660 13	117,285 61

(*Continued on next page*)

BEATTIE MANUFACTURING COMPANY

ANALYSIS OF PROFIT AND LOSS ACCOUNT

JULY 1, 1882, to NOVEMBER 30, 1905

DEBIT

	1893 Nov. 30	1894 Nov. 30	1895 Nov. 30	1896 Nov. 30	1897 Nov. 30	1898 Nov. 30	1899 Nov. 30
Expense	4,755 82	3,709 14	4,457 94	3,758 02	3,871 43	5,036 19	4,705 86
Salaries	22,500 00	19,500 00	19,500 00	19,500 00	20,500 00	20,500 00	17,333 33
Repairs	15,595 53	14,496 02	14,321 94	14,150 01	13,214 42	15,491 72	16,699 51
Insurance	2,574 07	1,977 31	2,406 76	3,462 37	3,058 09	2,373 89	2,904 79
Interest	708 03	1,633 72	.....	.....	.....	.....	.....
Stable Account	147 44	308 21	.....	330 17	.....	.....	.....
Taxes	3,703 93	3,076 90	2,770 58	3,025 35	2,514 70	2,689 52	2,589 49
Bad Accounts	3,608 43	14,804 21	833 34	6,101 57	3,050 47	528 45	.....
Total Expense	53,593 25	59,505 51	44,290 56	50,327 49	46,209 11	46,619 77	44,232 98
Profit	30,788 20	17,755 09	21,667 03	31,195 99	32,540 56	20,760 89	35,594 29
Total	84,381 45	77,260 60	65,957 59	81,523 48	78,749 67	67,380 66	79,827 27

CREDIT

Merchandise Account	79,905 46	74,782 29	60,035 00	74,129 02	73,525 96	62,234 82	62,372 33
Rent	4,475 99	2,478 31	3,567 49	3,090 00	2,606 07	2,754 47	2,788 70
Bad Accounts Recovered	.....	.....	204 49	.....	.....	580 72	.....
Sand Account	.....	.....	.....	267 70	.....	.....	12,600 08
Interest	.....	.....	2,150 61	4,036 76	2,617 64	1,810 65	1,966 24
Total	84,381 45	77,260 60	65,957 59	81,523 48	78,749 67	67,380 66	79,827 27

(*Continued on next page*)

BEATTIE MANUFACTURING COMPANY

ANALYSIS OF PROFIT AND LOSS ACCOUNT

JULY 1, 1882, to NOVEMBER 30, 1905

DEBIT

	1900 Nov. 30	1901 Nov. 30	1902 Nov. 30	1903 Nov. 30	1904 Nov. 30	1905 Nov. 30
Expense	6,049 40	5,462 67	7,801 67	7,596 49	7,582 49	14,208 00
Salaries	14,500 00	17,000 00	18,500 00	19,000 00	19,000 00	19,000 00
Repairs	19,169 99	26,021 38	27,191 29	26,636 51	21,217 60	22,611 46
Insurance	4,295 63	2,339 52	1,241 68	1,346 41	936 49	1,061 29
Interest	.....	.....	....	.....	.....	2,245 48
Stable Account	.....	.....	1,742 88	1,353 67	1,513 14	1,687 72
Taxes	2,740 32	3,360 02	3,860 88	2,711 36	3,700 17	3,822 81
Bad Accounts	10,313 94	7,192 50	250 76	.....	3,844 29	13 95
Estate of R. Beattie	.....	4,716 61	.....	.....	.....	.....
Depreciation Machinery	10,487 40	12,104 87	12,561 61	12,003 75	.....	5,383 51
" Fire Department	.....	7,700 86	3,572 80	3,272 39	.....	.....
" Real Estate and Buildings	.....	.....	24,414 96	21,898 46	.....	10,146 06
" L. I. Real Estate	.....	.....	4,389 16	.....	10,236 19	.....
" Stock	.....	.....	.....	.....	79 31	.....
Royalties	.....	.....	1,216 75	556 54	.....	.....
Commissions	.....	.....	5,861 74	6,380 00	2,687 45	3,826 13
Fuel and Light	.....	.....	.....	.....	.....	.....
	67,556 68	79,898 43	112,606 18	102,755 58	70,797 13	84,006 41
Total Expense	36,040 74	46,300 00	59,943 99	78,045 99	51,452 39	33,073 31
Profit						
Total	103,597 42	126,198 43	172,550 17	180,801 57	122,249 52	117,079 72

			CREDIT			
Merchandise Account	87,166 88	109,227 60	155,608 29	161,933 36	98,963 01	94,883 07
Rent	3,266 32	9,854 93	3,389 84	3,508 08	3,307 10	3,611 32
Taxes	.....	.....	.....	.....	290 68	.....
Bad Accounts Recovered	.....	.....	.....	.....	1,835 00	606 30
Sand Account	.....	....	480 75	.....	.....	.....
Interest	13,164 22	7,115 90	13,071 29	15,360 13	17,853 73	17,979 03
Total	103,597 42	126,198 43	172,550 17	180,801 57	122,249 52	117,079 72

BEATTIE MANUFACTURING COMPANY.

AMENDED STATEMENT SHOWING PROFITS

From July 1, 1882, to November 30, 1905,

AND DISPOSITION OF SAME.

		Net Profit. Per ac.	*Per Ledger.*	*Add.*	*Deduct.*
1882	Dec. 31.....	11,386 63			
1883	June 30.....	695 69			
1883	Dec. 31.....	38,177 74			
1884	Nov. 30.....	26,398 50			
1885	"	46,240 05			
1886	"	74,771 30			
1887	"	93,631 93			
1888	"	62,164 60			
1889	"	68,341 44			
1890	"	72,581 33			
1891	"	55,131 84			
1892	"	61,424 83			
1893	"	30,788 20			
1894	"	17,755 09			
1895	"	21,667 03			
1896	"	31,195 99			
1897	"	32,540 56			
1898	"	20,760 89			
1899	"	35,594 29	18,000 00	17,594 29	
1900	"	36,040 74	22,800 00	13,240 74	
1901	"	46,300 00	35,000 00	11,300 00	
1902	"	59,943 99	54,943 99	5,000 00	
1903	"	78,045 99	73,045 99	5,000 00	
1904	"	51,452 39	54,918 28		3,465 89
1905	"	33,073 31	34,734 43	598 31	2,259 43
		1,106,104 35		52,733 34	5,725 32

Total per Ledger	1,059,096 33
Deductions	5,725 32
	1,053,371 01
Additions	52,733 35
	1,106,104 35

DISPOSITION.

To General Reserve	251,295 52
" Real Est. Impt. Reserve	204,653 64
" Bad ac. Reserve	17,155 19
Total to Reserve	473,104 35
Dividends paid	633,000 00
	1,106,104 35

BEATTIE MANUFACTURING COMPANY.

July 1, 1882, to November 30, 1905.

SALARIED.

	Wm. Beattie.	*Robt. Beattie.*	*J. C. Maguire.*	*W. E. Beattie.*	*C. G. Beattie.*	*R. Beattie, Jr.*
1882 December	1,500 00	1,500 00	1,800 00			
1883 June	1,500 00	1,500 00	900 00			
1883 December	1,500 00	1,500 00	900 00			
1884 June	1,500 00	1,500 00	750 00			
1884 November 30.. ...	1,666 66	1,666 66	900 00			
1885 June	2,333 33	2,333 33	750 00			
1885 November 30.....	2,083 33	2,083 33	1,050 00			
1886 "	5,000 00	5,000 00				
1887 "	5,500 00	5,500 00		838 30		
1888 "	10,000 00	10,000 00		936 00		
1889 "	10,000 00	10,000 00		1,453 00		
1890 "	10,000 00	10,000 00		1,500 00		
1891 "	10,000 00	10,000 00		2,000 00		
1892 "	10,000 00	10,000 00		2,500 00		
1893 "	10,000 00	10,000 00		2,500 00		
1894 "	8,500 00	8,500 00		2,500 00		

1895	"	.....	8,500 00	8,500 00		2,500 00		
1896	"	.....	8,500 00	8,500 00		2,500 00		
1897	"	.....	8,500 00	8,500 00		3,500 00		
1898	"	.....	8,500 00	8,500 00		3,500 00		
1899	"	.....	2,833 33	8,500 00		6,000 00		
1900	"	.....		8,500 00		6,000 00	750 00	
1901	"	.....		8,500 00		8,500 00		
1902	"	.....		8,500 00		8,500 00		1,500 00
1903	"	.....		8,500 00		8,500 00		2,000 00
1904	"	.....		8,500 00		8,500 00		2,000 00
1905	"	.....		8,500 00		8,500 00		2,000 00
Wm. Beattie.....			127,916 65	184,583 32	7,050 00	80,727 30	750 00	7,500 00
Robt. Beattie.....			184,583 32					
Wm. H. Beattie.....			80,727 30					
Chas. G. Beattie			750 00					
Robt. Beattie, Jr.....			7,500 00					
			401,477 27					
J. C. Maguire.....			7,050 00					
			408,527 27					

BEATTIE MANUNACTURING COMPANY.

Dividends Declared and Paid

July 1, 1888, to November 30, 1905.

	Rate.	Dividend.	Wm. Beattie, 800 Shares.	Robt. Beattie, 800 Shares.	William Beattie, Guardian.		
					Eva Murray, 25 Shares.	Alex. Murray, 25 Shares.	G. Murray, 25 Shares.
1882 Dec. 31	2	6,000 00	1,600 00	1,600 00	50 00	50 00	50 00
1883 Dec. 31	3	9,000 00	2,400 00	2,400 00	75 00	75 00	75 00
1884 Nov. 30	4	12,000 00	3,200 00	3,200 00	100 00	100 00	100 00
1885 "	4	12,000 00	3,200 00	3,200 00	100 00	100 00	100 00
1886 "	5	15,000 00	4,000 00	4,000 00	125 00	125 00	125 00
1887 "	10	30,000 00	8,000 00	8,000 00	250 00	250 00	250 00
1888 "	10	30,000 00	8,000 00	8,000 00	250 00	250 00	250 00
1889 "	10	30,000 00	8,000 00	8,000 00	250 00	250 00	250 00
1890 "	12½	37,500 00	10,000 00	10,000 00	312 50	312 50	312 50
1891 "	10	30,000 00	8,000 00	8,000 00	250 00	250 00	250 00
1892 "	12½	37,500 00	10,000 00	10,000 00	312 50	312 50	312 50

1893	"	10	30,000 00	8,000 00	8,000 00	250 00	250 00	250 00
1894	"	10	30,000 00	8,000 00	8,000 00	250 00	250 00	250 00
1895	"	7	21,000 00	5,600 00	5,600 00	175 00	175 00	175 00
1896	"	7	21,000 00	5,600 00	5,600 00	175 00	175 00	175 00
1897	"	10	30,000 00	8,000 00	8,000 00	250 00	250 00	250 00
1898	"	10	30,000 00	8,000 00	8,000 00	250 00	250 00	250 00
1899	June 15	2	6,000 00	1,600 00	1,600 00	50 00	50 00	50 00
1899	Nov. 30	10	30,000 00	8,000 00	8,000 00	250 00	250 00	250 00
1900	"	10	30,000 00	8,000 00	8,000 00	250 00	250 00	250 00
1901	"	10	30,000 00	8,000 00	8,000 00	250 00	250 00	250 00
1902	"	10	30,000 00	8,000 00	8,000 00	250 00	250 00	250 00
1903	"	12	36,000 00	9,600 00	9,600 00	300 00	300 00	300 00
1904	"	10	30,000 00	8,000 00	8,000 00	250 00	250 00	250 00
1905	"	10	30,000 00	8,000 00	8,000 00	250 00	250 01	250 00
			633,000 00	168,800 00	168,800 00	5,275 00	5,275 00	5,275 00

BEATTIE MANUFACTURING COMPANY,

Dividends Declared and Paid

July 1, 1882, to November 30, 1905.

				Mrs. Beattie, Gdn.	*William Beattie and Others, Trustees.*			
		Rate.	*Dividend.*	*Mrs. Skaren. 25 Shares.*	*Mrs. M. Murray, 300 Shares.*	*Mrs. Wm. Dickson, 350 Shares.*	*Mrs. E. E. Gedney, 350 Shares.*	*Mrs. A. Beattie 300 Shares.*
1882	Dec. 31.....	2	6,000	50 0	600	700	700	900
1883	Dec. 31.....	3	9,000	75 00	900	1,050	1,05	600
1884	Nov. 30.....	4	12,000	100 00	1,200	1,400	1,400	1,200
1885	"	4	12,000	100 00	1,200	1,400	1,400	1,200
1886	"	5	15,000	125 00	1,500	1,750	1,750	1,500
1887	"	10	30,000	250 00	3,000	3,500	3,500	3,000
1888	"	10	30,000	250 00	3,000	3,500	3,500	3,000
1889	"	10	30,000	250 00	3,000	3,500	3,500	3,000
1890	"	12½	37,500	312 50	3,750	4,375	4,375	3,750
1891	"	10	30,000	250 00	3,000	3,500	3,500	3,000
1892	"	12½	37,500	312 50	3,750	4,375	4,375	3,750
1893	"	10	30,000	250 00	3,000	3,500	3,500	3,000
1894	"	10	30,000	250 00	3,000	3,500	3,500	3,000
1895	"	7	21,000	175 00	2,100	2,450	2,450	2,100

1896	"	7	21,000	175 00	2,100	2,450	2,450	2,100
1897	"	10	30,000	250 00	3,000	3,500	3,500	3,000
1898	"	10	30,000	150 00	3,000	3,500	4,500	3,000
1899	June 15	2	6,000	50 00	600	700	700	600
1899	Nov. 30	10	30,000	250 00	3,000	3,500	3,500	3,000
1900	"	10	30,000	250 00	3,000	3,500	3,500	3,000
1901	"	10	30,000	250 00	3,000	3,500	3,500	3,000
1902	"	10	30,000	250 00	3,000	3,500	3,500	3,000
1903	"	12	36,000	300 00	3,600	4,200	4,200	3,000
1904	"	10	30,000	250 00	3,000	3,500	3,500	3,000
1905	"	10	30,000	250 00	3,000	3,500	3,500	3,000
			633,000	5,275 00	63,300	73,850	73,850	63,300

SUMMARY.

Wm. Beattie	168,800	Mrs. M. Murray	63,300
Robt. Beattie	168,800	Mrs. Wm. Dickson	73,850
Eva Murray	5,275	Mrs. E. E. Gedney	73,850
Alex. Murray	5,275	Mrs. Agnes Beattie	63,300
Georgia Murray	5,275		
Mrs. Skaren	5,275		633,000

BEATTIE MANUFACTURING COMPANY.

RECEIPTS FOR INTEREST, RENTS, ETC.

July 1, 1882, to November 30, 1905.

	Rent.	*Stone Quarry.*	*Brown Bros.*	*Union Trust Co.*	*Colonial T. Co.*	*P. S D. & T. Co.*	*E. J. Watt Co.*
1882 December	655 89						
1883 June	913 62						
1883 December	931 45						
1884 June	985 28						
1884 December	849 86						
1885 November	1,743 71						
1886 "	2,647 03						
1887 "	3,351 72	3,594 57					
1888 "	3,172 34	980 65					
1889 "		3,128 33					
1890 "	3,200 45		1,808 45				
1891 " . ..	3,047 02	100 00	1,804 85				
1892 "	3,078 14		1,285 97				
1893 "	4,475 99		1,117 76				

1894	"	.....	2,478 31						
1895	"	.....	3,567 49						
1896	"	.....	3,090 00		2,709 30	1,808 33			
1897	"	.....	2,606 07		1,903 28	2,154 25			
1898	"	.....	2,754 47		1,382 55	1,479 25			
1899	"	.....	2,788 70		1,347 09	1,901 78			12,600 00
1900	"	.....	3,266 32		1,000 94	766 80			12,600 00
1901	"	.....	3,554 93		488 41	1,604 17			12,600 00
1902	"	.....	3,389 84		498 04	1,079 16			12,600 00
1903	"	.....	3,508 08		3,136 55	243 25	1,128 03		12,600 00
1904	"	.....	3,307 10				1,555 97	310 40	12,600 00
1905	"	.....	3,611 32		1,940 03		1,591 05	575 35	12,600 00
			66,975 13	7,803 55	20,423 22	11,036 99	4,275 05	1,385 75	88,200 00

Rents	66,975 13	Brown Bros.	20,423 22
Stone Quarry	7,805 55	East Jersey Water Co	88,200 00
Paterson S. D. & T. Co.	1,385 75		
Colonial T. Co.	4,275 05	Total	200,099 69
Union T. Co.	11,036 99		

BEATTIE MANUFACTURING COMPANY.

MONTHLY CASH BALANCES

November 30, 1899, to November 30, 1905.

		Colonial T. Co.	*Brown Bros.*	*Union T. Co.*	*Total.*	*Cash.*
1899	Nov. 30		54,206 62	77,343 61	131,550 23	26,955 84
	Dec. 31				131,550 23	3,173 33
1900	Jan. 31		39,311 49	77,343 61	116,655 10	1,733 16
	Feb. 29		38,311 49	77,343 61	115,655 10	5,708 40
	Mch. 21				115,655 10	17,102 06
	Apl. 30				115,655 10	45,801 09
	May 31				115,655 10	40,569 48
	June 30				115,655 10	15,953 60
	July 31				115,655 10	3,510 35
	Aug. 31		20,311 49	77,343 61	97,655 10	2,252 56
	Sep. 30				97,655 10	18,416 10
	Oct. 31				97,655 10	46,336 21
	Nov. 30		21,312 43	78,110 41	99,422 84	42,336 03
	Dec. 31				99,422 84	26,327 21
1901	Jan. 31		21,310 48	70,000 00	91,312 43	5,458 19
	Feb. 28				91,312 43	853 59
	Mch. 31				91,312 43	41,140 10
	Apl. 30				91,312 43	70,459 35
	May 31				91,312 43	55,265 67
	June 30				91,312 43	47,897 57
	July 31				91,312 43	35,076 78
	Aug. 31				91,312 43	7,611 88
	Sep. 30				91,312 43	47,838 53
	Oct. 31				91,312 43	60,941 34

Nov. 30		21,800 84	71,604 17	93,405 01	52,126 67
Dec. 31				93,405 01	42,529 35
1902 Jan. 31				93,405 01	23,490 96
Feb. 28		21,800 84	70,204 17	92,005 01	21,659 97
Mch. 31				92,005 01	64,984 72
Apl. 30				92,005 01	89,748 23
May 31				92,005 01	80,185 94
June 30				92,005 01	61,688 71
July 31				92,005 01	49,520 85
Aug. 31				92,005 01	36,731 70
Sep. 30				92,008 01	110,087 07
Oct. 31				92,005 01	130,354 19
Nov. 30		22,298 88	71,283 33	93,582 21	79,251 38
Dec. 31				93,582 21	56,624 76
1903 Jan. 31				93,582 21	16,693 18
Feb. 28	50,000 00	22,298 88		72,298 88	25,594 82
Mch. 31				72,298 88	72,635 75
Apl. 30				72,298 88	112,768 71
May 31				72,298 88	77,022 94
June 30	50,000 00	42,793 69		92,793 69	89,717 33
July 31				92,793 69	72,213 15
Aug. 31				92,793 69	61,764 57
Sep. 30				92,793 69	104,163 79
Oct. 31				92,793 68	115,832 51
Nov. 30	51,228 03	43,306 61		94,534 64	121,655 39

(*Continued on next page.*)

BEATTIE MANUFACTURING COMPANY.

Monthly Cash Balancer

November 30, 1899, to November 30, 1905.

	Brown Bros.	*Colonial T. Co.*	*Pat. S. D. and T. Co.*	*Total.*	*Cash.*
1903 Dec. 31	78,306 61	51,228 03	35,000 00	164,534 64	42,970 72
1904 Jan. 31	74,660 86	51,226 03	35,000 00	160,888 89	19,169 98
Feb. 28	74,660 86	51,228 03	25,000 00	150,888 89	13,785 77
Mch. 31				150,888 89	75,647 50
Apl. 30				150,888 89	64,082 62
May 31				150,888 89	66,431 68
June 30				150,888 89	67,396 17
July 31				150,838 89	50,904 46
Aug. 31				150,888 89	56,536 35
Sep. 30				150,888 89	107,987 78
Oct. 31				150,888 89	103,228 76
Nov. 30	76,789 68	52,784 00	25,577 39	155,151 07	110,202 90
Dec. 31				155,151 07	56,083 86
1905 Jan. 31				155,151 07	33,803 87
Feb. 28				155,151 07	30,461 93
Mch. 31				155,151 07	77,876 32
Apl. 30				155,151 07	76,586 27
May 30				155,151 07	55,416 23
June 30				155,151 07	53,292 19
July 31				155,151 07	45,828 79
Aug. 31				155,151 07	21,327 37
Sep. 30	76,789 68	52,784 00		129,573 68	109,035 21
Oct. 31				129,573 68	101,121 17
Nov. 30	78,729 71	54,379 01		133,108 72	78,336 56

BEATTIE MANUFACTURING COMPANY.

MONTHLY CASH BALANCES

From November 30, 1899, to November 30, 1905.

		1900.	1901.	1902.	1903.	1904.	1905.
Nov. 30	Balance	26,955 84	42,336 03	52,126 87	79,251 38	121,655 39	110,202 90
Dec. 31	Receipts	27,006 73	23,991 18	26,666 75	33,598 68	16,037 41	21,454 70
		53,962 57	66,327 21	78,793 62	112,850 06	137,692 80	131,657 60
	Disbursements	48,789 24	400,000 00	36,264 29	56,225 30	95,722 08	75,593 74
	Balance	5,173 33	26,327 21	42,529 33	56,624 76	42,970 72	50,063 86
Jan. 31	Receipts	27,687 09	23,851 95	20,419 79	26,329 25	22,429 74	21,572 97
		32,860 42	49,979 16	62,949 12	82,954 01	65,400 46	77,636 83
	Disbursements	31,127 26	45,520 97	39,458 16	66,260 83	46,230 48	43,832 96
	Balance	1,733 16	5,458 19	23,490 96	16,693 18	19,169 98	33,803 87
Feb. 28	Receipts	25,639 11	23,956 10	29,438 78	43,460 12	23,507 55	16,292 28
		27,372 27	29,414 29	52,929 74	60,153 30	42,677 53	50,096 15
	Disbursements	21,663 87	28,560 70	31,269 77	34,558 48	28,691 76	19,634 22
	Balance	5,708 40	853 59	21,659 97	25,594 82	13,985 77	30,461 93

EXHIBIT C 8

CASH BALANCES—*Continued.*

Mch. 31	Receipts	47,731 20	75,241 18	84,184 81	78,179 72	102,297 59	87,511 56
		53,439 60	76,094 77	105,844 78	103,774 54	116,283 36	117,973 49
	Disbursements	36,337 54	34,954 67	40,860 06	31,138 79	40,635 86	40,097 17
	Balance	17,102 06	41,140 10	64,984 72	72,635 75	75,647 50	77,876 32
Apl. 30	Receipts	51,424 44	41,427 18	66,736 67	69,752 46	2 ,702 49	33,63[illegible] 83
		68,526 50	112,567 28	131,721 39	142,388 21	101,349 99	111,512 15
	Disbursements	22,725 41	42,107 93	41,973 16	29,624 50	37,267 37	34,925 88
	Balance	45,801 09	70,459 35	89,748 23	112,763 71	64,032 62	76,536 27
May 31	Receipts	30,224 12	31,344 85	46,916 03	22,359 21	23,232 94	24,582 07
		76,025 21	101,804 20	136,664 26	135,122 92	87,315 56	101,168 34
	Disbursements	35,455 73	46,538 53	56,478 32	58,099 98	20,863 88	45,752 11
	Balance	40,569 48	55,265 67	80,185 94	77,022 94	66,451 68	55,416 23

(*Continued on next page.*)

BEATTIE MANUFACTURING COMPANY.

MONTHLY CASH BALANCES

From November 30, 1899, to November 30, 1905.

		1900.	1901.	1902.	1903.	1904.	1905.
May 31	Balance	40,569 48	55,265 67	80,185 94	77,022 94	66,451 68	55,416 23
June 30	Receipts	19,340 32	27,666 52	27,233 60	78,650 31	21,549 22	23,745 99
		59,909 80	82,932 19	107,419 54	155,673 25	88,000 90	79,162 22
	Disbursement	43,956 14	35,034 62	45,730 83	55,955 92	20,604 73	25,870 03
	Balance	15,953 66	47,897 57	61,668 71	89,717 33	67,396 17	53,292 19
July 31	Receipts	17,836 03	22,765 51	24,935 86	29,076 25	20,065 36	28,033 59
		33,789 69	70,683 08	86,624 57	118,793 58	87,461 53	81,325 78
	Disbursements	30,279 34	35,606 30	37,103 72	46,580 43	30,497 07	39,496 99
	Balance	3,510 35	35,076 78	49,520 85	72,213 15	56,964 46	45,828 79
Aug. 31	Receipts	34,679 12	26,796 22	23,908 34	18,727 25	15,752 47	27,573 16
		38,189 47	61,873 00	74,429 19	90,940 40	72,716 93	73,401 95
	Disbursements	35,936 91	54,261 12	37,647 49	29,175 83	16,180 58	52,074 58
	Balance	2,252 56	7,611 88	36,781 70	61,764 57	56,536 35	21,327 37

CASH BALANCES—*Continued.*

Sept. 30	Receipts	50,925 40	67,944 26	105,997 24	84,990 37	74,713 17	151,005 09
		53,177 96	75,556 14	142,778 94	146,754 94	131,249 52	172,332 46
	Disbursements	34,761 86	27,717 61	32,691 87	42,591 15	23,261 74	63,297 25
	Balance.....	18,416 10	47,838 53	110,087 07	104,163 79	107,987 78	109,035 21
Oct. 31	Receipts.....	68,114 60	65,617 07	83,937 90	48,986 12	31,507 74	40,234 41
		86,530 70	113,455 80	194,024 97	153,149 91	139,495 52	149,269 62
	Disbursements.....	40,174 49	43,514 28	63,670 78	37,317 40	36,266 76	48,148 45
	Balance.....	46,356 21	69,941 34	130,354 19	115,832 51	103,223 76	101,121 17
Nov. 30	Receipts.....	28,673 13	27,861 96	24,602 25	54,543 32	27,900 65	40,270 45
		75,029 34	97,803 30	154,956 44	170,375 83	131,129 41	141,391 62
	Disbursements.....	32,693 31	45,676 43	75,705 06	48,720 44	20,926 51	63,055 06
	Balance.....	42,336 03	52,126 87	79,251 38	121,655 39	110,202 90	78,336 56

BEATTIE MANUFACTURING COMPANY.

Deposit Accounts

November 30, 1899, to November 30, 1905.

Brown Bros.

1899	Nov. 30	To Balance	54,206 62		
1903	June 24	" Cash	20,000 00		
	Dec. 4	" "	35,000 00		
		Interest	7,063 97		
					116,270 59
1900	Jan. 25	By Cash	11,000 00		
	" 26	" " Watson	3,895 13		
	Feb. 9	" "	1,000 00		
	Apl. 10	" "	5,000 00		
	" 16	" "	10,000 00		
	" 24	" "	3,000 00		
1904	Jan. 23	" " Watson	3,645 75		
				37,540 88	
1905	Nov. 30	" Balance	78,729 71		
					116,270 59

Colonial Trust Co.

1903	Feb. 3	To Cash	50,000 00	
1905	Nov. 30	" Interest	4,379 01	
		Balance		34,379 01

Union Trust Co.

1899	Nov. 30	To Balance	77,343 61	
1903	Feb. 3	" Interest	3,693 38	
				81,036 99

1901	Jan.	1	By Cash	8,11 41	
1902	Feb.	24	" "	1,400 00	
1903	Feb.	3	" " (Colonial)	50,000 00	
			" "	21,526 58	
					81,036 99

PATERSON S. D. & T. Co.

1903	Dec.	4	To Cash	3,500 00	
1905	Sep.	27	" Interest	1,385 75	
					36,385 75
1904	Feb.	24	By Cash	5,000 00	
			" "	5,233 01	
	Sep.	28	" "	26,152 74	
					36,385 75

EXHIBIT C 9

C 9.

Articles of agreement entered into this nineteenth day of April, 1879, between Robert Beattie, William Beattie and Robert Beattie, Jr., of Little Falls, in the County of Passaic, State of New Jersey, witnesseth:

WHEREAS, the said parties have for several years been in partnership under the name of Robert Beattie & Sons, in the manufacturing business, and without any definite agreement as to the respective interest of each in said business. Therefore, for the purpose of a settlement of the same up to the first day of January, 1879, and also for a continuance of the business with a defined interest of each in the same, it is eventually agreed between the parties as follows:

First—It is agreed that each of their individual accounts should be balanced up to January 1st, 1879, by placing to their respective accounts a credit equal in amount to the sums charged to them.

Second—It is conceded that the ownership of all the real estate is in Robert Beattie.

Third—Taking as a basis of settlement the valuation made on the first day of January, 1879, as follows:

On Machinery amounting to....	$56,000
On Stock on hand	68,000
On Bills Receivable	40,000
Amounting to	$164,000
And deducting therefrom Bills Payable.....	24,000
Leaving a balance of.....	$140,000

EXHIBIT C 9

It is agreed that this amount, viz., one hundred and forty thousand dollars, shall be divided into fourteen hundred shares of one hundred dollars each, of which Robert Beattie shall be entitled to seven hundred and twenty shares (720); William Beattie shall be entitled to three hundred and forty shares (340); Robert Beattie, Jr., shall be entitled to three hundred and forty shares (340).

Fourth—It is agreed that Robert Beattie shall be paid an annual rent of $4,000; William Beattie and Robert Beattie, Jr., a salary of $2,000 each per annum, and the profits shall be divided annually according to the number of shares held by each.

Fifth—It is agreed that no money, except as above, shall be drawn out of the business without the consent of each member of the firm, and that no endorsement shall be made by any member thereof, either in their individual or in the firm name.

This agreement of partnership shall terminate on the 31st day of December, 1883.

IN WITNESS WHEREOF, we have hereunto set our hands in triplicate this nineteenth day of April, 1879.

ROBERT BEATTIE,
WILLIAM BEATTIE,
ROBERT BEATTIE, JR.

EXHIBITS C 10, 11, 12, 13 and 14

C 10.

Abstract.

Agreement dated February 15, 1898, between Beattie Manufacturing Company and The East Jersey Water Company, whereby the Beattie Company, in consideration of $10,000 thereby paid and $320,000 to be thereafter paid, agrees to sell to the East Jersey Water Company and to grant and convey certain property rights described.

C 11.

Bank book, Chemical National Bank.

C 12.

Bank book, Central National Bank.

C 13.

Ledger, marked No. 4, R. B. & Sons.

C 14.

Ledger, marked No. 5, R. B. & Sons.

EXHIBITS C 15 and 18

C 15.

Minute Book of Beattie Mfg. Co.

Statements Read at Stockholders' Meetings, 1899 to 1905 Inclusive.

C 18.

December 1st, 1899.

Assets.

Real Estate & Mchy	$450,000 00	
Stock Mdse	148,198 70	
Cash	158,506 07	
A/c Receivable	155,162 62	$911,867 39

Liabilities.

Capital	$300,000 00	
A/c Payable	98,582 38	
Dividend	30,000 00	$428,582 38
		$483,285 01

EXHIBITS C 19 and 20

C 19.

December 1st, 1900.

Assets.

Real Estate & Mchy	$450,000 00	
Stock Mdse	167,166 32	
Cash	141,758 87	
A/c Receivable	134,655 92	$893,581 11

Liabilities.

Capital	$300,000 00	
A/c Payable	83,156 63	
Dividend	30,000 00	$413,156 63
		$480,424 48

C 20.

December 1st, 1901.

Assets.

Real Estate & Mchy	$450,000 00	
Stock	165,541 32	
Cash	145,531 88	
A/c's Receivable	103,014 78	$864,087 98

Liabilities.

Capital	$300,000 00	
A/c's Payable	76,245 08	
Dividend	30,000 00	$406,245 08
		$457,842 90

EXHIBITS C 21 and 22

C 21.

December 1st, 1902.

Assets.

Real Estate & Mchy	$450,000 00		
Cash	172,833 59		
A/c Receivable	99,845 56		
Stock Mdse	185,377 25	$908,056 40	

Liabilities.

Capital	$300,000 00	
Dividend	30,000 00	
A/c's Payable	62,553 76	$392,553 76
		$515,502 64

C 22.

December 1st, 1903.

Assets.

Real Estate & Mchy	$450,000 00	
Stock Mdse	206,858 29	
Cash	216,190 03	
A/c's Receivable	77,283 67	$950,331 99

Liabilities.

Capital	$300,000 00	
Dividend	36,000 00	
A/c's Payable	31,988 83	$367,988 83
		$582,343 16

EXHIBITS C 17 and 16

C 17.

December 1st, 1904.

Assets.

Real Estate & Mchy	$450,000 00	
Stock Mdse	194,487 70	
Cash	265,353 97	
A/c Receivable	67,277 41	$977,119 08

Liabilities.

Capital	$300,000 00	
A/c Payable	37,064 98	
Dividend	30,000 00	$367,064 98
		$610,054 10

10

20

C 16.

December 1st, 1905.

Assets.

Real Estate & Mchy	$450,000 00
Mdse ($236,307 67)	237,353 63
Cash	211,445 28
A/c Receivable ($82,075 06)	80,630 59
	$979,429 50

30

Liabilities.

Capital	$300,000 00	
A/c Payable ($49,657 76)	51,257 76	
Dividend	~~300~~ 30,000 00	$381,257 76
		$598,171 74

40

EXHIBITS C 23, 24 and 25

C 23.

OLD STOCK BOOK.

C 24.

NEW STOCK BOOK.

C 25.

Little Falls, N. J., July 15th, 1905.

William H. Beattie, Esq.,

Secretary & Treasurer, Beattie Manufacturing Co.
Little Falls, N. J.

Dear Sir:

As you are aware, I am a stockholder in the Beattie Manufacturing Company. From such meagre information regarding the affairs of that Company as its present management have permitted the stockholders to obtain, I have reason to believe that the Company for some years, if not during the entire period of its existence, has failed to pay to the stockholders out of the net earnings from the business such dividends as those to which they have been legally entitled; that on the contrary the Company has systematically pursued a policy of accumulating in its treasury a large surplus, a sum far in excess of legitimate needs of the busi-

ness, and a sum which in fact has not been used in the business. I understand that the Company actually now has on hand a large sum of money which is not needed and is not in fact being used in the business, but is placed on deposit in various banks and trust companies, drawing an exceedingly low rate of interest.

I believe that this policy of the Company has been dictated by two members of the board of directors, constituting the majority of the board, who have expected and still do expect to personally benefit thereby at the expense of other stockholders in the Company, including myself, whose interest it is to obtain from year to year the largest sum in dividends which the earnings of the Company shall warrant.

The personal benefit to accrue to the members of the board of directors to which I refer is the fact that they have an interest in remainder in certain shares of stock of the Company, in which shares others have a life-interest, entitling the latter to the dividends during their lifetime. Whatever sums to which they may be entitled, in the shape of dividends, are withheld from those life-interests will consequently eventually be received by those having the revisionary interests in the stock. The two members of the board of directors referred to hold such a reversionary interest.

While this policy to which I refer may increase the value of my own shares, I prefer to receive my profits in the form of annual dividends to the extent to which I am legally entitled.

For the purpose of ascertaining the truth or falsity of the belief which I have indicated, as founded upon such information as I have heretofore been able to obtain, I desire to examine the books of the

Company covering the period in question, and to employ, at my own expense, an expert accountant as my assistant, to make such an examination. The information which I wish particularly to obtain by such examination is in regard to the annual gross earnings, annual expenses and net profits of the business and the anuual output during the period in question; the total assets and liabilities of the Company and the value and character of the assets of the Company, as shown by the books, particularly the amount of cash and value of the securities among the assets, representing a surplus shown by the last report of the Company to the stockholders; and also in regard to the amount of the working capital which has been required in the past to conduct the business.

I desire this information for the purpose of taking whatever legal proceedings I may be advised by my counsel, the information, when so obtained, shall warrant. The purpose of this letter is to request permission to make an examination of the books of the Company, containing the aforesaid information, with the assistance of Mr. George E. Peterson, an expert accountant, or some other competent person, at my own expense. I am advised by my counsel that I am legally entitled to make such examination for the purpose which I have above mentioned. If, therefore, permission to do so is not promptly forthcoming, I shall institute legal proceedings to enforce my rights in the premises.

Assuming that the Company will not object to the proposed examination, I shall instruct Mr. Peterson to call at the office of the Company, in Little Falls, where I understand the books now are, at his earliest convenience, unless I hear from the

Company that it will refuse access to its books and will hinder me in the proposed examination.

I make this request on my own behalf and also on behalf of Mrs. Mary Murray, Mrs. Katherine Dickson, Mrs. Josephine Gedney and Miss Agnes Beattie, who have a life interest in 1300 shares of stock in the Company, entitling them to the dividends on their stock as they shall be declared out of the net earnings of the Company.

I am

Yours truly,

ALEX. MURRAY.

C 26.

Member Society of Public Accountants, State of New Jersey.

George E. Peterson,
Certified Public Accountant,
United Bank Building,
Paterson, N. J.

July 18th, 1905.

Mr. W. H. Beattie,

Sec. & Treas. of the Beattie Mfg. Co.

The bearer Mr. Geo. E. Peterson is ready to go over your books as per my notice to you, kindly advise him what time will be convenient to you.

Very truly,

ALEX. MURRAY.

11:30 A. M. Tuesday, July 17th, 1905.

EXHIBIT C 27

C 27.

Fellow, Society of Certified Public Accountants State of New Jersey.
Fellow of American Association of Public Accountants.

GEORGE E. PETERSON,

Certified Public Accountant,

United Bank Building,

Paterson, N. J.

BEATTIE MANUFACTURING COMPANY.

LONG ISLAND REAL ESTATE.

DR.				6 Per Cent, Int. to Oct. 31. '06.
1899				
Apl. 30	To Robt. Beattie & Sons bal.			
	a/c due B. M. Co.	38,811 22		17,465 05
1901				
Aug. 31	To Cash R. H. Smith & Co., Taxes, &c.	4,567 80		1,416 62
Oct. 18	" " " "	5 5 19		154 08
Nov. 26	" " " "	7 44		2 16
1905				
Apl. 14	" " " "	3,000 00		277 50
		46,891 65		19,314 81
	Interest Dr.	19,314 81		
	Total Dr.			66,206 46

CR.				6 Per Cent. Int. to Oct. 31, '06.
1903				
Apl. 7	By Cash Albert Klink	1,094 50	234 22	
1904				
Mch. 14	" " R. H. Smith	2,370 00	373 27	

EXHIBIT C 27

1905						
Mch. 31	"	"	W. G. Johnson...	400 00	38 00	
Apl. 26	"	"	9 lots	5,000 00	454 00	
May 9	"	"	.....	154 51	13 71	
				9,019 01		
			Interest Cr.		1,113 20	
			Cash a/c		9,019 01	
						10,132 21
						56,074 25
			Amount of sale of balance of lots..			45,000 00
						11,074 25

C 28

BEATTIE MANUFACTURING COMPANY

TOTAL PROFITS—Profits from Rents, Interest, &c., Manufacturing Profits and Salaries of Officers

1882 to 1905

	Total	Rents, Int., &c.	Manufacturing	Salary			Dividends
				Robt. Beattie	Wm. Beattie	W. H. Beattie	
1882....	11,386 63	655 89	10,730 74	1,500 00	1,500 00	.....	6,000 00
1883....	38,873 43	1,845 07	37,028 36	3,000 00	3,000 00	.....	9,000 00
1884....	26,398 50	1,835 14	24,563 36	3,166 66	3,166 66	.....	12,000 00
1885....	46,240 05	1,743 71	44,496 34	4,416 66	4,416 66	.....	12,000 00
1886....	74,771 50	2,647 03	72,124 27	5,000 00	5,000 00	.....	15,000 00
1887....	93,631 93	6,946 29	86,685 64	5,500 00	5,500 00	838 30	30,000 00
1888....	62,164 60	4,152 99	58,011 61	10,000 00	10,000 00	936 00	30,000 00
1889....	68,341 44	3,128 33	65,213 11	10,000 00	10,000 00	1,453 00	30,000 00
1890....	72,581 33	5,008 90	67,572 43	10,000 00	10,000 00	1,500 00	37,500 00
1891....	55,131 84	4,951 87	50,179 97	10,000 00	10,000 00	2,000 00	30,000 00
1892....	61,424 83	4,364 11	57,060 72	10,000 00	10,000 00	2,500 00	37,500 00
1893....	30,788 20	5,593 75	25,194 45	10,000 00	10,000 00	2,500 00	30,000 00
1894....	17,755 09	2,478 31	15,276 78	8,500 00	8,500 00	2,500 00	21,000 00
1895....	21,667 03	3,567 49	18,099 54	8,500 00	8,500 00	2,500 00	21,000 00
1896....	31,195 99	7,607 63	23,588 36	8,500 00	8,500 00	2,500 00	30,000 00
1897....	32,540 56	6,663 60	25,876 96	8,500 00	8,500 00	3,500 00	30,000 00
1898....	20,760 89	5,616 27	15,144 62	8,500 00	8,500 00	3,500 00	36,000 00
1899....	35,594 29	18,637 57	16,956 72	8,500 00	2,833 33	6,000 00	30,000 00
1900 ...	36,040 74	17,634 06	18,406 68	8,500 00	.....	6,000 00	30,000 00
1901....	46,300 00	18,247 51	28,052 49	8,500 00	.....	8,500 00	30,000 00
1902....	59,943 99	17,567 04	42,376 95	8,500 00	.....	8,500 00	30,000 00
1903....	78,045 99	20,615 91	57,430 08	8,500 00	.....	8,500 00	36,000 00
1904....	51,452 39	18,273 47	33,178 92	8,500 00	.....	8,500 00	30,000 00
1905....	33,073 31	20,317 75	12,755 56	8,500 00	.....	8,500 00	30,000 00
	1,106,104 35	209,099 69	906,004 66	184,583 32	127,916 65	80,727 30	633,000 00

EXHIBIT C 29

C 29

Fellow, Society of Certified Public Accountants State of New Jersey,
Fellow of American Association of Public Accountants

N. Y. & N. J. Telephone 136 Rooms 301-303

GEORGE E. PETERSON

CERTIFIED PUBLIC ACCOUNTANT

UNITED BANK BUILDING

Paterson, N. J.

BEATTIE MANUFACTURING COMPANY

Statement Showing per Cent. of Dividend Paid on Capital Stock and Surplus

	Rate on Surplus and Capital Stock	Capital and Surplus	Dividend Paid	Rate on Cap. Stk.
1882 Dec. 31.....	2 94	305,386 63	9,000	3 00
1883 "	3 58	335,260 06	12,000	4 00
1884 Nov. 30.....	3 43	349,658 56	12,000	4 00
1885 "	3 91	383,398 61	15,000	5 00
1886 "	6 78	443,669 91	30,000	10 00
1887 "	5 91	507,301 84	30,000	10 00
1888 "	5 96	539,466 44	30,000	10 00
1889 "	6 49	577,807 88	37,500	12 50
1890 "	4 89	612,889 21	30,000	10 00
1891 "	5 88	638,021 05	37,500	12 50
1892 "	4 50	666,586 04	30,000	10 00
1893 "	4 51	664,889 75	30,000	10 00
1894 "	3 23	650,489 17	21,000	7 00
1895 "	3 11	675,156 20	21,000	7 00
1896 "	4 34	691,352 19	30,000	10 00
1897 "	4 29	698,892 75	30,000	10 00
1898 "	5 18	694,653 64	36,000	12 00
1899 "	4 29	699,647 93	30,000	10 00
1900 "	4 28	700,288 67	30,000	10 00
1901 "	4 20	715,288 67	30,000	10 00
1902 "	4 86	740,232 66	36,000	12 00
1903 "	3 83	782,278 65	30,000	10 00
1904 "	2 66	1,125,031 04	30,000	10 00
1905 "	2 66	1,128,104 35	30,000	10 00
Average	4 28	15,325,751 90	657,000	

COMPLAINANTS' EXHIBITS.

HEARING IN 1911.

C 1

Offered Feb. 16, 1911

BEATTIE MANUFACTURING COMPANY

BALANCE SHEETS

DECEMBER 1, 1905, to NOVEMBER 30, 1909

ASSETS

	Nov. 30 1906	Nov. 30 1907	Nov. 30 1908	Nov. 30 1909
Real Estate	188,080 98	178,067 93	167,634 76	156,014 00
Machinery	145,231 37	138,803 52	137,201 59	137,185 54
Stock of Merchandise	291,626 55	282,484 78	280,654 72	276,732 33
Cash	37,683 97	38,095 49	139,297 79	212,104 58
Colonial Trust Company	56,026 55	40,394 98	15,675 55	975 19
Brown Brothers	34,340 46	62,408 28	44,856 11	61,351 19
Accounts and Bills Receivable	91,268 70	121,554 19	136,561 81	156,776 48
New Buildings, Improvements, &c	18,093 12	39,145 60	40,125 10	79,944 70
East Jersey Water Co., Mortgage	315,000 00	315,000 00	315,000 00	315,000 00
Long Island Real Estate Mortgage	35,000 00	18,445 00	14,210 00	2,660 00
Little Falls Carpet and Rug Mills Investment	700 00	700 00	700 00	700 00
Total	1,213,051 70	1,235,099 77	1,291,917 43	1,399,444 01

LIABILITIES

Accounts Payable	46,130 60	30,526 48	37,646 21	57,858 67
Capital Stock	300,000 00	300,000 00	300,000 00	300,000 00
Reserve Fund	260,269 38	299,264 56	341,701 76	396,531 38
Real Estate Reserve	204,653 64	204,653 64	204,653 64	204,653 64
Doubtful Debts Reserve	16,998 08	15,655 09	15,415 82	25,400 32
Dividend	30,000 00	30,000 00	37,500 00	60,000 00
Water Rights Account	355,000 00	355,000 00	355,000 00	355,000 00
Total	1,213,051 70	1,235,099 77	1,291,917 43	1,399,444 01

EXHIBIT C 1

BEATTIE MANUFACTURING COMPANY.

Statement of Profits.

Profit for the year

1905–1906		35,473 86
1906–1907		60,882 40
1907–1908		78,586 72
1908–1909		114,829 62
		289,772 60

Depreciations, &c., charged to Profit and Loss.

Real Estate	46,467 65	
Machinery	37,360 56	
Stock	9,019 38	
New Buildings 1906–7–8 & 9	7,200 41	
Fire Department	497 87	
Bad and Doubtful Debts	10,000 00	
		110,545 87
		400,318 47

Profit for the four years as above without charging depreciation.

EXHIBIT C 1

BEATTIE MANUFACTURING COMPANY.

Monthly Cash Balances

November 30, 1905, to November 30, 1909.

November 30, 1905	211,445 28
December 31	162,975 36
January 31, 1906	148,381 20
February 28	146,071 95
March 31	228,341 03
April 30	215,482 34
May 31	175,666 14
June 30	159,259 75
July 31	138,886 75
August 31	93,217 98
September 30	170,339 76
October 31	135,018 35
November 30	128,050 98
December 31	98,266 75
January 31, 1907	76,321 95
February 28	64,285 91
March 31	147,934 03
April 30	149,721 65
May 31	144,004 19
June 30	116,175 37
July 31	94,903 36
August 31	72,104 64
September 30	191,339 13
October 31	165,864 94
November 30	140,898 75
December 31	129,521 28
January 31, 1908	107,800 70
February 28	61,478 13
March 31	120,659 00
April 30	131,632 57
May 31	129,261 85
June 30	119,106 44
July 31	98,274 79
August 31	90,333 38

EXHIBIT C 1

September 30	193,218 93
October 31	198,586 33
November 30	199,829 45
December 31	179,816 68
January 31, 1909	177,971 78
February 28	154,492 57
March 31	273,172 99
April 30	293,084 33
May 31	268,535 10
June 30	250,590 19
July 31	215,532 97
August 31	200,493 62
September 30	307,691 05
October 31	282,493 99
November 30	274,430 96

EXHIBIT C 2

C 2.

Offered Feb. 16, 1911.

BEATTIE MANUFACTURING COMPANY.

Balance Sheet

November 30, 1910.

Assets.

Real Estate	193,444 81
Machinery	172,251 59
Stock of Merchandise	~~356,333 32~~ ~~147,324 94~~ 138,705 97
Cash	~~356,286 34~~ 997 69
Colonial Trust	~~138,705 97~~ 63,222 86
Brown Bros	~~201 69~~ 147,324 94
Accounts and Bills Receivable	~~63,222 86~~
New Buildings, Improvements, &c	6,372 51
East Jersey Water Co., Mortgage	315,000 00
Little Falls Carpet & Rug Mills, Investment	700 00
Total	1,394,445 69

Liabilities.

Accounts Payable	39,701 39
Capital Stock	300,000 00
Reserve Fund	410,684 37
Real Estate Reserve	204,653 64
Doubtful Debts Reserve	24,406 29
Dividend	60,000 00
Water Rights Account	355,000 00
Total	1,394,445 69

EXHIBIT C 2

BEATTIE MANUFACTURING COMPANY

Inventories for the Years 1906, 1907, 1908, 1909 and 1910

	1906	1907	1908	1909	1910
Finished Goods.....	129,777 88	133,158 36	185,909 27	129,482 88	180,549 46
Goods in Process....	68,370 65	107,305 92	47,600 81	103,565 73	98,437 77
Raw Material.....	91,768 81	40,305 64	44,465 60	41,679 40	74,441 25
Fuel and Light.....	771 15	690 00	1,350 00	450 00	1,056 00
Shipping Expenses..	453 01	896 08	1,259 49	1,367 76	1,357 90
Factory Expenses ..	485 05	128 78	69 55	186 56	492 94
	291,626 55	282,484 78	280,654 72	276,732 33	356,335 32

EXHIBIT C 2

BEATTIE MANUFACTURING COMPANY.

MANUFACTURING ACCOUNT

December 1, 1909, to November 30, 1910.

Stock Account, Material, &c	306,468 19
Manufacturing Labor	170,605 15
Commissions on Sales	691 09
Discount Allowed	17,757 28
Fuel and Light	8,150 84
Freight	3,762 89
Designs	6,285 39
Selling Expenses	20,485 30
Royalties	705 32
Total	534,911 45
Profit and Loss	163,619 72
Sales	698,531 17

EXHIBIT C 2

BEATTIE MANUFACTURING COMPANY.

PROFIT AND LOSS ACCOUNT

December 1, 1909, to November 30, 1910.

DEBIT.

Expense	15,052 98
Salaries	21,500 03
Insurance	509 69
Interest	205 20
Stable Account	872 70
Taxes	5,116 70
Construction and Repairs	28,801 31
Depreciation Machinery	19,139 06
Depreciation Real Estate	21,323 47
Total	112,521 14
Profit	74,073 41
Total	186,594 55

CREDIT.

Merchandise Account	163,619 72
Rent	4,092 92
Interest	18,881 91
	186,594 55

EXHIBIT C 2

BEATTIE MANUFACTURING COMPANY.

Receipts for Interest and Rents

December 1, 1909, to November 30, 1910.

East Jersey Water Co	12,682	31
Brown Bros	1,871	67
Paterson National Bank	1,723	49
Bank of Metropolis	884	14
Colonial Trust	22	50
Sundries	1,697	80
Rents	4,092	92
	22,974	83
Interest	18,881	91
Rents	4,092	92
	22,974	84

EXHIBIT C 2, 3, 4 and 5

BEATTIE MANUFACTURING COMPANY

MONTHLY CASH BALANCES

	Brown Bros.	Colonial Trust	Cash	Total
December 31, 1909	61,351 19	975 19	160,689 09	223,015 47
January 31, 1910	61,351 19	975 19	133,123 26	195,449 64
February 28, "	61,351 19	975 19	94,593 64	156,920 02
March 31, "	61,351 19	975 19	207,832 65	270,159 03
April 30, "	61,351 19	975 19	211,615 02	273,941 40
May 31, "	61,351 19	975 19	199,920 82	262,247 20
June 30, "	61,351 19	975 19	162,235 67	224,562 05
July 31, "	61,351 19	975 19	154,593 58	216,919 96
August 31, "	61,351 19	975 19	80,052 11	142,378 49
Sept. 30, "	61,351 19	975 19	201,088 29	263,414 67
October 31 "	61,351 19	975 19	183,315 34	245,641 72
Nov. 30 "	63,222 86	997 69	138,795 97	203,016 52

C 3. C 4. C 5.

(Offered Feb. 16, 1911.)

Mislaid, and omitted by consent.

EXHIBIT C 6

C 6

BEATTIE MANUFACTURING COMPANY

(Offered Feb. 16, 1911)

RECEIPTS

	1905–1906	1906–1907	1907–1908	1908–1909	1909–1910
December ...	19,918	25,373	21,928	41,592	33,736
January	34,105	44,965	39,858	35,830	42,309
February	35,056	36,536	55,071	23,361	28,309
March	137,230	127,367	105,793	171,610	169,476
April	33,611	50,859	46,726	55,700	67,281
May	32,066	32,319	43,326	35,592	51,987
June	18,809	20,187	36,966	41,539	27,921
July	31,543	42,554	27,933	43,916	39,263
August	55,707	51,615	29,739	41,164	24,739
September ..	106,802	162,680	137,386	169,532	146,777
October.	40,152	43,769	45,194	54,910	48,362
November ...	36,102	49,942	37,255	32,270	40,978

EXHIBIT C 7

C 7.

Offered Feb. 16, 1911.

BEATTIE MANUFACTURING COMPANY.

Gross Assets		1,394,445 69
Liabilities		339,701 39
Surplus		1,054,744 30

DISPOSITION OF PROFITS.

Increase in Real Estate, Machinery and New Buildings	161,100 85	
Increase in Cash	137,182 59	
Increase in Merchandise	263,404 09	
Increase in Bills Receivable	135,538 63	
	697,226 16	
Water Rights Mortgage	315,090 00	
Little Falls Carpet and Rug Mills	700 00	
Decrease in Bills Payable	41,818 14	
		1,054,744 30

DEFENDANTS' EXHIBITS.

HEARING IN 1906.

EXHIBIT D 1

D 1

		Total Sales	Sales of Carpets, &c.	Net Earnings		Cash	Mdse.	A/c Rec.	A/c Pay.	Dividend	Balance
1882	6 mos.	142,765 61	.....	.....		204 95	94,837 24	46,222 39	56,035 77	6,000	79,228 81
1883	. .....	311,902 56	192,620 13	38,873 43		591 45	107,462 15	67,912 99	72,387 98	9,000	94,578 61
1884	t 11/30.....	275,804 87	165,847 74	26,398 50		.....	106,870 06	87,532 11	60,719 59	12,000	121,682 58
1885	. .....	338 084 49	178,491 70	46,240 05		2,199 01	117,419 35	132,207 87	88,618 83	12,000	151,207 40
1886	. .....	444,695 22	231,560 40	74,771 30		.....	140,575 71	125,449 21	78,425 73	15,000	172,599 19
1887	. .....	551,244 59	254,792 43	93,631 93		6 80	97,561 31	221,604 15	62,377 15	30,000	226,795 11
1888	. .....	428,847 47	193,763 38	62,164 60		548 47	120,751 20	228,179 11	65,315 22	30,000	254,163 57
1889	.....	472,461 30	226,525 02	68,341 44		60,978 00	117,891 31	230,784 20	87,715 56	30,000	291,937 95
1890	.....	445 857 12	234,495 40	72,581 33		56,808 45	161,130 70	260,910 25	116,257 13	37,500	325,092 27
1891	.....	471,135 47	252,207 49	55,131 84		57,181 35	170,504 43	288,219 38	139,420 75	30,000	346,484 41
1892	.....	461,364 28	236,017 79	61,424 83		58,401 17	174,405 49	311,917 39	134,684 83	37,500	372,539 22
1893	.....	359,347 63	203,244 40	30,788 20		69 87	155,044 16	339,757 10	106,333 59	30,000	358,537 54
1894	.....	307,076 06	186,907 78	17,755 09		340 85	111,187 88	349,019 45	91,384 19	30,000	339,163 99
1895	.....	301,842 31	259,726 60	21,667 03		50,119 58	100,499 00	299,870 35	84,666 34	21,000	344,822 59
1896	.....	287,434 52	231,274 18	31,195 99		174,395 55	114,780 90	173,576 85	85,794 18	21,000	355,959 12
1897	.....	278,405 98	257,768 71	32,540 56	East Jersey	157,978 46	162,439 19	146,191 05	81,923 86	30,000	354,684 84
1898	.....	249,991 19	226,585 08	20,760 89	Interest	174,124 54	152,332 08	137,825 37	86,111 48	30,000	348,170 51
1899	.....	343,556 81	310,271 41	18,000 00	.....	158,506 07	148,198 70	155,162 62	98,582 38	36,000	327,285 01
1900	.....	404,203 39	379,470 23	10,200 00	12,600	141,758 87	167,166 32	134,655 92	83,156 63	30,000	330,424 48
1901	....	499,893 31	478,166 65	22,400 00	12,600	145,531 88	165,541 32	103,014 78	76,245 08	30,000	307,842 90
1902	.....	561,261 61	530,297 16	42,343 99	12,600	172,833 59	185,377 25	99,845 56	62,553 76	30,000	365,502 64
1903	.....	523,708 20	513,353 29	60,445 99	12,600	216,190 03	206,856 29	77,283 67	31,988 83	36,000	432,343 16
1904	.....	356,676 17	356,676 17	42,318 28	12,600	265,353 97	194,487 70	67,277 41	37,064 98	30,000	460,054 10
1905	.....	482,977 53	482,977 53	22,134 43	12,600	211,445 28	237,353 63	82,085 06	51,257 76	30,000	449,626 21

D 2

IN CHANCERY OF NEW JERSEY.

BETWEEN

ALEXANDER MURRAY,
Complainant,

and

THE BEATTIE MANUFACTURING COMPANY,
Defendant.

On Bill, etc.
Report of Accountant.

As requested, I have investigated the books of account of The Beattie Manufacturing Company for the purpose of ascertaining the facts concerning certain matters therein, and I desire now to report the results. I have prepared certain statements, which are appended hereto, that will aid in elucidating the subjects touched upon. They are.

A statement of Net Earnings from July 1, 1882 to Nov. 30, 1905.

A statement of Reserve Fund from Dec. 31, 1882 to Nov. 30, 1905.

" " " Real Estate Improvement Fund from Dec. 31, 1883 to Nov. 30, 1905.

" " " "Doubtful Accounts" (A reserve fund against bad debts) from Nov. 30, 1899 to Nov. 30, 1905.

A statement of Dividends declared and paid.

" " " Expenditures from July, 1, 1882 to Nov. 30, 1905.

" " " Merchandise purchased from Dec. 1895 to Dec. 1905.

EXHIBIT D 2

A statement of Real Estate Account from July 1, 1882 to Nov. 30, 1905.

" " " Long Island Real Estate from August 21, 1901 to Nov. 30, 1905.

" " " Account with Brown Brothers & Co., Bankers, N. Y.

" " " Account with Union Trust Co., N. Y.

" " " Account with Colonial Trust Co.

" " " " " " Paterson Deposit & Trust Co.

" " " Accounts with East Jersey Water Company.

" " " Salaries paid to Robert Beattie, President, William H. Beattie, Manager and Treasurer and Robert Beattie, Jr

Balance Sheet for Dec. 1, 1895.

Profit and loss account from July 1, 1882 to Nov 30, 1905.

A statement of Assets and Liabilities Nov. 30, 1905.

The Net Earnings reach a total of $1,059,096.33; $267,223.47 of which have been credited to Reserve Fund and $210,551.88 to Real Estate Improvement Account. Mr. Robert Beattie said that he regarded these two funds as identical in character. A reference to statement No. 3 will show that none of the net earnings credited to Real Estate Improvement account has been used for real estate improvements. $21,484 02 was charged to it for dividends and, in addition to direct credits from Profit & Loss, it was

also credited with $15,585.78 from Reserve Fund. In addition to the amount taken from Real Estate Improvement Account for dividend, there was also taken $5,000 from Reserve Fund and $25,200 from East Jersey Water Co.'s interest account for the same purpose. This left a balance on Dec. 1, 1905, of $251,295.52 in the Reserve Fund, and in the

Real Estate Improvement Fund . . .	204,653 64
To which add the Reserve for Bad Debts	17,155.19
Making the sum of	473,104.35
And if the surplus in Water Rights Reserve Account be added	40,000.00
The total reserve will amount to.	$513,104.35

The $40,000.00 item, however, does not accrue from manufacturing business.

In December, 1900, minutes, page 52, and about the close of each year thereafter, the following was added to the resolution declaring a dividend: "and that the residue of the accumulated profits of the Company be reserved as a working capital," and the following was adopted by acclamation:

Resolved, That the by-laws be amended by adding the following Art. 17: "The Directors may determine, from time to time, the amount to be reserved by the Corporation as a working capital."

The dividend statement shows that dividends have been declared by the Company during its existence amounting to $633,000.00, of which $30,000.00 remained unpaid at the close of the statement. $15,000.00 of this has already been paid,

the remaining $15,000.00 being payable in July next.

The statement of expenditures from July 1, 1882 to Nov. 30, 1905 is presented as requested, and needs no explanation.

The same may be said of the statement of Merchandise bought from December, 1895 to December, 1905.

The new machinery purchased during the last year cost $30,373.31. This is reported in answer to a request for the information.

The Real Estate statement is a transcript of the account as it has been made in the books.

The Long Island Real Estate Account shows a balance due on the account Dec. 1, 1905, of $33,438.48. This account will shortly be closed as the property has been sold. $7,500 has been paid since the books were closed Nov. 30 and the company is yet to receive a mortgage for $35,000. A full statement cannot now be made but it is expected that when finally closed there will be enough to pay what commissions will be due and to permit re-charging the account with the $4,389.16 which was written off for depreciation Nov. 30, 1902.

The statements of account with Brown Brothers & Co., Union Trust Co., Colonial Trust Co., and Paterson Deposit and Trust Co. require no explanation. They are the only bankers accounts other than the Paterson National Bank of Paterson and the Bank of the Metropolis, N. Y. with which The Beattie Manufacturing Company has had dealings. The Union Trust Company and the Paterson Deposit and Trust Company's accounts have been closed as will be seen.

The statement of salaries paid to Robert Beattie, W. H. Beattie and Robert Beattie, Jr., is in response to the request made for same.

EXHIBIT D 2

There is among the statements, one of the various accounts relating to the East Jersey Water Company.

The first of those statements of account contains credit of $25,000 the amount received by the Beattie Manufacturing Company for Pequannock Water. The other items of that account, three credits of $5,000 each, being on account of the sale of Water Rights for $330,000 paid for by these $15,000 and the bond and the mortgage for $315,000. The credit to Water Right Reserve Account of $355,000 is based on the $40,000 of the first account and the $315,000 of the mortgage account.

The next account is that of interest received on the mortgage. The interest has been fully paid up.

There is but one other small account that of the purchase of gravel by the East Jersey Water Co.

It is agreed (in the agreement of February 15, 1898) that the East Jersey Water Company shall on or before the 23rd of March, 1915, purchase what reserve power is retained by The Beattie Manufacturing Company for the sum of $200,000.

Office expense consists of $133.70 paid every two weeks for wages, and other expenses, such as printing, stationery, telephone, telegraph, stamps, cleaning, &c., amount to not more than $125.00 per month.

The Merchandise inventories for the years stated were as follows, viz:

Fiscal year	ending	Nov.	30,	1900,	...	$167,166.32
"	"	"	"	1901,	....	165,541.32
"	"	"	"	1902,	....	185,377.25
"	"	"	"	1903,	...	206,858.29
"	"	"	"	1904,	....	194,487,70
"	"	"	"	1905,	....	237,353.63

EXHIBIT D 2

The pay roll for the year 1905 amounted to $111,829.52.

The statement of assets and liabilities shows that the $1,209,362.11 of assets, less $51,257.76 belong to the stockholders as all other liabilities are liabilities to stockholders, and after being paid for their capital stock and dividend, there would still be left for them $858,104.35. This value is set upon these assets, largely, on their relation to a going business.

Respectfully submitted,

ISAAC A. LEWIS,

C. P. A.

April 7, 1906.

EXHIBIT D 2

Net Earnings from July 1, 1882, to November 30, 1905, and Application of same, According to the Books

Date	Net Earnings	DISTRIBUTION OF NET EARNINGS Reserve Fund	Real Estate Improvement	Dividend	Additional for Dividend	Rate
July 1 to Dec. 31, 1882....	11,386 33	5,386 63	.....	6,000 00	.....	2%
Jan. 1 to June 30, 1883....	.....	.....	.....	.....	.....	....
July 1 to Dec. 31, 1883....	38,873 43	7,268 96	22,604 47	9,000 00	.....	3 "
Jan. 1 to Nov. 30, 1884....	26,398 50	14,398 50	.....	12,000 00	.....	4 "
" " 1885....	46,240 05	15,000 00	19,240 05	12,000 00	....	4 "
" " 1886....	74,771 30	31,138 64	28,632 65	15,000 00	.....	5 "
" " 1887....	93,631 93	65,309 17	2,322 76	30,000 00	.....	10 "
" " 1888....	62,164 60	31,083 87	1,080 73	30,000 00	.....	10 "
" " 1889....	68,341 44	.....	38,341 44	30,000 00	.....	10 "
" " 1890....	72,581 33	.....	35,081 33	37,500 00	....	12½ "
" " 1891....	55,131 84	.....	25,131 84	30,000 00	.....	10 "
" " 1892....	61,424 83	.....	23,924 83	37,500 00	....	12½ "
" " 1893....	30,788 20	.....	788 20	30,000 00	.....	10 "
" " 1894....	17,755 09	.....	.....	17,755 09	R. E. Impt. 12,244 91	10 "
" " 1895....	21,667 03	.....	667 03	21,000 00	.....	7 "
" " 1896....	31,195 99	.....	10,195 99	21,000 00	.....	7 "
" " 1897....	32,540 56	.....	2,540 56	30,000 00	.....	10 "
" " 1898....	20,760 89	.....	.....	20,760 89	R. E. Impt. 9,239 11	10 "
" " 1899....	18,000 00	.....	.....	18,000 00	E. J. W. Co. 12,000 00	10 "
	.....	.....	.....	.....	" 6,000 00	2 "
" " 1900....	22,800 00	.....	.....	22,800 00	E. J. W. Co. 7,200 00	10 "
" " 1901....	35,000 00	10,000 00	.....	25,000 00	Reserve Fd. 5,000 00	10 "
" " 1902....	54,943 99	24,943 99	.....	30,000 00	.....	10 "
" " 1903....	73,045 99	37,045 99	.....	36,000 00	.....	12 "
" " 1904....	54,918 28	24,918 28	.....	30,000 00	.....	10 "
" " 1905....	34,734 43	4,734 43	.....	30,000 00	.....	10 "
	1,059,096 33	267,228 47	210,551 88	581,315 98	51,684 02	
				51,684 02		
				633,000 00	As per Statement of Dividends declared and paid.	

RESERVE FUND ACCOUNT.

Ledger A. 380.

1883			1882		
Dec. 31	To Balance.....	12,655 59	Dec. 31	By Profit & Loss 227.....	5,386 63
			1883		
			Dec. 31	By Profit & Loss 305.....	7,268 96
		12,655 59			12,655 59
1884			1884		
Nov. 30	To Balance.....	27,054 09	Jan. 1	By Balance.....	12,655 59
			Nov. 30	By Profit & Loss 365.....	14,398 50
		27,054 09			27,054 09
1895					
Nov. 30	To Balance.....	42,054 09	Dec. 1	By Balance.....	27,054 09
			1885		
			Nov. 30	By Profit & Loss 431.....	15,000 00
		42,054 09			42,054 09
1886					
Nov. 30	To Balance.....	73,192 74	Dec. 1	By Balance.....	42,054 09
			1886		
			Nov. 30	By Profit & Loss 37.....	31,138 65
		73,192 74			73,192 74

1887						
Nov. 30	To Balance	134,501 91		Dec. 1	By Balance	73,192 74
				1887		
				Nov. 30	By Profit & Loss 111	61,309 17
		134,501 91				134,501 91
1888				1887		
Nov. 30	To Balance	165,585 78		Dec. 1	By Balance	134,501 91
				1888		
				Nov. 30	By Profit and Loss 184	31,083 87
		165,585 78				165,585 78
1889						
Nov. 30	To Real Est., Improvement 247	15,585 72		Dec. 1	By Balance	165,585 78
	To Balance	150,000 00				
		165,585 78				165,585 78
1901				1896		
Dec. 1	Transfd. to Private Lr 164	160,000 00		Dec. 1	By Amt. from Lr. B. 369	150,000 00
				1901		
				Nov. 30	By Profit and Loss	10,000 00
		160,000 00				160,000 00

EXHIBIT D 2

1902			1901		
Nov. 29	To Dividend Ac't.....323...	5,000 00	Dec. 1	By Balance.....	160,000 00
	To Balance.....179,943 99		1902		
		184,943 99	Nov. 30	By Profit and Loss.....	24,943 99
1903					184,943 99
Nov. 30	To Balance.....216,989 98		1902		
			Dec. 1	By Balance.....	179,943 99
			1903		
			Nov. 30	By Profit & Loss 355.	37,045 99
		216,989 98			216,989 98
1905			1903		
Nov. 30	To Interest J 32...	1,791 48	Dec. 1	By Balance.....	216,989 98
"	To Interest J 33...	454 00	1904		
			Dec. 1	" P. & L. (Int. 03) 381	6,300 00
			Dec. 1	" P. & L. (1904 ac't 381.....	24,918 28
			1905		
			Nov. 30	" B. H. T. (04 ac't J. 27.....	298 31
			30	" Rent (04 ac't J. 29	300 00
			30	" P. & L. (1905) J. 37.....	4,734 43
		253,541 00			253,541 00
			1905		
			Dec. 1	By Balance.....	251,295 52

REAL ESTATE IMPROVEMENT AC'T.

Ledger A. 173.

1883			
Dec. 31	By Profit & Loss 305....	22,604	47
1885			
Nov. 30	By Profit & Loss 431	19,240	05
1886			
Nov. 30	By Profit & Loss 37.....	28,632	65
1887			
Nov. 30	By Profit & Loss 111	2,322	76
1888			
Nov. 30	By Profit & Loss 184	1,080	73
1889			
Nov. 30	By Profit & Loss 247	38,341	44
"	By Reserve Fund "	15,585	78
1890			
Nov. 30	By Profit & Loss 301	35,081	33
1891			
Nov. 30	By Profit & Loss 352	25,131	84
1892			
Nov. 30	By Profit & Loss 407	23,924	83

1894				1893		
Nov. 30	To Dividend Act. 2.....	12,244 91		Nov. 30	By Profit & Loss 458	788 20
				1895		
				Nov. 30	By Profit & Loss 46	667 03
1898				1896		
Nov. 30	To Dividend Act. 197....	9,239 11		Nov. 30	By Profit & Loss 94	10,195 99
				1897		
	To Balance.....	204,653 64		Nov. 30	By Profit & Loss 147	2,540 56
		226,137 66				226,137 66
					By Balance.....	204,653 64

EXHIBIT D 2

DOUBTFUL DEBTS ACCOUNT.

Dec. 1	Transfd. to Private Lr. 63.....	10,635 03	1899 Nov. 30	By P. & L.	236.....	4,994 39
			1900 Nov. 30	"	" 267.....	640 74
			1901 Nov. 30	"	" 294.....	5,000 00
		10,635 03				10,635 03
1895 Nov. 28	To Sundries.....	3,465 89	1902 Dec. 1	By Bal. from Lr. C,	352.....	10,635 03
	35 Items for sundry differences on settlements, Freight deductions and failures		1902 Nov. 30	By P. & L. act	325.....	5,000 00
			1903 Nov. 3	"	" J. 355.....	5,000 00
Nov. 30	To Balance.....	17,169 14				
		20,635 03				20,635 03

1905				1904			
Nov. 30	To Ed. Hunter & Co. J. 27 ..... N. G.		16 00	Dec. 1	By Balance.....	17,169	14
				1905			
				May 19	By Cash (F. W. Stockbridge) 224.....		2 05
			17,155 19				
			17,171 19			17,171	19
				Dec. 1	By Balance	17,155	19

EXHIBIT D 2

DIVIDENDS DECLARED AND PAID

1882						1882				
Dec. 31	To Sundries		227	6,000		Dec. 31	By P. & L.	2%	227	6,000 00
1884						1883				
Apl. 1	"	"	306	9,000		Dec. 31	" "	3%	305	9,000 00
1885						1884				
Apl. 1	"	"	365	12,000		Nov. 30	" "	4%	365	12,000 00
1886						1885				
Apl. 1	"	"	432	12,000		Nov. 30	" "	4%	431	12,000 00
1887						1886				
Apl. 1	"	"	37	15,000		Nov. 30	" "	5%	37	15,000 00
1888						1887				
Apl. 1	"	"	130	15,000		Nov. 30	" "	10%	111	30,000 00
Oct. 1	"	"	168	15,000						
1889						1888				
Jan. 1	"	"	184	30,000		Dec. 1	" "	10%	184	30,000 00
1890						1889				
Jan. 1	"	"	248	30,000		Dec. 1	" "	10%	247	30,000 00
1891						1890				
Jan. 1	"	"	300	15,000		Dec. 1	" "			
July 1	"	"	327	15,000		"	" "	12½%	300	37,500 00
Oct. 1	"	"	338	7,500		"	" "			
1892						1891				
Jan. 4	"	"	353	15,000		Dec. 1	" "			
July 1	"	"	384	15,000			" "	10%	352	30,000 00
1893						1892				
Jan. 2	"	"	412	15,000		Dec. 1	" "			
July 1	"	"	437	15,000			" "	12½%	407	37,500 00
Oct. 2	"	"	446	7,500			" "			

EXHIBIT D 2

1894							
Jan. 1	"	"	462	15,000			
July 1	"	"	483	15,000			
1895							
Jan. 1	"	"	6	15,000			
July 1	"	"	26	15,000			
1896							
Jan. 1	"	"	50	10,500			
July 1	"	"	74	10,500			
1897							
Jan. 2	"	"	98	10,500			
July 1	"	"	124	10,500			
1898							
Jan. 1	"	"	152	15,000			
July 1	"	"	174	15,000			
1899							
Jan. 3	"	"	201	15,000			
July 1	"	"	225	15,000			
July 1	"	"	"	6,000			
1900							
Jan. 1	"	"	237	15,000			
July 1	"	"	254	15,000			
1901							
Jan. 1	"	"	271	15,000			
July 1	"	"	282	15,000			
1902							
Jan. 2	"	"	299	15,000			
July 1	"	"	312	15,000			

1893						
Dec. 1	"	"	10%	458	30,000	00
1894						
Dec. 1	"	R. E. I.	10%		12,244	91
	"	P. & L.			17,755	09
1895						
Dec. 1	"	"	7%	46	10,500	00
"	"	"		"	10,500	00
1896						
Dec. 1	"	"	7%	94	10,500	00
"	"	"		"	10,500	00
1897						
Nov. 30	"	"	10%	147	30,000	00
1898						
Nov. 30	"	R. E. I.		197	9,239	11
"	"	P. & L.	10%	"	20,760	89
1899						
June 15	"	E. J. W. Co.	2%	225	6,000	00
Nov. 30	"	P. & L.		236	18,000	00
1900						
July 1	"	E. J. W. Co.	10%	254	12,000	00
Nov. 30	"	P. & L.		267	22,800	00
Dec. 31	"	E. J. W. Co.	10%	271	7,200	00
1901						
Nov. 30	"	P. & L.		294	25,000	00
Dec. 1	"	Reserve Fd.	10%	323	5,000	00

1903					1902				
Jan. 2	"	"	326	15,000	Nov. 30	"	P. & L.	10%	325	30,000 00
July 1	"	"	341	15,000	1903					
1904					Nov. 30	"	"	12%	355	36,000 00
Jan. 1	"	"	358	18,000	1904					
1904					Nov. 30	"	"	10%	381	30,000 00
July 1	"	"	368	18,000						
1905										
Jan. 1	"	"	384	15,000						
June 30	"	"	8	15,000	Nov. 30	"	"	10%	37	30,000 00
				603,000						
Balance, payable Jan. 2 and July 2, '06				30,000						
				$633,000						$633,000 00

EXHIBIT D 2

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EXHIBIT D 2

EXPENDITURES.

July, 1882, to December, 1905.

1882				
		Ledger A.		
July	31	89	11,187 08	
Aug.	31	"	8,302 29	
Sept.	30	"	13,175 81	
Oct.	31	"	13,883 81	
Nov.	13	"	12,394 74	
"	20	"	827 17	
"	27	"	712 28	
"	30	"	39 89	
Dec.	9	"	11,328 89	
"	26	"	1,924 37	
"	30	"	1,999 51	
				75,775 84
1883				
		Ledger A.		
Jan.	31	88	9,688 81	
Feb.	28	"	12,577 40	
Mch.	31	"	12,526 28	
Apl.	30	"	14,035 82	
May	31	"	10,901 46	
June	30	"	6,678 55	
				66,408 32
		Ledger A.		
July	31	88	9,318 90	
Aug.	31	"	9,609 20	
Sep.	30	"	13,405 66	
Oct.	31	"	15,073 96	
Nov.	30	"	12,491 56	
Dec.	31	"	7,832 01	
				67,731 29
1884				
		Ledger A.		
Jan.	31	88	9,787 64	
Feb.	29	"	6,842 11	
Mch.	31	"	6,886 57	

EXHIBIT D 2

(*Expenditures Continued*)

Apl. 30		"	9,864 41	
May 31		"	7,421 53	
June 30		"	10,134 74	
				50,937 00
	Ledger A.			
July 31	88		7,813 52	
Aug. 31		"	7,853 27	
Sep. 30		"	6,782 46	
Oct. 31		"	6,533 11	
Nov. 30		"	4,480 64	
				33,463 00
	Ledger A.			
Dec. 31	88		6,590 10	
1885				
Jan. 31		"	9,872 53	
Feb. 28		"	7,963 54	
Mch. 31		"	5,366 36	
April 30		"	7,101 13	
May 31		"	6,433 06	
June 80		"	5,397 99	
				48,724 71
1885				
	Ledger A.			
July 31	142		8,290 90	
Aug. 31		"	7,868 52	
Sep. 30		"	8,905 32	
Oct. 31		"	9,680 25	
Nov. 11		"	10,691 49	
				45,436 48
	Ledger A.			
Dec. 31	142		9,348 68	
1886				
Jan. 31		"	9,012 13	
Feb. 28		"	7,996 13	
Mch. 31		"	7,694 17	
April 30		"	10,672 75	

EXHIBIT D 2

(*Expenditures Continued*)

May 31		"	9,332 00
June 30		"	9,558 21
July 31		"	17,177 08
Aug. 31		"	10,356 99
Sep. 30		"	10,984 95
Oct. 31		"	9,577 05
Nov. 30		"	8,826 98
			120,537 12
	Ledger A.		
Dec. 31	142		9,215 76
1887			
Jan. 31		"	8,264 86
Feb. 28		"	8,235 36
Mch. 31		"	8,537 00
Apl. 30		"	8,916 60
May 31		"	10,818 59
June 30		"	10,101 41
July 30		"	18,102 43
Aug. 31		"	12,212 80
Sep. 30		"	10,587 09
Oct. 31		"	10,525 16
Nov. 30		"	10,045 56
			125,562 62
	Ledger B.		
Dec. 31	370		9,745 33
1888			
Jan. 31		"	6,508 67
Feb. 29		"	9,032 79
Mch. 31		"	9,606 88
Apl. 30		"	8,170 93
May 31		"	10,449 74
June 30		"	19,764 04
July 31		"	8,069 21
Aug. 31		"	9,775 10
Sep. 30..		"	9,097 68

EXHIBIT D 2

(*Expenditures Continued*)

Oct. 31		"	7,793 58
Nov. 30		"	7,039 31
			————115,053 26
1888			
Dec. 31		"	6,953 46
1889			
Jan. 31		"	6,455 31
Feb. 28		"	8,388 39
Mch. 31		"	8,415 18
Apl. 30		"	8,978 04
May 31		"	17,220 81
June 30		"	9,400 46
July 31		"	8,592 36
Aug. 31		"	9,776 55
	Ledger B.		
Sep. 30		370	8,430 71
Oct. 31		"	9,478 53
Nov. 30		"	9,596 31
			————111,686 11
Dec. 31		"	9,094 15
1890			
Jan. 31		"	8,999 90
Feb. 28		"	20,940 17
Mch. 31		"	9,661 25
Apl. 30		"	11,395 91
May 31		"	16,837 20
June 30		"	9,377 21
July 31		"	10,538 73
Aug. 31		"	11,144 58
Sep 30		"	8,375 17
Oct. 31		"	10,350 08
Nov. 30		371	8,495 05
			————135,209 40
Dec. 31		"	7,612 57
1891			
Jan. 31		"	7,333 74

EXHIBIT D 2

(*Expenditures Continued*)

Feb. 28	"	8,329 72	
Mch. 31	"	10,612 47	
Apl. 30	"	10,376 70	
May 3	"	19,500 36	
June 30	"	9,740 92	
July 31	"	9,073 73	
Aug. 31	"	10,395 59	
Sep. 30	"	9,555 46	
Oct. 31	"	10,164 66	
Nov. 30	"	9,516 18	
			122,213 10
Dec. 31	"	9,039 51	
1892			
Jan. 31	"	7,482 67	
Feb. 29	"	9,324 11	
Mar. 31	"	9,369 82	
Apl. 30	"	20,651 47	
May 31	"	11,141 40	
June 30	"	11,128 68	
July 31	"	9,420 52	
Aug. 31	"	10,461 75	
Sept. 30	"	10,494 15	
Oct. 31	"	10,106 60	
Nov. 30	"	9,316 66	
			127,937 34
Dec. 31	"	9,225 71	
1893			
Jan. 31	"	8,748 38	
Feb. 28	"	9,185 93	
Mar. 31	"	19,823 62	
Apl. 30	"	10,571 46	
May 31	"	10,672 42	
June 30	"	10,485 60	
July 31	"	6,695 81	
Aug. 31	"	5,254 05	
Sep. 30	"	2,858 16	

EXHIBIT D 2

(Expenditures Continued)

Oct. 31	"	3,775 20	
Nov. 30	"	4,031 94	
			101,328 28
	Ledger B.		
Dec. 31	372	5,372 31	
1894			
Jan. 31	"	5,122 55	
Feb. 28	"	4,630 11	
Mar. 31	"	11,168 84	
Apl. 30	"	5,012 70	
May 31	"	4,695 57	
June 30	"	6,175 03	
July 31	"	6,012 53	
Aug. 31	"	6,021 26	
Sep. 30	"	5,884 57	
Oct. 31	"	5,702 51	
Nov. 30	"	5,906 42	
			71,694 40
Dec. 31	"	5,604 38	
1895			
Jan. 31	"	6,011 60	
Feb. 28	"	6,492 83	
Mch. 31	"	11,855 47	
Apl. 30	"	6,649 74	
May 31	"	7,109 73	
June 30	"	6,427 40	
July 31	"	6,597 19	
Aug. 31	"	7,523 26	
Sep. 30	"	6,853 51	
Oct. 31	"	7,778 15	
Nov. 30	"	6,999 53	
			85,902 79
Dec. 31	"	6,781 42	
1896			
Jan. 31	"	13,713 21	
Feb. 29	"	7,573 60	

EXHIBIT D 2

(*Expenditures Continued*)

Mch. 31	"	7,974 81	
Apl. 30	"	8,093 15	
May 31	"	7,064 34	
June 30	"	7,014 95	
July 31	238	6,048 53	
Aug. 31	"	7,147 40	
Sep. 30	"	6,838 43	
Oct. 31	"	6,502 59	
Nov. 30	"	5,130 75	
			89,883 18
	Ledger C.		
Dec. 31	347	9,545 23	
1897			
Jan. 31	"	7,943 06	
Feb. 28	"	7,916 55	
Mch. 31	"	7,655 88	
Apl. 30	"	7,318 49	
May 31	"	6,799 87	
June 30	"	7,611 20	
July 31	"	6,250 91	
Aug. 31	"	7,644 32	
	Ledger C.		
Sept. 30	347	7,843 98	
Oct. 31	"	7,564 23	
Nov. 30	"	8,489 42	
			92,583.14
Dec. 31	"	17,116 60	
1898			
Jan. 31	"	12,452 65	
Feb. 28	"	10,889 17	
Mch. 31	"	8,279 13	
Apl. 30	"	9,707 16	
May 31	"	10,603 06	
June 30	"	7,603 29	
July 31	"	5,974 81	

EXHIBIT D 2

(*Expenditures Continued*)

Aug. 31	"	6,582 58	
Sept. 30	"	7,212 30	
Oct. 31	"	5,972 14	
Nov. 30	"	6,836 34	
			109,229 23
Dec. 31	"	17,073 98	
1899			
Jan. 31	"	10,976 72	
Feb. 28	"	7,086 22	
Mch. 31	"	8,419 36	
Apl. 30	"	9,743 40	
May 31	"	26,443 85	
June 30	"	35,171 89	
July 31	"	25,597 42	
Aug. 31	"	24,308 96	
Sept. 30	"	32,904 76	
Oct. 31	"	32,386 32	
Nov. 30	"	44,708 54	
			274,821 42
	Ledger C.		
Dec. 31	348	48,789 24	
1900			
Jan. 31	"	31,127 26	
Feb. 28	"	21,663 87	
Mch. 31	"	36,337 54	
Apl. 30	"	22,725 41	
May 31	"	35,455 73	
June 30	"	43,956 14	
July 31	"	30,279 34	
Aug. 31	"	35,936 91	
Sept. 30	"	34,761 86	
Oct. 31	"	40,174 49	
Nov. 30	"	32,693 31	
			413,901.10
Dec. 31	"	40,000 00	
1901			
Jan. 31	"	44,520 97	

EXHIBIT D 2

(*Expenditures Continued*)

Feb. 28	"	28,560 70	
Mch. 31	"	34,954 67	
Apl. 30	"	42,107 93	
May 31	"	46,538 53	
June 30	"	35,034 62	
July 31	"	35,606 30	
Aug. 31	"	54,261 12	
Sept. 30	"	27,717 61	
Oct. 31	"	43,514 26	
Nov. 30	"	45,676 43	
			478,493 14
	Private Ledger.		
Dec. 31	46	36,264 29	
1902			
Jan. 31	"	39,458 16	
Feb. 28	"	31,269 77	
Mch. 31	"	40,860 06	
Apl. 30	"	41,973 16	
May 31	"	56,478 32	
June 30	"	45,730 83	
July 31	"	37,103 72	
Aug. 31	"	37,647 49	
Sept. 30	"	32,691 87	
Oct. 31	"	63,670 78	
Nov. 30	"	75,705 06	
			538,853 51
Dec. 31	"	56,225 30	
1903			
Jan. 31	"	66,260 82	
Feb. 28	"	34,558 48	
Mch. 31	"	31,138 79	
Apl. 30	"	29,624 50	
May 31	"	58,099 98	
June 30	"	65,955 92	
July 31	"	46,580 43	
Aug. 31	"	29,175 83	

EXHIBIT D 2

(*Expenditures Continued*)

Sept. 30	"	42,591 15	
Oct. 31	47	37,317 40	
Nov. 30	"	48,720 44	
			546,249 05
Dec. 31	"	95,722 08	
1904			
Jan. 31	"	46,23[illegible] 48	
Feb. 29	"	28,691 76	
Mch. 31	"	40,635 86	
Apl. 30	"	37,267 37	
May 31	"	20,863 88	
June 30	"	20,604 73	
July 31	"	30,497 07	
Aug. 31	"	16,180 58	
Sept. 30	"	23,261 74	
Oct. 31	"	36,366 76	
Nov. 30	"	20,926 51	
			417,148 82
Dec. 31	"	75,593 74	
1905			
Jan. 31	"	43,832 96	
Feb. 28	"	19,634 22	
Mch. 31	"	40,097 17	
Apl. 30	"	34,925 88	
May 31	"	45,752 11	
June 30	"	25,870 03	
July 31	"	35,496 99	
Aug. 31	"	52,074 58	
Sept. 30	"	63,297 25	
Oct. 31	"	48,148 45	
Nov. 30	"	63,055 06	
			547,778 44

EXHIBIT D 2

MERCHANDISE PURCHASED DECEMBER 1895 TO DECEMBER 1905.

Invoice D.	203	Dec., 1895,	14,377 70		
	214	Jan., 1896,	29,808 92		
	222	Feb., "	16,182 59		
	232	Mch., "	4,912 52		
	241	Apl., "	4,992 89		
	250	May, "	7,843 20		
	261	June, "	6,510 43		
	269	July, "	3,820 20		
	278	Aug., "	8,665 51		
	287	Sept., "	4,253 48		
	293	Oct., "	9,274 01		
See Fol. 301 for summary material,	300	Nov., "	16,434 44		
					127,075 89
	311	Dec., "	4,226 38		
	319	Jan., 1897,	4,378 15		
	328	Feb., "	32,838 93		
	338	Mch., "	33,513 28		
	345	Apl., "	2,790 99		
	353	May, "	23,611 77		
	362	June, "	8,386 57		
	371	July, "	10,546 08		
	380	Aug., "	3,576 89		
	389	Sept., "	10,126 17		
	397	Oct., "	8,931 54		
Do. See Fol. 407.	406	Nov., "	6,043 54		
					148,970 29
	416	Dec., "	3,740 15		
	427	Jan., 1898	5,936 26		
	435	Feb., "	4,377 74		
	443	Mch., "	7,513 64		
	451	Apl., "	7,654 02		

EXHIBIT D 2

	459	May,	"	6,110 45	
	465	June,	"	2,594 73	
	473	July,	"	10,728 78	
	482	Aug.,	"	7,258 52	
	489	Sept.,	"	2,182 23	
	497	Oct.,	"	10,012 03	
Invoice E. See Summary Fol. 7.	6	Nov.,	"	12,563 03	
					80,671 58
	16	Dec.,	"	10,317 96	
	25	Jan.,	1899,	13,010 84	
	33	Feb.,	"	6,222 06	
	43	Mch.,	"	15,515 84	
	54	Apl.,	"	5,129 74	
	64	May,	"	15,602 36	
	74	June,	"	11,971 39	
	84	July,	"	12,156 12	
	95	Aug.,	"	20,464 28	
	104	Sept.,	"	13,695 04	
	114	Oct.,	"	14,424 11	
	123	Nov.,	"	22,477 11	
					160,986 65
	135	Dec.,	"	28,015 30	
	148	Jan.,	1900	21,840 42	
	158	Feb.,	"	9,530 02	
	168	Mch.,	"	9,375 58	
	192	Apl.,	"	9,341 45	
	193	May,	"	21,038 66	
	208	June,	"	17,476 20	
	220	July,	"	15,642 91	
	232	Aug.,	"	13,130 68	
	243	Sept.,	"	12,775 04	
	253	Oct.,	"	14,088 26	
	262	Nov.,	"	9,760 11	
					182,017 63

EXHIBIT D 2

	275	Dec., "	24,556	17	
	287	Jan., 1901	18,411	11	
	295	Feb., "	12,071	83	
	307	Mch. "	17,724	61	
	321	Apl. "	13,355	87	
	334	May, "	28,890	41	
	347	June, "	6,331	19	
	359	July, "	11,575	12	
	371	Aug., "	37,703	87	
	382	Sept., "	8,592	91	
	394	Oct., "	26,968	53	
	405	Nov., "	14,240	84	
					220,422 46
	420	Dec., "	31,670	07	
	435	Jan., 1902	7,547	33	
	450	Feb., "	14,467	41	
	469	Mch., "	17,585	27	
Invoice F.	18	Apl., "	23,749	72	
	35	May, "	30,952	40	
	51	June, "	13,297	75	
	65	July, "	15,561	87	
	82	Aug., "	16,169	93	
	108	Sept., "	16,022	12	
	140	Oct., "	24,747	61	
	168	Nov., "	48,996	41	
					260,768 39
	196	Dec., "	19,576	92	
	226	Jan., 1903,	37,484	62	
	257	Feb., "	13,910	21	
	284	Mch., "	11,365	25	
	34	Apl., "	22,764	20	
	62	May, "	15,271	12	
	98	June, "	27,140	30	
	134	July, "	12,608	56	
Invoice H.	20	Aug., "	22,374	28	
	40	Sept., "	12,214	12	
	59	Oct., "	21,301	62	

EXHIBIT D 2

	76	Nov., "	11,024 35	
				227,035 55
	93	Dec., "	11,727 09	
	109	Jan., 1904	14,452 42	
	125	Feb., "	17,064 82	
	142	Mch., "	16,938 57	
	160	Apl., "	20,605 46	
	174	May, "	7,265 10	
	187	June, "	3,201 43	
	195	July, "	9,319 55	
	205	Aug., "	9,857 66	
	213	Sept., "	1,430 20	
	219	Oct., "	20,822 98	
	239	Nov., "	9,058 73	
				141,744 01
	251	Dec., "	57,759 02	
	262	Jan., 1905,	16,395 16	
	274	Feb., "	5,223 93	
	289	Mch., "	22,952 36	
Invoice I.	3	Apl., "	15,282 85	
	6	May, "	20,143 68	
	9	June, "	12,579 00	
	13	July, "	33,632 51	
	16	Aug., "	34,189 12	
	21	Sept., "	12,593 35	
	25	Oct., "	21,451 04	
	29	Nov., "	34,679 86	
				286,881 88

EXHIBIT D 20

REAL ESTATE A/c, Ledger A, Fol. 175

The Company have purchased from Robert Beattie, Sr., the mill property and privileges and Real Estate excepting that known as the Brick Yard Jol. A, 155, July 1, 1882.

			Dr.	Cr.
1882				
July 1	To Sundries	J. 155		139,903 63
	" Real Estate and Machinery as having purchased from Robert Beattie, Sr., mill property, lands and machinery.			
1883				
June 30	To Sundries	J. 259		19,338 54
263	New House No. 1	Transferred	1,872 59	
261	" No. 2	"	1,264 47	
264	Permanent Improvements.	"	1,756 80	
265	New Building	"	3,043 10	
266	Carriage House	"	119 40	
257	Boiler House	"	4,674 53	
257	New Mill	"	6,607 65	
Dec. 31	To Sundries	J. 304		3,265 93
255	New Color Shop	Amt. Transferred	912 25	
256	New Mill	"	60 33	
261	New House No. 2	"	126 46	
263	" No. 1	"	59 65	
264	Permanent Improvements.	"	371 02	
276	New Office	"	1,417 77	
257	Boiler House	"	318 45	
1884				
June 30	To Sundries	J. 337		626 98
250	Permanent Improvements	Transferred	176 29	
255	New Color Shop	"	197 94	
257	New Mill	"	25 00	
270	New Office	"	227 75	
Aug. 18	To Cash	J. 346	~~15~~,000 00	
	John C. Feury, Adm'r. part mortgage		1,5	
Sept. 23	To Cash	J. 352	~~15~~,000 00	
	C. Taggart part mortgage		1,5	
Nov. 30	To Sundries	J. 364	836 91	
204	Wm. J. Bunn	400 00		

EXHIBIT D 2

	251	Permanent Improvements.	70 00		
	255	New Color Shop.....	366 91		
Nov. 30.....		By Repairs, for amount charged to this account. June 30, Nov. 30, 1884. Herewith transferred.	365 00		1,463 89
Dec. 17.....		To Cash Mutual Benefit Insurance Co.....	368 00	5,000 00	
1885					
		To Cash I. C. Feury, Adm. Part Mortgage	375 00	1,500 00	
Mch. 2.....		To Cash "	378 00	2,000 00	
Apl. 1.....		To Cash "	381 00	1,500 00	
1886					
Mch. 15.....		To Cash Mutual Ben. Insurance Co., Mortgage.	J. 451	10,000 00	
Nov. 30.....		To Sundries.....	37 00	24,872 70	
	221	New Mill Transferred	12,024 80		
	153	New Cottages "	8,146 12		
	260	Weave Shop Addn. "	1.727 49		
	272	R. B. Old House "	2,974 29		
Dec. 30.....		By Cash Wm. Schoonmaker for 1 piece of ground C. B.	208 00		138 00
1887					
Nov. 30.....		To Sundries.....	J. 109	2,460 76	
	185	Permanent Improvements.	2,229 11		
	240	Engine House	231 65		

LEDGER B 367

1888					
Apl. 14.....		To Cash part Mtge—Mrs. C. Feury	J. 131	500 00	
Nov. 30	366	To Permanent Improvements, amt. transferred	J. 183	580 73	
1889					
Feb. 21.....		By Cash Wm. Bruckmann for 2 Lots	C. B. 264		252 75
Sep. 16.....		By Cash Baxall for 2 lots..	C. B. 282		250 00
Nov. 11.....		" " Joseph Clark 240 and 10 2 lots.....	" 286		250 00
		" Cash J. Snyder, 3 lots...	"		375 00
Nov. 30	366	To Permanent Improvements, Amt. Transfer'd.	J. 247	1,350 76	

EXHIBIT D 2

1890						
Jan. 14	291	By Cash A. Murray for 1½ lots	C. B.	290		187 50
Feb. 25		By Cash W. H. Roome on a/c, 2 lots	"	292		197 00
May 28		" " Thomas Clark	"	302		420 00
July 8		" " L. Klotz	"	306		850 00
Aug. 5		" " E. A. Mills, Jr.	"	308		500 00
" 6		" " James McGoron	"	"		250 00
" 15		" " W. H. Roome	"	"		53 00
Nov. 1	518	" " E. Gardener, Trans.	J.	292		250 00
" 1		" " James Galloway	C. B.	314		400 00
" 7	534	To E. B. DeGraff, one strip of land sold to us	J.	288	60 00	
" 30	366	To Perm. Impts., Amt. Transferred	J.	398	209 30	
" 30	7	To New Stock House, Amt. Transferred	J.	299	3,333 07	
Dec. 18		By John Grey	C. B. B.	2		80 00
1891						
Mch. 1		" "	"	8		170 00
" 4		To Cash W. H. Roome	J.	312	250 00	
Apl. 15		To credited in error, Mch 1, John Grey	C. B. B.	11	170 00	
May 8		By Del. L. & W. R. R.	C. B. B.	12		1,750 00
June 5		By E. Gardener	"	14		125 00
July 14		By E. A. Mills, Jr	"	16		500 00
Oct. 14		By John Grey	"	24		170 00
Nov. 30	141	To Felt Mill Extension	J.	351	5,285 61	
	7	To Block House	"		540 09	
	7	To Smoke House	"		129 00	
1892						
May 25		By Cash Chas. Boxall on a/c.	C. B. B.	42		75 00
June 13		By " T. Lawlor	"	47		250 00
Sep. 27		By A. Dillig	"	56		275 00
Nov. 30		To Felt Mine Extension	J.	403	785 55	
1893						
Mch. 27		By Cash Chas. Boxall	C. B. B.	74		80 00
July 12		By " Ralph Shaw	"	86		600 00
Nov. 30	141	To New Building, 1892	J.	457	9,440 55	
" " "		To Felt Mill Extension	"		9 00	
1894						
Nov. 30	"	To New Building	J.	499	23 04	
	566	To New Dye House	"		64 27	
	462	To C. L. Kalmbach	"		1,557 12	
1896						
June 1		To E. J. Water Co. for dirt.	C. B. B.	194		82 80
Nov. 30		To New Building, Amt. Transferred	J.	194	38 19	

EXHIBIT D 2

LEDGER C, Fol. 355

				Dr.	Cr.
1897					
June 3	By Cash Alexander Murray.	C. B. B.	230		685 00
Sept. 25	To Cash E. A. Mills, Jr....	J.	133	500 00	
1899					
June 9	By Cash P. B. Rhodes	C. B. B.	296		125 00
July 1 388	By " Robert Beattie... for 75 feet on R. R. Ave., next to Ralph Shaw's house, 225 feet on side street, as per Deed Book.	J.	223		1,960 00
Nov. 25	To Cash A. Murray	C. B. C.	51	1,000 00	
1900					
Jan. 16	To " "	"	61	700 00	
25	To " "	"	"	500 00	
"	To Sundries.....	J.	242	451 73	
	W. D. Wilson, work done on A. Murray House		211 73		
	Repairs—painting done by, Price on ditto.....		240 00		
Mch. 13	To Cash A. Murray.....	C. B. C.	71	300 00	
Apl. 17	By " M. E. Roome.....	"	82		375 00
May 29	By " Thomas Stanton..	"	86		1 00
June 16	By " Ralph Shaw.....	"	91		150 00
Nov. 30	To Perm. Impts., see Lr. fol. 285			631 51	
	To New Dbl. Houses " " 448			5,117 99	
	To Office Extension " " 437			1,841 10	
	To New (3) Houses.....	J.	293	1,580 00	
	To New Barn.....	"		1,439 07	
	To Color Shop Extension	"		391 74	

PRIVATE LEDGER, Fol. 173

1901					
Nov. 30 136	To New Buildings, balance Transferred.....	J.	324	4,355 71	
1902					
Nov. 30 148	By Profit and Loss..... This is equal to 10 per cent. of balance of the a/c $244,149.64, reducing same to $219,734.68				24,414 96
June 10	By Cash Robert Thompson.	C. B. D.	54		250 00
Nov. 16	By E. A. Mills, Jr., Balance Transferred.....	J.	349		500 00
" 30	By Profit and Loss, 10 per cent. of balance of a/c written off.....	J.	355		21,898 46

EXHIBIT D 2

1904					
Nov. 30	To Machine Shop addition. Transferring a/c, being increase in R. E.		J. 377	5,835 07	
1905					
Jan. 6	Real Estate, J. C. W. S. Co.		C. B. D. 178		3,382 27
Apl. 10	" Sindle		" 208		500 00
July 25	" Right of way given, North Eastern ... Tel. and Tel. Co.		" 236		24 00
July 31	Real Estate, Thos. Lawlor.		" 240		250 00
Nov. 30	Profit and Loss 5 per cent. written off balance of a/c 1@/1/04		J. 136		
	To cover depreciation				10,146 06
				263,275 65	74,656 69

LONG ISLAND REAL ESTATE Lr. "C" 467

1901					
Aug. 21	To Cash B. H. S. & Co.		C. B. C. 179	4,567 80	
Oct. 18	To " Roe H. Smith & Co.		" 191	505 19	
Nov. 26	To " "		" 199	7 44	
Nov. 30	To R. Beattie & Sons		J. 292	38,811 22	
Ledger "C" ends here. Amount Transferred.					

PRIVATE LEDGER 115

1902					
Nov. 30	By Profit and Loss 10 per cent. of Balance		J. 325		4,389 16
1903					
April 7	By Cash Albert Klenk		C. B. D. 36		1,094 50
1904					
Mch. 14	By Roe H. Smith & Co ...		" 118		2,370 00
1905					
Mch. 31	By Cash H. C. Johnson		" 206		400 00
Apl. 26	9 Lots		" 214		5,000 00
" 14	To Cash Taxes			3,000 00	
May 9	By "				154 51
				46,891 65	13,408 17

BROWN BROTHERS & CO.

1889					1890			
Nov. 1	To Cash	J1.	239	$50,000 00	Feb. 7	By Cash	292	$5,000 00
" 21	" "		243	10,000 00	Dec. 13	" "	315	1,498 10
1890								
Nov. 30	" Interest		298	1,808 45		Balance		57,115 20
1891								
Nov. 30	" "		350	1,665 07				
Dec. 31	" "		353	139 78				
				63,613 30				63,113 30
1892					1893			
Jan. 1	To Balance.....			57,115 20	July 31	By R. Beattie & Sons...	439	59,518 93
Nov. 30	" Interest.....		403	1,285 97				
1893								
July 31	" "		441	1,117 76				
				59,518 93				59,518 93
1895					1896			
Mch. 29	To Cash		15	50,000 00	Dec. 1	By Balance to Lr. C.....	286	102,450 79
1896								
Apl. 22	" "		64	10,000 00				
Sep. 25	" "		82	30,000 00				
Nov. 13	" "		89	10,000 00				
" 30	" Interest		94	2,450 79				
				102,450 79				102,450 79

1896				1897			
Dec. 1	To amt. from Lr. B....	373	102,450 79		By Balance.....		102,709 30
" 31	" Interest.....	102	258 51				
			102,709 30				102,709 30
1897							
Jan. 1	To Balance.....		102,709 30	Jan. 26	By Cash	102	5,352 58
June 30	" Interest.....	122	1,170 59	" 27	" "	"	6,000 00
				Mar. 22	" "	110	14,134 31
				" 24	" "	"	12,000 00
				June 17	" "	122	3,000 00
					" Balance		63,393 00
			103,879 89				103,879 86
June 30	To Balance		63,393 00	July 7	By Cash.....	124	12,000 00
Oct. 15	To Cash	137	20,000 00	Aug. 26	" "	130	5,000 00
Nov. 3	" "	139	15,000 00	Dec. 30	" "	150	10,000 00
" 30	" Interest.....	146	732 69	" 31	" Interest.....	"	124 39
					" Balance.....		72,001 30
			99,125 69				99,125 69
1898				1899			
Jan. 1	To Balance		72,001 30	Jan. 3	By Cash.....	201	5,000 00
Oct. 15	" Cash	187	25,000 00	" 12	" "	201	5,000 00
Nov. 30	" Interest.....	195	1,382 55	" 21	" "	204	15,000 00

EXHIBIT D 2

1899										
Oct. 23	"	Cash		241	358 30	July 24	By	Cash	24	5,000 00
Nov. 30	"	Interest		230	1,347 09	" "	"	Sundries	226	6,882 62
						Aug. 21	"	Cash	30	9,000 00
							"	Balance		54,206 62
					100,089 24					100,089 24
						1900				
Dec. 1	To	Balance			54,206 62	Jan. 25	By	Cash	59	11,000 00
1900										
Nov. 30	"	Int. to Jan. 1st		266	1,000 94	" 22	"	"	242	3,895 13
						Feb. 9	"	"	64	1,000 00
						Aug. 10	"	"	98	5,000 00
						" 16	"	"	"	10,000 00
						" 24	"	"	"	3,000 00
							By	Balance		21,312 43
					55,207 56					55,207 56
1901						1901				
Jan. 1	To	Balance			21,312 43	Nov. 30	By	Balance		21,800 84
Nov. 30	"	Interest		291	488 41					
					21,800 84					21,800 84
Dec. 1	To	Balance down			21,800 84	Dec. 1	21,800 84	Transferred to to Private Lr	43	

1902				1892			
Nov. 29	" Interest	J321	498 04	Nov. 29	By Balance.....		22 298 88
			22,298 88				22,298 88
Dec. 1	To Balance down.....		22,298 88	1903			
1903				Nov. 30	By Balance		43,306 61
June 24	" Cash.....	55	20,000 00				
July 1	" Interest	J341	494 81				
Nov. 30	" " ".....	351	286 79				
" 30	" "	"	226 13				
			43,306 61				43,306 61
1903				1904			
Dec. 1	To Balance down.....		43,306 61	Jan. 23	By Christ Watson	359	3,645 75
" 4	" Cash.....		35,000 00		" Balance		76,789 68
Nov.30	" Interest		2,128 82				
			80,435 43				80,435 43
1904				1905			
Dec. 1	To Balance.....		76,789 68	Nov. 30	By Balance.....		78,729 71
1905							
Nov. 30	" Interest.....		1,940 03				
			78,729 71				78,729 71
1905							
Dec. 1	To Balance.....		78,729 71				

THE UNION TRUST CO.

1896					1896	Lr. B 373	Lr. C. 287	
Jan. 21	To Cash	53	70,000 00		Dec. 1	By Amt. to Lr. C	287	71,808 33
Nov. 30	" Interest	94	1,808 33					
			71,808 33					71,808 33
1896					1901			
Dec. 1	To Amt. from Lr. B.	373	71,808 33		Jan. 1	By Balance		78,110 41
1897								
Nov. 30	To Interest	146	2,154 25					
1898								
Nov. 30	" "	195	1,479 25					
1899								
Nov. 30	" "	230	1,901 78					
1900								
Nov. 30	" " to Jan. 1st	266	766 80					
			78,110 41					78,110 41
1901								
Jan. 1	To Balance		78,110 41		Jan. 1	By Cash	130	8,110 41
Nov. 30	" Interest	291	1,604 17			By Balance		71,604 17
			79,714 58					79,714 58

1901					1902			
Dec. 1	To Balance down.....		71,604 17		Feb. 24	By Cash.....	218	1,400 00
					Mar. 1	" Bal. transferred to Private Ledger ...	211	70,204 17
			71,604 17					71,604 17
1902					1902			
Mch. 1	Bal. from Lr. C.....	287	70,204 17		Nov. 29	By Interest account....	321	204 17
Nov. 29	To Interest account....	321	1,283 33			By Balance		71,283 33
			71,487 50					71,487 50
1902					1903			
Dec. 1	To Balance down.....		71,283 33		Feb. 3	By Colonial Trust Co....	332	50,000 00
1903								
Feb. 3	To Int. account	J332	243 25		"	By Cash.....		21,526 58
			71,526 58					71,526 58

EXHIBIT D 2

492

COLONIAL TRUST CO.

1903 Private Ledger, Fol. 54

1903								
Feb. 3	To Check of Union Trust Co.....	332	50,000 00		Nov. 30	By Balance		51,228 03
Nov. 30	To Interest.....	351	591 79					
"	" "	"	636 24					
			51,228 03					51,228 03

				1904			
Dec. 1	To Balance		51,228 03	Nov. 30	By Balance		52,784 00
1904							
Oct. 14	To Interest	J373	398 79				
Nov. 30	" Interest	J377	757 18				
			52,784 00				52,784 00
				1905			
Dec. 1	To Balance		52,784 00	Nov. 30	By Balance		54,379 01
1905							
Nov. 30	To Interest		1,595 01				
			54,379 01				54,379 01
1905							
Dec. 1	To Balance		54,379 01				

PATERSON DEPOSIT & TRUST CO.

(Private Ledger, Fol. 153).

1903					1904			
Dec. 4	To Cash	97	35,000 00	Feb. 24	By Cash	112	5,000 00
1904								
Feb. 24	" Interest	361	233 01	"	" "	"	5,233 01
Nov. 30	" "	J378	678 10	Nov. 30	" Interest	J380	100 71
			35,911 11				35,911 11

1904				1905				
Dec. 1	To Balance		25,577 39	Sep. 8	By Cash	262	26,152 74
1905								
Sept. 27	" Interest	J20	575 35					
			26,152 74				26,152 74

WATER RIGHTS ACCOUNT.

Ledger B, 381; Ledger C, 354; Private Ledger, 213.

				1895				
To Water Rights Reserve		J380	40,000 00	Jan. 25	By Cash (Pequannock Water)	J12	25,000 00
				Mch. 27	" Cash	J61	5,000 00
				1897				
				Mch. 22	" "	J222	5,000 00
				1898				
				Apl. 1	" "	J266	5,000 00
			40,000 00				40,000 00

East Jersey Water Company Bond & Mortgage Account. Private Ledger 78.

To Water Rights Reserve	J380	31,500 00	

Water Rights Reserve Account. Private Ledger 214.

				1904			
				Nov. 30	By Sundries	380	355,000 00

EXHIBIT D 2

EXHIBIT D 2

East Jersey Water Co., 2 Wall St., N. Y. Lr. C, 346.

1899					1899				
July 1	To Dividend account....		225	6,000 00	June 7	By Cash.....		18	6,300 00
1900									
July 1	" " "		254	12,000 00	Dec. 7	" "		54	6,300 00
					1900				
Dec. 31	" " "		271	7,200 00	June 16	" "		90	6,300 00
					Dec. 4	" "		124	6,300 00
				25,200 00					25,200 00

For the year 1901 the interest was credited to Rent account, viz.:

					1901				
					June 4	By Cash C. B		361	6,300 00
					Dec. 3	" " "			6,300 00

East Jersey Water Co. Private Ledger, fol. 80.

1902					1902				
Nov. 30	To Interest.....		324	6,300 00	June 5	By Cash.....		244	6,300 00
1903									
Nov. 30	" P. & L.....		J354	12,600 00	Dec. 3	" "		2	6,300 00
					1903				
					June 3	" "		50	6,300 00
				12,600 00					12,600 00

1904				1903				
Nov. 30	To P. & L.	J379	18,900 00	Dec. 4	By Cash	96	6,300 00	
				1904				
				June 2	" "	134	6,300 00	
				Nov. 30	" "	164	6,300 00	
			18,900 00					18,900 00
1905				1905				
Nov. 30	To Interest		12,600 00	June 1	By Cash		6,300 00	
				Nov. 30	" "		6,300 00	
			12,600 00					12,600 00

East Jersey Water Co. Ledger C, 523.

1897				1897				
Nov. 16	To Gravel	143	25 00	Dec. 3	By Cash		25 00	

EXHIBIT D 2

Salaries Paid to Robert Beattie, Sen'r., W. H. Beattie and Robert Beattie, Jr.

Salaries of President and Treasurer were fixed Jan. 24, 1888, see Minutes p. 23, at $10,000, each, per annum. From January 1, 1888, Robert Beattie, Senior, drew as President for 1888, 1889, 1890, 1891, 1892 and 1893, $10,000, annually, and for 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901,1902, 1903, 1903 and 1905, $8,500 annually.

William H. Beattie, as Manager and Treasurer, has drawn for 1901, 1902, 1903, 1904 and 1905, $8,500 annually.

During 1899, 1900 and 1901, Robert Beattie, Jr. was paid at the rate of $18.00 per week, for 1902 he was paid $1,500 and for 1903, 1904 and 1905, $2,000 per year.

Balance Sheet December 1st, 1895.

Real Estate	288,681.40	
Machinery	991,89.39	
Merchandise, Stock on hand	100,499.00	
Robert Beattie & Sons	293,204.25	
Brown Bros. & Co.	50,000.00	
Rents due	148.50	
New Building a/c.	38.19	
Cash on hand	119.58	
Electric Plant	1,373.36	
Patent Account	407.80	
New Turbine Wheel	1,643.47	
Bowling Alley	681.29	
		775,986.23

ACCOUNTS RECEIVABLE.

John W. Hamer.	1.00
Stephen Sindle	.75
R. H. Stirrall	17.90

EXHIBIT D 2

Dr. Mark Van Winkle	6.75	
A. Zabriskie	48.00	
Logan Hodge	62. 1	
W. H. Beattie	615.24	
D. L. & W. R. R. Co	1.31	
C. L. Kalmbach	63.41	
Mills & Kepler	.60	
Eugene Gardner	100.00	
William T. Adams	137.19	
Ralph Shaw	6.05	
Charles H. Booth	23.80	
Thomas Allen	27.00	
Kingsley Paper Works	2.17	
Dr. Keiller	6.72	
		1,119.70
The late R. Beattie Sr. L. A. fol. 449	99.24	
The late R. Beattie Estate L. A. fol. 280	2,065.79	
The late Mrs. R. Beattie Sr. L. A. fol. 259	2,130.58	
The late R Beattie Estate L. A. fol. 246	421.00	
		4,716.61
		$781,822.54

ACCOUNTS PAYABLE.

Christopher Watson	45.39
Watson Machine Co	28.77
Anderson Lumber Co	107.31
The John Norwood Co	1.75
John Agnew	5.50
Muzzy Bros	8.78
Wm. Peckhart & Kuttroff	110.04
Thomas C. Sindle	31.11
George Jackson	265.44

EXHIBIT D 2

Innis & Co	38.00
Weeks & Parr	65.00
Samuel Smith & Sons	278.85
Standard Oil Co. of N. Y	25.64
C. W. English	112.17
Norwood & Co	2.70
John E. Beggs Machinery Co.	4.03
John J. Keller & Co	15.50
L. A. Salomon & Bro	14.50
The H. B. Claflin Co	5.10
Holtzer Cubot Electric Co	22.77
Schulze Berge & Koch	77.00
Isaac Eaton & Co	58.50
A. Hubbard & Co	13.60
Davis Sewing Machine Co	2.40
P. Cooper Glue Factory	84.71
W. E. Wells	3.00
Imperial Gas Machine Co	56.95
Morton Clark	46.56
G. B. Sinderman & Co	551.11
Holbrook Manfg. Co	158.80
Van Riper Manfg. Co	87.88
T. Kentworthy & Bro	902.42
Fayerweather & Ladew	81.90
Loom Picker Co	13.25
J. A. & W. Bird & Co	16.69
Curtis & Marble	18.50
John Boyle & Co	1.25
H. M. DeKerguelen	35.00
Charles Ford	45.95
L. F. Quarry Co	22.01
James Inglis, Jr	1.27
Cosgro & Friel	4.00
N. Y. & Boston Dyewood Co.	72.17
C. Bischoff & Co	38.50
B. P. Ducas Co	75.50
U. S. Mailing Tube Co	25.00

EXHIBIT D 2

C. H. O'Neill	7.56	
J. A. Van Winkle & Co	6.30	
Sutherland & Edwards Co.	1,515.83	
Geo. A. Meyers & Co.	12.26	
William Crabb & Co.	57.69	
J. B. Ward & Sons	38.10	
E. A. Mills	18.00	
The Fairbanks Co	7.70	
The Sinkenheimer Co	5.68	
Drew & Secker	181.80	
Kitching & Bicknell	177.43	
A. F. Buchanan & Sons	6.00	
John M. Hoxson	9.92	
William Aveyard	106.17	
Jersey City Milling Co	21.81	
Yellow Pine Co	50.12	
Avery Chemical Co	12.75	
Dayton Globe Iron Works	832.52	
J. W. Jackson & Co	40.83	
		6,788.74
Manufacturing Labor wages due this date	5,121.65	
Repairs, wages due this date.	456.75	
Farm, " " " "	49.50	
Expenses, " " " "	169.80	5,797.70
Freight, amount due this date	396.97	
Taxes, " " " "	2,576.88	2,973.85
William Beattie, &c., Trustee	13,198.28	
Robert Beattie	42,398.02	
William Beattie	3,476.72	
W. H. Beattie, div'd. a/c.	750.00	
Singack Brick Co.	8,579.54	
Mrs. William Beattie	375.12	

EXHIBIT D 2

Alexander Murray.....	58.37	69,106.05
Dividend a/c.....		21,000.00
		105,666.34
Reserve Fund a/c.....	150,000.00	
Real Estate Improvement a/c.....	201,156.20	
Water Rights a/c.....	25,000.00	
Capital a/c.....	300,000.00	676,156.20
		$781,822.54

EXHIBIT D 2

SUMMARY OF INVENTORY, December 1, 1895.

Inventory of Stock on Hand Dec. 1, 1895.

Stock Book No. 1,374.

		Dr.
374	New Stock House, No. 1	19,387 28
375	Old Stock House, No. 2	1,787 77
"	Coal Yard	2,220 00
376	Mixing Room	1,133 52
"	Card Room	477 46
"	Fulling "	
"	Size "	
377	Felt on Stock	5,377 37
	Stock in M. C. Co.	
	Warps	139 73
	Worsted Room	1,057 83
	Hard Waste from Worsted Room. Colored Waste from Setting Room White Woolen Yarn Worsted from winding frame	791 14
	Peter Cooper's Glue	55 10
	Dextrine	9 69
	P. Starch	18 00
	Sal Soda	7 36
	Roll Brimstone	20 45
		32,932 70
378	Color Shop Carpet Mill	818 39
379	" " Felt Mill	160 23
380	Stone Mill Yarns	7,739 59
"	Weave Room	1,833 60
		43,484 51
381	Selling Room	5,800 30
"	Drum "	14,159 65
383	New Mill	4,028 16
"	Weave Room	56 32

EXHIBIT D 2

383	Finishing Room	532 51
"	White Woolen Yarn	365 20
		68,426 65
384	Office	338 34
385	Carpet per Stock Book, on floor and on memo to Shepard Knapp & Co	42,751 03
386	Cellar	149 53
		111,665 55
	Ten Per Cent	11,166 55
		$100,499 00

EXHIBIT D 2

PROFIT AND LOSS, LEDGER A, 19.

July 1, 1882, to Dec. 31, 1882.

Dr.					Cr.			
1882					1882			
Dec. 31	Expense	Lr.	66....	5,063 40	Dec. 31	Merchandise	Lr. 58....	24,370 50
"	Repairs	"	64....	4,778 56	"	Rent	" 362....	655 89
"	Insurance	"	307....	1,816 84				
"	Interest	"	287....	648 87				
"	J. C. Maguire Com	J1,	218....	1,332 09		Dividend....	6,000 00	
"	Reserve Fund A/c	"	227....	5,386 62		Reserve Fund	5,386 63	
"	Dividend A/c	"	"	6,000 00		Net Earnings	11,386 63	
				25,026 39				25,026 39

PROFIT AND LOSS, LEDGER A, 19.

Jan. 1, 1883, to June 30, 1883.

1883					1883			
June 30	Farm,	Lr. 62	1,037 87		June 30	Mdse.,	Lr. 59	13,112 26
	Repairs,	" 65	5,272 93			Rent,	" 262	913 62
	Expense,	" 66	4,546 92					
	Road,	" 266	574 00					
	Interest,	" 287	1,552 82					
	Insurance,	" 307	345 65					
	Balance,		695 69					
				14,025 88				14,025 88

PROFIT AND LOSS, LEDGER A, 19.

July 1, 1883, to Dec. 31, 1883.

1883					1883			
Dec. 31	Farm,	Lr. 62	775 33		July 1	Balance,		695 69
	Expenses,	" 67	5,708 39		Dec. 31	Mdse.,	Lr. 59	58,875 25
	Repairs,	" 80	6,311 32			Rent,	" 262	931 45
	Taxes,	" 86	1,654 50					
	Interest,	" 87	1,453 06					
	Insurance,	" 307	1,398 12					
	Jas. C. Stanley	" 480	2,011 73					
	John Discon & Co.,	" 321	1,785 00					
	E. C. Church,	" 317	500 00			R. E. Impt.,		22,604 47
	N. J. Felt Works,	" 439	32 51			Reserve Fd.,		7,268 96
						Dividend,		9,000 00
	R. E. Improvt. A/c,	J1 305	22,604 47			Net Earnings,		38,873 43
	Reserve Fund,	" 305	7,268 96					
	Dividend A/c,	" 305	9,000 00					
			60,503 39					60,503 39

PROFIT AND LOSS, LEDGER A, 19.

Jan. 1, 1884, to Nov. 30, 1884.

1884				1883			
June 30	Farm,	J1 338	922 53	June 30	Mdse.,	J1 338	36,464 03
	Expense,	" "	5,014 34	" "	Rent,	" "	985 28
	Repairs,	" "	5,988 72	Nov. 30	Mdse.,	" 365	34,683 22
	Interest,	" "	1,039 40		Rent,	" "	849 86
	Insurance,	" "	555 00				
Nov. 30	Farm,	" 364	1,110 03				
	Expense,	" "	5,103 73				
	Repairs,	" "	15,091 46		Dividend,	12,000 00	
	Interest,	" "	1,838 07		Reserve Fd.,	14,398 50	
	Insurance,	" "	1,316 29				
	Taxes,	" "	1,663 45		Net Earnings,	26,398 50	
	Machin'y 10%,	" "	6,940 87				
	Reserve Fd.,	" 365	14,398 50				
	Dividend A/c,	" "	12,000 00				
			72,982 39				72,982 39

PROFIT AND LOSS, LEDGER A, 19.

Dec. 1, 1884, to November 30, 1885.

1885				1885			
June 30	Farm,	399	883 11	June 30	Mdse.,	J1 399	35,312 31
	Expense,	"	6,753 38	"	Rent,	" "	1,002 27
	Repairs,	"	8,278 61	Nov. 30	Mdse.,	" 431	52,460 84
	Interest,	"	1,391 82	"	Rent,	" "	741 44
	Insurance,	"	730 55				
	Taxes,	"	4 54				
Nov. 30	Farm,	431	641 14				
	Expense,	"	5,757 71		R. E. Impt. a/c,	19,240 05	
	Repairs,	"	9,286 02		Reserve Fd.,	15,000 00	
	Interest,	"	851 50		Dividend,	12,000 00	
	Insurance,	"	554 22				
	Taxes,	"	1,897 43		Net Earnings,	46,240 05	
	Machinery 10%,	"	6,246 78				
	R. E. Impt. a/c,	"	19,240 05				
	Reserve Fund a/c,	"	15,000 00				
	Dividend,	"	12,000 00				
			89,516 86				89,516 86

PROFIT AND LOSS, LEDGER A, 172.

Dec. 1, 1885, to Nov. 30, 1886.

1886					1886				
Nov. 30	Repairs,	J.	36	20,518 41	Nov. 30	Mdse.,	J.	36	123,167 66
	Expense,	"	"	13,926 29		Rent,	"	"	2,647 03
	Farm,	"	"	1,477 77					
	Interest,	"	"	2,669 27					
	Insurance,	"	"	1,561 15					
	Taxes,	"	"	3,347 18		R. E. Impt.,	28,632 65		
	Machin'y 10%,	"	"	6,743 32		Reserve Fund,	31,138 65		
	R. E. Impt.,	"	37	28,632 65		Dividend,	15,000 00		
	Reserve Fund,	"	"	31,138 65					
	Dividend a/c	"	"	15,000 00		Net Earnings,	74,771 30		
				125,814 69					125,814 69

EXHIBIT D 2

PROFIT AND LOSS, LEDGER A, 172.

Dec. 1, 1886, to Nov. 30, 1887.

1887				1877			
Nov. 30	Repairs,	J. 110	22,157 76	Nov. 30	Mdse.,	J. 10	132,736 53
	Expense,	" "	15,790 22		Rent,	" "	3,351 72
	Farm,	" "	1,123 54		Stone Quarry,	" "	3,594 57
	Interest,	" "	1,198 31				
	Insurance,	" "	3,511 45				
	Taxes,	" "	1,932 55				
	R. E. Impt.,	" 111	2,322 76		R. E. Impt.,	2,322 76	
	Reserve Fd.,	" "	61,309 17		Reserve Fd.,	61,309 17	
	Dividend a/c,	" "	30,000 00		Dividend,	30,000 00	
	Mt. Hebron Cemetery,	" 110	273 56		Net Earnings,	93,731 93	
	District School,	" "	24 78				
	J.&W. Dumnick,	" "	24 00				
	Rogers Loco. Works,	" "	14 72				
			139,682 82				139,682 82

PROFIT AND LOSS, LEDGER B, 376.

(Dec. 1, 1887 to Nov. 30, 1888).

1888.					1888				
Nov. 30,	Repairs,	J.	183	17,245 08	Nov. 30,	Rent,	183		3,172 34
	Expense,	"	"	26,089 10		Stone Quarry	"		980 65
	Farm,	"	"	734 80		Mdse.	"		109,617 58
	Interest,	"	"	1,246 90					
	Insurance,	"	"	2,252 59					
	Taxes,	"	"	1,863 84					
	R. E. Impt.,	"	184	1,080 73		R. E. Impt.,	1,080 73		
	Reserve Fd.	"	"	31,083 87		Reserve Fd.,	31,083 87		
	Dividend,	"	"	30,000 00		Dividend,	30,000 00		
C. H. Short,		36 70	179						
Jacob Brown,		67 54	"			Net Earnings,	62,164 60		
Wm. Moore,		2 97	"						
Lindsay F. Co.,		242 37	"						
T. or F. Crosby,		1,574 08	"						
		2,223 66							
Less Div.									
Wright & Co.,		50 00	"	2,173 66					
				113,770 57					113,770 57

PROFIT AND LOSS, LEDGER B, 376.

(Dec. 1, 1888 to Nov. 30, 1889).

1889.				1889.			
Nov. 30, Repairs,	245	18,131 09		Nov. 30, Mdse.,	247	117,418 23	
Expense,	"	24,896 85		Rent	"	3,128 33	
Farm,	"	859 64					
Interest,	"	360 70					
Insurance,	"	2,929 18					
Taxes,	"	2,706 88					
R. E. Impt. a/c	247	38,341 44					
Dividend,	"	30,000 00		R. E. Impt. a/c		38,341 44	
Bad Debts,	"	2,320 78		Dividend,		30,000 00	
H. Worthener,	869 25						
Timothy Bros.,	242 83			Net Earnings,		68,341 44	
W. F. Ryerson,	100 00						
United Cab & Carriage Co.,	68 70						
Q. C. Boulter,	214 33						
Prouty & Glass,	125 64						
H. M. Greenough,	195 58						
Swan Busford & Co.,	129 22						
G. G. Warborn	375 23						
		120,546 56				120,546 56	

PROFIT AND LOSS, LEDGER B, 376.

(Dec. 1, 1889 to Nov. 30, 1890).

1890.			1890.			
Nov. 30,	Repairs,	18,059 61	Nov. 30,	Mdse.,	299	124,819 38
	Expense,	24,926 16		Rent,	"	3,200 45
	Farm,	690 96				
	Interest,	4,552 95				
	Insurance,	2,411 92				
	Taxes,	2,976 25		Dividend,	37,500 00	
	Dividend a/c,	37,500 00		R. E. Impt.,	35,081 33	
	R. E. Impt.,	35,081 33				
	Bad Debts,	1,820 65		Net Earnings,	72,581 33	
		128,019 83				128,019 83

EXHIBIT D 2

PROFIT AND LOSS, LEDGER B, 376.

(Dec. 1, 1890 to Nov. 30, 1891).

1891.					1891.			
Nov. 30,	Repairs,	351	15,751 20		Nov. 30, Mdse.,	352	108,513 11	
	Expense,	"	25,696 41		Rent,	"	3,047 02	
	Farm,	"	775 91		Stone Quarry,	"	100 00	
	Interest,	"	934 21					
	Insurance,	"	2,381 00					
	Taxes,	"	2,171 46		Dividend,	30,000 00		
	Bad Debts,	352	8,818 10		R. E. Impt.,	25,131 84		
A. J. Campbell,	25 96							
Geo. DeB Keim Co.,	8,883 93				Net Earnings,	55,131 84		
	8,909 89							
Less recov. from Blakeman & Bussy,	91 79							
	Dividend a/c	352	30,000 00					
	R. E. Impt.,	"	25,131 84					
			111,660 13				111,660 13	

PROFIT AND LOSS, LEDGER B, 377.

(Dec. 1, 1891 to Nov. 30, 1892).

1892.				1892			
Nov. 30, Repairs,	406	17,837 43		Nov. 30, Mdse.,	J. 406		113,544 19
Expense,	"	26,201 53		Rent,	"		3,078 14
Farm,	"	520 73		Interest,	"		663 28
Insurance,	"	2,792 04					
Taxes,	"	2,399 52					
Bad Debts,	"	1,469 37		Dividend,	37,500 60		
Dividend a/c,	407	37,500 00		R. E. Impt.,	23,924 83		
Sales guarantee,	"	4,640 16					
R. E. Improvement,	"	23,924 83		Net Earnings,	61,424 83		
		117,285 61					117,285 61

PROFIT AND LOSS, LEDGER B, 377.

(Dec. 1, 1892 to Nov. 30, 1893).

1893.				1893.				
Nov. 30,	Repairs,	456	15,595 53	Nov. 30,	Mdse., J.	456	79,905 46	
	Expense,	"	27,255 82		Rent,	"	4,475 99	
	Farm,	"	147 44					
	Insurance,	"	2,574 07					
	Taxes,	"	3,703 93					
	Interest,	"	708 03		R. E. Impt.,		788 20	
	Sales Guarantee,	"	3,608 43		Dividend,		30,000 00	
	R. E. Impt.,	458	788 20					
	Dividend,	"	30,000 00		Net Earnings,		30,788 20	
			84,381 45					84,381 45

PROFIT AND LOSS, LEDGER B, 377.

(Dec. 1, 1893 to Nov. 30, 1894).

1894.				1894			
Nov. 30, Repairs,	1		14,496 02	Nov. 30, Mdse.,	J.	2	74,782 29
Expense,	"		23,209 14	Rent,	"	"	2,478 31
Farm,	"		308 21				
Insurance,	"		1,977 31				
Taxes,			3,076 90				
Interest,	"		1,633 72				
Sales Guarantee,	"		10,578 64				
Bad Debts,	2		4,225 57				
E. S. Higgins & Co.,	11	29					
A. L. Stanley,	170	50					
J. C. Stanley,	339	82					
J. C. & R. Stanley,	580	72					
E. E. Gedney,	2,294	44					
Bills Receivable,	542	24					
Miller & Parker,	7	00					
William Dickson,	2	00					
Polhemus & Co.,	16	10					
St. Joseph's Hospital	15	50					

George Sindle,		19 00					
William O'Brien,		97 60					
Mark Zake,		21 50			Net Earning,		17,755 09
Miscellanous a/c,		107 86					
			17,755 09				
Dividend,			77,260 60				77,260 60

PROFIT AND LOSS, LEDGER B, 377.

(Dec. 1, 1894 to Nov. 30, 1895).

1895.				1895.			
Nov. 30,	R. Beattie & Sons,	44	833 34	Nov. 30,	By R. Beattie & Sons,	44	204 49
	Repairs,	46	14,321 94		Mdse.,	46	60,035 00
	Expense,	"	23,957 94		Rent,	"	3,567 49
	Insurance,	"	2,406 76		Interest,	"	2, 50 61
	Taxes,	"	2,770 58		R. E. Impt.,	667 03	
	R. E. Impt., a/c,	"	667 03		Dividend,	21,000 00	
	Dividend,	"	21,000 00				
					Net Earnings,	21,667 03	
			65,957 59				65,957 59

Profit and Loss, 1896.

Ledger B, 351.

1896					1896			
Nov. 30	To R. Beattie & Sons	B.D.91	6,101 57		Nov. 30	By R. Beattie & Sons.	B.D.91	267 70
	" Repairs	93	14,150 01			" Mdse	93	74,129 02
	" Expense	"	23,258 02			" Rent	"	3,090 00
	" Insurance	"	3,462 37			" Interest	"	4,036 76
	" Taxes	"	3,025 35					
	" Farm	"	330 17			R. E. Impt.	10,195 99	
	" R.E.Imt. account	94	10,195 99			Dividend	21,000 00	
	" Dividend	"	21,000 00			Net earnings	31,195 99	
			81,523 48					81,523 48

Profit and Loss, 1897.

Ledger, C 350.

1897					1897			
Nov. 30	To Bad Debts R. B. & S.	143	3,050 47		Nov. 30	By Mdse	147	73,525 96
	" Repairs	147	13,214 42			" Rent	"	2,606 07
	" Expense	"	24,371 43			" Interest	"	2,617 64
	" Insurance	"	3,058 09					
	" Taxes	"	2,514 70			Dividend	30,000 00	
	" Dividend account	"	30,000 00			R. E. Impt.	2,540 56	
	" R. E. Impt. account.	"	2,540 56			Net earnings	32,540 56	
			78,749 67					78,749 87

Profit and Loss, 1898.

Ledger C, 350.

1898				1898			
Nov. 30	To Bad Debts R. B. & S.	193	528 45	Jan. 28	By L. F. Quarry Co.	154	580 72
	" Repairs	196	15,491 72	Nov. 30	" Mdse	197	62,234 82
	" Expense	"	25,536 19		" Rent	"	2,754 47
	" Insurance	"	2,373 89		" Interest	"	1,810 65
	" Taxes	"	2,689 52				
	" Dividend account	"	20,760 89		Net Earnings	20,760 89	
			67,380 66				67,380 66

Profit and Loss, 1899.

Ledger C, 350.

1899				1899			
Nov. 30	To Repairs	236	16,699 51	Nov. 30	By Mdse	235	62,472 33
	" Expense	"	22,039 19		" Rent	"	2,788 70
	" Insurance	"	2,904 79		" Interest	"	1,966 24
	" Taxes	"	2,589 49				
	" Doubtful Debts	"	4,994 29				
	" Dividend account	"	18,000 00				
			67,227 27				67,227 27

EXHIBIT D 2

Profit and Loss, 1900.

Ledger C, 350.

1900				1900			
Nov. 30	To Repairs	267	19,169 99	Nov. 30	By Mdse	263	87,166 88
	" Expense	"	20,549 40		" Rent	"	3,266 32
	" Insurance	"	4,295 63		" Interest	"	564 22
	" Taxes	"	2,740 32				
	" Electric Plant	"	1,513 03				
	" New Turbine Wheel,	"	3,297 48				
	" Cpt. Printing Machine	"	5,248 44				
	" Patent account	"	407 80				
	" Miscellaneous account	"	20 65				
	" C. L. Kalmbach	"	118 41				
	" Eugene Garden	"	100 00				
	" Boyd Hurley & Co.	"	10,095 53				
	" Doubtful Debts	"	640 74				
	" Dividend	"	22,800 00		Net earnings	22,800 00	
			90,997 42				90,997 42

EXHIBIT D 2

521

Profit and Loss, 1901.

Ledger C, 351.

1901					1901				
Nov. 30	To Insurance account...	293	2,339 52		Nov. 30	By Interest account	292	815 90	
	" Repairs " ...	"	20,021 18			" Rent "	"	9,854 93	
	" Expense " ...	"	22,462 67			" Merchandise account.	294	109,227 60	
	" Taxes " ...	"	3,360 02						
	" Est. of R. Beattie ..	"	4,716 61						
	" Machinery account..	"	12,104 87						
	" Fire Dept.....	294	7,700 86						
	" Sundry Bad Debts..	"	7,192 50			Dividend	25,000 00		
	" Doubtful Debts	"	5,000 00			Reserve Fd	10,000 00		
	" Dividend account....	"	25,000 00						
	" Reserve Fund	"	10,000 00			Net earnings	35,000 00		
				119,898 43					119,898 43

EXHIBIT D 2

Profit and Loss, 1902.

Private Ledger, 148

1902					1902				
July 31	To Frank E. Rosen.....	19	41 44		May 9	By Geo. F. Daniels.....	J308	92 16	
	" J. H. Vanderventor.	"	178 63		Aug. 4	" Cash	30	1 38	
	" Columbia F. & C. Co.	"	60 50		Nov. 30	" Sundries	320	1 75	
Nov. 30	" Sundries.....	320	65 48			" Sand account	324	480 75	
	" Mfg. account	325	350,283 93			" Rent "	325	9,689 84	
	" Repair "	"	27,191 29			" Interest "	"	6,771 29	
	" Fuel & Light account.....	"	5,861 74			" Sales "	"	524,649 79	
	" Expense account....	"	53,121 42						
	" Electric Plant.....	"	473 52						
	" Dividend	"	30,000 00						
	" Fire Dept.....	"	3,572 80						
	" Machinery	"	12,088 09						
	" Real Estate and Bldgs.....	"	24,414 96			Dividend	30,000 00		
	" Doubtful Debts	"	5,000 00			Reserve Fd.....	24,943 99		
	" L. I. R. Estate	"	4,389 16						
	" Reserve Fund	"	24,943 99			Net earnings.....	54,943 99		
			541,686 96					541,686 96	

EXHIBIT D 2

Profit and Loss, 1903.

Private Ledger, 148-9.

1903					1903				
Nov. 30	To Manfg	J355	333,529 37		Nov. 30	By Singac B. Co	J353	112 17	
	" Repairs	"	26,636 51			" Sales	354	512,491 70	
	" Fuel & Light	"	6,380 00			" East Jersey	"	12,600 00	
	" Expense	"	49,593 44			" Rent	"	3,508 08	
	" Fire Dept	"	3,272 39			" Interest	"	2,479 01	
	" Electric Plant	"	300 00			" " Overdue	"	168 95	
	" Machinery	"	11,703 75						
	" Real Estate	"	21,898 46			Dividend	36,000 00		
	" Dividend	"	36,000 00			Reserve	37,045 99		
	" Doubtful account	"	5,000 00				73,045 99		
	" Reserve Fund	"	37,045 99						
				531,359 91					531,359 91

Profit and Loss, 1904

Private Ledger, fol. 150.

1904				1904			
Feb. 26	To Hart Carpet Co ...	61	314 64	Aug. 1	By B. W. Co.....	J371	1,835 00
Mch. 31	" B. R. S. & Co.....	68	63 76	Nov. 30	" Sales.....	379	358,594 05
Nov. 30	" Manfg	J379	243,479 89		" Interest Overdue account.....	"	164 98
	" Repair.....	"	21,217 60		" Rent	"	3,307 10
	" Fuel & Light.....	"	2,687 45		" E. J. W. Co.....	"	18,900 00
	" Expense	"	48,883 44		" Interest	"	5,189 46
	" Manfg.....	J380	4,173 46		" Taxes	380	290 68
	" Expense	"	18 38				
	" Sales.....	"	5,980 90				
	" Fuel & Light	"	63 45				
	" Pat. Safe D. & T. Co.....	"	100 71				
	" Royalties	"	79 31				
	" Reserve (P & L 1903)	381	6,300 00				
	" Dividend.....	"	30,000 00				
	" Reserve Fd	"	24,918 28				
			388,281 27				

Dividend	30,000 00	
Reserve Fd	24,918 28	
Net Earnings	54,918 28	
		388,281 27

EXHIBIT D 2

Profit and Loss, 1905.

Private Ledger, 150.

1905				1905			
Nov. 30	To R. Beattie.....	J34	1,600 00	Mar. 30	By Sundries	J391	200 00
	" Expense.....	36	57,849 49	June 29	" "	J8	600 00
	" Fuel & Light		3,826 13	July 6	" Check 290	234	7 99
	" Manufg		321,659 48	Aug. 21	" Firth Cpt. Co.....	J15	500 00
	" Repairs.....		22,611 46	Sep. 26	" " " "	J20	300 00
	" Depreciation		15,529 57	Nov. 30	" Balance Sales	J36	434,612 22
	" Dividend.....		30,000 00		" Discount	"	1,714 96
	" Reserve.....		4,734 43		" Rent	"	3,611 32
					" Interest	"	16,264 07
			457,810 56				457,810 56

Dividend	30,000 00	
Reserve	4,734 43	
Net Earnings.....	34,734 43	

EXHIBIT D 2

ASSETS AND LIABILITIES, DECEMBER 1, 1905.

Assets.

Fire Department.		3,411 82	
Machinery Account.....		132,660 06	
Scouring Mill....		4,810 17	
Vault		493 65	
Bowling Alley..		1,454 47	
Bond and Mortgage, E. J. W. Co.....		315,000 00	
Real Estate.....188,618 96			
" Long Island. 33,483 48			
		222,102 44	
Cash:			
Petty Cash.....	465 88		
Check E. J. Water Co....	6,300 00		
Peterson National Bank.....	64,498 44		
Bank of Metropolis, N. Y....	7,072 24		
		78,336 56	
Brown Bros. Co..	78,729 71		
Colonial Trust...	54,379 01		
		211,445 28	
Accounts Receivable.....		80,630 59	
Merchandise as per Inventory.		237,353 63	

Liabilities.

Capital Stock....			300,000 00
Reserve for Bad Debts.....	17,155 19		
Reserve for Real Estate Improvements.	204,653 64		
Reserve for a/c Water Rights.	355,000 00		

EXHIBIT D 2

Reserve Fund...251,395 52		
		828,104 35
Accounts payable		51,257 76
Dividend.....		30,000 00
	$1,209,362 11	$1,209,362 11

SUMMARY OF INVENTORY FOR DECEMBER 1, 1905.

Stock House..		80,712 46	
Worsted Mill..		15,953 66	
Felt Mill.....		3,646 73	
Stone Mill, Dry Room.....	6,471 00		
Soap, &c.....	79 58		
Drum Room..	2,055 26		
Sitting Room..	14,150 80	22,756 64	
Stone Mill, 3rd floor.....		20,158 92	
Weave Shop..			
Color Shop...		1,459 58	
Fire Room...		9,844 05	
		154,532 05	
Less 5%...		7,726 60	146,805 45
Finished Goods.			
Finishing Room.....		7,157 80	
Carpet Stock Room.....		75,467 16	
Rug.....		8,023 40	
Field Chapmans.....		2,483 70	
Samples.....		585 00	
		93,617 06	
Less 5%.....		4,680 85	88,936 21
Expense.			
Oat Hulls.....		235 88	
" " Dr. Room.....		47 25	
		283 13	

EXHIRIT D 2

Less 5%.....	14 16	268 97
Tubes, Paper, Burlaps, &c..	468 68	
Less 5%.....	23 43	445 25
Coal in yard.....	945 00	
Less 5%.....	47 25	897 75
		$237,353 63

ACCOUNTS RECEIVABLE, DECEMBER 1st, 1905.

Ledger D.

104	C. H. Booth.....	57 11
208	E. P. Holmes.....	1,623 56
497	J1. of Commerce.....	12 00
55	B. H. Tobey, Manager	1,630 85
2	Mrs. W. F. Adams (Private Ledger)..	24 00
14	R. Beattie, Jr.....	4 00
35	Howard Beattie.....	2,222 22
134	A. Murray.....	105 40
199	Second Reformed Church.....	1,023 00
232	E. G. Beattie.....	195 31
	*Balances of Customers Ledger, see Trial Balance.....73,659 04	
	Rents due, see Jol., fol. 30.....	74 10
		80,630 59

*Bills Receivable, Alexander Murray..... 3,066 71

Ac. Receivable..... ..70,592 33

ACCOUNTS PAYABLE, DECEMBER 1st, 1905.

Ledger D.

99	W. H. Button.....	27 70
102	E. H. Bennett.....	90 00
114	William Crabb & Co.....	22 15
118	Peter Cooper's Glue Factory.....	112 50
121	Carpet Yarn Pig Co.....	112 73
127	John Campbell & Co.....	201 25
138	Dolphin Jute Mills.....	1,553 80
146	Davis & Furber Machine Co.....	2 50

EXHIBIT D 2

149	De. Lack. & W. R. R. Co	82 35
152	H. de Kergwelen	20 00
160	Isaac Eaton Co	458 42
162	Erie Railroad Co	141 07
170	Fuller's Express Co	382 10
172	C. M. Fauser	180 00
190	Garland Mfg. Co	72 80
205	Chas. F. Hubb Co	21 60
207	A. Hubbard Lumber Co	104 92
221	Inglis Stationery Co	17 90
246	E. L. Klotz	45 23
249	Charles E. Kayhurt	15 75
250	W. E. Kent	129 00
259	Linen Thread Co	1,416 16
262	Leonard & McCoy	4 32
263	Little Falls Eagle	23 45
265	Lockwood Bros. Co	43 50
275	H. Miller, Agt	67 83
276	A. W. Mitchell	3 25
290	N. Y. & N. J. Telephone Co	27 45
296	Norwood & Berdan	319 05
310	T. E. Pechin	15 02
314	Press Printing and Publishing Co	3 90
315	Public Service Corporation of N. J	13 26
317	Postal Telegraph Cable Co	3 35
319	Joseph Pickarn	97 45
321	Frank Parker	40 80
324	Paterson Rubber Co	4 20
333	A. J. Rogers Co	212 06
335	David G. Rogers Co	44 53
345	Samuel Smith & Son Co	2 97
357	Snider & Dunn	11 75
363	J. J. Terhune	26 60
376	J. A. Van Winkle Co	437 96
379	Van Riper Mfg. Co	67 71
388	Weeks & Parr	195 00
389	Chris. Watson & Co	81 53
391	William D. Wilson	155 47
392	George D. Walker & Sons	19 85
394	Watson Machine Co	522 54

EXHIBIT D 2

296	Western Union Telegraph Co.....	4 78
408	Muzzy Bros.....	6 88
410	Commonwealth Roofing Co.....	224 74
497	F. Eliot Low.....	10 00
"	J. Russell Marble Co.....	11 03
54	George L. Burkmaier.....	48 56
42	Singack Brick Co.....10,220	56
24	W. H. Beattie.....	2,841 18
64	William Dickson.....	16 00
226	William Beattie, Trustee.....	6,750 99
240	Robert Beattie, Senior.....16,245	49
	Wages, see Jol., fol. 30.....	3,698 80
	Taxes.....	3,524 02
		$51,257 76

DEFENDANTS' EXHIBITS.

(HEARING IN 1911.)

EXHIBIT D I

D 1.

(Offered February 16, 1911.)

DATA

Taken from the Books and Accounts of the Beattie Manufacturing Company.

Prepared and submitted by the Beattie Manufacturing Company.

February, 1911.

Statement Showing Working Capital as at close of fiscal years 1882 to 1910, viz: Cash, Accounts Receivable and Merchandise—after deducting Items Payable.

	Cash.	*Merchandise.*	*Accounts Receivable.*	*Accounts Payable.*	*Dividends.*	*Working Capital.*
1882 (6 months)	204 95	94,837 24	46,222 39	56,035 77	6,000	79,228 81
83	591 45	107,462 15	67,912 99	72,387 98	9,000	94,578 61
84 to 11/30		106,070 06	87,532 11	60,719 59	12,000	121,682 58
85	2,199 01	117,419 35	132,207 87	88,618 83	12,000	151,207 40
86		140,575 71	125,449 21	78,425 73	15,000	172,599 19
87	6 80	97,561 31	221,604 15	62,377 15	30,000	226,795 11
88	548 47	120,751 20	228,179 11	65,315 22	30,000	254,163 56
89	60,978 00	117,891 31	230,784 20	87,715 56	30,000	291,937 95
1890	56,808 45	161,130 70	260,910 25	116,257 13	37,500	325,092 27
91	57,181 35	170,504 43	288,219 38	139,420 75	30,000	346,484 41
92	58,401 17	174,405 49	311,917 39	134,684 83	37,500	372,539 22
93	69 87	155,044 16	339,757 10	106,333 59	30,000	358,537 54
94	340 85	111,187 88	349,019 45	91,384 19	30,000	339,163 99
95	50,119 58	100,499 00	299,870 35	84,666 34	21,000	344,822 59
96	174,395 55	114,780 90	173,576 85	85,794 18	21,000	355,959 12
97	157,978 46	162,439 19	146,191 05	81,923 86	30,000	354,684 84
98	174,124 54	152,332 08	137,825 37	86,111 48	30,000	348,170 51
99	158,506 07	148,198 70	155,162 62	98,582 38	36,000	327,285 01

1900	141,758 87	167,166 32	134,655 92	83,156 63	30,000	330,424 48
01	145,531 88	165,541 32	103,014 78	76,245 08	30,000	307,842 90
02	172,833 59	185,377 25	99,845 56	62,553 76	30,000	365,502 64
03	216,190 03	206,858 29	77,283 67	31,988 83	36,000	432,343 16
04	265,353 97	194,487 70	67,277 41	37,064 98	30,000	460,054 10
05	211,445 28	237,353 63	82,085 06	51,257 76	30,000	449,626 21
06	128,050 98	291,626 55	91,126 62	46,130 60	30,000	434,673 55
07	140,898 75	282,484 78	121,442 35	30,526 48	30,000	484,299 48
08	199,829 45	280,654 72	136,473 60	37,585 91	37,500	541,871 86
09	274,430 96	276,732 33	172,579 39	57,858 67	60,000	605,582 64
1910	203,016 52	356,335 32	147,324 94	147,360 70	60,000	499,316 00

EXHIBIT D 1

Statement of Sales, Net Earnings, Dividends and Working Capital at close of fiscal years 1882 to 1910.

	Sales.	*Net Earnings.*	*Dividends.*	*Working Capital.*
1882 (6 months)	142,765		6,000	79,228
1883	311,902	38,873	9,000	94,578
1884	275,804	26,398	12,000	121,682
1885	338,044	46,240	12,000	151,207
1886	444,695	74,771	15,000	172,599
1887	551,244	94,631	30,000	226,795
1888	428,847	62,164	30,000	254,163
1889	472,461	68,341	30,000	291,937
1890	445,857	72,581	37,500	325,092
1891	471,135	55,131	30,000	346,484
1892	461,364	61,424	37,500	372,539
1893	359,347	30,788	30,000	358,537
1894	307,076	17,755	30,000	339,163
1895	301,842	21,667	21,000	344,822
1896	287,434	31,195	21,000	355,956
1897	278,405	32,540	30,000	354,684
1898	249,991	20,760	30,000	348,170
1899	343,556	30,600	36,000	327,285
1900	404,203	35,400	30,000	330,424
1901	499,893	41,300	30,000	307,842
1902	561,261	54,943	30,000	365,502
1903	523,708	75,045	36,000	432,343
1904	356,676	54,918	30,000	460,054
1905	482,977	34,734	30,000	449,626
1906	512,907	35,473	30,000	434,673
1907	604,470	60,882	30,000	484,299
1908	583,556	78,586	37,500	541,871
1909	743,791	114,829	60,000	605,582
1910	698,531	74,073	60,000	499,316

EXHIBIT D 1

Table Showing Disposition of Earnings for years 1882 to 1910, inclusive.

	Net Earnings.	*Dividends.*	*Improvements, Machinery and Replacements*	*Total.*	*Carried to unexpended earnings above dividends.*	*Taken from unexpended earnings above dividends.*
1882	11,386	6,000	6,547	12,547	.....	1,161
1883	38,873	9,000	25,796	34,796	4,077	.....
1884	26,398	12,000	6,246	18,246	8,152	.....
1885	46,240	12,000	10,000	22,000	24,240	.....
1886	74,771	15,000	47,404	62,404	12,367	.....
1887	93,631	30,000	9,574	39,574	54,057	.....
1888	62,164	30,000	4,796	34,796	27,368	.....
1889	68,341	30,000	1,694	31,694	36,647	.....
1890	72,581	37,500	5,034	42,534	30,047	.....
1891	55,131	30,000	66,534	36,534	18,597	.....
1892	61,424	37,500	3,110	40,610	20,814	.....
1893	30,788	30,000	12,985	42,985	.....	.....
1894	17,755	30,000	4,972	34,972	.....	17,217
1895	21,667	21,000	16,545	37,545	.....	15,878
1896	31,195	21,000	693	21,693	9,502	.....
1897	32,540	30,000	3,227	33,227	.....	687
1898	20,760	30,000	1,505	31,505	.....	10,745
1899	30,600	36,000	6,861	42,861	.....	12,261
1900	35,400	30,000	17,832	47,832	.....	12,432
1901	41,300	30,000	6,229	36,229	5,071	.....
1902	54,943	30,000	16,314	46,314	8,629	.....
1903	73,045	36,000	25,821	61,821	11,224	.....
1904	54,918	30,000	8,522	38,522	16,396	.....
1905	34,734	30,000	30,465	60,465	.....	25,731
1906	35,473	30,000	43,739	73,739	.....	38,266
1907	60,882	30,000	21,934	51,934	8,948	.....
1908	78,586	37,500	6,551	44,051	34,535	.....
1900	114,829	60,000	52,086	112,086	2,743	.....
1910	74,073	60 000	162,333	222,333	.....	148,260
	1,454,428	850,500	565,349	1,415,849	333,414	294,835

Summary:	Net Earnings.....		1,454,428	Carried to Unexpended earnings above dividends.....	333,414
	Dividend 850,500				
	Imprts.replacements	565,349	1,415,849	Taken from.....	294,835
	Balance.....		38,579		38,579

Statement Showing Increase in Sales of Rugs and Decrease in Sales of Carpets for 7 Years—1904 to 1910 Inclusive.

	Carpets and Small Rugs made on Carpet Machinery.		*Rugs.*		*Yarns and Noils.*		*Other Sundry Sales.*		*Totals.*
1904	241,442 20	(67%)	53,832 59	(15%)	59,699 45	(17%)	2,589 78	(1%)	357,564 02
1905	307,017 54	(64 ")	96,410 66	(20 ")	76,976 84	(16 ")	2,572 49		482,977 53
1906	251,028 13	(49 ")	186,548 96	(36 ")	76,705 45	(15 ")	3,249 65		517,532 19
1907	221,712 03	(37 ")	359,916 97	(59 ")	25,413 81	(4 ")	2,624 71		609,667 52
1908	111,122 06	(19 ")	412,581 34	(70 ")	62,889 17	(11 ")	3,781 44		*590,374 01
1909	127,678 86	(17 ")	563,704 17	(75 ")	50,576 75	(7 ")	5,955 07	(1 ")	†747,914 95
1910	119,540 45	(17 ")	525,778 27	(75 ")	53,432 70	(7 ")	4,142 92	(1 ")	702,894 34

* Less Trade discounts for year 1908—$529.74, making total net $589,844.27.

† Less Trade discounts for year 1909—$1,200.89, making total net $746,714.06.

EXHIBIT D 1

EXHIBIT D 1

Statement Showing Needs to March 1st, 1911.

Receipts.

Cash on hand February 1st.		$125,086 73
Accounts Receivable February 1st	182,883 30	
Estimated Sales for February, same as last year	41,706 63	
	$224,589 93	
*Estimated to receive of this between now and March 1st, 1911, 11%		24,704 89
Total		149,791 62

*Being same percentage as received last year, as follows:

Accounts Receivable February 1st, 1910	$218,526 24	
Sales February, 1910	41,706 63	
	$260,232 87	
Receipts February, 1910, or 11%	28,842 67	

Expenditures.

As per year just closed; for Manufacturing and Trading purposes:

Expenses	$67,991 38	
Fuel	8,150 84	
Manufacturing	535,150 63	
Repairs, etc	28,801 31	
	$640,074 31	
As per Profit and Loss ac't. estimate 1-12th of this for month of February		$53,339 51
Liabilities—Current a't. as per Trial Balance, Feb 1st.		53,574 98

EXHIBIT D 1

Liabilities-ac't. new Plant—		
Engine, Boilers, Machinery, under contract. etc..	$58,101 57	84,651 57
To be ordered.....	26,550 00	
		$91,566 06
Total receipts as above, brought down.....		149,791 62
Estimated liabilities of Corporation on March 1st, 1911, above the amount of cash on hand.....		$41,774 44

Note.—Dividends declared for the year 1910, to the extent of $45,000, will be payable after March 1st, 1911.

Statement of Expenditures for Improvements, Machinery and Replacements, under way, Contracted for or Flanned.

Estimate furnished by John W. Ferguson Co. of Equipment Power Plant, etc., under contract:

Engine and boiler foundations.....	$2,080 00
Setting.....	2,250 00
Smoked flue.....	800 00
Forced Draft, etc.....	725 00
Chimney and foundation.....	3,040 00
Shafting.....	13,150 00
Add. for foundations and overtime.....	1,500 00
Sprinklers, moving pump, etc.....	2,100 00
Moving small engine.....	350 00
Switch board and wiring.....	1,000 00
Piping engines, etc.....	7,000 00
Condenser, heater and hot well.....	1,500 00
Ropes.....	1,375 00
Coal conveyor.....	1,500 00
Ash handling apparatus.....	1,000 00
General masonry and carpenter.....	1,000 00
Buildings and foundations.....	18,450 00
New Suction Fire Pump.....	600 00
Hot Water Pump and installation.....	600 00
	$60,020 00

EXHIBIT D 1

Engine, as per contract....	$9,400 00	
Boilers, as per contract....	4,500 00	
		$13 900 00
		73,920 00
Machinery ordered:		
Yarn Dryer.....	$3,250 00	
Two pairs Atlantic Drums..	3,500 00	
Four 16-4 Looms.....	10,500 00	
Five 12-4 Looms	10,500 00	
		27,450 00
Machinery required:		
Burr Picker.....	700 00	
Yarn Dyeing Machine....	8,000 00	
Two pairs Atlantic Drums.	3,200 00	
Two pairs AxminsterDrums	3,600 00	
One 6-4 Shear.....	600 00	
One Jute Dressing Machine	3,500 00	
One Long Steam Box	1,300 00	
One 12-4 Shear.....	1,150 00	22,050 00
Total.....		$123,420 00
Deduct:		
Paid or entered on books as liabilities, prior to December 1st:		
John W. Ferguson Co.....	$5,000 00	
Brick, Material, etc.....	1,372 51	
Yarn Dryer.....	3,250 00	
Two pairs Atlantic Drums.	3,200 00	
On account of Looms.....	2,026 48	
Duties on Looms.....	911 70	15,760 69
As per balance sheet December 1st, 1910.....		$107,659 31
Add to this for further requirements that have since developed:		
Remodeling Steam Room..	$3,950 00	

EXHIBIT D 1

Rearrangement of Electric wiring	2,000 00	
Rearrangement of Steam Pipes	3,000 00	
Re-hanging Shafting	1,000 00	
Two mules $1,000 each	2,000 00	
One set of cards	1,800 00	
Two setting frames	700 00	14,450 00
		$122,109 31

Paid during December, or entered as liability:

John W. Ferguson Co	6,000 00	
Looms	8,571 57	
Duties	1,991 70	

Paid or entered as liability, during Jauuary:

Cash item	17 00	
Boilers	4,500 00	
Materials, etc	561 32	
Machinery ac't.: Singer	68 03	
Watson's.	555 00	
Freight	270 90	
John W. Ferguson Co	7,000 00	
Watts-Campbell-Engine ac't	5,640 00	
Duties on Looms	1,900 05	
Machinery, etc., January	382 17	
	$20,894 47	37,457 74
		$84,651 57

Balance Sheet, December 1st, 1910.

Assets.

Cash in check accounts, etc.	$138,795 97	
Brown Brothers	63,222 86	
Colonial Trust Co	997 69	$203,016 52
Accounts Receivable:		
W. F. Adams ac't	24 00	
M. B. Wildes	33	

EXHIBIT D 1

G. M. Booth	24 00	
R. Beattie, Jr	78	
Alex. Murray	24 00	
K. B. Dickson	345 60	
H. Beattie	291 65	
E. G. Beattie	131 80	
R. W. Beattie	702 52	
Bills Receivable	1,686 84	
B. H. Tobbey	930 16	
Rents	150 00	
Interest	6,382 31	
Second Reform Church	443 00	
Customer's Ledger	136,112 59	
Creditor's—O. W. Richardson & Co., $15 06		
R. Shaw, 60 30	75 36	
		$147,324 94
Stock		356,335 32
Machinery		172,251 59
Real Estate		191,911 23
Bowling Alley		1,533 58
East Jersey Water Co.	315,000 00	
Little Falls Cpt. & Rug	700 00	315,700 00
Ac't. Engine Room, etc., entered	6,372 51	
Ac't. Engine Room, etc. not entered	107,659 31	114,031 82
		$1,502,105 00

Liabilities.

Accounts payable:		
W. H. Beattie	4,869 61	
Geo. L. Birkmaier	119 40	
Wages due employees	7,960 05	
Taxes due	3,623 00	
Accounts Payable—Ledger	22,919 08	
Accounts Payable — Customer's Ledger	210 25	

EXHIBIT D I

Ac't. Improvements, as per Journal entry	107,659 31	$147,360 70
Doubtful debts reserve		24,406 29
Capital account		300,000 00
Real Estate Improvement ac't	204,653 64	
Reserve Fund	410,684 37	
Water Rights Reserve	355,000 00	970,338 01
Dividend		600,000 00
		$1,502,105 00

Trial Balances of Ledgers, February 1st, 1911.

Debits.

Cash	$60,866.18	
Brown Brothers	63,222.86	
Colonial Trust Co	997.69	$125,086.73

Accounts Receivable.

W. F. Adams ac't	24.00	
M. B. Wildes	1.60	
K. B. Dickinson	345.60	
2nd Reform Church	393.00	
E. B. Beattie	50.00	
R. W. Beattie	917.52	
Bills Receivable	1,000.00	
Customers' ac'ts Receivable	180,076.22	
R. Shaw	60.30	
O. W. Richardson & Co.	15.06	
Total Accounts Receivable		$182,883.30
Advance act. of N. Y. Office expenses—B. H. Tobey		2,084.70
E. J. Water Co. Bond & Mortgage	315,000.00	

EXHIBIT D 1

Investment in Little Falls Carpet & Rug Mills...	700.00	$315,700.00
Real Estate.....	191,911.23	
Bowling Alley.....	1,559.78	$193,471.01
Machinery December 1st.	172,251.59	
Purchases and duties....	13,739.42	$185,991.01
New Engine Room.....	11,450.83	
Act. John W. Ferguson Co	13,000.00	$24,450.83
Watts, Campbell Co. Engine		$5,640.00
Manufacturing and Trading Accounts:		
Raw material as per Inventory Dec. 1.....	$74,441.25	
Goods in process Inventory Dec. 1.....	98,437.77	
Finished goods Inventory Dec. 1.....	180,549.46	
Factory Expenses.	492.94	
Shipping expense.....	1,357.90	
Fuel & Light.....	1,056.00	356,335.32
Charges to Manufacturing & Trading Accounts, Purchases, etc:—		
Raw Material.	66,948.98	
Freight.....	824.65	
Designs.	1,110.00	
Factory expense.....	285.28	
Shipping expense.....	1,169.48	
General expense.....	1,589.84	

EXHIBIT D 1

Pay Roll.....		25,234.80	
Insurance.....		1,705.02	
Taxes		329.37	
Commission...		223.85	
Construction..		2,459.70	
Selling expense		3,951.95	
Fuel & Light.		2,260.59	
Stable.....		93.05	
Samples.....		116.50	
Pay roll accrued to Feb. 1.....	$5,200.00		
Salaries accrued to Feb. 1.....	3,583.33	8,783.83	117,085.99
Sales for period.....		116,446.06	473,421.31
Less returns..	920.85		
Colortypes....	2.85	923.70	
		115,222.36	
Less discount allowed.....		2,270.03	113,252.33
			360,168.98
			$1,395,476.56

EXHIBIT D 1

Trial Balances of Ledgers, February 1st, 1911.

Credits.

Accounts payable :			
Geo. L. Birkmaier		$105 70	
Creditor's Ledger		45,887 10	
Reserve wages accrued		5,200 00	
" salaries "	$3,583 33		
Less advances—			
R. B. Jr.,	$500 42		
W. H. B.,	510 54		
H. B.,	291 66	1,302 62	
		2,280 71	
Customer's payable		101 47	
			$53,574 98
Dividends payable April 1st, July 1st and October 1st			45,000 00
Reserve against Accounts Receivable for Doubtful Debts			24,406 29
Profit and Loss—returned envelopes			4 15
Real Estate Improvement account			204,653 64
Reserve Fund			410,684 37
Water Rights			355,000 00
Capital			300,000 00
Rents		$599 47	
Interest		299 30	
Discount on purchase		1,286 30	
Farm		38 00	
			2,153 13
Total			$1,395,476 56

D 2.

(Offered February 16, 1911.)

Insurance Map of Defendants' Buildings.

D 3 and D 4.

(Offered February 16, 1911.)

Photographs of Defendants' Buildings.

MEMORANDUM OF CONCLUSIONS.

June 27-1910

Bill filed by stockholders of The Beattie Manufacturing Company (1) to compel the distribution of accumulated profits by dividends to stockholders, and (2) to compel restoration to the company of moneys received by officers as salaries in excess of the value of the services rendered.

STEVENSON, V. C.

My conclusion is that the complainants when they filed their bill were entitled to a compulsory dividend distributing a very substantial amount of accumulated profits.

My further conclusion is that the salaries of the defendants Robert Beattie and William H. Beattie ($8,500 each) are not excessive but on the contrary in view of all the facts and circumstances of the case so far as they are disclosed by the evidence are fair and reasonable.

(1). The defendant corporation, The Beattie Manufacturing Company, was incorporated by certificate filed under the general Corporation Act of 1875, June 27, 1882. For many years prior to that date Robert Beattie had been operating a carpet manufactory at Little Falls on the Passaic River where from time to time he acquired tracts of land until apparently the entire water power of the river at that place was owned or controlled by him. Two sons, Robert Beattie, the defendant, and William Beattie, now deceased, were associated with their father in the manufacturing business upon an indefinite partnership arrangement. On April 19, 1879, Robert Beattie and his two sons made a written partnership agreement in which it is recited that the sons had "for several years been in partnership under the name of Robert Beattie & Sons, in the manufacturing business and without any definite

agreement as to the respective interest of each in said business," and further recited that the written agreement was made te settle the interests of the parties and to provide for a continuance of the business. The significant fact is that the parties took as a basis of settlement a statement of assets and liabilities made January 1st, 1879, showing a net surplus of just $140,000. The partnership assets included machinery, stock and bills receivable, and the agreement sets forth that it was "conceded that the ownership of all the real estate is in Robert Beattie."

When the partners proceeded in June, 1882, to create a corporation to take the manufacturing business of Robert Beattie & Sons, and also to take the very large interests of Robert Beattie in real estate and water privileges at Little Falls, the manufacturing business appears to have been turned over to the corporation at the same valuation fixed in the partnership agreement as of January 1st, 1879, to wit, $140,000, the bill of sale by which the transfer was effected being signed by the three partners. It may be noted in passing that the bill of sale in terms transfers only goods and stock at Little Falls and at the store in New York, but I understand that it is conceded that in fact all the tangible assets of the firm were transferred to the corporation.

At the same time Robert Beattie, the father, made an agreement with the corporation by which in consideration of 1,600 shares of the stock of the company he conveyed or agreed to convey his carpet and woolen manufactory at Little Falls and the tract of real estate whereon the same was erected, and certain lands adjoining the same "together with the water privileges and the machinery and fixtures in said factory." The agreement provided for a more formal deed thereafter to be given.

MEMORANDUM OF CONCLUSIONS

The capital stock of the corporation set forth in its certificate was $300,000 and assigned 1,600 shares to Robert Beattie and 700 shares to each of his sons. The entire authorized stock (3,000 shares) was thus fully paid for.

It is proved beyond all question that no definite valuation of the assets of the partnership or of the real estate and water rights of Robert Beattie was made when the corporation was formed, $300,000 apparently was selected as a convenient amount of stock to issue, all parties recognizing that the assets conveyed to the corporation were worth a great deal more money. There is nothing, however, about the case to affect the necessary inference to be drawn that the lands and water power of Robert Beattie were more valuable than the assets of the partnership.

The specification of the objects for which the company was formed set forth in the certificate of incorporation is as follows:

(1). To purchase of Robert Beattie the carpet and woolen manufactory and tract of real estate whereon the same is erected and the lands adjoining the same at Little Falls, together with the water power and privileges and the machinery and fixtures in said factory.

(2). To purchase from Robert Beattie and Sons the goods and stock in said factory and at their store, No. 85 White street, New York City.

(3). To carry on the manufacture and sale of carpets and other merchandise at said manufactory and store; to erect buildings, mills and machinery for the pur-

pose of such manufacture; to improve and rent and sell said real estate; and to carry on any other business necessary for the proper management and development of said property."

It may be noted that the corporation was formed to purchase two very different kinds of property, and to carry on two very different kinds of business with the two kinds of property thus acquired. The company bought a carpet factory and a stock of goods which had been made therein, and the certificate provided as one of the permanent objects of the corporation for the carrying on of the carpet manufacturing business and the erection of "buildings, mills and machinery for the purposes of such manufacture." But the corporation was receiving lands and water privileges far beyond what were necessary for use in connection with the carpet manufacturing business, as the proofs amply show and the certificate therefore provided as another object of the corporation that the company was "to improve, rent and sell said real estate and to *carry on any other business necessary for the proper development of said property.*"

Robert Beattie, the father, died about a month after the corporation was formed before the "formal deed" provided for in the agreement of July 6th, 1882, above mentioned had been made. This deed, however, was executed by the two sons and residuary devisees, William and Robert Beattie, and their respective wives to the corporation on March 25th, 1884, and although the instrument was duly acknowledged on April 5th, 1884, it was not recorded until February 20th, 1886. From this formal deed it appears that in fact Robert Beattie, the father, turned over to the corporation a large

number of tracts of land, aggregating four or five hundred acres at Little Falls with all the valuable water rights which were appurtenant thereto. The deed expressly conveys all "the right, title and interest of Robert Beattie, now deceased, to lands under water in the Passaic River at Little Falls, and all the water power, privileges, dams, acqueducts, canals, raceways, rights to flow land, rights to maintain dams, abutments, and bridges, and all rights appurtenant to his lands or mill at Little Falls."

In pursuance of the corporate objects above specified the corporation continuously from 1882 until the filing of this bill in 1906, has carried on the carpet manufacturing business at Little Falls and in New York City, and has also sold land and marketed the water privileges which Robert Beattie conveyed to the corporation upon its formation. Both branches of business seem to have been carried on with great success and have resulted in the accumulation of a very large amount of money and securities, the apparent aggregate value of which seems to make the capital stock of the corporation ($300,000) appear like rather a small figure. The corporation at all times since the death of Robert Beatty until the death of William Beattie in 1889 was under the control of the two sons, Robert and William, who were the officers of the corporation, and constituted a majority of its board of directors. After the death of William Beattie in 1889 the defendant, William H. Beattie, a son of Robert Beattie, took the place of his uncle William. Since 1889, Robert and his son William H. have had absolute control of all the affairs of the company.

Under the management of these gentlemen, the defendants, Robert Beattie and his son William H. Beattie, water privileges have been sold to the East

Jersey Water Company by deed or contract for the aggregate sum of $530,000. The corporation as one of the fruits of this water business which it has carried on, now possesses a purchase money mortgage executed by the East Jersey Water Company for $315,000, upon which the annual interest ($12,600) apparently has been paid since the execution of the mortgage in November, 1901. The corporation also holds the agreement of The East Jersey Water Company to buy the remaining water power which the corporation controls on or before March 23rd, 1915, for the sum of $200,000.

It does not appear that this corporation has done a great deal in the way of selling or improving the large tract of real estate at Little Falls, which have no essential connection with the carpet manufacturing business, but this work, of course, the corporation may at any time undertake in pursuance of one of its corporate objects. The wide scope of the business in which The Beattie Manufacturing Company may lawfully engage under its certificate is indicated by the clause in the certificate which authorizes the company "to carry on any other business necessary for the proper management and development" of these extensive lands at Little Falls, and these excedingly valuable water rights connected with the falls of the Passaic River at that place.

Without the aid of the considerations hereinafter set forth, it seems to me that to classify The Beattie Manufacturing Company as a "manufacturing corporation" would be inaccurate and misleading. It would be equally inaccurate and misleading, it seems to me, to classify it as a land and water right company. It is true that one object of the corporation is to carry on the carpet manufacturing business, and it would be entirely proper

to describe the corporation as being engaged, among other things, in the conduct of such business, and to that extent a manufacturing corporation. In like manner the company might properly be referred to in connection with the business of selling land and water rights and privileges.

The fact that the corporate name does not indicate that the corporation was in any other line of business than manufacturing to my mind is of very little significance. In connection with the important name *Beattie* it was quite natural that the word "manufacturing" should appear in the title because the corporation was to continue the old established Beattie carpet manufacturing business at Little Falls and in New York. A name like the Beattie Land and Water Power Company would have been a very queer one to select for use in the carpet market of New York. On the other hand, it was not necessary to the successful prosecution of the other great branches of the corporate business that there should be any reference to such business in the corporate title. The Beattie Manufacturing Company could negotiate for the sale of lands and water rights and privileges just as well as the original Robert Beattie, the old carpet manufacturer, could have done in his day. To add anything to the title besides what was appropriate for use in connection with the carpet business would have been useless and even inconvenient. To find out whether this corporation can properly be called a "manufacturing corporation" we must look at the objects of the corporation as specified in the certificate, and then ascertain what kind of business the corporation actually embarked in. It may be conceded for the purposes of this case that the certificate is not controlling—that ten objects may be specified in a certificate, only one of which is the

manufacture of goods, but if the corporation exclusively engages in such manufacture it may be proper to term it a "manufacturing corporation."

2. We are now prepared to deal with the question which has been extensively argued, whether or not The Beattie Manufacturing Company must be deemed a "manufacturing corporation" within the meaning of §51 of the Corporation Act of 1875 (1 Rev. St., p. 186). This section with one significant change which will be noticed hereafter, embodied the provisions of a statute passed in 1866 (Laws of 1866, p. 1034) which last mentioned act was the first attempt in New Jersey to impose anything like a rigid mandatory rule to compel the distribution of the profits of corporations in dividends to stockholders. This statute imposed upon "all manufacturing corporations" within the State the duty of distributing profits as a dividend to stockholders on the first day of August in each year unless some other specific day had been fixed in the charter or by-laws. The statute of 1866 only permitted a different day to be fixed by the charter alone. The act permitted the board of directors to reserve as a working capital a sum "not exceeding the amount of one-half of the capital stock paid or secured to be paid." The remainder of the profits had to be distributed annually.

The argument has been forcibly urged that The Beattie Manufacturing Company, having been formed under the act of 1875 was, when this suit was commenced, subject to this ironclad rule regulating the distribution of "accumulated profits." I cannot accept that view.

The history of the legislation in New Jersey looking toward the compulsory distribution of the profits of corporate business by dividends to the

stockholders was set forth by me in the case of Stevens vs. United States Steel Corporation, 68 N. J. Eq., 373 (1904), and also in the case of Reynolds vs. Diamond Mills Paper Co., 69 N. J. Eq., 299, and need not be repeated here in detail. The opinions in those cases may also be referred to as indicating the view which I entertain in regard to the practicability and wisdom of undertaking by a statute to lay down a rigid rule for the distribution of the profits of business corporations. The act of 1866 was a legislative experiment in New Jersey which subsequent enactments seem to indicate did not meet approval or pass the test of time and experience. When; at length, by the revision of 1906 (347), this novel law was made applicable to all corporations created under the general act, the mandatory distribution of profits was modified so as to permit the corporation, by its certificate or by a by-law to "give the directors power to fix the amount to be reserved as a working capital." It is a part of the history of our corporation law that an immense manufacturing and business corporation paused in the work of organization until the statute was further amended (Laws of 1901, p. 245,) so as to give a corporation power by its "original or amended certificate of incorporation, or any by-law adopted by a vote of at least a majority of its stockholders" to regulate the business of distributing its profits in dividends as it might see fit, subject, of course, to equitable control to prevent any abuse of this discretionary power. See Stevens vs. United States Steel corporation, *supra*. Thus the legislative policy of imposing a rigid statutory rule upon manufacturing and other corporations was abandoned and the original rule prevalent generally was in effect re-established in New Jersey.

MEMORANDUM OF CONCLUSIONS

(1.) The act of 1866, as modified in 1875, should, in my opinion, be strictly construed. This statute was an experiment and was based upon a view of corporate management which has, practically, been abandoned.

(2.) The statute in question lays down a law to regulate the distribution of profits of a corporation derived from capital invested in manufacturing business. Where the capital of a corporation to any considerable extent is invested in some other kind of business, either the statutory rule becomes entirely inapplicable, the case not being within the statute at all, or the law, according to its spirit, should be obeyed by apportioning the profits between the two radically different kinds of business and subjecting one part of the profits to distribution under the ironclad rule of the statute and leaving the rest of the profits under the control of the directors. If the statute had been intended to operate in this way such intention would probably have been expressly declared. In the case of The Beattie Manufacturing Company a very large part of the original capital and surplus with which the company began business seems to have consisted of property not used or intended to be used in the carpet manufacturing business. Is it possible that the statutory rule was made applicable to a corporation with a capital of $10,000,000, 999/1000 of which was invested in various enterprises not connected with any manufacturing business if one of the corporate objects consisted in operating a shoe-peg factory in which not more than $10,000 was invested or was intended to be invested?

Very soon after the statutory rule was made applicable to all corporations, as we have seen, the whole force of the rigid rule was abolished. In my opinion, the hard and fast rule of the Corporation

Act of 1875 should be strictly limited to corporations whose capital, in its substantial entirety, at least, is invested in manufacturing and therefore the rule never was applicable to The Beattie Manufacturing Company.

(3.) If the Beattie Manufacturing Company must be deemed to be a manufacturing corporation within the meaning of the Act of 1875, that act after a series of modifications was repealed and displaced by the Act of 1901.

(5). It is not contended on behalf of the complainants that the by-laws with which we have to deal were not adopted by a majority vote of the stockholders so as to bring them within the operation of §47 as amended in 1901. The evidence seems to show that the by-laws were adopted unanimously.

The first by-law passed upon organization of the corporation in 1882 is as follows:

"Dividends shall be declared and paid semi-annually in the months of January and July of such portion of profits as the directors shall deem advisable."

If the Beattie Manufacturing Company was a "manufacturing corporation" within the meaning of §52 of the act of 1875, we certainly have here a most flagrant disregard of the rule laid down by that statute in relation to the distribution of profits in dividends. This by-law was acted upon from year to year without protest from any stockholder.

In the year 1900 the following by-law was adopted:

"The directors may determine from time to time the amount to be reserved by the corporation as working capital."

This by-law manifestly was adopted pursuant to

§47 as it appeared in the Revision of 1896. Under this by-law thereafter the directors regularly by resolution declared a dividend and directed that "the residue of the accumulated profits of the company be reserved as working capital." If the statute of 1896 became applicable to this corporation the only question in regard to the accumulated profits after the adoption of this by-law in the year 1900 would seem to be confined to the *bona fides* of the directors in doling out $30,000 to the stockholders as dividends and keeping back $150,000 or $200,000 of cash in the banks by calling this idle money "working capital." It is plain that §47 was amended in 1901 so as to narrow the control of the Court of Chancery over the Boards of Directors of corporations in respect of the distribution of profits to stockholders. Under the law of 1901 directors are not obliged to set off profits as working capital in order to retain the same from distribution; where corporations avail themselves of this last form of our statute it would seem that the jurisdiction of this Court stands just where it did before any of this experimental legislation was attempted. The Court still has full power to prevent an abuse of discretion and compel the distribution to stockholders of profits which are unreasonably withheld.

(6). My conclusion is that §52 of the act of 1875, was never applicable to The Beattie Manufacturing Company, and that if it was applicable in 1882 it was repealed and substituted by subsequent laws which the Legislature had the constitutional right to pass.

My further conclusion is that under the by-laws of the corporation and the provisions of the present general corporation act as amended in 1901, the whole matter of distributing profits as dividends is

within the sound discretion of the directors. If any of the views expressed above are erroneous—if the act of 1875 is the law governing The Beattie Manufacturing Company, the complainants have all their property as stockholders in their stock, and in my judgment, after these many years of acquiescence in the policy of the corporation, they should be allowed to enforce their rights in a Court of Equity to receive their share of the profits in the form of cash dividends only to an extent which will not increase the burden and inconvenience of the corporation. If we admit that The Beattie Manufacturing Company is a "manufacturing corporation" within the meaning of the act of 1875, and that the rule in respect of the distribution of the profits imposed by that act is unalterable by the Legislature, or if we assume that this corporation is not a manufacturing corporation and hence was not within the operation of the act of 1875, but that it was not competent for the Legislature in 1896 or in 1901 to materially alter the existing law under which the corporation was formed in regard to the distribution of profits in dividends, or whether we hold that these recent statutes of 1896 and 1901 successively became applicable to the corporation, the practical result for all present purposes in my judgment is substantially the same after this long period of delay and acquiescence. The stockholders can only get the aid of this Court to compel the distribution to them of profits which exist in the form of cash, or which can be readily converted into cash, and which the corporation does not reasonably require for the continuation of the successful business of all kinds in which at the present time it may lawfully be engaged.

In this case as well as in prior similar cases which

have come before this Court the complainants recognize most fully in their bill the practical difficulties in the way of strictly enforcing their alleged rights under these statutory rules for the distribution of profits in dividends. The bill does not invoke the statute (§52 of Act of 1875) and demand under that statute a distribution of "accumulated profits" according to the rule therein laid down. The bill prays that the corporation "be decreed to declare a dividend of all the net earnings and accumulated profits of the said company" which shall appear to be "not needed for the legitimate purposes of the company's business." The bill also prays that the decree may compel the declaration of "such reasonable dividends" from time to time as the "financial status of the business may warrant." Counsel for the complainants state in one of the briefs that the three principal complainants, Miss Beattie, Mrs. Gedney and Mrs. Murray do not ask to have withdrawn from the business and distributed among the stockholders as dividends any more of the accumulated profits than can with due regard to the best interests of all the stockholders be properly withdrawn. This would seem to be substantially a statement of the original equitable rule in regard to the power of this Court to compel the corporation to distribute profits unreasonably withheld.

It was necessary, however, in my judgment, to determine the law applicable to the present situation. Counsel for complainants have argued that the law of 1875 governs this case. What the bill says and what counsel say in their briefs and arguments only go to establish a formal waiver by which the extent of the remedy which the complainants seek in this Court at the present time may be modified and limited. The complainants stand in Court asserting a very wide right under the statute of

1875 which they allege to be irrepealable as to them by the Legislature, but they voluntarily waive the enforcement of all these rights to the interests of their corporation to the extent which they think is promotive of their present interests. The decree will not be based on any such theory of waiver.

3. So far the complainants have been considered as ordinary legal stockholders. Such, however, is not the case with respect to all of them. One complainant, Alexander Murray, is the legal owner of twenty-five shares of stock, and another complainant, Mary Murray, is also the legal holder of twenty-five shares. The great bulk of the stock of this corporation in which the complainants are interested is held in trust as follows: 300 shares in trust for the complainant Mary Murray; 300 shares in trust for Agnes Beattie, and 350 shares in trust for Josephine Gedney. These three ladies are daughters of the original Robert Beattie who died in 1882, and this stock aggregating 950 shares was bequeathed by Robert Beattie to his executors in trust. The legacy in trust for the complainant Mary Murray is in the following language:

"I give my said executors 300 shares of the stock of the Beattie Manufacturing Company in trust to pay the income and dividends thereof from the date of my death to my daughter Mary Murray for her life and on her death I give the said shares to her issue, if any; if none, to her heirs at law, to be divided among such heirs in the same proportions as real estate of which she might die seized would descend."

The trust legacies for the complainants Agnes Beattie and Josephine Gedney respectively are in the same words excepting that the name of the beneficiary is different, and in the case of Mrs.

Gedney the amount of the stock is fifty shares more than the amount allotted to either of her sisters.

The executors of the will of Robert Beattie, deceased, were his two sons, Robert and William, and his two sons-in-law William Dickson and Edward Gedney. The son-in-law William Dickson is an aged man entirely blind who acts as a third director with Robert and William H. Beattie. *The control of Robert Beattie over the voting power of the stock of which these trustees are the legal holders seems to have been complete.*

There are two points requiring consideration connected with the nature and situation of these holdings of stock in trust.

(1.) Counsel for complainants, in their arguments, deal with these beneficiaries, the complainants, Miss Beatty, Mrs. Murray and Mrs. Gedney, as if they were the legal stockholders with whom the corporation sustains relations and whose rights the corporation is bound to protect. It seems to me that this is not the correct view. A corporation charged with withholding dividends or otherwise impairing the rights or injuriously affecting the interests of its stockholders, is confronted with a question between itself and its legal stockholders. If these legal stockholders are trustees, bound to pay over all dividends to some beneficiaries who are strangers to the corporation, that is their affair. The corporation, in my judgment, is only liable to such extent as all persons are liable who deal knowingly with trustees to the injury of beneficiaries. The complainants, in respect of the nine hundred and fifty shares of stock held in trust, do not have the same status in this Court of stockholders of The Beattie Manufacturing Company. If the complainants' trustees—the legal stockholders—have

been guilty of negligence or fraud in failing to secure the distribution of more profits as dividends during all these years, these complainants have their appropriate equitable actions for relief. This present suit on the part of these beneficiaries is not brought against the trustees to compel them to account for their mismanagement of the trust estate in their hands; it is brought against the corporation as the principal defendant to compel the corporation to distribute dividends which the trustees, as stockholders, have prevented the corporation from so distributing.

The situation of corporations would be hard, indeed, if they had to act, or refrain from acting, not only with their stockholders in view, but also with regard to the interests of all the beneficiaries of stock held in trust under wills or deeds.

(2.) The second point to be considered relates to the inability of the controlling directors of this corporation to deal impartially and fairly with this stock held in trust with respect to the declaration of dividends.

The defendant, Robert Beattie, one director, holds over seven hundred shares of the stock of the corporation, and the defendant, William H. Beattie, another director, holds two hundred shares. As the accumulation of profits increases their shares not only become more valuable, but such additional and increasing value remains their property. Not so with the stock of their sisters, Agnes Beattie and Josephine Gedney, who are over fifty years of age and without issue. Upon the death of either of these sisters without issue the defendants above named, or their children, will receive a substantial portion of the shares held in trust under the terms of the will creating the same. I think it is quite

plain that the power of a Court of Equity to intervene in a case like this and control a corporation in respect of the declaration of dividends, thus setting aside the discretionary power of the directors in the premises, may be safely based upon the incapacity of these corporate managers to act fairly where they have so large a selfish interest at stake.

(4.) Under the original law of the State and under the present corporation act, as amended in 1901, the rule still obtains, as we have seen, that while the distribution of the profits of a corporation in dividends is largely within the discretion of the directors, a Court of Equity will intervene and compel a distribution of profits which have been unreasonably and improperly withheld. See authorities cited in Stevens vs. United States Steel Corporation, *supra*, pp. 337 and 378.

The control over dividends by the directors of a corporation, obtainable through a by-law, pursuant to the provisions of §47 as amended in 1901, is plainly subject to this well-settled rule of equity.

(5.) The case under consideration is one where this Court, in my judgment, should intervene to compel the distribution of a large amount of the accumulation of profits which for a long period of time have existed as cash on deposit with bankers or in a trust company.

I have already pointed out the very substantial selfish interest of the directors which naturally inclines them to keep back dividends and let the accumulated profits add value to the stock. This *disqualifying interest* upon a slight showing of actual hardship and unfairness might justify intervention by a Court of Equity. But the proofs in this case establish beyond a shadow of doubt that for years there has been an accumulation of the profits of

this corporation in money drawing a low rate of interest. The dividend of late has been 10 per cent. per annum. Thus $30,000 a year has been distributed, while it is perfectly plain that the dividend often might have been doubled without having any other effect upon the corporation or its business than to diminish these huge deposits in the banks. The only attempt worthy of consideration made by the defendant directors to justify this enormous piling up of profits in money was put forward by Mr. William H. Beattie, to the effect that such accumulation of money enabled the corporation to guarantee for the future the payment of 10 per cent. dividends. Inasmuch as directors of corporations engaged in endeavoring to make money for stockholders are not charged with the duty of guarantying stated incomes to the shareholders, and are charged with the duty of honestly paying out all profits which the corporation does not require for its own use in the corporate business, the excuse of this director need not be further considered.

The proofs do not show that the Beattie Manufacturing Company is engaged in erecting buildings or in improving land or using capital in carrying on any business not connected with manufacturing which is permissible under its charter, nor does it appear that the corporation is contemplating engaging in any such work. If the corporation should spend $40,000 or $50,000 in the erection of a new power plant to take the place of the water which has been cut off or will be cut off on or before 1915, the evidence shows that after allowing for this extraordinary disbursement a large dividend could still be paid without injuriously affecting the corporation in any way.

The principles upon which the extent of the divi-

dend should be ascertained presents some questions which call for careful consideration. The company at the start no doubt had a large surplus vested in it by the contributions of the assets of the firm of Robert Beattie & Sons, and of the lands and water rights of Robert Beattie. The capital however, was fixed at $300,000 only. It was one object of the corporation to improve and sell a very large tract of real estate, and this included the sale of the water rights which already has been effected for the sum of $530,000. The view which I have taken of the relation of the present and former New Jersey statutory law to this present controversy seems to make it unnecessary to undertake a definition of the term "profits" or "accumulated profits" where the corporation starts out with a large surplus invested both in a manufacturing business and in lands and the water power which it holds for sale. The surplus itself plainly cannot be classified as profits. As the surplus was to be handled, rented, improved and otherwise dealt with by the corporation, profits thereon undoubtedly might be made.

It seems to me to be safe to hold that in this case the entire surplus invested in lands and water rights was practically vested in the corporation *in trust to sell and divide the net proceeds* among the stockholders. It is true that the corporation is authorized by its certificate to improve and rent the real estate and to carry on business other than manufacturing, which may be "necessary for the proper *development*" of said property. The corporation object seems to be the sale of this real estate, and naturally power was given to rent, to improve and to develop such real estate.

Of course creditors could require the capital to remain intact for their protection, and the law for-

bids the distribution of the capital to the stockholders.

As to this large surplus, although not to be classified with "accumulated profits," the stockholders in my judgment in a case like this have equities which correspond with their equities in respect of profits unreasonably retained from distribution, and which the directors are bound to recognize and can be made to recognize by the decree of this Court. If, by December 1st, 1918, when the mortgage for $315,000 falls due, the entire $520,000 due from the East Jersey Water Company has been paid to The Beattie Manufacturing Company in cash, can there be any doubt that a Court of Equity would not allow this corporation to hold indefinitely this large sum of money deposited in banks or otherwise invested and drawing 3 1/2 per cent. or 4 per cent. interest? Is it not plain that the Court would hold such action as a gross abuse of discretion, in fact a violation of fiduciary obligation, for which Courts of Equity always afforded a remedy?

One object of this corporation was to make money by manufacturing carpets, and another object was to sell these valuable lands and water rights. As this conglomeration of business proceeds the money realized (always having in view the preservation of the capital) belong in equity to the stockholders, for whose pecuniary advantage the whole enterterprise was conceived and established in 1882. It is not necessary to question how far the directors could keep all this cash as a part of an undisturbed surplus or undistributed profits by erecting blocks of buildings and embarking in various lines of business which they might deem "necessary for the proper management and development" of the property committed to their charge. This corporation

has engaged in no such project. It holds this mortgage for $315,000 and collects the annual interest thereon of $12,600, nearly half the annual dividend, which they have arbitrarily fixed as the amount which the stock is to receive.

The mortgage for $315,000 and the obligation of the East Jersey Water Company to pay $200,000 form no part of what is now distributable in dividends. If the complainants could show that the corporation could sell this mortgage without recourse and realize the amount thereof in cash the situation would be very different. As the case stands it may be that no portion of these principal sums, aggregating $515,000, will ever be collected, while the water rights sold for that sum may revert to the corporation and be offered in the market in some form or for some purposes again.

The amount of the dividend to be declared will, of course, *depend upon present conditions.* A substantial amount of cash, which I find is unreasonably withheld, can be distributed, not necessarily on the date of the decree in this cause without affecting injuriously the interests of the corporation.

The mode of ascertaining the amount of the dividend now to be declared and fixing the time and conditions under which the same shall be paid may be determined on settlement of the decree.

6. The charge that the salaries of the managers (at one time, I think a brief period, $10,000 a year each, and recently $8,500 each) are excessive is not sustained it seems to me by a review of the facts which have already been considered in disposing of the more important issue in this cause. The question is whether the management of this corporation, as a whole, by the defendants, Robert and William H. Beattie, is worth the money which they have

paid to themselves for such service. It is not denied that they have operated a large manufacturing business with very great success, and that they have marketed over half a million dollars worth of water rights, in the accomplishment of which business no doubt skill and energy and persistent negotiation must have been necessary. These men are not to be paid as if they were clerks. It appears that, practically, their whole time has been devoted to the business of the corporation which has grown under their hands.

It has been urged that there were certain specific instances of misfeasance or misappropriation of property disclosed by the testimony for which these defendants are responsible, and the argument is made that their salaries should be reduced if not forfeited with such facts in view. No issue of forfeiture or mismanagement is raised by the pleadings. The bill merely charges that these defendants have paid themselves "annual salaries far in excess of the true or fair value of the services actually rendered," that the duties performed "are very light and insignificant," etc. The prayer of the bill is that the "fair value of the services annually rendered" by Robert and William H. Beattie be ascertained by the Court and that these defendants "may be decreed to restore" what the Court "may find to have been an excessive amount drawn by them in respect of such salaries." If there is any set off against the true value of the services rendered by these officers and agents of the corporation growing out of mismanagement or misappropriation of corporate property such a set off must be established by a distinct issue either in this suit or in some other suit. It would be grossly unfair to permit the complainants to go through this mass of testimony and pick out fragments upon which to

construct and sustain a charge of mismanagement against these defendants and then ask the Court to convict them, assess the damages and deduct the same from the amount of the salaries found by the Court to be reasonable and just. Of course if we had to deal with a charge that the corporate managers have been persistently negligent, so that their whole general management has been unprofitable, the case would be quite different, but even then it would be fair to have the bill of complaint disclose to the defendants that such issue was to be tried.

The complainants, Miss Beattie, Mrs. Murray and Mrs. Gedney, the three beneficiaries were produced as witnesses to testify to the effect that they knew little or nothing of the business of the corporation, but they were not asked whether they knew the amount of these salaries which from year to year had been received by Robert and William H. Beattie, and gave no testimony in regard to this matter. The natural inference is that these ladies knew what their brother and their nephew were receiving during all these years, and it is not claimed that they ever made any protest or objection of any kind. The same inference is proper in the case of the remaining complainant, Alexander Murray, who holds only twenty-five shares of the stock and who gave no testimony in the cause.

Upon the whole case I cannot find that the compensation of these defendants has been excessive. Whether they are liable to their corporation for any specific acts of misfeasance is a question which is not considered in this case. The salaries of the Messrs. Beattie for the present will be fixed at the sum which they have been actually receiving during the last few years, viz., $8,500 each.

Memorandum of Vice Chancellor Stevenson in regard to counsel fees.

March 23rd, 1911.

The decree will allow the complainants their taxable costs, including a counsel fee of $5,000, to be paid by the defendant corporation. There are strong reasons which might be urged in this case in favor of compelling the individual defendants to bear these charges. Complainants, however, ask to have them paid out of the treasury of the corporation, and the individual defendants naturally consent that if any allowance is to be made to the complainants it shall be so paid. All the stockholders with the exception of a small minority who are not represented in this suit, support the above ruling. Upon the whole case, giving due weight to the request of the complainants and the consent of the individual defendants, my conclusion is that the defendant corporation may bear these costs and fees as above stated.

The individual defendants will be allowed a counsel fee of $100, which will be charged against the complainants and which the complainants will be directed to pay. The individual defendants will also recover against the complainants any costs of litigating the issue in regard to the salaries which are distinguishable from costs incurred in the unsuccessful effort of the defendants to prevent the complainants from obtaining the main relief for which they sued, viz., a compulsory dividend. My present recollection is that there was some testimony, such as the deposition of an expert in regard to salaries of officers of carpet companies, which had no relation whatever to the question of a compulsory dividend. If counsel for the defendants think it worth while to go through the pleadings and evi-

dence in order to separate the costs incurred by the defendants in litigating the salary question, they may do so and send memorandum to counsel for the complainants, and in case of a dispute I will adjust it (not by correspondence but at any time when counsel may come before me in Jersey City or Paterson). In making any such separation the rule will be that if the testimony relates legally to the dividend question it will not be the subject of costs in favor of defendants. A large part—perhaps the greater part—of the testimony in regard to the dividend, informs the Court in relation to the salary question. This is one of the advantages of having these two totally different issues tried together in one suit.

Ordinarily a decree allowing counter claims of costs would leave the ascertainment of the amounts respectively allowed to be made by the taxing officer who with us is the Clerk. It occurs to me as altogether probable that counsel in this case will find it more convenient to settle this question as to the amount of costs taxable on these two issues either before decree or on application to have the stenographer's bill allowed as part of the costs of complainants.

In Reynolds vs. Diamond Mills Paper Co., 69 N. J. Eq., 299, I endeavored to point out the anomalous joinder or misjoinder of these two entirely different causes of action which has become permissible under a long series of precedents in New Jersey. The complainants' claim to a distribution of profits by a compulsory dividend is a suit against this corporation on behalf of the complainants and the other stockholders directly, whereas the complainants' claim to have salaries cut down and the excess already collected restored to the treasury of the corporation, is a suit on behalf of the corpora-

tion and against the other defendants, the individual defendants. In this case and in the Diamond Mills Company case, and the Lillas case, and the Jersey City Printing Co. case and others, the corporation is the actual complainant in one suit, and the actual defendant in another, and both of these causes of action are presented by a single bill of complaint and disposed of in a single decree.

I hold that in this case the complainants have "obtained" a decree against the defendants in one suit, and the individual defendants have "obtained" a decree against their co-defendant, the corporation, and the complainants in the other suit.

Counsel agree that the new law in regard to counsel fees (Laws of 1910, p. 427) applies to this whole case, and I have not questioned the soundness of this view.

In regard to the fees paid by complainants to their expert bookkeepers, I can only say that I know of no power in the Court to make any such disbursement a part of the taxable costs. To stretch the counsel fee so as to cover it would be in my judgment an invasion of the law or something worse. These expert services are not a part of the work of counsel but may be absolutely necessary for the proper discharge of the duty of counsel on the trial and argument of the cause. Such disbursements I think are taxable in England and certainly are taxable in many other States of the Union. It must be borne in mind that the Court is not in possession of any funds out of which these disbursements might be allowed. The decree compels the defendant corporation to distribute $60,000 in money to its stockholders. The power of the Court to make the decree compel the defendant to pay a counsel fee rests upon this statute. There may be hardship in leaving a necessary burden upon the complainants who

have prosecuted a cause successfully which takes money from the treasury of the corporation and distributes it to all the other stockholders as well as the complainants pro rata, but while the Legislature has recently given relief against a similar hardship in relation to counsel fees, it has as yet provided no relief that I know of against such a hardship as the complainants complain of in this case in respect of these necessary disbursements.

FINAL DECREE.

(Filed March 28, 1911).

This cause coming on to be heard on the ninth day of October, nineteen hundred and six, the fourteenth day of November, nineteen hundred and six and the sixteenth day of February, nineteen hundred and eleven at the Chancery Chambers in the city of Jersey City, and on the eighteenth day of February, nineteen hundred and eleven at the Court House in the City of Paterson, before the Honorable Eugene Stevenson, the Vice Chancellor to whom the said cause was referred to be heard for the Chancellor, in the presence of Humphreys & Sumner, of counsel with the complainants; John W. Harding, Esquire, also appearing as counsel for the complainant Josephine Gedney; and Messrs. Collins & Corbin of counsel with the defendants, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court by the pleadings and proofs taken in the cause that the complainants are entitled to the aid of this Court to compel the distribution among all the stockholders of said defendant corporation of profits unreasonably withheld by said corporation from distribution among its stockholders (and which, according to law, should have been distributed among them) and which exist now in the form of cash, or which can be readily converted into cash, and which the said corporation does not reasonably require for the continuation of the successful business of all kinds in which at the present time it is lawfully engaged; and it further appearing to the Court by the proofs aforesaid that there has been in fact unreasonably withheld by

said defendant corporation from distribution among its stockholders, profits of the nature and character last mentioned, which, according to law, ought to have been distributed among its stockholders, amounting to the sum of sixty thousand dollars ($60,000);

And it further appearing to the Court by the proofs aforesaid that the annual salaries of Robert Beattie, now deceased, and William H. Beattie, were eight thousand, five hundred dollars ($8,500) each for the years nineteen hundred to nineteen hundred and five, both inclusive, and that the complainants are not entitled to the relief prayed for in respect of said salaries, and that their bill of complaint in so far as it asks for such relief should be dismissed;

It is accordingly on this twenty-seventh day of March, nineteen hundred and eleven, by Mahlon Pitney, Chancellor of the State of New Jersey, ordered, adjudged and decreed and the said Chancellor, by virtue of the power and authority of this Court doth hereby order, adjudge and decree, that the said defendant corporation shall forthwith, by its Board of Directors, declare a dividend (additional to any dividend heretofore declared) among its stockholders of the following portion of its accumulated profits, to wit, the said sum of sixty thousand dollars ($60,000), and pay the same to said stockholders in three equal installments of twenty thousand dollars ($20,000) each, the first of such installments to be so paid on the first day of April, nineteen hundred and eleven; the second of such installments to be so paid on the first day of July, nineteen hundred and eleven and the third and final installment of twenty thousand dollars ($20,000) to be paid on the first day of October, nineteen hundred and eleven with leave to the com-

plainants to apply to this Court from time to time in the future to compel said defendant corporation to declare such dividends from time to time as, according to law, ought from time to time to be declared.

And it is further ordered and decreed that the complainant's bill, in so far as it prays relief in respect to the salaries of the individual defendants, be, and the same hereby is, dismissed.

And it is further ordered, adjudged and decreed, that the said defendant, The Beattie Manufacturing Company, do forthwith pay to the complainants' solicitors the costs of complainants in this suit to be taxed, including a counsel fee of five thousand dollars ($5,000) to Humphreys & Sumner and John W. Harding, of counsel with the said complainants.

And it is further ordered, adjudged and decreed that the said complainants do forthwith pay to the solicitors of the defendants other than The Beattie Manufacturing Company, the costs of said individual defendants in this suit to be taxed, including a counsel fee of one hundred dollars ($100) to Messrs. Collins & Corbin, of counsel with the said individual defendants, the said costs, however, of said individual defendants so to be taxed to be limited exclusively to such costs as relate to litigating the issue in regard to the salaries of said individual defendants, as distinguished from costs incurred by them in their unsuccessful effort to prevent complainants from obtaining the main relief for which they sued, viz., a compulsory dividend.

And it is further ordered that the said parties to this cause, or either of them, be at liberty to apply to this Court for further directions if occasion should require. MAHLON PITNEY, C.

Respectfully advised,

EUGENE STEVENSON, V. C.

APPEAL.

(Filed Mar. 28, 1911.)

IN CHANCERY OF NEW JERSEY.

Between Alexander Murray and others, *Complainants,* *and* The Beattie Manufacturing Company and others, *Defendants.*		*On Bill, etc.* *Appeal.*

The defendants, The Beattie Manufacturing Company and William H. Beattie (the defendants Robert Beattie and William Dickson having departed this life) hereby appeal from so much of the final decree made in this Court in the above stated cause as directs that said defendant corporation shall forthwith, by its board of directors, declare a dividend (additional to any dividend heretofore declared) among its stockholders of the following portion of its accumulated profits, to wit, the sum of sixty thousand dollars, and pay the same to said stockholders in three equal instalments of twenty thousand dollars each, the first of such instalments to be so paid on the first day of April one thousand nine hundred and eleven, the second of such instalments to be so paid on the first day of July, one thousand nine hundred and eleven, and the third and final installment of twenty thousand dollars to be so paid on the first day of October, one thousand nine hundred and eleven, with leave to the complainants to apply to this Court from time to time

in the future to compel said defendant corporation to declare such dividends from time to time; and to so much of said final decree as orders the said defendant corporation to forthwith pay to the complainants' solicitors the costs of complainants in this suit to be taxed, including a counsel fee of five thousand dollars to Messrs. Humphreys & Sumner and John W. Harding, of counsel with the said complainants to the Court of Errors and Appeals, in the last resort in all causes.

COLLINS & CORBIN,
Solicitors of Defendants.

GILBERT COLLINS,
Of Counsel.

Dated March 28, 1911.

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

GILBERT COLLINS,
Of Counsel with said Defendants.

PETITION OF APPEAL.

(Filed April 17, 1911.)

NEW JERSEY COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES.

BETWEEN ALEXANDER MURRAY ET AL., *Complainants–Respondents,* *and* THE BEATTIE MANUFACTURING COMPANY ET AL., *Defendants–Appellants.*	*On Appeal from Chancery.* *Petition of Appeal.*

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

The petition of The Beattie Manufacturing Company and William H. Beattie, 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, Mahlon Pitney, Chancellor of New Jersey, bearing date the twenty-seventh day of March in the year of our Lord one thousand nine hundred and eleven in a cause wherein Alexander Murray, Agnes Beattie and Josephine Gedney, survivors, were complainants, and your petitioners, survivors, were defendants in these respects, to wit, that the said decree adjudged that by the proofs in the cause it appeared that there had been in fact unreasonably withheld by the defendant corporation from distribution among its stockholders profits existing in

the form of cash or which could be readily converted into cash, which the said corporation did not reasonably require for the continuation of the successful business of all kinds in which, at the time of the said decree, it was lawfully engaged, and amounting to the sum of sixty thousand dollars, and that the complainants were entitled to the aid of the Court of Chancery to compel the distribution thereof among the stockholders of said corporation; and did order, adjudge and decree that the said corporation should forthwith by its board of directors declare a dividend(addional to any dividend theretofore declared) among its stockholders of the sum of sixty thousand dollars of its accumulated profits,and pay the same to its stockholders in three equal instalments of twenty thousand dollars each the first of such instalments to be so paid on the first day of April, one thousand nine hundred and eleven, the second of such instalments to be so paid on the first day of July, one thousand nine hundred and eleven, and the third and final instalment of twenty thousand dollars to be paid on the first day of October, one thousand nine hundred and eleven, with leave to the complainants to apply to the Court of Chancery from time to time in the future to compel such defendant corporation to declare such dividends from time to time as according to law ought from time to time to be declared; and therein and thereby did further order, adjudge and decree that the said corporation should forthwith pay to the complainants' solicitors the costs of the complainants in said suit to be taxed, including a counsel fee of five thousand dollars to Humphreys & Sumner and John W. Harding, of counsel with the said complainants.

And your petitioners humbly appeal from those parts of the decree of the Chancellor which decree

as aforesaid, upon the grounds that the same are erroneous, for that the said Court of Chancery was without jurisdiction to compel the distribution among the stockholders of said corporation of any of its accumulated profits, such distribution (in the absence of fraud or gross abuse) being by law vested in the sound discretion of said corporation and its directors, and the stockholders thereof having fixed to be reserved as a working capital all of such accumulated profits above dividends declared; and for that if said Court has jurisdiction in the premises, the proof did not establish that any profits of said corporation had been unreasonably withheld from distribution among its stockholders, but that all accumulated profits not theretofore declared as dividends by the directors of said corporation are reasonably required for the continuation of the successful business of all kinds in which at the time of said decree said corporation is lawfully engaged; and for that, if any part of such accumulated profits above declared dividends could at the time of said decree be reasonably distributed among its stockholders, the amount by said decree ordered to be so distributed is excessive; and for that the Court of Chancery had no jurisdiction upon the bill of complaint before it to decree leave to the complainants to apply to said Court from time to time in the future to compel said corporation to declare dividends; and for that it was inequitable to charge the said corporation with the costs of complainants in the suit in Chancery, including a counsel fee as directed, and to compel payment of such costs, or if it were proper to direct payment of such costs, the amount of the counsel fee awarded is excessive.

Your petitioners therefore pray that the said decree of the said Chancellor may in the particulars aforesaid 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.

COLLINS & CORBIN,
Solicitors of Appellants.
GILBERT COLLINS,
Of Counsel with Appellants.

ANSWER TO PETITION OF APPEAL.

(Filed April 22, 1911.)

NEW JERSEY COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES.

BETWEEN ALEXANDER MURRAY ET AL., *Complainants–Respondents,* *and* THE BEATTIE MANUFACTURING COMPANY AND OTHERS, *Defendants–Appellants.*	*On Appeal from Chancery.* *Answer to Petition of Appeal.*

The answer of the above named respondents, Alexander Murray, Agnes Beattie and Josephine Gedney to the petition of appeal of the above named appellants. These respondents not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless say and admit that a final decree

pay to the solicitors of the defendants other than The Beattie Manufacturing Company, the costs of said individual defendants in said suit to be taxed, including a counsel fee of one hundred dollars ($100) to Messrs. Collins & Corbin, of counsel with the said individual defendants; and also because the said final decree fails to provide for the payment to the said complainants by the said defendant corporation of the amount of reasonable disbursements made by the complainants in payment for the services of expert accountants in examination of the books of account of said Beattie Manufacturing Company, in order to present the facts to the Court at the hearing of the said cause—to the Court of Errors and Appeals in the last resort in all causes.

Dated April 4th, 1911.

HUMPHREYS & SUMNER,
Solicitors of Complainants.

JOHN B. HUMPHREYS,
Of Counsel.

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

JOHN B. HUMPHREYS,
Of Counsel with the said Complainants.

CROSS PETITION OF APPEAL.

Filed April 20, 1911.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN ALEXANDER MURRAY AND OTHERS, *Complainants–Appellants,*	*On Appeal from Court of Chancery.*
and	*Petition of Appeal of Alexander Murray, Agnes Beattie and Josephine Gedney.*
THE BEATTIE MANUFACTURING COMPANY AND OTHERS, *Defendants–Respondents.*	

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

The petition of Alexander Murray, Agnes Beattie and Josephine Gedney (the complainant Mary Murray having departed this life), 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, Mahlon Pitney, Chancellor of New Jersey, bearing date the twenty-seventh day of March, nineteen hundred and eleven, wherein the said Alexander Murray and others were complainants, and the said The Beattie Manufacturing Company and others were defendants, in these respects, to wit, that the said decree limits the dividend (additional to any dividend theretofore declared) which the defendant corporation is thereby directed to forthwith declare among its stockholders and pay to said stockholders to the sum of sixty thousand dollars ($60,000), and that the said decree declares that the complain-

ants are not entitled to the relief prayed for in respect of the annual salaries of Robert Beattie, now deceased, and William H. Beattie, for the years nineteen hundred to nineteen hundred and five, both inclusive, and that the said decree dismisses the bill of complaint in so far as it prays relief in respect to the salaries of said individual defendants; and that the said decree adjudges that the said complainants do forthwith pay to the solicitors of the defendants, other than the Beattie Manufacturing Company, the costs of said individual defendants in said suit to be taxed, including a counsel fee of one hundred dollars ($100) to Messrs. Collins & Corbin, of counsel with said individual defendants, and because the said decree fails to provide for the payment to the said complainants by the said defendant corporation of the amount of the reasonable disbursements made by the complainants in payment for the services of expert accountants in examination of the books of account of said Beattie Manufacturing Company in order to present the facts to the Court at the hearing of the said cause. And your petitioners humbly appeal from those parts of the decree of the Chancellor, which decree, as aforesaid, upon the ground that the same are erroneous for that the dividend (additional to any dividend theretofore declared) which the defendant corporation should have been by said decree directed to forthwith declare among its stockholders and pay to said stockholders, should have been a sum largely in excess of the said sum of sixty thousand dollars ($60,000), to wit, the whole amount of the accumulated profits of said defendant corporation (in excess of its capital stock paid in) and not legally by it reserved as a working capital, and for that the complainants were entitled to the relief prayed for in respect of said salaries of

Robert Beattie, now deceased, and William H. Beattie for the years above mentioned, and should have been accorded such relief, and for that the said bill of complaint, in so far as it prayed for such relief, should not have been dismissed, and for that the defendants other than The Beattie Manufacturing Company were not entitled to recover as against the complainants the costs of said individual defendants in said suit to be taxed, including said counsel fee, notwithstanding the taxation of such costs was limited exclusively to such costs as related to litigating the issue in regard to the salaries of said individual defendants, as distinguished from costs incurred by them in their unsuccessful efforts to prevent complainants from obtaining the main relief for which they sued, viz., a compulsory dividend, and for that the amount of the reasonable disbursements made by the complainants in payment for the services of expert accountants in examination of the books of account of said Beattie Manufacturing Company, in order to present the facts to the Court at the hearing of said cause, should, by said decree, have been directed to be paid to the said complainants by the said defendant corporation, or, at all events, to be so paid by the said defendant corporation out of the sum directed by said decree to be paid to said stockholders by way of dividend, to wit, out of the said sum of sixty thousand dollars ($60,000), so thereby directed to be paid, or out of such greater dividend as the said defendant corporation may be ordered by this Honorable Court to pay to its stockholders, and before the payment thereof.

Your petitioners therefore pray that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing

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

HUMPHREYS & SUMNER,
Solicitors and of Counsel with Appellants.

ANSWER TO CROSS PETITION OF APPEAL.

Filed April 22, 1911.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN ALEXANDER MURRAY AND OTHERS, *Complainants-Appellants,* *and* THE BEATTIE MANUFACTURING COMPANY AND OTHERS, *Defendants-Respondents.*	*On Appeal from Chauncery.* *Answer to petition of appeal of Alexander Murray, Agnes Beattie and Josephine Gedney.*

The answer of The Beattie Manufacturing Company and William H. Beattie, respondents, to the petition of appeal of Alexander Murray, Agnes Beattie and Josephine Gedney, appellants.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless say and admit that a decree was on the

twenty-seventh day of March last past made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced; and these respondents are advised and believe that the said decree, so far forth as the same has been appealed from by the said appellants is agreeable to equity, and they pray that to that extent the same may be affirmed with costs to be adjudged to these respondents.

COLLINS & CORBIN,

Solicitors for and of Counsel with Respondents.