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COMPLAINANT'S EXHIBITS:

C-1—Testimony on examination of Lester C. Burdett, under Section 21A, marked in evidence at page 33, folio 10 197

C-3—Analysis of group of checks, marked in evidence at page 33, folio 20 344

C-4—Checks of Bradette Corporation, signed by Lester C. Burdett, President, marked in evidence at page 33, folio 30 346

C-5—Checks of Bradette Corporation, signed by Lester C. Burdett, Treasurer, marked in evidence at page 33, folio 30 346

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C-6—Checks of Bradette Corporation, marked in evidence at page 33, folio 30 347

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C-8—Report of Puder & Puder, Accountants, dated May 6, 1919, marked in evidence at page 35, folio 30 348

C-9—Statement of Assets and Liabilities of Alpha Chemical Works, Inc., marked in evidence at page 39, folio 30 352

DEFENDANTS' EXHIBITS:

D-1—Letter dated September 10, 1918, to C. H. Venner and C. H. Venner, Jr., marked in evidence at page 43, folio 20 353

D-2—Letter dated January 24, 1919, to C. H. Venner, marked in evidence at page 43, folio 40 355

D-3—Letter dated January 24, 1919, to Continental Securities Co., marked in evidence at page 44, folio 10 356

D-4—Letter dated January 24, 1919, to C. H. Venner, marked in evidence at page 44, folio 20 359

D-5—Agreement dated May 1, 1917, between Alpha Chemical Works, Inc., and Chemical Engineering & Research Corp., marked in evidence at page 56, folio 30 360

D-6—Recapituation from Invoices, marked in evidence at page 63, folio 40 365

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D-7—Statement showing Bills from August, 1918, to January, 1919, marked in evidence at page 64, folio 20 367

D-8—Statement of Miscellaneous Sales, marked in evidence at page 64, folio 40 369

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Bill of Complaint, Filed June 30, 1923.

IN CHANCERY OF NEW JERSEY.

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

The complainant, Cecil M. McMahon, as trustee in bankruptcy of Alpha Chemical Works, Inc., a corporation, respectfully shows:

1. That the said Alpha Chemical Works, Inc. is a corporation organized and existing under the laws of the State of Delaware and was incorporated as such in the month of April, 1917, and thereafter engaged in the business of manufacturing chemicals, having a plant situate at East Bound Brook, in the County of Middlesex and State of New Jersey.

2. That ever since its incorporation, one Lester C. Burdette has been its president and director thereof, and George F. Burdette and Robert Vom Cleff have been and still are the directors thereof. That the moneys of said corporation were by said Burdette with the consent and knowledge of the said directors from time to time deposited in bank accounts in the name of said corporation, the checks for the withdrawal of funds therefrom being in almost every instance signed by said Burdette as president of said corporation solely.

3. That the said Lester C. Burdette did receive from time to time between the date of the incorporation of said corporation and the 3rd day of February, 1919, divers sums of money aggregating in the whole the sum of upwards of $11,000.

4. That on the 21st day of May, 1919, the said Alpha Chemical Works, Inc. was adjudged a bankrupt in the District Court of the United States for the District of New Jersey, and thereafter complainant was duly appointed trustee in bankruptcy and qualified as such.

5. That the sum of $11,000 referred to in Paragraph "3" hereof ought by said Burdette to be returned and paid over to your complainant, and that the same forms part of the estate of said bankrupt and constitutes assets thereof; for greater particularity complainant refers to the checks upon the bank accounts aforesaid, by means of which said funds were withdrawn from said bank accounts and paid by said Burdette as an officer aforesaid to himself, some of said checks being drawn to the order of Burdette and Study, or Lester C. Burdette, or Burdette & Horne.

6. Complainant alleges that on or about the month of October, 1918, said Lester C. Burdette caused to be formed and organized a corporation under the laws of the State of New York, known as the Bradette Corporation, of which he, the said Lester C. Burdette, became an officer. That thereafter, between the 1st day of October, 1918, and the 1st day of February, 1919, he did cause to be paid to the said Bradette Corporation, without consideration, out of the funds of said bankrupt, the sum of $2,500 and that of said sum upwards of $1,500 was by said Bradette Corporation paid over to the said Lester C. Burdette, or for his use of benefit, and for greater particularity complainant does hereby refer to the checks upon the bank ac-

count of the said bankrupt, constituting the payment of said funds by said bankrupt to said Bradette Corporation, as well as to the checks of said Bradette Corporation upon the bank account of said Bradette Corporation, whereby said funds were transferred to said Lester C. Burdette.

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

1. That the said Lester C. Burdette, George F. Burdette and Robert Vom Cleff, the defendants hereto, may answer this bill of complaint.

2. That the said defendants and each of them may be directed to account for and pay over to the complainant all of said moneys and the interest thereon, or each part thereof as may be found to be due from them, and that a trust may be impressed upon said moneys and any property in which said moneys may have been converted.

3. That the defendants may be directed to pay the costs and counsel fees of this suit.

4. That the complainant may have such other and further relief as may be proper in the premises.

5. That a writ of subpoena may be issued commanding said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises.

BILDER & BILDER,
Solicitors for and of Counsel
with the Complainant.

Answer and Cross Bill of Lester C. Burdette, Filed July 28, 1923.

The defendant, Lester C. Burdette, answering the bill of complaint, says:

1. He admits the statements contained in paragraph 1.

2. He denies the statements contained in paragraph 2.

3. He admits that between the date of the incorporation of the company and the date of the bankruptcy he received sums of money but as to the amount thereof he leaves the complainant to prove the same.

4. He admits the contents of paragraph 4.

5. He denies the contents of paragraph 5.

6. He denies the contents of paragraph 6.

7. Further answering the bill this defendant says:

1. The bill of complaint does not set forth sufficient facts to constitute an action cognizable in equity.

2. The bill of complaint lacks equity.

3. There are no charges or statements in the bill sufficient to base responsibility for any moneys upon defendant.

4. Complainant has a complete and adequate remedy at law.

Answer and Cross Bill of Lester C. Burdette, Filed July 28, 1923

5. This Court has no jurisdiction of this case.

8. Further answering the bill defendant says that any moneys which he received were received for full and adequate consideration.

9. Further answering the bill defendant says that the complainant is guilty of gross laches.

10. Further answering the bill defendant pleads section one of an act for the limitation of actions of the State of New Jersey.

11. Further answering the bill defendant says that all of the persons interested in said corporation and represented by the trustee herein, including creditors and stockholders, had full knowledge of the transactions referred to in the bill of complaint and are estopped from now questioning them and the trustee representing said creditors and stockholders is likewise estopped.

12. Further answering the bill defendant says that upon the issues in the above entitled matter he is entitled to a trial by jury and he insists that the matter should be at law and therefore he says that this court has no jurisdiction in the premises.

Defendant prays that the bill may be dismissed.

And for cross bill exhibited against the said trustee this defendant says:

1. On or about the 12th day of November, 1918, this defendant endorsed a note for $2,500 as an

accommodation and for the benefit of the Alpha Chemical Works, Inc., of which the complainant is trustee and on or about the 21st day of November, 1918, this defendant endorsed for the accommodation and for the benefit of the Alpha Chemical Works, Inc., a note for the sum of $1,000; on or about the 29th day of January, 1919, defendant endorsed for the accommodation of the Alpha Chemical Works, Inc., a note for the sum of $1,500; on or about the 5th day of February, 1919, defendant endorsed for the accommodation and benefit of the Alpha Chemical Works, Inc., a note in the sum of $5,000.

2. Said notes above mentioned were discounted by the Chatham and Phoenix National Bank and the proceeds paid to the Alpha Chemical Works, Inc. That when said notes became due the said Alpha Chemical Works, Inc., did not pay the same, whereupon defendant was obliged to and did in fact pay on account of the same the sum of $5,000.

Defendant prays:

1. That complainant may answer this cross bill and each statement therein contained.

2. That it may be adjudicated that defendant be entitled to recover from said complainant the sum of $5,000 with interest.

3. That the defendant have such other relief as may be proper.

MERRITT LANE,
Solicitor for Defendant.

Answer of George F. Burdette, Filed July 28, 1923.

The defendant, George F. Burdette, answering the bill of complaint, says:

1. He admits the contents of paragraph 1.

2. He denies the contents of paragraph 2.

3. Answering paragraph 3, he says that the said Lester C. Burdette did in fact receive certain sums of money from the Alpha Chemical Works, Inc., but as to the amounts thereof he leaves complainant to prove the same.

4. He admits the contents of paragraph 4.

5. He denies the contents of paragraph 5.

6. He denies the contents of paragraph 6.

7. Further answering the bill this defendant says:

1. The bill of complaint does not set forth sufficient facts to show a cause of action against this defendant.

2. There is no equity in the bill.

3. The complainant has a complete and adequate remedy at law.

4. This court has no jurisdiction in the premises.

8. Further answering the bill this defendant says that any moneys which were paid as stated in

said bill were paid for services rendered and for full consideration.

9. Further answering the bill this defendant says that the complainant is guilty of gross laches.

10. Further answering the bill this defendant says that the creditors and stockholders who are represented by the said trustee had full and complete knowledge of the transactions referred to in the bill and are now estopped and complainant acting in their right is likewise estopped.

11. Defendant pleads the first section of an act entitled "An Act for the Limitation of Actions of New Jersey."

12. Defendant further shows that he is entitled to have a trial by jury and he demands the same.

Defendant prays that the bill may be dismissed.

MERRITT LANE,
Solicitor for Defendant.

Replication, Filed December 17, 1924.

The complainant joins issue on the answer of the defendant, Lester C. Burdette.

As to the counterclaim or cross bill contained in said answer, complainant says:

1. He denies any knowledge or information sufficient to form a belief as to the allegations of paragraph 1 and paragraph 2 of said counterclaim or cross bill.

2. That the said defendant is not the owner of the notes referred to and described in said cross bill.

3. That claims based upon said promissory notes have been filed by persons other than said defendant, in the Matter of Alpha Chemical Works, Inc., pending in the District Court of the United States for the District of New Jersey.

4. That said defendant failed within the time limited by the bankruptcy laws to file any claim in said bankruptcy matter, in said United States Court, based upon the allegations contained in said cross bill or counterclaim and is barred from any recovery thereon, pursuant to the acts of Congress relating to bankruptcy.

5. Said counterclaim or cross bill does not set forth sufficient facts to constitute an action cognizable in equity.

6. The same lacks equity.

Replication, Filed December 17, 1924.

7. Said defendant has a complete and adequate remedy at law.

8. This court has no jurisdiction of said cross bill or counterclaim.

9. The complainant joins issue on the answer of the defendant, George F. Burdette.

BILDER & BILDER,
Solicitors of Complainant.

Replication, Filed December 17, 1924.

The complainant joins issue on the answer of the defendant, George F. Burdette.

BILDER & BILDER,
Solicitors of Complainant.

Opinion, Filed April 19, 1930.

On final hearing.

1. A contract to pay a president salary is valid, subject to review of this court.

2. Directors held responsible for misappropriation of corporate funds.

For complainant, Messrs. Bilder & Bilder.

For defendants, Mr. Merritt Lane.

BACKES, *Vice Chancellor:*

The trustee in bankruptcy of the Alpha Chemical Works, Inc., a Delaware corporation, sues to recover from directors salary paid to the president and other moneys alleged to have been misappropriated.

The corporation was formed in April, 1917, and took over the assets of a company of the same name, formed three months before under the laws of this State, assuming its obligations. The financial interests and the officers of the two companies were identical. The World War was on, and the business was the manufacture of war time chemicals. Lester C. Burdette, a young New York lawyer, promoted the enterprise. He was president of the companies. His brother, George, and a friend, Von Cleff, were his associates and fellow directors. The manufacturing of phenol was the first undertaking. That was abandoned when a fire occurred a few months after the company started. The next was salicylic acid, which proved a failure. That was followed in September, 1918, by para explosives. The business collapsed with the armistice and the company was adjudged bankrupt three months later.

Burdette, as president, drew a salary of $300 a month to October, 1918, and $500 a month for the next three months. The company leased offices in New York. Burdette had two successive law partnerships occupying the same offices. The company paid the office expenses fixed at $300 a month. The monthly salary of the president had been resolved by the directors of the former New Jersey company, and the Delaware company, having assumed its obligations, continued it and also agreed to the monthly office expense fixed at $300. The office expense and some of the president's salary were remitted to Burdette's law firm and it in turn paid the actual outlay. In 1918 the Bradette Company was formed ostensibly as a selling company and, it is said, took over the office and assumed the expenses from October first. At the same time Burdette's salary was raised to $500 a month by resolution of the directors. Twenty-five hundred dollars was advanced to the Bradette Company for commissions earned and to be earned on sales of the Alpha Company's wares. The money advanced was used, in part at least, to pay the office expenses. The salary, office expenses and the money advanced, it is charged, were misapplication of corporate funds.

A contract to pay a president salary is valid, subject to review by this court as to amount. Mitchell v. United Box Board & Paper Co., 72 N. J. Eq. 580.

It is the complainant's argument that Burdette was not entitled to compensation because the enterprise was not successful. That is neither reasonable nor fair. All his time and energy were devoted to making it succeed. It was not lack of spirit nor effort nor labor on his part that it did not. War materials had the call of the day. He, like many others who succeeded where he failed,

saw a chance, or thought he did, to make a fortune. He interested Von Cleff, whose mother had some means, and together they bought a discarded plant at Bound Brook and equipped it. Burdette's father-in-law, Brady, a man of modest wealth, helped him. The initial investment was some $31,000, including $16,000 of debts, when the plant was turned over to the Delaware company. The change from phenol to salicylic acid, after the fire, involved an outlay of $50,000 for new machinery and later, when para products were decided upon, $30,000 more was required. Burdette did the financing. True, his father-in-law's funds were more or less at his disposal, but he induced others to invest; one, a tight-fisted money lender, to the tune of $25,000. The prospects were bright. Meanwhile money had to be raised and credit obtained for operating. Burdette bought the installation, or helped; he bought raw materials and sold the finished product, together approximating $500,000, and he made the contracts and the collections. Of course, he had assistance, some competent, in managing the business, but he had the supervision. He had the final word. The responsibility was upon him. If success in business were the price of compensation, few would pay the fare. The salary is not open to adverse criticism. The increase to $500 a month was not warranted. There was no change in service or circumstance that earned it. There must be an accounting for the excess.

The appropriation of flat $300 a month to Burdette's law firm for office expense cannot be sanctioned. An office in New York may, under the circumstances, have been essential; and in Burdette's law office perhaps advantageous. They were matters of judgment of the directors and the bona fides

is not challenged or reviewed. But saddling the entire cost on the company for only a share of the benefit was an imposition. It may well be that the law partnership business was negligible; that is irrelevant. The partners were fledglings, neither having practiced independently, both had been law clerks, but it was manifestly unfair to make their venture at the Bar at the company's expense. They should have paid their share of the joint use of the office and facilities. There will be an accounting. The company will be charged with one-half the normal expense and with such items of which it had exclusive benefits.

The accounting will include the $2,500 advanced to the Bradette Company. Paying to that company a commission on purchases and sales was a scheme of the directors to set aside a percentage of the income of the Delaware company for Burdette's father-in-law, Brady, who had advanced a large amount, $60,000, of its capital, to give him an immediate profit on his investment instead of waiting for a stock dividend. It was no doubt done with good intentions, in appreciation of Brady's financial assistance, but the additional burden on the Delaware company cannot be justified. That company, in fact, continued to pay the office expenses and its officers carried on as before. Crediting the Bradette Company with earned or unearned commissions was mere bookkeeping. The advancement of it to enable it to pay office expenses was artifice.

Primary liability will fall upon Burdette, secondarily upon the directors. Von Cleff was not served with process; judgment cannot go against him. Pennoyer v. Neff, 95 U. S. 717.

Decree accordingly.

Decree, Filed September 9, 1930.

This cause coming on to be heard before this Court in the presence of David H. Bilder, of counsel with the complainant, and Merritt Lane, of counsel with the defendants, and the pleadings having been read and the proofs having been taken and the arguments of the respective counsel having been heard and considered and the Court having duly considered said pleadings, proofs and arguments, and its appearing to the Court that the complainant is entitled to the relief sought and prayed for by him in his bill of complaint to the extent hereinafter granted, it is on this 9th day of September A. D. One Thousand Nine Hundred and Thirty by Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED:

1. That the payment, by said Alpha Chemical Works, Inc., a Delaware corporation, to the defendant Lester C. Burdette, of the sum of $500 per month for the months of November and December, 1918 and the month of January, 1919, making the aggregate sum of $1,500 was unlawful and excessive to the extent of $600 which last mentioned sum of $600 together with interest thereon from the 1st day of January, 1919 the said defendants, Lester C. Burdette and George F. Burdette are hereby ordered and directed to forthwith pay to the said complainant.

2. That the payments by the said Alpha Chemical Works, Inc., a Delaware corporation, to Burdette & Horn from April 1, 1917 to February 1, 1918 of the sum of $300 per month and to the firm of Burdette & Study from February 1, 1918 to

October 1, 1918 of the sum of $300 per month, aggregating in the whole the sum of $5,400 was unlawful; that the payments by said Alpha Chemical Works, Inc., to Burdette Corporation of the following sums, to wit:

$1,000	on November	4, 1918
500	on November	9, 1918
500	on December	20, 1918
500	on January	20, 1919

aggregating in the whole the sum of $2,500 was likewise unlawful, except that the said defendants are entitled to have credited upon said respective sums of $4,500 and $2,500 respectively, aggregating in the whole, the sum of $7,900, in the event that they shall prove or establish the same in this Court, one-half of the normal expense of the office for the period from April 1, 1917 to February 1, 1919 of said Alpha Chemical Works, Inc., and said Burdette & Horn and Burdette & Study respectively, in the Woolworth Building, New York City, as well as such items of expense of said office of which said Alpha Chemical Works, Inc., had exclusive benefits during said period and that said defendants pay to the complainant the sum of $7,900 less such credit, if any, as shall be by this Court allowed thereon, together with interest as shall hereafter be by this Court determined.

3. It is further ORDERED that it be referred to Homer C. Zink, Esq., one of the Special Masters of this Court, to ascertain and report, with all convenient speed, what sum should be credited against said sum of $7,900 for one-half of the normal ex-

pense of the said office for said period of said Alpha Chemical Works, Inc., and said Burdette & Horn and Burdette & Study, respectively, in the Woolworth Building, New York City, as well as such items of expense of which said Alpha Chemical Works had exclusive benefits during said period. Said Master shall likewise ascertain and report what sum shall be paid by said defendants as interest upon said sum of $7,900 or any part thereof.

4. That the defendants pay to the complainant the costs of this suit to be taxed in which shall be included a counsel fee of $1,000, and that execution issue therefor.

5. The consideration of all further directions are reserved until after the said Master shall have made his report.

6. The complainant is at liberty to apply to this Court as the occasion shall require.

E. R. WALKER
C.

Respectfully advised,

JOHN H. BACKES
V. C.

Notice of Appeal of Lester C. Burdette, Filed September 17, 1930.

TAKE NOTICE that the defendant, Lester C. Burdette, appeals from those portions of the decree of the Chancellor made in the above entitled cause on the 9th day of September, 1930, upon the advice of the Hon. John H. Backes, Vice Chancellor, as orders, adjudges and decrees that the payment by the Alpha Chemical Works, Inc., a Delaware corporation, to the defendant, Lester C. Burdette, of the sum of $500 per month for the months of November and December, 1918 and the month of January, 1919, making the aggregate sum of $1,500 was unlawful and excessive to the extent of $600, which said last mentioned sum of $600, together with interest thereon from the 1st day of January, 1919, the said defendants, Lester C. Burdette and George F. Burdette are, by the said decree, ordered and decreed to forthwith pay to the said complainant; and as orders, adjudges and decrees that the payments made by the said Alpha Chemical Works, Inc., a Delaware corporation, to Burdette & Horn from April 1, 1917 to February 1, 1918 of the sum of $300 per month and to the firm of Burdette & Study from February 1, 1918 to October 1, 1918 of the sum of $300 per month, aggregating in the whole the sum of $5,400 was unlawful; and as orders, adjudges and decrees that the payments by the said Alpha Chemical Works, Inc. to Burdette Corporation of the sums in said decree specifically referred to, aggregating in the whole the sum of $2,500 was likewise unlawful, except that the defendants are entitled to certain credits specifically referred to in said decree; and as orders, adjudges and decrees that it be referred to Homer

Notice of Appeal of Lester C. Burdette, Filed September 17, 1930

C. Zink, Esq., one of the Special Masters of this Court, to ascertain and report with all convenient speed, what sum should be credited against said sum of $7,900 for the matters referred to in said decree; and as orders, adjudges and decrees that the defendants pay to the complainant the costs of this suit to be taxed; and as orders, adjudges and decrees that there should be included a counsel fee of $1,000; and as fails to grant relief to the defendant, Lester C. Burdette, upon his counterclaim, to the New Jersey Court of Errors and Appeals in the last resort in all causes.

MERRITT LANE,
Solicitor Lester C. Burdette.

MERRITT LANE,
Of Counsel Lester C. Burdette.

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

Dated: September 17, 1930.

MERRITT LANE,
Of Counsel Lester C. Burdette.

To:

BILDER & BILDER,
Solicitors for Complainant.

MERRITT LANE,
Solicitor for George F. Burdette.

Service acknowledged September 17, 1930.

Notice of Appeal of George F. Burdette, Filed September 17, 1930.

TAKE NOTICE that the defendant, George F. Burdette, appeals from those portions of the decree of the Chancellor made in the above-entitled cause on the 9th day of September, 1930, upon the advice of the Hon. John H. Backes, Vice-Chancellor, as orders, adjudges and decrees that the payment of the Alpha Chemical Works, Inc., a Delaware corporation, to the defendant, Lester C. Burdette, of the sum of $500 per month for the months of November and December, 1918, and the month of January, 1919, making the aggregate sum of $1,500, was unlawful and excessive to the extent of $600, which said last mentioned sum of $600, together with interest thereon from the 1st day of January, 1919, the said defendants, Lester C. Burdette and George F. Burdette, are, by the said decree, ordered and decreed to forthwith pay to the said complainant; and as orders, adjudges and decrees that the payments made by the said Alpha Chemical Works, Inc., a Delaware corporation, to Burdette & Horn from April 1, 1917, to February 1, 1918, of the sum of $300 per month and to the firm of Burdette & Study from February 1, 1918, to October 1, 1918, of the sum of $300 per month, aggregating in the whole the sum of $5,400, was unlawful; and as orders, adjudges and decrees that the payments by the said Alpha Chemical Works, Inc., to Burdette Corporation of the sums in said decree specifically referred to, aggregating in the whole the sum of $2,500, was likewise unlawful, except that the defendants are entitled to certain credits specifically referred to in said decree; and as orders, adjudges and decrees that it be referred to Homer

Notice of Appeal of George F. Burdette, Filed September 17, 1930

C. Zink, Esq., one of the Special Masters of this Court, to ascertain and report with all convenient speed what sum should be credited against said sum of $7,900 for the matters referred to in said decree; and as orders, adjudges and decrees that the defendants pay to the complainant the costs of this suit to be taxed; and as orders, adjudges and decrees that there should be included a counsel fee of $1,000; to the New Jersey Court of Errors and Appeals in the last resort in all causes.

MERRITT LANE,
Solicitor George F. Burdette.

MERRITT LANE,
Of counsel George F. Burdette.

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

MERRITT LANE,
Of counsel George F. Burdette.

Dated, September 17, 1930.

To:

BILDER & BILDER,
Solicitors for Complainant.

MERRITT LANE,
Solicitor for Lester C. Burdette.

(Service acknowledged September 17, 1930.)

Petition of Appeal of George F. Burdette, Filed October 7, 1930.

NEW JERSEY COURT OF ERRORS AND APPEALS.

CECIL H. McMAHON, as Trustee in Bankruptcy of Alpha Chemical Works, Inc., Complainant-Respondent, and LESTER C. BURDETTE, *et als.*, Defendants-Appellants.	On Bill, &c. On Appeal From Chancery.

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

The petition of George F. Burdette, the appellant in the above-entitled cause, respectfully shows that your petitioner finds himself aggrieved by a decree made in the Court of Chancery by His Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 9th day of September, 1930, upon the advice of the Hon. John H. Backes, Vice-Chancellor, wherein the said Cecil H. McMahon, as trustee in bankruptcy of Alpha Chemical Works, Inc., was complainant, and the said George F. Burdette, *et als.*, were defendants, in this respect, to wit: that the said decree orders, adjudges and decrees that the payment of the said Alpha Chemical Works, Inc., a Delaware corporation, to the defendant, Lester C. Burdette, of the sum of $500 per month for the months of November and December, 1918, and the month of January, 1919, making the aggregate sum of $1,500, was unlawful and excessive to the extent of $600, which said last mentioned sum of $600, together with

Petition of Appeal of George F. Burdette, Filed October 7, 1930

interest thereon from the 1st day of January, 1919, the said defendants, Lester C. Burdette and George F. Burdette, are, by the said decree, ordered, adjudged and decreed to forthwith pay to the said complainant; and in this respect, to wit: that the payments made by the said Alpha Chemical Works, Inc., a Delaware corporation, to Burdette & Horn from April 1, 1917, to February 1, 1918, of the sum of $300 per month and to the firm of Burdette & Study from February 1, 1918, to October 1, 1918, of the sum of $300 per month, aggregating in the whole the sum of $5,400 was unlawful; and in this respect, to wit: that the payments by the said Alpha Chemical Works, Inc., to Burdette Corporation of the sums in the said decree specifically referred to, aggregating in the whole the sum of $2,500, were likewise unlawful; except that the defendants are entitled to certain credits specifically referred to in said decree; and in this respect, to wit, that it was referred to Homer C. Zink, Esq., one of the Special Masters of this court, to ascertain and report with all convenient speed, what sum should be credited against the sum of $7,900, for the matters referred to in said decree; and in this respect, to wit: that the defendants pay to the complainants the costs of this suit to be taxed; and in this respect, to wit: that there should be included a counsel fee of $1,000; and in this respect, to wit, as said decree fails to grant relief to the defendant, Lester C. Burdette, upon his counterclaim.

And your petitioner humbly appeals from such decree which orders, adjudges and decrees as aforesaid upon the ground that the same is erroneous for that the said decree should not have decreed

that the excess of $500 paid to Lester C. Burdette for the months of November and December, 1918, and the month of January, 1919, making the aggregate sum of $1,500, was unlawful and excessive, and should not have decreed that the sum of $500, together with interest thereon from the 1st of January, 1919, should be paid by the said Lester C. Burdette and George F. Burdette to the complainant forthwith because there was no evidence in the case sufficient to warrant the court in finding that the payments made to the said Lester C. Burdette were excessive and unreasonable or that they were fraudulently made and because the court under the circumstances of this case had no power or authority to go behind the action of the corporation; and for that said decree should not have ordered, adjudged and decreed that the payments made by said Alpha Chemical Works, a Delaware corporation, to Burdette & Horn from April 1, 1917, to February 1, 1918, of the sum of $300 per month, and to the firm of Burdette & Study from February 1, 1918, to October 1, 1918, of the sum of $300 per month, aggregating in the whole the sum of $5,400, were unlawful because the court under the circumstances of this case was without authority to go behind the action of the corporation and because the evidence did not show that the payments were unreasonable or excessive, or that they were fraudulently made, and because the court had no jurisdiction to determine the reasonableness or unreasonableness of the payments made, and for that said decree should not have ordered, adjudged and decreed that the payments made by said Alpha Chemical Works, Inc., to Burdette Corporation of the specific sums referred to in said decree, aggregating in the whole the sum of $2,500,

Petition of Appeal of George F. Burdette, Filed October 7, 1930

were unlawful because the evidence did not show that said payments were unlawful and because the court had no jurisdiction to determine them to be unlawful; and for that said decree should not have directed your petitioner to make repayment, because the evidence did not show that the said payments were conceived in fraud or any facts which would warrant the court in holding the directors responsible; and for that said decree should not have directed that interest be paid by the defendants, Lester C. Burdette and George F. Burdette, under the circumstances of this case; and for that the said decree should not have directed that the defendants pay to the complainant the costs of this suit to be taxed, or a counsel fee of $1,000, such direction being inequitable under the circumstances of this case; and for that the said decree should have denied all relief to the complainant upon the ground of laches; and for that the said decree should have awarded relief to Lester C. Burdette upon his counterclaim and should have offset the amount found due Lester C. Burdette under the counterclaim against any liability of your petitioner found by the court.

Your petitioner, therefore, prays that the said decree of the Chancellor may be in the particulars aforesaid reversed and set aside and for nothing holden, and that the record may be remitted to the Court of Chancery with directions to enter a decree denying the relief prayed for by the complainant and that the petitioner may have such relief in the premises as to this court may seem just and proper.

MERRITT LANE,
Solicitor and of Counsel with Appellant.

Petition of Appeal of Lester C. Burdette, Filed October 7, 1930.

NEW JERSEY COURT OF ERRORS AND APPEALS.

CECIL H. MCMAHON, as Trustee in Bankruptcy of Alpha Chemical Works, Inc., Complainant-Respondent, and LESTER C. BURDETTE, *et als.*, Defendants-Appellants.	On Bill, &c. On Appeal From Chancery.

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

The petition of Lester C. Burdette, the appellant in the above-entitled cause, respectfully shows that your petitioner finds himself aggrieved by a decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 9th day of September, 1930, upon the advice of Hon. John R. Backes, Vice-Chancellor, wherein the said Cecil H. McMahon, as trustee in bankruptcy of Alpha Chemical Works, Inc., was complainant, and the said Lester C. Burdette, *et als.,* were defendants, in this respect to wit: that the said decree orders, adjudges and decrees that the payment by the said Alpha Chemical Works, Inc., a Delaware corporation, to the defendant, Lester C. Burdette, of the sum of $500 per month for the months of November and December, 1918, and the month of January, 1919, making the aggregate sum of $1,500, was unlawful and excessive to the extent of $600, which

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said last mentioned sum of $600, together with interest thereon from the 1st day of January, 1919, the said defendants, Lester C. Burdette and George F. Burdette, are, by the said decree, ordered, adjudged and decreed to forthwith pay to the said complainant; and in this respect, to wit: that the payments made by the said Alpha Chemical Works, Inc., a Delaware corporation, to Burdette & Horn from April 1, 1917, to February 1, 1918, of the sum of $300 per month and to the firm of Burdette & Study from February 1, 1918, to October 1, 1918, of the sum of $300 per month, aggregating in the whole the sum of $5,400, was unlawful; and in this respect, to wit: that the payments by the said Alpha Chemical Works, Inc., to Burdette Corporation of the sums in said decree specifically referred to, aggregating in the whole the sum of $2,500, were likewise unlawful, except that the defendants are entitled to certain credits specifically referred to in said decree; and in this respect, to wit: that it was referred to Homer C. Zink, Esq., one of the Special Masters of this court, to ascertain and report with all convenient speed, what sum should be credited against said sum of $7,900 for the matters referred to in said decree; and in this respect, to wit: that the defendants pay to the complainant the costs of this suit to be taxed; and in this respect, to wit: that there should be included a counsel fee of $1,000; and in this respect, to wit, as said decree fails to grant relief to the defendant, Lester C. Burdette, upon his counterclaim.

And your petitioner humbly appeals from such decree which orders, adjudges and decrees as aforesaid upon the ground that the same is erroneous for that the said decree should not have decreed that the excess over $500 paid to him for the

months of November and December, 1918, and the month of January, 1918, making the aggregate sum of $1,500, was unlawful and excessive, and should not have decreed that the sum of $600, together with interest thereon from the 1st of January, 1919, should be paid by the said Lester C. Burdette and George F. Burdette, to the complainant forthwith because there was no evidence in the case sufficient to warrant the court in finding that the payments made to the said Lester C. Burdette were excessive and unreasonable or that they were fraudulently made, and because the court under the circumstances of this case had no power or authority to go behind the action of the corporation; and for that said decree should not have ordered, adjudged and decreed that the payments made by said Alpha Chemical Works, a Delaware corporation, to Burdette & Horn from April 1, 1917, to February 1, 1918, of the sum of $300 per month, and to the firm of Burdette & Study from February 1, 1918, to October 1, 1918, of the sum of $300 per month, aggregating in the whole the sum of $5,400, were unlawful because the court under the circumstances of this case was without authority to go behind the action of the corporation and because the evidence did not show that the payments were unreasonable or excessive, or that they were fraudulently made, and because the court had no jurisdiction to determine the reasonableness or unreasonableness of the payments made, and for that said decree should not have ordered, adjudged and decreed that the payments made by said Alpha Chemical Works, Inc., to Burdette Corporation of the specific sums referred to in said decree, aggregating in the whole the sum of $2,500, were unlawful because the evidence did not show

Petition of Appeal of Lester C. Burdette, Filed October 7, 1930

that said payments were unlawful and because the court had no jurisdiction to determine them to be unlawful; and for that said decree should not have directed the defendants, Lester C. Burdette and George F. Burdette, to make repayment, because the evidence did not show that the said payments were conceived in fraud or any facts which would warrant the court in holding the directors responsible; and for that said decree should not have directed that interest be paid by the defendants, Lester C. Burdette and George F. Burdette, under the circumstances of this case; and for that the said decree should not have directed that the defendants pay to the complainant the costs of this suit to be taxed, or a counsel fee of $1,000, such direction being inequitable under the circumstances of this case; and for that the said decree should have denied all relief to the complainant upon the ground of laches; and for that the said decree should have awarded relief to Lester C. Burdette upon his counterclaim and should have offset any amount found due Lester C. Burdette under the counterclaim against any liability of your petitioner found by the court.

Your petitioner, therefore, prays that the said decree of the Chancellor may be in the particulars aforesaid reversed and set aside and for nothing holden, and that the record may be remitted to the Court of Chancery with directions to enter a decree denying the relief prayed for by the complainant and granting the relief prayed for by the petitioner upon his counterclaim, and that the petitioner may have such relief in the premises as to this court may seem just and proper.

MERRITT LANE,
Solicitor for and of Counsel with
Appellant, Lester C. Burdette.

Testimony.

IN CHANCERY OF NEW JERSEY.

Monday, May 4, 1925.

TRANSCRIPT of shorthand notes of testimony taken in the above entitled matter before Hon. John H. Backes, Vice Chancellor, at the Chancery Chambers, in the City of Newark, New Jersey, in the presence of Messrs. Bilder & Bilder for complainant, and Mr. Merritt Lane for defendant Burdette.

Mr. Bilder: I offer in evidence the testimony of Lester C. Burdette taken in the matter of Alpha Chemical Works, Inc., bankrupt, at the session of March 27, 1919, which we will indicate as book No. 1.

The Court: Is that book filed with the referee?

Mr. Bilder: Yes, sir.

The Court: We will not mark it then.

Mr. Lane: Is that the original record you are offering, because there were changes in the transcript.

Mr. Bilder: Yes; I am offering the originals, they are signed by Mr. Burdette.

The Court: Offer all the testimony that was taken. Are there any admissions in the answer? Do you admit the filing of the petition in bankruptcy and adjudication?

Mr. Lane: Yes, sir; we admit the record of fact.

The Court: Do you admit the filing of the petition in bankruptcy, the adjudication and appointment of the trustee, and an indebtedness liability in excess of $50,000 of the corporation at the time of the filing of the petition and the adjudication—at least $50,000?

Mr. Lane: No, sir; we do not admit that last statement.

The Court: At least $20,000?

Mr. Lane: No.

The Court: How much do you admit of indebtedness—provable debts, $50,000 or $60,000?

Mr. Lane: About that, yes, sir.

The Court: Provable debts of fifty or sixty thousand dollars?

Mr. Lane: Yes, sir; I think so.

The Court: And debts proved of fifty or sixty thousand dollars.

Mr. Lane: We do not know that.

The Court: How much is proved?

Mr. Bilder: I have here the referee's report.

The Court: Debts proved of fifty or sixty thousand dollars?

Mr. Lane: We do not know. We are quite content to take whatever the trustee or referee will certify.

The Court: How much was proved of debts? Counsel is ready to admit.

Mr. Bilder: I asked the referee to produce his statement here so that I would not have to rely upon my own recollection.

The Court: Was there $50,000?

Mr. Bilder: There was over $50,000.

The Court: Proved?

Mr. Bilder: I think so. I think Mr. Brady has got over $40,000.

The Court: How much can you admit was proved? In excess of the amounts claimed here?

Mr. Lane: I think we can safely do that.

The Court: They admit everything. Now go into the meritorious question of fraud.

Mr. Bilder: I offer in evidence testimony taken in the bankruptcy proceedings, books marked 1, 2, 3, 4, 5, 6 and 7.

The Court: All signed?

Mr. Bilder: Yes, sir.

The Court: Testimony of Mr. Lester Burdette and signed by him.

Mr. Bilder: Yes, sir.

The Court: That is the testimony you want to offer?

Mr. Bilder: Yes, sir. I want to put down the dates of these because I want to be sure the dates are in the record.

The Court: Mr. Bilder, you have offered those seven books. Later on if you find you are mistaken you may offer more.

Mr. Bilder: With that reservation I am content.

The Court: Examine your files afterwards and if you find you need more in, put it in.

Mr. Bilder: I desire to offer in evidence checks signed Alpha Chemical Works, Inc., Lester C. Burdette, president, a list of which is set forth on this statement. Those made to Lester C. Burdette total $5,669.04; those made to Burdette & Horne, $725.85; those made to Burdette & Study, $5,929.91; those made to G. W. Study, $325.00; those made to Ralph W. Horne, $132.75; those made to the Bradette Corporation, $2,500; total $15,282.55.

The Court: The items you have given me are represented by these checks.

Mr. Bilder: Represented by these checks.

The Court: Made to the various people.

Mr. Bilder: Except, sir, in one or two instances, where the check is missing, and the missing check is indicated by the fact that the item has no check mark on the side of it on the statement.

The Court: The testimony offered will not be marked but will be considered as Exhibit C1. Place the checks in an envelope and have that marked.

(Envelope containing checks marked Exhibit C2.)

Mr. Bilder: May I offer the statement in evidence?

The Court: Any objection to the checks going in?

Mr. Lane: No.

The Court: Any objection to the statement going in for guidance?

Mr. Lane: No, sir.

The Court: Is the statement made up by you?

Mr. Bilder: Yes, sir.

The Court: We will use it as a guide.

(Paper marked Exhibit C3.)

Mr. Bilder: I desire to offer in evidence checks drawn by the Bradette Corporation contained in four envelopes, showing disbursements made by the Bradette Corporation of the $2,500 received from the Alpha Chemical Works, Inc. These checks indicate the manner in which this money was spent.

Mr. Lane: We admit them.

(Envelope marked Exhibits P4, 5, 6 and 7.)

The Court: Do you admit the statements of counsel as well?

Mr. Lane: Yes.

Mr. Bilder: I offer in evidence three check books of the Alpha Chemical Works, Inc.

The Court: Are these books all referred to in the testimony you have offered?

Mr. Bilder: Yes, sir; they are marked in evidence.

The Court: Just offer those books in connection with your testimony. They are already in, aren't they?

Mr. Bilder: Yes, sir. I offer the books in connection with the testimony already received in evidence.

The Court: And by the exhibit numbers as disclosed in that record.

Mr. Bilder: I offer also in evidence the minute book.

The Court: Wasn't that in the former record?

Mr. Bilder: Yes, sir.

The Court: Got a mark?

Mr. Bilder: Yes, sir.

The Court: That is all in.

Mr. Bilder: And the Bradette Corporation is also, I think, in.

The Court: Do you admit it without objection?

Mr. Lane: There is a great deal that is immaterial in these books, and some time we will have to cut the record down.

The Court: On appeal you will have to submit an agreed state of facts. Isn't there a provision in the Court of Appeals rules for that?

Mr. Lane: There is.

Mr. Bilder: Your Honor will also regard as in evidence any other exhibits which are referred to as admitted in the testimony without formal reference to them at this time?

The Court: Do you know of anything that should not be admitted?

Mr. Lane: No, sir.

The Court: They will be regarded as in.

Mr. Bilder: That carries with it the balance sheet I have referred to?

The Court: If it is an exhibit in the case before the referee it is in this case.

Mr. Bilder: If your Honor please, I have the report of an accountant.

The Court: Was that in the former case?

Mr. Bilder: No, sir, that is not. He made a comparison of the statement made by the corporation as of August 29 with the books, and I have the result of his comparison. I would like to save bringing the expert here to testify. I will give my adversary an opportunity to look it over.

Mr. Lane: I cannot say anything until I do look it over. I do not know what he has got in there.

The Court: You cannot impose that labor on Mr. Lane.

Mr. Lane: I am quite willing to assume it, but I cannot do it right now.

Mr. Bilder: Are you willing it should go in evidence without bringing the accountant here to swear to it?

Mr. Lane: No, not until I look at it.

The Court: Let it go in with the right to strike it out on your motion.

(Paper marked Exhibit C8.)

Mr. Bilder: I desire to prove, and ask whether my adversary will admit that the trustee in bankruptcy realized from all of the assets $12,439.56 and that he paid out as cost of administration $5,334.57.

The Court: Will you admit that there is a deficiency?

Mr. Lane: Yes, sir.

The Court: In excess of the amount here claimed?

Mr. Lane: Yes, sir.

The Court: Deficiency in the bankrupt estate, and that the trustee has the right to recover if you are liable?

Mr. Lane: Yes, your Honor.

Mr. Bilder: The bill left out the date of the adjudication in bankruptcy. I would like to prove that.

The Court: The petition was filed about when?

Mr. Bilder: February, 1919.

The Court: And adjudication followed——

Mr. Bilder: Shortly after.

The Court: And Mr. McMahon was appointed trustee in bankruptcy?

Mr. Bilder: That is right.

The Court: I do not see that we need any dates.

CLARENCE H. VENNER sworn for complainant.

Direct Examination by Mr. Bilder:

Q. You know Mr. Lester C. Burdette? A. Yes, sir.

Q. Do you remember the first conversation you had with him after you became acquainted? A. I do.

Q. Did you have any conversation with Mr. Burdette as to whether or not he had been drawing any money from the Alpha Chemical Works, Inc., of Delaware? A. I did.

Q. Will you state the substance of that conversation, and about when and where it took place?

Mr. Lane: I desire at this time to put on the record my objection to the materiality and relevancy of this testimony.

The Court: I will admit it.

A. It was on the 10th day of September, 1918, at my office in the City of New York. Mr. Burdette stated to me that no one was receiving any salary except the persons employed in the plant at Bound Brook; that he was receiving no salary himself; that no salaries had been voted, and that he expected to make his money in the enterprise out of the common stock of no par value to be subsequently issued.

Q. When did he make this statement? A. On the 10th day of September, 1918, which was the first time I ever saw the man.

The Court: Under what circumstances were they made? Why were they made to you?

Witness: Perhaps I can clear it up.

The Court: Answer my question.

Witness: My son.

Q. What led up to Mr. Burdette making that statement to you? A. He came to me for the purpose of raising money for the Alpha Chemical Works.

Q. And what was his application to you? A. He wanted to raise $25,000. He wanted to sell some stock out of the proposed increase of capitalization of the Alpha Chemical Works, and as a result of that I loaned the company some money on its note.

Q. Now, before you loaned the money did you have a conversation with him with regard to the

financial condition of the Alpha Chemical Works and the expenses and income? A. I did.

Q. What was the substance of the conversation and what took place, if anything, at the time of this conversation?

Mr. Lane: I interpose the same objection, if the Court please.

The Court: I am not interested in the wider field than that which has already been testified to, am I?

Mr. Bilder: I am endeavoring to observe your Honor's suggestion, as to what led up to the making of the statement and perhaps the surrounding circumstances.

The Court: Well, I understand he applied to you for money, and of the many statements that he made one was the one that you have related in detail.

Witness: Yes, sir. Of course, there were other statements made which went to the financial condition of the company.

The Court: Any of those important in this case to you, Mr. Bilder?

Mr. Bilder: I think there is one fact that I ought to bring out.

The Court: Go on.

Q. Did he submit to you a financial statement of the corporation? A. Yes, sir, in this way. He had previously given to my son a balance sheet of the corporation as of August 29, 1918, and that balance sheet I had with me and present during the time of the conversation with Mr. Burdette, and he admitted that that was the balance sheet.

Q. Have you that balance sheet here? A. I have.

Q. And did you afterwards employ an accountant to compare that balance sheet with the record? A. I did.

Q. And did you employ the firm of Puder & Puder to make that examination? A. I did.

Q. And did they submit to you a report? A. They did.

Q. And is Exhibit C8 that report? A. It is.

Q. And was that examination and report made after the bankruptcy of the Alpha Chemical Works? A. It was.

Mr. Bilder: I offer this statement in evidence.

Witness: I would like to put in a copy of it, if I may, not the original.

The Court: The copy will be accepted, subject to correction.

(Paper marked Exhibit C9.)

Q. At the time this statement was presented to you, which has just been received in evidence, did you have any conversation with him with regard to that statement? A. Yes, sir.

Q. What was the substance of the conversation? A. Well, he stated among other things that the real estate which the company owned at Bound Brook, the company had paid $12,000 about.

The Court: I understand the attitude of the defendant to be this, that they admit the withdrawal of these moneys and they set up a legal warrant to withdraw them, is that the attitude, Mr. Lane?

Mr. Lane: Yes, sir.

The Court: Now do not put any more in the case than you regard as may be necessary, in view of that attitude of the defendant.

Q. Did you call his attention to the fact that the statement showed that there was a deficiency? A. I did.

Q. What did he say? A. Why he said that was more than offset by the actual guaranteed profits on the contract that he had for this para. This balance sheet has on it, at the foot of it, "orders on hand $159,970, and estimated profits of over 40 cents on 98,330 pounds, $39,332." I would like to add, if permitted to do so, that they thought to borrow this money of me for the purchase of machinery to carry out the contract to manufacture the stuff para which is referred to on this balance sheet.

Mr. Bilder: That is all.

The Court: I do not want to curb you or limit you in the proof of your case, but simply to guide you. I pointed out to you what the attitude of the defendant was, as I understood it. If there is more in the case that you want to develop, go ahead.

Mr. Bilder: I think I have gone as far as I need to on the line that I have in mind.

Cross Examination by Mr. Lane:

Q. Mr. Venner, did you consider the statement made by Mr. Burdette with respect to his not getting a salary, and no salaries being paid, as important? A. I certainly did.

Q. Did you, after the conference that you had, receive from Mr. Burdette a written communication dated September 10? A. I did.

Q. Have you it? A. I have.

Q. Produce it. A. Here it is.

Q. That was drawn by you, was it not? Wasn't this paper signed by Mr. Burdette drawn by you? A. I will state the facts to you.

Q. Was it or wasn't it? A. I dictated that statement or that letter in the presence of Mr. Burdette after my conversation with him.

Q. Will you tell me why it was, Mr. Venner, if this statement with respect to salaries was important, that among the representations which Mr. Burdette made at your dictation in that communication of September 10th there does not appear any statement with respect to salaries? A. Read that question to me, please.

Q. (Question read.) A. Well, Mr. Lane, it is rather difficult to answer that question, but I will try to. In the first place I relied upon the representations made to me by Mr. Burdette. I thought that he was truthful and on the square, and it is entirely possible and even probable that in dictating this letter I did not—I just overlooked it—I did not anticipate the situation which subsequently developed. If I had I would have it in black and white.

The Court: You thought you were going to make money instead of lose, is that what you mean?

Witness: Not exactly that, no, but I would not have gone in had I seen or had I been informed that this corporation was being looted

by the very man who was misrepresenting the situation to me to raise money from me.

Q. I asked you why, if you depended so upon the word of Mr. Burdette, that you required that those —or some at least of these representations should be reduced to writing? A. Well, again you are getting into the speculative arena. It is the custom of bankers when they loan money to a corporation to get some sort of a statement from the applicant corporation showing the condition of that corporation, and that is what I sought to get in this proposition.

Q. Now, it was not because you questioned the salary—the question of salary was not in your mind when you dictated this communication of September 10th, was it, because you were careful to provide—or I will withdraw the word "careful," because you provide that as consideration for the making of this loan your son, Clarence H. Venner, should be employed at a salary? A. Oh, Mr. Lane, you are quite beside the mark. The proposition here—— (interrupted).

The Court: It is not an action for deceit, Mr. Lane.

Mr. Lane: No; I appreciate that, but to some extent counsel has introduced this and I am trying to show—we deny that we made any such representation, of course.

The Court: It goes to the credibility?

Mr. Lane: And it goes to the credibility.

Mr. Bilder: What is Mr. Lane's question?

Mr. Lane: I will withdraw the question.

Q. You have at the present time, have you not, a suit pending against Mr. Burdette in New York for deceit?

Mr. Bilder: I object as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

A. I have a suit pending against Mr. Burdette.

The Court: The answer is yes, is it?

Witness: Yes, sir.

Mr. Lane: I offer that letter for identification. If Mr. Bilder consents I will offer it in evidence.

Mr. Bilder: I object.

The Court: Let it be marked.

(Paper marked Exhibit D1 for identification.)

The Court: Mr. Bilder, a copy will go in evidence subject to correction.

Q. Mr. Venner, have you a communication, sent to you by the Alpha Chemical Works under date of January 24, 1919? A. I think so.

Q. Will you produce it? A. I don't know that. I have it here but—here is the letter.

Mr. Lane: I ask that it be marked for identification.

(Paper marked Exhibit D2 for identification.)

Q. Another letter of January 24, did you ever receive a letter of that kind? A. No.

Q. Did you receive a letter of that kind? A. No.

The Court: Let the things he is denying be identified.

(Paper marked Exhibit D3 for identification.)

Mr. Lane: I understand the witness's testimony is that he never reecived the letter which is marked for identification Exhibit D3; nor did he receive a letter—a paper that purports to be a copy of the letter dated January 24, 1919, and which will be marked Exhibit D4 for identification.

(Paper marked Exhibit D4 for identification.)

Witness: This record is liable to be——(interrupted).

The Court: Please do not do any more talking.

CLARENCE H. VENNER, JR., sworn for complainant.

Direct Examination by Mr. Bilder:

Q. You are the son of Mr. Venner, who was just on the stand? A. Yes, sir.

Q. Do you know Mr. Lester C. Burdette? A. Yes, sir.

Q. Did you have a conversation with him some time in 1918 with regard to the subject of salary? A. I had a conversation with him in his office and also on the train from Bound Brook.

Q. About when was the first conversation? A. The first conversation was about August 22 — around there.

Q. Was it before the investment was made?

The Court: What year?
Witness: August, 1918.

Q. Was it before the money was paid over by your father? A. It was before this statement was given to me.

Q. Was it before your father invested? A. Before my father ever saw Mr. Burdette.

Q. Invested $25,000? A. Yes, sir, before my father ever knew anything about the proposition.

Q. What was the substance of what Mr. Burdette told you on the subject of salary, if anything? A. He said that nobody was getting a salary except at the plant, and that Dr. Shoedler was getting commissions on the sales—otherwise no salaries being paid.

Cross Examination by Mr. Lane:

Q. What was the employment that you were to have with the company at a salary?

Mr. Bilder: I object as incompetent and immaterial.
The Court: Not cross examination.

Q. At the time you had this discussion with Mr. Burdette as to salaries being paid was the question of your salary also discussed?

Mr. Bilder: Objected to as not proper cross examination.
The Court: Objection overruled.

A. I had no discussion with him at the time.

Q. At no time when the fact that the company was paying salaries was your salary discussed? A. I never discussed my salary with Mr. Burdette.

Mr. Bilder: Mr. Venner says that a letter has been marked which was not the one asked about.

Mr. Venner, Sr.: Mr. Lane asked me if I had received a letter under date of January 24th. I told him that I had and I produced it at his request. It was a letter signed by Mr. Burdette.

The Court: This is the letter you referred to.

Mr. Venner, Sr.: This is the letter.

The Court: Let it be marked.

Mr. Venner, Sr.: It is marked.

The Court: How is it marked?

Mr. Venner, Sr.: It is marked Exhibit D2 for identification.

The Court: That shows it.

Mr. Venner, Sr.: That doesn't clear up the record. Mr. Lane showed me another letter which is directed to the Continental Securities Company. I have the letter which he was asking me about.

CLARENCE H. VENNER, SR., recalled for further

Cross Examination by Mr. Lane:

Q. The letter which is marked for identification Exhibit D3, dated January 24, 1919, addressed to

the Continental Securities Company, which you say you did not receive, or, as I understood your testimony, did the Continental Securities Company ever receive such a letter? A. It did not. That is—wait a moment—you must show me the letter, Mr. Lane.

The Court: The one that he has already shown you.

Witness: I cannot be sure about what letter he is referring to.

The Court: I do not see that it is going to play very much part in the case.

Witness: This letter dated January 24, 1919, marked Exhibit D3 for identification, is not signed.

Mr. Lane: I move to strike that out.

Witness: And the Continental Securities Company never received it.

The Court: You mean the original of that letter?

Mr. Lane: Yes.

The Court: Is that what you mean?

Witness: I would like to see the paper which is now referred to as Exhibit D4.

The Court: What is the trouble?

Witness: There are two letters, if your Honor please. I never received that letter marked Exhibit D4.

The Court: No, the original of that letter the question is.

Witness: I never received the original of it.

The Court: Of what—what exhibit number?

Witness: Exhibit D4, dated January 24, 1919.

Q. Is it or is it not a fact that you dictated Exhibit D3? A. It is a fact that I prepared both Exhibits D3 and D4, expecting that the Alpha Chemical Works and Mr. Burdette would sign them and they never were signed. They were just mere forms of letters.

COMPLAINANT RESTS.

LESTER C. BURDETTE sworn for defendant.

Direct Examination by Mr. Lane:

Q. Where do you live? A. Palisades, New Jersey.

Q. What is your profession? A. Attorney at law.

Q. How long have you been an attorney at law? A. Since September, 1918—no, 1908.

Q. Of the Bar of what State? A. New York.

Q. When did you first have any connection with this chemical business? A. In about November or December, 1916.

Q. At that time what was your employment? A. I was employed by Breed, Abbott & Morgan, 32 Liberty Street—law firm.

Q. How did you become interested in the proposition generally? A. A client of Breed, Abbott & Morgan, together with two of the firm, were interested in another chemical proposition. They later became interested in this and finally decided not to undertake it, and I took it up with my

brother and a Mr. Von Cleff, and we discussed it very fully and we and Von Cleff and Von Cleff's mother and one or two others agreed to buy this plant at Bound Brook at a bankruptcy sale of the United States Standard Chemical Company, which I understand was run by Broecker.

Q. Was a corporation formed at that time? A. The corporation was formed under the name of Alpha Chemical Works, under the laws of the State of New Jersey in either late December, 1916, or the first part of January, 1917—the minute book will show.

Q. Were the assets of this United States Standard Chemical Company purchased? A. Yes, sir; they were purchased at the bankruptcy sale.

Q. When? A. In December, 1916, I think. The original bill of sale is here.

Q. Did the Alpha Chemical Works of New Jersey —or when did the Alpha Chemical Works of New Jersey commence to operate? A. About the first week in January, 1917.

Q. And have you the minutes of the Alpha Chemical Works of New Jersey? A. They are here.

Mr. Bilder: Not of New Jersey, of Delaware. I will have to make a search. I did not attempt to bring them over. They may be in my office. I will telephone the office.

Mr. Lane: We need those minutes, and the Referee in Bankruptcy was subpoenaed to produce them, as was Mr. Bilder.

RECESS.

Q. Mr. Burdette, I show you the minute book of the Alpha Chemical Works, Inc., a New Jersey corporation, and call your attention to a meeting of the directors held on the second day of December, 1916. Were you present at that meeting? A. Yes, sir.

Q. I call your attention to the minutes—the last minutes of the meeting, and ask you whether that was passed? A. Yes, sir.

Q. I call your attention to the signature that is attached to that meeting. Do you know the handwriting of Mr. Von Cleff? A. Yes, sir.

Q. Was he secretary of the corporation at that time? A. He was, at that time.

Q. Is that his signature? A. Yes, sir.

Mr. Lane: I offer it.

Mr. Bilder: I object as incompetent, immaterial and irrelevant. Here is a minute of a meeting of a previous corporation.

The Court: Counsel admits it to be the minute book of the New Jersey corporation.

Mr. Bilder: But without waiving my rights to object to it being received in evidence as immaterial.

Mr. Lane: I offer the book and desire to call attention to the minutes of the meeting of the 2nd of December, 1916.

Mr. Bilder: Objected to on the ground that it is incompetent, immaterial and irrelevant.

The Court: I will admit it but reserving to you the right later on to strike it out. I don't know what Mr. Lane has in mind.

(Book marked Exhibit D5.)

Mr. Lane: For the purpose of the record may I read it. "On motion duly seconded and carried it was resolved that a salary of $300 per month be paid to the president of the corporation."

Q. At that time who were the officers of the company?

Mr. Bilder: I object as incompetent, immaterial and irrelevant. May I make a general objection to all testimony relating to the conduct of the affairs of the New Jersey corporation with respect to salaries as not binding on the trustee.

The Court: I suppose this is simply preliminary and introductory to action taken by the new company?

Mr. Bilder: There was no resolution by the new corporation.

The Court: I will admit it.

A. I as the president. I think George S. Burdette, my brother, was the vice-president——(interrupted).

The Court: What is the question?

Mr. Lane: Who were the officers of the New Jersey corporation at that time?

Witness: And Robert Vom Cleff, secretary and treasurer.

Q. Mr. Burdette, when you became interested in this proposition and president of the company to what did you devote your time? A. To the business of this company.

The Court: You mean the Jersey company?
Mr. Lane: The New Jersey company.

Q. And did you have any other business connections? A. No, sir, except that I was a member of the law firm of Burdette & Horne. We did no business.

Q. The office of the corporation was where? A. Room 1508 and 1510 Woolworth Building, New York.

Q. When was that office acquired? A. January 1st, 1917.

Q. In whose name was the lease? A. Alpha Chemical Works, Inc., New Jersey corporation.

Q. What was the necessity for a New York office? A. All of the buying and all of the selling, such as the raw material, machinery, and executive management was carried on at the New York office.

Q. Was there any arrangement made with respect to the New York office expenses? A. It was understood between the directors of this corporation and Mr. Horne and myself that they would allow us to use the New York office as a law firm without expense except such things as were incidental to our own business, such as telephone, telegrams and stationery, and things of that sort.

Q. What did you do as a matter of fact as the president of that company? A. Well, I took part in the original organization of the company, the promotion and organized the company, that is the Alpha Chemical Works of New Jersey, became its president—executive head. Took care of all of the financial affairs of the corporation. I went to Bound Brook two or three times a week to look

over things there. I hired all the chemists and most of the men, and took care of things generally as an administrative head. All ledgers and books were kept in the New York office except petty cash, which was reported to us.

Q. At the time of the acquisition of the plant by the Chemical Company what was its condition? A. The chemical plant at Bound Brook had just gone through receivership, and I have forgotten what they made there, but we took it over and rebuilt it and installed machinery for the manufacture of phenol, or carbolic acid.

The Court: You mean the former owner went through bankruptcy?

Witness: Yes, sir, the corporation.

Q. How much machinery did you install? A. During the first three months I should think we spent about four or five thousand dollars on machinery.

Q. And then what happened? A. Then on—during the first part of April, after we had been operating for two months, the chemist who was in charge, Mr. Broecker, failed to make any phenol, and it looked very much to me as though he didn't know the process. I then told him that he hadn't succeeded and that we did not care to put in any further money until we had secured someone who knew about the manufacture of carbolic acid or phenol. He said if that was the case, that if we were to engage someone to advise him or check up his work he would no longer work for us, and after that talk he left and I have never seen him since.

Q. At that time was he a stockholder in the company? A. Yes, sir.

Q. To what extent, generally, not precise? A. I think sixty shares.

Q. How much money had been invested in the corporation up to that time in the aggregate? A. $14,500.

Q. Through whose efforts? A. Mine.

Q. Any one else's? A. No, sir.

Q. After this conference or talk with Mr. Broecker what did you do? A. I went to see his attorney.

Q. Never mind the details, the result? A. The result was that we organized a new corporation with the same name, Alpha Chemical Works, Inc., under the laws of the State of Delaware, and tock over all of the assets and liabilities of the New Jersey company.

Q. That was in April, 1917? A. April, 1917.

Q. Now, who were the stockholders of this new corporation? A. The same stockholders as the old with the exception of Broecker and myself.

Q. Were you a stockholder of the New Jersey corporation? A. Yes, sir.

The Court: I thought you said he quit?

Witness: He did.

The Court: At that time?

Witness: Yes.

The Court: Was he a stockholder of the new corporation?

Witness: Oh, I didn't understand the question.

Mr. Bilder: I understand the testimony up to this point has related entirely to the New Jersey corporation.

The Court: You are perfectly proper about that. I think Mr. Lane asked you who the stockholders of the new company were.

Mr. Lane: No; I mean who were the stockholders of the new corporation as compared with the old?

Witness: The same, with the exception of Broecker and myself.

Q. You and Broecker were stockholders in the old company and were not in the new company? A. No.

Q. Were you ever a stockholder in the new company—Delaware company? A. No.

Q. Was Broecker? A. No.

Q. Otherwise the stockholders in the new corporation were the same as in the old, is that right? A. I think so.

Q. Or substantially? A. Substantially so.

Q. Who were the officers of the new Delaware corporation? A. The same as the New Jersey corporation.

Q. And they were—— A. Myself, president, my brother George the vice-president and Robert Vom Cleff secretary and treasurer.

Q. You say you were not a stockholder, how did it come about that you were president? A. I was a director and qualified to be president.

Q. The laws of Delaware do not require that an officer—an officer had to be a director at the time, but did not have to be a stockholder, and a director didn't have to be a stockholder? A. Yes, sir; amended just prior to that.

Q. When was it that the Delaware corporation took over the assets of the New Jersey corporation? A. In April, 1919.

Q. Now, from that time until the time that the Delaware corporation was liquidated was there any change in the directorate? A. No, sir.

Q. Or in the officers? A. No, sir.

Q. After the Delaware corporation started business was there any change in the method of operation? A. Yes, sir.

Q. What? A. I then started out to find some one who could complete—or make successful the manufacture of phenol, and I talked to Mr. Guile, who I had known for some time, who was in a similar business, and he went over the matter with me and sent his engineers and chemists to the plant and made a complete examination—made a report to me stating that he could make phenol at this plant with certain changes and additions, at a cost showing reasonable profit. I then entered into a contract with Mr. Guile's company, which was known as the Chemical Engineering and Research Corporation, by which he agreed to operate the plant.

Q. I show you a paper-writing dated the 1st day of May, 1917, and ask you whether that is a copy of the contract which was made between the two concerns? A. Yes, sir.

Mr. Lane: I offer it in evidence.

(Paper marked Exhibit D5.)

Q. Now, in pursuance of that contract what was done? A. Mr. Guile, who was president of that organization, sent a man named Summers, who was his chemist, a man named White, a man named Graves, a man named , all engi-

neers employed by him; they went to the plant, examined it, and redesigned a new plant, and built a new plant for the manufacture of phenol. Mr. Summers was there practically every day taking care of overlooking the installation of machinery and later the making of phenol.

Q. And how much was invested in that new construction, approximately? A. I should say about thirty or forty thousand dollars—more than that.

Q. How long did the construction work take? A. Well, my recollection is that there was only—the changes were made in probably three or four weeks, and mind you, these changes were made prior to the actual signing of that contract. They were in there during the month of April.

Q. When was the contract signed? A. May 1st, and I think we probably began the shipments of phenol about the date of the execution of this agreement.

Q. During the course of this reconstruction what did you do yourself? A. I went over the plans of reconstruction with Mr. Guile's engineers and chemists and went to the plant three or four times a week; I purchased all the machinery for the installation and all the raw material for the manufacture of phenol and took care of the selling of all of the phenol.

Q. What next happened? A. The phenol plant ran until Decoration Day on May, 1917, at which time we had a fire and burned up the still room and made it impossible to continue the manufacture of phenol.

Q. What next did you do? A. We then continued with Mr. Guile, discussed the manufacture

of some other product, and he advised—we agreed to make and sell salicylic acid. We then worked in conjunction with Mr. Guile's organization, rebuilt the entire plant, redesigned almost all new machinery which we purchased and had installed, which took us several months.

Q. That reconstruction work took how long? A. Oh, I should say five or six months.

Q. During that reconstruction work what did you do? A. I made contracts for the purchase and did purchase all of the machinery, and had conferences with Mr. Guile almost daily, and went to the plant and consulted with—I think it was Corlin, the superintendent, as to the changes and operation and plans and policy of the corporation.

Q. And what was the market value of the new machinery you installed, approximately? A. I should say $40,000.

Q. And what was the cost of the entire reconstruction? A. Between forty and fifty thousand dollars.

Q. What happened to the insurance? Was there insurance on the building? A. Yes, sir, we had the building covered by insurance and collected—my recollection is $1,200 or $1,500, and I think that we indorsed those checks over to Mr. , who had a mortgage on the property, and he gave them back to me.

Q. Did the plant start operating? A. The plant did not start, I should say, until October or November of that year.

Q. Then what happened? A. Then we began the manufacture of salicylic acid.

Q. How long did you continue the manufacture of salicylic acid? A. Until June or July, 1918.

Q. And during that period of time how much salicylic acid did you sell? A. About $133,000.

Q. And who sold it? A. I sold it.

Q. From what office? A. New York.

Q. Do you know how many customers you had? A. We had eleven customers on salicylic acid.

Q. What happened to the salicylic situation? A. The situation was this, we had contracts for the manufacture and delivery of both what was known as technical salicylic and U. S. P. salicylic, or refined. We never succeeded in making the sublime or U. S. P. salicylic acid. We continued and did deliver about $130,000 worth of technical salicylic acid, and about the time we stopped the market was—the market price was so low that we could not continue to manufacture it at a profit.

Q. Then what did you do? A. Then we shifted to something else. We examined fourteen or fifteen different products which we were considering manufacturing and finally arrived at the manufacture of para—paranitroline.

Q. Is there an English word for that expression? A. No; we called it para; and then in addition to that paranitroline was paranitroacetanilide, that was one of the intermediaries of paranitroline—in other words, we had to make both. We sold paranitroacetanilide, also paranitroline. We attempted to make and did make some parared. I went to Washington on that and saw one of the department heads who were interested in getting parared, which was to be used for smoke screens, and they offered me a considerable contract if I could make it, and we did make it and had samples made which were approved, but we were too late—armistice.

Q. How long did the manufacture of this substance continue? A. We continued to manufacture paranitroline and paranitroacetanilide until December, 1918—December 30th.

Q. During the time that you had your investigation of substitution of something for salicylic acid what did you do yourself with respect to it? A. I discussed it with some different chemists, particularly Mr. Guile, and worked on a plan with them for its manufacture, and then spent a good deal of my time to raise the money to manufacture this para which I succeeded in doing.

Q. How much money did you raise, approximately? A. Altogether, between a hundred and a hundred and ten thousand dollars.

Q. I am talking about the money which was needed to change this enterprise from the manufacture of salicylic acid? A. Oh, to the paranitroline. My recollection is that it was about $38,000, which covered the cost of new machinery and the purchase of sufficient raw material to begin operation.

Q. Who attended to the purchase of this machininery? A. I did.

Q. Who attended to the purchase of the raw material? A. I did.

Q. Hod much in value did you sell of this paranitroline—whatever it is? A. From October to December I think about $70,000.

Q. What happened then? A. In February, 1919 ——(interrupted).

Q. Well, we are down to December, 1918. A. Well, in January——

The Court: What happened then?

Witness: January——(interrupted).

The Court: Why did you stop?

Witness: December 31st.

The Court: Why did you stop?

Witness: I will tell you——

The Court: The war came to an end.

Witness: The war came to an end in November, 1918.

The Court: And you were manufacturing raw material?

Witness: Yes, sir; and the price of paranitroline dropped to about—$1.65 a pound to 18 cents. Then we sold what we had on hand, manufactured up what raw material we had and continued on our contract which they took at that price, but of course we couldn't sell any more.

The Court: What price?

Witness: $1.65.

The Court: The Government took it?

Witness: No, we sold it to Bayer & Company.

Q. Then what did you do? A. We shut down.

Q. How long did you continue shut down? A. Until February, 1918.

Q. The receiver came then? A. The receiver came in early in February, 1918.

Q. You never opened up and began to manufacture after you abandoned the manufacture of this last para, or whatever it is? A. No.

Q. These substances or things you were investigating before you took up the manufacture of that, what were they? A. Phenol was carbolic acid and

is used in making explosives for which we had large contracts; salicylic acid is used in making the khaki colors for soldiers' unforms; we sold that to various firms from which they made yellow, a dyestuff. Paranitroline was also used in the making of dyes.

Q. You said a few moments ago that before you entered upon the manufacture of this last thing you had investigated some fourteen other substances, or a certain number of other substances, what were they? A. One was coumarine. I think it was a perfume; another was nerolin, which we made and sold to Colgate's. Another one was amal-acetate, which I understand was used in the making of guncotton; another cinammic acid and cinammic alcohol.

Q. What kind of alcohol? A. Cinammic—and several others which I cannot think of now.

Q. During the course of the business of this company can you tell me in the aggregate about the amount of the products sold in value? A. I should say between $250,000 and $300,000.

Q. How much phenol in it? A. I should say twenty or thirty thousand dollars worth.

Q. Have you checked from the books of the company or from the records in your possession the amount of salicylic acid sold and the customers? A. Yes, sir.

Q. And also the amount of paranitroline sold? A. Yes, sir.

Q. And customers? I show you a statement purporting to show sales from November, 1917, to September, 1918. Does that correctly indicate the sales? A. Yes, sir.

The Court: September, 1917 to 1918? They were not operating until August, 1918, is that what you mean?

Witness: No, from 1918 paranitroline.

Q. And salicylic acid? A. And salicylic acid.

The Court: You started to manufacture—to sell salicylic acid October, 1917, up until June, 1918, is that right?

Witness: No, we continued to sell until September—sold out the last. We had some left over.

The Court: Until 1918.

Witness: Yes, sir.

Q. Are the books from which you made that recapitulation here? A. This was made from the actual invoices and bills of lading.

Q. From your invoices and bills of lading? A. Yes, sir.

The Court: What did it amount to?

Witness: It amounted to $146,293.75.

Mr. Lane: I offer it as a recapitulation from the invoices.

Mr. Bilder: May I reserve the right to cross examine until after I have had my accountant make an examination? It may be that I will agree with their figures and it would not be necessary to cross examine as to that.

(Paper marked Exhibit D6.)

Q. Now I show you a recapitulation or statement—letter—of sales from August, 1918, to Jan-

uary, 1919, paranitroline, and ask you from what source you took this. A. Yes, sir.

Q. From what source? A. Oh, from the bills of lading and invoices.

Q. And are they here subject to inspection? A. Yes, sir.

Q. And does this statement show the bills, customers, amounts, from August, 1918, to January, 1919? A. Yes, sir.

Mr. Lane: I offer that in evidence.

(Paper marked Exhibit D7.)

Mr. Lane: The aggregate is $83,161.62.

The Court: That is para. The salicylic acid——

Witness: $143,000.

Q. I show you another statement headed miscellaneous sales. Is that statement of miscellaneous sales taken from the invoices and bills of lading?

The Court: What period?

Witness: This covers the entire period. Just odd things.

The Court: Paranitroline was the operation of the Delaware company, do you mean?

Witness: Yes, sir.

The Court: Have you the record of the phenol sales?

Witness: I haven't got that. It is in the book, though. I can get it.

Mr. Lane: I offer the miscellaneous sales.

(Paper marked Exhibit D8.)

Mr. Bilder: May I have the same reservation?

The Court: Yes.

The Court: The amount of phenol, have you made any recapitulation of it?

Witness: No, the amount of phenol sold will show in the sales book and in the accounts receivable book. I did not have these books. They were in the hands of the trustee. I do not seem to be able to locate the invoices.

Q. You are depending upon your recollection with respect to the phenol? A. Yes, sir.

Q. Which is what? A. I should say $30,000.

The Court: That was sold between the time —up to the time of the fire.

Witness: Yes, sir. That was sold between April, 1917, and May 30, 1917, and possibly we had a little left over that we sold after the fire.

Q. Now, what records of this company were kept in New York? A. We kept in New York the cash book, showing three banks—we had a small bank account in Bound Brook for petty cash—accounts payable book, on which was listed all our bills—accounts receivable book, in which was shown the money owed, perpetual inventory of all the raw material on hand and finished products. That perpetual inventory showed daily the amount of each raw material on hand, the amount in process and the amount of the finished goods. That inventory was checked at the factory once a month, or once every other month, with the actual physical inventory.

Q. I show you three books and ask you whether they were kept in the New York office and what

they were? A. This was an inventory of the—daily inventory of the phenol manufactured at the time, showing batch number, quantities of raw material used and the yield, as we called it, or the amount realized.

Q. Under whose supervision was that book kept? A. Under my supervision by my stenographer.

Q. Who made the figures in the book? A. Mostly made by the stenographer—some made by myself.

Q. Did you have knowledge of the contents of that book from day to day? A. From day to day, yes, sir.

Q. And did you have sufficient technical knowledge of the subject to understand what it all meant? A. Yes, sir.

Mr. Lane: I offer that book in evidence.

(Book marked Exhibit D9.)

Q. Give us a little further as to how far in detail that book goes.

Mr. Bilder: I object. Isn't the book explanatory?

Mr. Lane: No, sir, it is not.

Mr. Bilder: I object to it as incompetent, immaterial and irrelevant, describing the work of his stenographer as I see it.

The Court: Objection overruled.

A. This is a daily inventory of the following products which we would use in manufacturing: costic soda, sulphuric acid, carbon dioxide, zinc, linseed, limestone, benzol, soda ash, muriatic acid, and fuel oil.

Q. All those products that you have referred to, who purchased them? A. I did.

Mr. Lane: I offer the books. Is there anything more you want to say about it?

Witness: No; I think that is pretty full.

(Book marked Exhibit D10.)

Mr. Bilder: May I ask whether that book covers the New Jersey corporation?

Witness: I don't know.

Mr. Bilder: I object to it unless it covers the life of the Delaware corporation and from the testimony it does not appear.

The Court: You may develop that on cross examination.

Mr. Bilder: But not first off.

The Court: I do not know what these things went into. Phenol, salicylic acid, or para, do you?

Mr. Lane: I do not. Some of them went into everything.

Mr. Bilder: He knows whether it begins with the New Jersey or the Delaware.

The Court: He may be asked.

Mr. Bilder: I object to it as the record now stands because it does not show that it is binding upon this corporation and trustee.

Q. Is there anything in that book that pertains exclusively to the New Jersey corporation or is it running for both? A. It either runs in both or obtains to the Delaware. It doesn't include the Jersey——(interrupted).

Q. Was there any change made in the operation of this last book because of the change of the cor-

poration from New Jersey to Delaware? A. No, sir; they continued running them. Nothing happened. The books were continued. No new books were bought.

Q. The second book you got here, what is that? A. It seems to be a record of the daily manufacture of phenol beginning in April, 1917, and runs until the end of May, 1917.

Q. Under whose supervision was that book kept? A. Mine. This was kept in the New York office. It also includes the daily inventory of raw material purchased and used during the period.

Q. What else does it show? A. That is all, I think.

Mr. Lane: I offer that.

(Paper marked Exhibit D11.)

Mr. Bilder: I object on the ground that it covers the business of the New Jersey corporation.

Witness: That is Delaware—entirely Delaware.

Q. What is the next book you have? A. This book is the daily inventory of the raw material used in the manufacture of salicylic acid, together with the yield and perpetual or daily inventory of the technical salicylic acid at the time. It takes in raw material of phenol, costic soda, carbon dioxide, sulphuric acid and zinc dust and muriatic acid; and also includes the daily inventory of the manufacture of paranitroline and paranitroacetanilide, together with the daily inventory of the raw material which are sulphuric acid, paranitroacet-

anilide, mixed acid, costic soda, nitric acid and acetarlan.

Q. Under whose supervision was that book kept? A. Mine.

Q. Were you familiar with its contents? A. Every day.

Mr. Lane: I offer it in evidence.

(Paper marked Exhibit D12.)

Q. Mr. Burdette, in order to operate this company was it necessary that you should have in the New York office any of these books from day to day? A. Most necessary. I learned very early that in the manufacture of chemicals you have to watch very carefully the raw materials as they were used and the yield of same; question of profit and loss depended upon the yield you get from your operations, and that thing had to be studied very carefully every day, and I spent a great deal of time on that work.

Q. What other books were kept in the New York office—oh, before I ask you that question, have you told us how many customers in all there were of this corporation during the course that it did business? A. About forty.

The Court: Not at one time.

Witness: Not during the period—you mean to whom we sold?

Q. To whom you sold? A. About forty.

Q. Have you any idea as to how many people there were from whom you bought? A. Twenty—twenty-five.

The Court: At no one time.

Witness: No. During that period of two years. That is raw material, and at least twenty-five or thirty on machinery.

Q. I was going to ask you from how many you bought machinery? A. Twenty-five or thirty, possibly more.

Q. What other books were kept in the New York office? A. All letters were handled from the New York office; the ledger was kept in the New York office; the stock certificate book and the stock ledger were kept and minute book was kept in the New York office; cash book, check book—and in addition to that we had a monthly trial balance, and profit and loss account which was prepared, I think, every month, except during the time when we were installing machinery and not doing much business, then, possibly, we skipped a month or two.

Q. What did you have to do with the preparation of the monthly statement? A. They were prepared by me and my stenographer under the advice of the accountant. We had two sets of accountants.

Q. What did you have to do with the keeping of the ledger? A. The ledger was kept by the accountant.

Q. What was the correspondence handled by you? A. I have it all here. I should say there was several thousand letters.

Q. Was it a matter of a letter once a week, or daily performance? A. No, it was anywhere from five to twenty letters a day, I should say.

Q. Who handled that correspondence? A. I did entirely.

Q. Is the correspondence here in court? A. It is all here, yes, sir.

Q. Do you know how many single invoices were handled? A. Maybe two hundred.

Q. By you? A. Yes, sir.

Q. You mean by you? A. Yes, sir.

Q. Answers to all these letters pertaining to the business of the company, who had charge of it—who answered them? A. I did entirely.

Q. Did the directors of the Delaware corporation know that you were drawing $300 a month, and $300 for the New York office expense? A. Yes, sir.

Mr. Bilder: I object as incompetent, irrelevant and immaterial and not binding on the trustee.

The Court: Overruled.

Q. From what period of time did they know that? A. From the first payment to the last.

Q. Was there a time when that arrangement was changed? A. Changed in this way. At the time I discussed the manufacture of phenol with Mr. Guile, president of the Chemical Engineering & Research Company, and at which time he made this contract which is to operate the plant for twenty-five per cent.——(interrupted).

The Court: Do not go into all that. Answer the question.

Witness: Well, yes.

Q. When was it changed? A. Oh, About May 1, 1917.

Q. How? A. In making this contract with Mr. Guile in which he was to be repaid for his services and an interest in the profits he insisted that I fix a definite amount for overhead expenses or administration. He checked up carefully and knew the cost of manufacturing and the factory cost, and I told him at the time I was getting $300 a month and the New York office was costing about $300 a month.

Mr. Bilder: At this time I object because the conversation had by this officer with Mr. Guile as to the reason for change is not binding on this trustee—self-serving declaration.

The Court: Your objection comes late to say the least.

Mr. Bilder: May I move to strike out?

The Court: Too late.

Q. Proceed. A. And in that contract with Mr. Guile, after I told him I was getting $300 a month and that the office cost $300, we agreed that an overhead for all administration including my salary and New York office expense would be $150 a week or approximately $600 a month, which was written into this contract.

Q. Was that arrangement subsequently changed? A. Yes, sir.

Q. When? A. In October, 1918.

Q. How? A. Oh, by the New York office being abandoned by the Alpha Chemical Works, bankrupt, and expenses were taken over by the Bradette Corporation, and I was paid $500 a month from October to January, I think.

Q. Were you present at a meeting of the directors of the company held on the 9th day of July,

1918? A. I have no present recollection of that date.

Q. (Showing witness book) A. I mean by that that I cannot——(interrupted).

Q. Have you read the minutes of that meeting enough to familiarize yourself with it enough to say whether you were present at the meeting of the corporation at which that action was taken? A. Yes, sir.

Q. Is the signature of Mr. Vom Cleff on the minutes of that meeting? A. Yes, sir.

Q. Did the action which appears to have taken place at that time take place? A. Yes, sir.

Mr. Lane: I offer the minutes.

Mr. Bilder: I object as incompetent, irrelevant and not binding on the trustee—self-serving resolution put upon the minutes by this director and the others. It certainly isn't binding on this trustee of the corporation.

The Court: The question is the competency of the testimony, not its binding force. Objection overruled.

(Paper marked Exhibit D13.)

Q. Mr. Burdette, who was the Bradette Corporation. A. The Bradette Corporation was organized by me. It was organized for the purpose of buying and selling chemicals or doing a brokerage business. This corporation bought and sold for brokers and from brokers and for manufacturers and from manufacturers chemicals, dyestuffs, and so forth, and the Alpha Chemical Works gave to it a contract to sell its products at a commission of five per cent. on the sale and to buy its products at one per cent. on its purchase.

Q. Before that contract was entered into had you any knowledge or had you acquired any information as to the customary charges for brokerages for selling and purchasing products? A. Yes, sir.

Q. What did you ascertain? A. I found that commissions as high as fifteen per cent. was being paid for the sale of products and as high as three to five per cent. for the purchase.

Q. What was the arrangement between the Bradette Corporation and the Alpha Chemical Works with respect to the New York office expense? A. The Bradette Corporation assumed the New York office expenses, and the—that is, took it over from the Alpha Chemical Works.

Q. There was some amount of money, $2,500, I think, paid to the Bradette Corporation? A. Yes, sir. That amount of money was paid to the corporation during a period of three months, I think. I don't know.

Q. And what was it used for? A. It was used to pay its expenses.

Q. Which were what? A. Which were the New York office expense and the salary of Dr. Shoedler, who was a salesman employed by it.

Q. Was any part of that money used to pay you individually? A. No, sir. The only check that I remember which was paid to me was a check for the actual disbursements of the organization of the corporation. I received no fee for the work done.

Q. And that was paid to you by the Bradette Corporation? A. Yes, sir.

Q. There was certain of those moneys paid to the firm of Burdette & Study, were there not? A. Yes, sir.

Q. What was that for? A. That was for the New York office expenses.

Q. Did the Bradette Corporation in fact sell any products? A. Yes, sir.

Q. Do you know how much? A. I couldn't answer that.

Q. The $2,500 which were advanced to it were on account of what? A. Sales they had made and to be made.

Q. The insolvency prevented the carrying out of that contract? A. Yes, sir, at the time of the filing of the petition we could not complete the contract because we had nothing to sell.

Q. During the time that you were president of this company and received these moneys did you receive anything from your law business? A. I think until—oh, I should say during the year 1917 and the greater part of 1918 I received nothing from the law business.

The Court: Had you clients or hadn't you clients?

Witness: Did not have any.

Q. Could you have had clients and attended to the business of this company?

Mr. Bilder: I object as incompetent, immaterial and irrelevant and calling for a speculative answer.

Mr. Lane: I will withdraw the question.

The Court: Let it stand.

The Witness: Yes, sir.

Q. I did not get the answer. A. Yes, sir.

Q. To what extent was your time taken up in

the business of this company? A. About 100 percent.

Q. Did you have any time to do any other business? A. No, sir. I spent my——(interrupted).

The Court: Had you any prospective clients?

Witness: Yes, sir, which has since proved to be real.

Mr. Bilder: I did not get the question.

The Court: Did he have prospective clients and the answer was, what?

Witness: Yes, and which have since become real.

Q. What did you get out of your law business after January?

The Court: What did he get out?

Q. Did you receive any revenue from it after January, 1919? A. Yes, sir.

Q. I thought you said January, 1919—1918?

The Court: Armistice, November 11, 1918.

Q. What did the partnership of Burdette & Horne get from this corporation, if anything? A. Nothing but the use of the office and the return of the disbursements made at the organization of the two companies. They never received any fee for organizing either of these companies.

Q. What did the partnership of Burdette & Study get out of this? A. Nothing, except the same.

Q. Did the company at any time bear any of the personal expenses either of yourself or these part-

nerships—by personal expenses I mean the expenses of telephoning and telegrams, et cetera, having to do with the law business? A. No, sir. May I amend that?

Q. Yes. A. I think the telephone bills were paid by the company, whatever use we made. We did not apportion.

Q. Did you ever receive from this corporation any moneys or any benefits of any kind, nature or description whatever during the course of your connection with it that you have not described? A. No, sir.

Q. Did you personally endorse paper for the company? A. Yes, sir.

Q. To what extent? A. At one time I was endorser on—accommodation endorser on $35,000 worth of its paper.

Q. Did you secure others to endorse paper for the company? A. Yes, sir.

Q. To what extent? A. Of that $35,000 I endorsed, five was endorsed by Mr. Brady and the balance was endorsed by Mr. Vom Cleff and myself.

Q. Were you obliged in fact to pay any of the paper of the company? A. Yes, sir.

Q. To what extent? A. After the petition in bankruptcy was filed I was endorser on $15,000 of notes. I paid five, Mr. Brady paid five and Mr. Vom Cleff paid five, with interest.

The Court: When was this?

Witness: After the failure. $10,000 of those were in the Chatham Phenix Bank which Mr. Vom Cleff and I endorsed for the accommodation of the company.

The Court: The proceeds of which went into the treasury of the company upon the failure?

Witness: Mr. Vom Cleff and I each paid $5,000 of that amount with interest.

Q. There has been some statement made this morning as to a difference between the financial statements—one of them—and the fact as disclosed by the books on the accounting. Do you know what that is? A. If there is any difference it is a surprise to me, very much, because the books were very accurately kept and checked by an accountant every month. I gathered from the statement that there was a difference which was caused by adding to the liabilities on the statements which I made some ten or fifteen thousand dollars, which I took to mean a commission which I owed Mr. Guile's company. At the time of the statement which I made—was made—I had a general release from Mr. Guile from that obligation, if any. We never knew what it was. Going back a little I might add that the contract to sell products at a five per cent. commission—we never operated under that contract—when it came time to earn the money for paranitroline I spoke to him about it and I said, "I must owe you some money". He said, "All right, I will give you a release of it so that you can have it clear before you put any further money in."

Q. And are those releases in existence? A. I have them, yes, sir.

Q. Did you see Mr. Venner at any time with respect to his investing moneys in this company? A. Yes, sir.

Q. Did you at his office say to him when you were in conference with him, I think, on the 10th of September, 1918, that you were not drawing any salary and that there were no salaries being paid by this corporation or words to that effect? A. No, sir.

Q. Did you at any time make any such statements? A. No. The fact was that I was always drawing a salary as commission, on the books.

Q. Did you tell Mr. Venner, Jr., at any time during the month of August when you were talking about this, going into this proposition, make any statement that you were not paying or being paid any salary? A. No, sir.

Q. Or that there were no executive salaries being paid? A. No, sir.

Q. Were there any other executive salaries or administration expenses than those which were paid to you? A. No, sir; outside of those payments nothing was paid except actual factory labor and superintendent.

Q. Were you ever paid anything for the organization of these different corporations? A. No, sir.

By the Court:

Q. Were you a stockholder in the Jersey corporation? A. Yes, sir; eighteen shares.

Q. How much had you invested in that? A. Nothing.

Q. How much money was invested? A. $14,500.

Q. In stock? A. Yes, sir.

Q. And the Delaware corporation, how much had you invested in that? A I personally, nothing; I had no stock.

Q. How much was invested in stock in that company? A. About $90,000 in cash.

Q. In stock? A. Yes, sir; may I explain it?

Q. People bought stock in the company to the extent of $90,000, is that what you mean? A. Yes, sir; they did it in this way.

Q. Well, they did it? A. Yes, sir; they did it, a hundred cents on the dollar.

Further Direct Examination:

Q. Did this company at any time make a profit? A. According to the statement, yes, sir.

Q. Can you refer to the statement and tell me what months and what the profits were? A. I can from the statements, but I have no recollection of it.

Mr. Lane: Have you the statements here?

Mr. Bilder: No. I have balance sheets here, if that is what he refers to.

Witness: That is it.

Q. (Showing witness papers.) A. This statement dated April 30, 1918, profit and loss statement, shows profits of $8,080.35.

Mr. Bilder: Those statements are in evidence. I object to the witness reading from the statement unless the whole statement is read.

Adjourned until May 14, 1925.

IN CHANCERY OF NEW JERSEY.

May 19, 1925.

Continuation of hearing pursuant to adjournment at the place and in the presence of the parties as before.

LESTER C. BURDETTE resumes the stand for

Cross Examination by Mr. Bilder:

Q. I understood you to say that you were admitted to the Bar in 1908. A. 1908 or 1909, I am not certain which.

Q. New York Bar? A. Yes, sir.

Q. And that the time of the formation of the New Jersey corporation you were in the employ of Messrs. Breed, Abbott & Morgan? A. Yes, sir.

Q. And you were not a member of that firm, were you? A. No, sir.

Q. For how long a time had you been in the employ of Breed, Abbott & Morgan? A. I was there from September 27, 1908 on until December 31, 1916.

Q. And during the year 1916 what compensation had you received from that firm? A. Two hundred dollars a month plus an interest in whatever business I brought in.

Q. Two hundred dollars a month, about fifty dollars a week. What had you started with? A. Nothing.

Q. So that you were in their employ eight years —after being in their employ eight years you were getting fifty dollars a week? A. That is right.

Q. And what had you received out of your profit sharing arrangement from the firm for the year 1916? A. I cannot determine. I should say something.

Q. Wasn't it so small that it is difficult for you to remember? A. Yes, sir.

Q. You had no clients of your own? A. Yes, sir; I had.

Q. At that time? You had no clients of your own. A. Yes, sir; I had.

Q. At that time? A. They were not my clients, but they were clients I brought into the office. The work was done by the firm.

Q. They remained with the firm, did they? A. Some did and some did not.

Q. Did any of them follow you into the office of the Alpha Chemical Works in New York? A. I do not remember any now.

Q. What is that? A. I do not remember of any now, except one which followed some time later.

Q. The Alpha Chemical Works of New Jersey was organized in December, 1916? A. Yes, sir.

Q. That was a New Jersey corporation and continued until April, 1917, is that right? A. Yes, sir.

Q. Now your first partner was Mr. Horn. A. Yes, sir.

Q. Was he also in the employ of Breed, Abbott & Morgan? A. Yes, sir.

Q. And was he receiving more or less than you were? A. I did not know.

Q. You do not know what he was receiving? A. I do not know; never did know.

Q. Were you supposed to get a profit on the business of the firm of Breed, Abbott & Morgan, or

business which you brought? A. The business which I brought in.

Q. Did you make an income tax return for the year 1916? A. I do not remember.

Q. To the Federal Government? A. I do not remember.

Q. Did you make an income tax return to the Federal Government for the year 1917? A. I have no recollection. Most likely I did.

Q. Did you make an income tax return to the Federal Government for the year 1918? A. I do not know, but I can tell from my records in the office.

Q. You haven't your records here? A. No.

Q. Did you pay an income tax for the year 1918 to the Federal Government? A. I do not remember.

Q. Did you pay an income tax return for the year 1917 to the Federal Government? A. I do not remember.

Q. Did you pay an income tax return to the Federal Government for the year 1919? A. I do not remember.

Q. Do you remember making a return, an income tax return for the year 1919 to the Federal Government? A. I have no personal recollection of it. If I should have filed it I know I did, that is all I can say.

Q. Did you have an income for the year 1919 upon which you should have paid a tax to the Federal Government? A. Yes, sir.

Q. Did you have an income during the year 1918 on which you should have paid taxes to the Federal Government? A. Yes, sir.

Q. And did you have an income during the year 1917 upon which you should have paid a tax to the Federal Government? A. I do not remember.

Q. During the year 1917 you do not remember? A. No, I do not.

Q. You do not remember what your income was for the year 1917? A. I remember what my income was, but I do not remember what the deductions were.

Q. Well, did you have any other deduction but that which you might get because you happen to be a married man, for the year 1917? A. All I had was the reduction for being married and three children, I think.

Q. Well, that is one reduction you remember. A. Yes.

Q. Any other deduction you might have had for 1917? A. I might have had, but I do not remember the others.

Q. You have a failing memory, have you? A. No.

Q. You do not remember whether the amount you had to pay the Government was so considerable that it made quite a difference in your income for the year 1917? A. I know it was not considerable, but I have no recollection of what it was.

Q. You have no recollection that you paid an income tax for 1917? A. No present recollection.

Q. What will refresh your recollection? A. My papers in my office, copies of the income tax return, if any.

Q. You mean if there are any? You do not say there are, do you? A. I do not know.

Q. Have you your check book for 1917? A. Have I it here?

Q. No. Have you it in your possession or control? A. I don't know.

Q. Have you your check book for 1918? A. I think so, yes, sir.

Q. And for 1919? A. I think so.

Q. All your return vouchers? A. I think so.

Q. Did the firm of Burdette & Horn keep a set of books? A. They kept books.

Q. Keep a cash book showing money taken in? A. Yes, sir.

Q. Ledger? A. No—yes, I think we had a ledger.

Q. Is the cash book of Burdette & Horn in existence? A. I don't know.

Q. Where did you see it last? A. In my office.

Q. How long ago? A. I don't know.

Q. This year? A. No; I think not.

Q. Last year? A. I don't know.

Q. Who kept the cash book of Burdette & Horn? A. Either Mr. Horn or myself.

Q. Did the stenographer have anything to do with keeping that book? A. Yes, sir.

Q. Who kept the—you had a cash book for the firm of Burdette & Study, did you? A. Yes, sir.

Q. And any other book besides cash book? A. I think we kept a ledger. The only cash book was the check book.

Q. You mean your check book was your cash book? A. Yes, sir.

Q. You are now talking about Burdette & Study? A. The same as to Burdette & Horn.

Q. Did you place your return checks in the book? A. No.

Q. They were kept—— Did you make a partnership income tax return for the firm of Burdette & Horn? A. I do not remember.

Q. How will you refresh your recollection? A. By looking through our papers.

Q. Did the firm of Burdette & Study make an income tax return? A. I do not remember.

Q. Did you make—in the year 1916 were you required to make an income tax return to the State of New York? A. I do not remember.

Q. When was the first time you made an income tax return to the State of New York? A. I do not remember.

Q. Did you make one this year? A. Yes, sir.

Q. Make one last year? A. Yes, sir.

Q. Make one the year before? A. I think so.

Q. For how many years have you been making such returns? A. I do not remember.

Q. You do not know when that law went into effect—you have no recollection, is that right? A. No present recollection, no.

Q. Now you thought it was desirable for the New Jersey corporation to have an office in New York, is that right? A. Yes, sir.

Q. At the time of the organization of this New Jersey corporation, your sole source of income was the money you were receiving from Breed, Abbott & Morgan, is that right? A. Yes, sir.

Q. That was fifty dollars a week. A. Plus an interest in any business I brought in.

Q. About fifty dollars a week or two hundred dollars a month. A. Two hundred a month.

Q. Payable how? A. I think it was semi-monthly; I do not remember.

Q. And when you left Breed, Abbott & Morgan, the only income you got was that which you received from the Alpha Chemical works, is that right? A. Yes, sir.

Q. And you were not a chemist, were you, in December, 1916? A. No.

Q. Were you a graduate from any college? A. Yes, sir.

Q. What college? A. Manhattan College.

Q. Academic course? A. Got the degree of A.B. in 1915, graduated from Columbia in 1908.

Q. You had not graduated in any course of chemistry, had you? A. No.

Q. Knew nothing about chemistry? A. Nothing, except what I had during the years of training in the academic course.

Q. Did the New Jersey corporation procure a certificate of authority to do business in New York? A. I do not remember.

Q. Isn't it a fact that the New Jersey corporation did not obtain a certificate of authority from the State of New York to do business in New York? A. I am not certain, but I think they did not.

Q. And you know, as a lawyer, that a corporation—foreign corporation doing business in New York did so at its peril and that its contract might be regarded as void, didn't you? A. Contracts are not regarded as void.

Q. You say that under the law of New York as it existed in 1916, that a New Jersey corporation can maintain an office in New York and make and sell goods in New York without violating the law without first procuring a certificate of authority to do business? A. As I remember it unless you do procure a certificate of authority to do business it is evidence in an action brought upon a contract made within the state.

Q. So that all contracts which were made, if any were made, in New York by the New Jersey corporation would have been uninforceable in New York, is that right? A. Possibly; yes, sir.

Q. Now the Delaware corporation, did it receive authority to do business in New York? A. No.

Q. Why not? A. The only reason I can think of is that through neglect or we tried to save the cost of doing so.

Q. Cost of what? A. Tried to save the cost of being permitted to do so.

Q. Isn't the real reason you didn't secure authority to do business in New York was that you were ready to prove that the New Jersey corporation and the Delaware corporation, neither of them, were doing business in New York? A. I do not think I ever thought of that.

Q. That did not occur to you? A. No.

Q. That was not the real reason? A. No.

Q. And the only reason you call it New York office is because you happen to have the name Alpha Chemical Works painted on the door and you happened to be practicing law at that particular office, isn't that so. A. No; the only reason it was the New York office, was because a great deal of work was done in the New York office.

Q. Well now, let me see, when you started up this chemical business you had a man by the name of Broecker who was the chemist, wasn't he? A. Yes, sir.

Q. And he received thirty-five dollars a week; is that right? A. I think so.

Q. And you were manufacturing phenol? A. Right.

Q. And you knew nothing about the manufacture of phenol, isn't that right? A. Nothing whatever.

Q. You relied entirely upon him? A. Yes, sir.

Q. And did you install any new machinery for the purpose of manufacturing phenol under his administration? A. Yes, sir.

Q. And whatever of machinery was purchased was purchased by him, was it not? A. No, sir; nothing was purchased by him.

Q. How did you know what machinery to purchase? A. He would make his recommendations and I would discuss it with others that knew something about the business, and buy the machinery myself.

Q. And who would select? A. He would recommend what should be bought; I would find where to buy it and how to buy it at the best price and terms and did buy it.

Q. Do you remember how much money was spent through Mr. Broeckner while Mr. Broeckner was there, for machinery? A. I can only guess. I think about five thousand dollars.

Q. I don't want you to guess. I want your memory. A. I don't know.

Q. You have no recollection? A. I—no definite recollection. It is nine years ago.

Q. You have no recollection at all as to how much was spent for machinery? A. I have some recollection. I cannot tell you exactly.

Q. I didn't ask you that. Can you tell me approximately from your recollection, without guessing? A. I should say fifteen or twenty thousand dollars. That included some buildings we were working on.

Q. That is before the Delaware corporation was organized? A. I think so; yes, sir.

Q. You are not sure of that, are you? A. No.

Q. Why aren't you sure? A. Because I have no definite recollection, nine years ago, how much money I spent. It is all in the books.

Q. Didn't you offer in evidence here certain statements which you say were compiled by you as to moneys that were spent? A. No.

Q. May I see the statement which you identified here with regard to the money that was spent—the money that we received when you were last on the stand? May I see those statements?

Mr. Lane: I haven't them. I think I have copies of them, but you have.

Mr. Bilder: This is merely a copy of the statement of sales. I have nothing else.

Mr. Lane: The papers were offered and marked and got in the possession of Mr. Bilder. As to where those typewritten statements went I do not know. I have been trying to look for them for the last two days.

Q. Mr. Burdette, when you were on the stand last you identified several statements; is that right, did you? A. Yes, sir.

Q. Was one of those statements a statement which you had prepared relating to the money which had been spent by you on behalf of both the New Jersey corporation and the Delaware corporation? A. I do not remember? I could tell if I saw the statement.

Q. Was that statement prepared by you (indicating)? A. Yes, sir.

Q. By you personally? A. By Miss Rieger, my secretary and myself.

Q. And you haven't got a copy of that statement here? A. I haven't it here, no. I left it here.

Q. Was there a carbon of that prepared? A. Yes, sir.

Q. Where is the carbon? A. I left it here.

Q. Where did you leave it? A. On the table. I took nothing from this court whatever after the trial at the last hearing. Whatever was here I left.

Q. You left both the original and the carbon here? A. Yes, sir; I left all I had.

Q. Now that statement was prepared from what data? A. Part of it was prepared from memory and part was prepared from the books of the Wilbutt Corporation, which advanced some of the money.

Q. Have you the book of the Wilbutt Corporation here? A. No.

Q. What kind of a book was that, cash book? A. Ledger.

Q. Ledger of the Wilbutt Corporation? A. Yes, sir.

Q. Didn't the Wilbutt Corporation have a cash book? A. Yes, sir; I think so.

Q. Did you use that in preparing that statement? A. No, sir.

Q. We are now talking about the money that was spent. Did you use any invoices in that connection? A. In making the statement?

Q. Yes; that statement. A. No.

Q. I did not have them. A. They are all here with the papers somewhere.

Q. When you say they were all here with the papers somewhere you are referring to what? A. The invoices to the Alpha Chemical Works which I paid with that money.

Q. And those invoices you say were here in this court room? A. They were either here or given to Judge Demarest. I haven't got them.

Q. Did you bring those invoices here? A. I don't know. I got a lot of papers here. I don't know all that is in them. I think the invoices were delivered to Judge Demarest; I am not certain.

Q. I want to see if I understand you correctly, that you made up this statement from your memory and from the ledger of the Wilbutt Corporation. A. Yes, sir.

Q. That is where you got all your data from? A. That was statement of the money invested in this company.

Q. The Wilbutt Corporation is a corporation which you organized; is that right? A. Yes, sir.

Q. And of which you were the president? A. No.

Q. And of which you were some officer, were you not? A. Treasurer.

Q. Treasurer. And that corporation received from Mr. Brady, your father-in-law, large sums of money, is that right?

Witness: I ask to be excused from answering that question, your Honor. I do not think it has anything to do with this at all.

Q. Well, you say that the money of the Wilbutt Corporation was invested in this New Jersey corporation and also in the Delaware corporation. A.

Nothing in the New Jersey. It was invested in the Delaware.

Q. Nothing in the New Jersey corporation? A. I do not remember—I think not.

Q. Did any of the money that was put in the Wilbutt Corporation come from you? A. No.

Q. Why do you want to be excused from answering the question as to where the money from the Wilbutt Corporation came from? A. I do not think it has any concern—any bearing on this case, whatever, where the money came from of the Wilbutt Corporation.

Q. Are you fearful that the answer will reveal something that may be to your detriment? A. Not the slightest.

Q. Are you fearful that the answer may tend to incriminate or degrade you? A. Not the slightest.

Q. Or incriminate or degrade someone connected with the Wilbutt Corporation? A. No, but I think you are prying into the business of somebody who is not related to this action at this time.

Q. You told us of the efforts you made to raise some money for investment in this corporation, haven't you? A. Yes, sir.

Q. Will you tell us some of the efforts that you made to raise this money—what the form of those efforts was? A. I did not make any particular effort to raise money for this corporation until after it was organized. In the beginning the raising of money for the New Jersey company was no particular effort on my part. After it was organized I endorsed for the corporation, to raise money, thirty-five thousand dollars worth of its notes. I tried from different people to borrow—I did borrow money, and I made efforts in Wilmington and

Philadelphia to raise money by the sale of stock. This was for the Delaware company.

Q. Did you raise money that was turned over to the Wilbutt Corporation and by the Wilbutt Corporation turned over——(interrupted). A. Not one dollar.

Q. Let me finish. ——by the Wilbutt Corporation turned over to the Delaware corporation? A. Not one dollar. Not one dollar of the Wilbutt Corporation money was ever raised for the purpose of investing it in the Alpha Chemical Works.

Q. But money that came from the Wilbutt Corporation was invested in the stock of the Delaware corporation; is that right? A. It was first loaned to the Delaware works and then converted into stock.

Q. Who were the officers of the Wilbutt Corporation? A. Mr. Brady was the president.

Q. Who was the other officer? A. I think Mr. Study was secretary. That was all.

Q. And you were the other officer? I think you have already stated that Mr. Brady is your father-in-law. A. Yes, sir.

Q. Is it because the money that was put into the Burdette—in the Wilbutt Corporation, came from your father-in-law that you are unwilling to tell us that fact? A. Yes, sir.

Q. That is the reason. So it is a fact that the money that went into the Wilbutt Corporation came from your father-in-law; isn't that right? A. Most of it; yes, sir.

Q. What was your disinclination to tell us that this money came from your father-in-law — what was the reason for it—for not desiring to let us

know about that? A. Simply the reason I think it is way beyond the issue in this case.

Q. That is the only reason? A. That is the only reason.

Q. Now the records of the New Jersey corporation, you say, were kept under your supervision? A. Yes, sir.

Q. Did they show the money that was invested in machinery? A. Yes, sir.

Q. Why didn't you refer to those books in preparing your statement? A. They were not in my possession.

Q. Did you endeavor to get access to those books? A. No.

Q. Why not? A. It never occurred to me.

Q. You mean to say that as president of this corporation, familiar with its books, as you say, kept under your supervision, it never occurred to you in preparing yourself to come here and testify as to how much money you have spent that the best source of information were the books of account? A. That is exactly what did occur to me. The books of account were all in evidence, as I understood it, in the examination under 21-A and were either in your possession or in the possession of Judge Demarest and I expected that they would be used with the testimony in this case and would be in evidence which would make it unnecessary for me to refer to them.

Q. Then why did you make up a statement knowing there were better records of your statement to compile a petition as to how much was spent for machinery? A. The statement I made up with regard to that was from copies of the trial balances, the originals of which were in the evidence under examination 21-A.

Q. Now will you tell me upon what theory, at the very beginning, you fixed your salary at three hundred dollars a month, the New Jersey corporation to pay the costs of maintaining the New York office? A. It was not fixed by me. It was fixed by those investing their money on my consent and agreement.

Q. That means yourself—fixed by you and your brother; is that right? A. Yes, sir, and Mr. Broeker, who was a director.

Q. And Mr. Broeker, who was director at the time? A. I think so; yes, sir.

Q. Of course, you were desirous of engaging in the practice of law in New York after you left the employ of Breed, Abbott & Morgan, weren't you? A. Yes, sir.

Q. That was rather prominent in your mind when these offices were rented, was it not? A. Yes, sir.

Q. And, of course, if you had gone to Bound Brook and conducted the business of the corporation in Bound Brook you would not have been able to practice law in New York, would you, at the expense of the corporation? I mean so far as the offices are concerned? A. I wouldn't have done it at that price.

Q. You wouldn't have done it at that price? A. I would not have given up the chances of law practice to go to Bound Brook for three hundred dollars a month.

Q. So that the opportunity to engage in the practice of law in New York, having the Alpha Chemical Works pay the cost of running that office, was one which was very attractive to you, is that right? A. It was attractive; yes, sir.

Q. Don't you think that you might have had somebody who might have stayed in Bound Brook and done exactly what you did for less money than three hundred dollars a month and the cost of running the New York office? A. I certainly do not.

Q. Why do you say that? Why do you say that you could not have? A. Because it was my opinion and the opinion of those associated with me that we should have a New York office and this was an agreement which I made with them, to do these certain things on a certain basis, and if it was a question of hiring somebody else, I would not have been interested at all.

Q. Then you were exercising your judgment in your own favor. You were not thinking of what was best for the company, were you? A. I think the company was paying a very fair and reasonable price for what it was getting.

Q. But your own self-interest weighed very heavily in reaching the decision as to whether the company should hire somebody to do at Bound Brook what you were expected to do at New York; is that right? A. It was never considered.

Q. Well, why didn't you consider it? As director of this corporation, entrusted with its funds and property, why didn't you consider that, as to whether you could not make a more—a cheaper arrangement than the one you were making in your own favor—why didn't you consider it? A. Because the position was offered to me on a certain basis which I accepted.

Q. It was offered to you by yourself and your brother and your father-in-law, isn't that right? A. No.

Q. Who else besides? A. I just told you that about three times.

Q. Answer it again. A. By the directors of the Alpha Chemical Works of New Jersey.

Q. Were you the director? A. I was a director.

Q. Were you the director——(interrupted). A. I do not understand you.

Q. Were you the board of directors? A. I was a member of the board of directors. My brother was a member of the board of directors and Mr. Von Cleff and Mr. Broeker.

Q. Did they have any money in the concern? A. All but Mr. Broeker.

Q. How much had Von Cleff in? A. Eventually about ten thousand dollars.

Q. At the time you made the arrangement? A. At that time I think five thousand dollars.

Q. And your brother? A. My brother I think ——(interrupted).

Q. At that time. A. Two thousand dollars, I think.

Q. Did they make you this offer or did you invite yourself in? A. It is hard to tell. We discussed it over at lunch and this was the result of the discussion.

Q. Did anybody ask you to work cheaper than three hundred dollars a month and cost of running the New York law office?

The Court: Not a fair question. I mean it is not fair to the witness.

Q. Was it suggested by anyone that the terms should be more favorable to the company than those you demanded, three hundred dollars and the

cost of running the New York office and the cost and expenses of the New York office?

The Court: You said "law office" each time.

Mr. Bilder: I beg pardon. I did not realize the presence of that.

Q. And the cost of running that office. A. I would like to hear the question.

Q. Was there any suggestion that you should content yourself with less than three hundred dollars and the cost of running this office? A. I do not remember.

Q. And at the very beginning the lease was taken in the name of the Alpha Chemical Works of New Jersey, at the rate of a thousand dollars per annum, payable eighty-three and a third dollars a month. A. Yes, sir.

Q. The telephone was also taken in the name of the Alpha Chemical Works. A. Yes, sir.

Q. But the listings for the telephone were, at the time of signing the contract, so arranged that Burdette & Horn would appear in the telephone book by their firm name? A. For which we paid a fee, I think, of two and a half, for each listing.

Q. That is, two and a half for putting the name in the book? A. Right.

Q. That is not per month—that is just the initial payment—that pays for getting it in the telephone book. A. I think that is the New York charge for listing in the book.

Q. That was paid by you—Burdette & Horn—or the Alpha Chemical Works? A. I think by Burdette & Horn.

Q. Wasn't it included in the Alpha Chemical Works of New Jersey telephone bill and paid by them? A. I do not remember.

Q. You are not positive that you paid it yourself? A. No.

Q. Well, now, will you just describe to the court what this office looks like? It consisted of how many rooms? A. Consisted of an outside room and two private offices.

Q. Was the space as large as this room? A. No; I should say about from here to—about half as large as this room.

Q. About half as large as this room, and one room was occupied by you?

The Court: One room partitioned, is that what it was?

Witness: Yes, sir; with the outside entrance.

The Court: One large room partitioned.

Q. Partitioned with cabinet work of wood or with wall? A. Wall.

Q. Wall, and so that it is divided into three rooms, one of which you occupied, is that right; one of which Mr. Horn occupied, and then an outer office or reception room, is that right? A. Right.

Q. And upon the door to your room there was a name, was there? A. No, sir.

Q. No name at all? A. Not on my room.

Q. Wasn't your name on the door? A. No.

Q. You are sure of that? A. Positive.

Q. I am talking now about your private office. A. Yes, sir; no name on that at all.

Q. Mr. Horn had a room. A. Yes, sir; no name on it.

Q. And the furniture in your room consisted of a desk and book cases, is that right? A. Consisted of a desk and two or three chairs and a book case.

Q. Purchased and paid for by whom? A. The book case was purchased by Burdette & Horn and the rest was purchased by the Alpha Chemical Works.

Q. And was the law books in your room too? A. At that time we didn't have any law books.

Q. Were there any law books purchased during the period that you were president of the New Jersey corporation? A. I think so; yes, sir.

Q. Paid for by the Alpha Chemical Works? A. Paid for by Burdette & Horn.

Q. Any book cases purchased by the Alpha Chemical Works? A. Book cases? No, purchased by Burdette & Horn.

Q. How many book cases? A. Two.

Q. And the outer office was furnished—will you just describe what kind of furniture there was in the outer office? A. There was a stenographer's desk and typewriter and file case purchased by the Alpha Chemical Works, with one or two chairs, and a cabinet purchased by Burdette & Horn—stationery cabinet I guess you call it.

Q. You mean one of these cases with law blanks in it? A. Yes, sir, and stationery of all kinds.

Q. And the law firm, as I understand it, had two book cases and a stationery cabinet. A. I think so, yes, sir. May I say there the furniture of Mr. Horn's room was purchased by himself.

Q. And then when you dissolved your partnership with him he got a check from the Alpha Chem-

ical Works for the furniture that he left there. A. That is right.

Q. Why didn't you give him a check out of your own pocket for that? A. I cannot answer. There is probably a good reason.

Q. Because you didn't have the money, I suppose. A. It may be.

Q. Of course you knew there was a difference between your money and the money of the Alpha Chemical Works, didn't you? A. Oh, positive.

Q. Why did you use the money of the Alpha Chemical Works if you were buying——(interrupted). A. Because it was the Alpha Chemical Works. I had no desire to help furnish it. It was used—both of these offices were used very, very often by the Alpha Chemical Works business.

Q. You mean you manufactured chemicals there? A. No.

Q. Mr. Horn was your partner. A. Yes, sir.

Q. In the practice of the law. He didn't perform any services for the Alpha Chemical Works, did he? A. He performed a good deal of law service for the Alpha Chemical Works.

Q. I see. They were constantly in litigation, were they? A. No.

Q. Law services occasioned by things that you did or failed to do. A. No; they were not suits. They were simply making leases and closing title and organization of these corporations. I think we had only one law suit.

Q. I see. Then there wasn't a good deal of law work. A. No.

Q. Then you are mistaken in saying a good deal. A. Possibly.

The Court: He didn't say there was a good deal of law work. What he said was that the offices were used a good deal.

Witness: I meant by that many times we had several people in the office and I would have some in each room. Mr. Horn probably would be out.

Mr. Bilder: I think you are mistaken. I asked the question whether Mr. Horn performed any services for the company. I understood him to say a good deal. I may be mistaken.

The Court: No. I do not think he said that. It did not impress me.

Mr. Bilder: The record will show. It is unimportant.

Q. Now at the very beginning you had Mr. Broecker, who was the chemist. You relied on him. Now who else did you have besides Mr. Broecker? A. During the entire time Mr. Broecker was there my brother was at the plant in Bound Brook every day.

Q. Was he on the payroll? A. No; never had any pay whatever.

Q. Who else did you have? A. Well, the laboring men. I think that is all.

Q. And you at once had an accountant open up a set of books, didn't you, at the very beginning? A. Yes, sir.

Q. Man by the name of—— A. Weish.

Q. At the very beginning. A. I think he opened the books at the beginning.

Q. There is a book that has already been received in evidence in the bankruptcy proceedings which sets forth the receipts and disbursements of the New Jersey corporation? A. Yes, sir.

Q. Give us the names of the employees and what they were paid. A. Yes, sir.

Q. And that book was kept by your stenographer; is that right? A. Either by her or by me.

Q. A mere matter of entering up. Those things were not of such importance that they should have engaged your personal attention, was it? A. No. I think mostly made by her.

Q. And she received from the corporation twenty dollars a week—from the Alpha Chemical Works—didn't she, from the very beginning? A. Either twenty or twenty-five. I do not remember.

Q. And she performed services not only for the —services of keeping these records, but she also performed services for the law firm, did she not? A. Very little.

Q. Very little. And did she perform any services for the Wilbutt Corporation? A. No; not whatever.

Q. There was very little for her to do except to enter up the little receipts and the little disbursements that were made, is that right? A. No. She was busy continually all day. We had a great deal of correspondence.

Q. I am talking now about the New Jersey corporation and the beginning. A. You say you are not talking about it?

Q. I am now talking about the New Jersey corporation. She was busy right from the beginning?

A. She was busy right from the beginning, every hour of the day.

Q. Have you any idea how much phenol was sold by the New Jersey corporation? A. I couldn't tell without looking at the sales book.

Q. You complained of the production, didn't you, under Broecker? A. Very much.

Q. Can you mention the name of any machinery concern that you purchased machinery from during the existence of the New Jersey corporation? A. Not without looking at the books.

Q. Now this was your first venture in the chemical field? A. Yes, sir.

Q. Had no law practice, had nothing to do but look after this business. A. That is right.

Q. And your first large purchase of machinery leaves no impression on your mind; is that right? A. It left a serious impression at the time, but it is nine years old and I have no recollection of it now.

Q. Can you tell us what the largest machine that you bought—the largest item of machinery that you purchased during the regime of the New Jersey corporation? A. No, I could not.

Q. Can you tell us the names of any of the machines that you purchased during the regime of the New Jersey corporation? A. I think we purchased a sulphunator.

Q. Do you know the name of the concern from whom you purchased that? A. I don't know without looking it up.

Q. And do you know how much was paid for those machines? A. No.

Q. And did you discuss with anybody the matter of the purchase of these machines before you bought

them? A. I probably discussed them with several manufacturers. I do not remember.

Q. It is your recollection that I would like to have. A. I have none.

Q. Can you give the court——(interrupted).

The Court: You have no what?

Witness: Have no recollection of what happened nine years ago as to the names of the purchasers from whom I bought the machines.

Q. Of the persons with whom you discussed the advisability of purchasing these machines, I am talking now, bringing you back to the beginning of this enterprise when you were called upon to receive three hundred dollars a month and have your office expenses paid and you were called upon to do something, I want you to tell the court, if you can, the name of any person with whom you consulted or advised with regard to the purchase of the machinery that you first bought. A. Well, I, of course, first consulted with Broecker and I consulted with my brother.

Q. With your brother? A. Yes, sir.

Q. Was he a chemist? A. No.

Q. Well, you think—you led us to believe that you took advice of others—that you did not rely upon Broecker as you proceeded. Now mention the name of any one person that you consulted at the beginning as to whether you should buy those sulphunators and whether the price asked was fair and what you did about it. A. I can't answer that without going through the papers and the correspondence.

Q. Now, Mr. Burdette, isn't this—wouldn't this be a correct statement? Mr. Broecker told you what machines he needed, that you placed the orders for the machines and that when the bills came from him with a suggestion that they be paid you just drew a check, isn't that what happened? A. No.

Q. You have a distinct memory that that did not happen, is that it? A. I have a distinct recollection that Broecker had no authority to buy anything.

Q. I didn't ask you whether he had authority. A. He didn't buy anything.

Q. Will you tell the Court whether my description of the operation is correct—approximately correct—that Broecker would tell you of the machines he needed, that he would then place the order, the machine would come in, he sent you the bill with recommendation that it be paid and that you then drew a check, isn't that the operation? A. I answered that no.

Q. Well, then, what did happen? How can you say that that didn't happen if you have no recollection of what you did? A. I have a recollection of him suggesting the buying of certain machines, possibly motors—things of standard make, and I shopped around at different places and bought them.

Q. Mention one place you shopped in. A. Robbins & Meyers as to motors.

Q. As to motors? A. And I shopped in half a dozen other places in New York City after motors.

Q. What was the price of each motor about? A. I don't know.

Q. Well, approximately at that time? A. Five or six hundred dollars.

Q. A motor. Was that during Broecker's regime or later? A. During Broecker's regime.

Q. You are sure of that? Well, those motors were standard equipment, is that right? A. Standard in one sense, but they are all built according to specifications.

Q. I am going to take your mind to the sulphunator, which is an unusual purchase, isn't that so? A. It isn't unusual when you need it to make phenol.

Q. I mean as you, for a lawyer, beginning the chemical business, it was unsual. A. Unusual, yes, sir; just as unusual as the motor.

Q. Just as unusual as the motor. I see. They were all strange things to you? A. Yes, sir.

Q. And you had to simply take Mr. Broecker's say so on it; is that right? A. Yes, sir.

Q. And that is practically what you did, just take Mr. Broecker's say so as to the machines he needed. You also took his say so as to the place where it was to be purchased, is that right? A. No.

Q. Now, do you remember any occasion during his connection with the company when he recommended the purchase of any considerable machines that you disapproved of it and purchased elsewhere? A. No.

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

Q. And why? A. Because it is too long ago.

Q. Your brother was a grocer; is that right? A. Yes, sir.

Q. So his advice wouldn't help you much on the purchase of sulphunators. A. His business judgment was very valuable.

Q. Oh, his business judgment. A. Yes, sir.

Q. I see. Had you ever seen the sulphunator before the day this was purchased? A. I do not remember.

Q. Do you know how much was paid for this sulphunator? A. No.

Q. Have you any approximate idea? A. No.

Q. And you say there was spent under Mr. Broecker's regime how much money altogether? A. I think about twenty thousand dollars. I can't be sure without looking at the books.

Q. And you haven't looked at the books? A. Not since you have had them.

(Adjourned until November 18, 1925.)

IN CHANCERY OF NEW JERSEY.

January 25, 1926.

Continuation of hearing pursuant to adjournment at the place and in the presence of the parties as before.

LESTER C. BURDETTE resumes the stand for further

Cross Examination by Mr. Bilder:

Q. Mr. Burdette, you told us on direct examination that you got rid of Broecker and formed a new corporation because you couldn't get a proper product of phenol, is that right? A. Yes, sir.

RECESS.

Q. Now, Mr. Burdette, Broecker was an investor in the New Jersey corporation, was he not? A. No, sir.

Q. Hadn't he bought stock in the New Jersey corporation? A. No, sir.

Q. I have an impression that you testified that he had five thousand dollars of stock in the New Jersey corporation. A. Whatever stock he had was given to him.

Q. I see. How much stock did Broecker have—did he have about three to five thousand dollars? A. I don't remember what he had.

Q. If you have mentioned figures or sum of money in your previous testimony as representing Mr. Broecker's stock interest, that stock is correct? A. If I stated that he had any stock that he paid for it is incorrect. He did have some stock that was given to him.

Q. Wherever in your previous testimony you referred to a stock investment by Broecker, you mean that that represents stock that he had in the corporation which was given to him? A. Yes, sir.

Q. Given to him as an inducement to become interested in the formation and promotion of the New Jersey company, is that right? A. Yes, sir.

Q. He was the man who brought this matter to you? A. Yes, sir.

Q. And he was the chemist. A. Yes, sir.

Q. And he was the man who was to make this phenol. A. Yes, sir.

Q. Now, then, when you formed the new corporation you just wiped him out, is that right? A. No.

Q. Well, he didn't come into the new corporation, did he? A. No.

Q. He wasn't asked to come into the new corporation, was he? A. Yes, sir. The facts are these ——(interrupted).

Q. No. It isn't of sufficient importance to give the details, but he was not asked to go into the new corporation; is that right? A. Yes; he was.

Q. He was? A. Yes, sir.

Q. But he didn't come in. A. No.

Q. Then you installed a plant for the manufacture of phenol. A. Yes, sir.

Q. A new plant. A. Well, we rebuilt the old one.

Q. When you say "we" you mean Mr. Guile of the chemical engineering concern? A. Yes, sir.

Q. Now during the life of the New Jersey corporation, the only thing you had manufactured was phenol, is that right? A. Yes, sir.

Q. And your customer for phenol was one concern, is that right? A. I think so at that time, yes, sir.

Q. What is the name of that concern? A. I think it was the Waugh Chemical Company.

Q. And their office was the same office as Mr. Guile's office? A. No, sir.

Q. They were not? A. They were 2 Rector Street.

Q. The Waugh Chemical Company took all your phenol, is that right, during the life of the New Jersey corporation? A. I think so, yes, sir.

Q. And the Waugh Chemical Company also sold you whatever of raw materials that you needed, is that right? A. They sold us the benzol and I think mostly all—I don't remember what at all.

Q. And did you have a contract with the Waugh Chemical Company for the purchase of your product? A. I think so, yes, sir.

New Jersey State Library

Q. And was that a contract whereby the Waugh Chemical Company got a commission? A. No; I think not.

Q. They just took your product? A. At a price.

Q. At a price. A. And resold it.

Q. They did their own reselling. A. Yes, sir.

Q. And on the purchase by you of material from them did you have a contract with them on that? A. I think so, yes, sir.

Q. And the substance of that contract was that you were to buy all of the merchandise or raw materials that entered into the manufacture of phenol at a price fixed in the contract. A. Yes, sir. I think we had a separate contract for the raw material.

Q. So that during the life of the corporation the sales and purchases—the sales of your manufactured product, and the purchases of your raw material was in this way confined to one concern. A. Yes, sir.

Q. Now, after the formation of the Delaware corporation, you entered into a contract, as I understand it, with Mr. Guile or his company, whereby they were to install a proper plant for the manufacture of phenol, is that right? A. Yes, sir.

Q. And that contract, in substance, provided that they were to install the plant, advise with regard to the purchase of the plant and supervise the purchase, is that right? A. Yes, sir; they recommended the machinery to be bought.

Q. And you were supposed to adopt their recommendations because they were making the contract on the basis that their recommendations would be adopted, is that right? A. Yes, sir.

Q. And they were also to participate in some way, with the manufacture of the phenol, were they? A. As I recollect it, they were to share in the profits as their compensation.

Q. But after the plant was installed were they to participate in any way in the manufacture—I don't mean in the profits—were they to have any supervision or control or direction over the manufacture? A. Yes; the chemist was to have supervision of the manufacture of phenol for them.

Q. That chemist was installed, was he? A. He was not installed.

Q. Did he come there? A. Yes, sir.

Q. Did he go to work? A. Yes, sir; he never worked for us.

Q. He worked for them? A. Yes, sir.

Q. Under the contract? A. Yes, sir.

Q. That was part of the contract? And I think you mentioned the figures as to how much machinery was purchased to manufacture phenol under this contract? A. I can't recollect it.

Q. You do not remember what that amount was? A. No.

Q. So that from and after the making of this contract with the Chemical Engineering & Research Company, the purchase of the machinery, the installation and the manufacturing process of phenol was all under the control and direction of the Chemical Engineering & Research Company pursuant to this contract, is that right? A. Yes, sir.

Q. And continued that way until the fire? A. Yes, sir.

Q. Now during that period I think you have told us how much phenol was sold by you? A. Yes, sir.

Q. You made up a statement as to how much phenol was sold, did you not? A. Yes, sir.

Q. Have you a copy of that statement? A. No, I have not.

Q. Did you keep a carbon copy of that statement? A. I think there was one carbon copy made. I don't know where it is.

Q. Is it your recollection that a statement of the amount of profit from the sale of phenol before the fire was produced here in evidence? A. Yes, sir.

Q. And you remember how much that amounted to? A. No, I do not.

Q. You know that these statements which you produced on your direct examination and which were received in evidence—you know that they have not been found, is that right? A. I understand not.

Q. Now these papers which I show you; are those carbon copies of some of the statements which were marked in evidence? A. Yes, sir.

Q. And you gave those to Mr. Lane? A. Yes, sir. Q. Now—and those carbon copies which I show you were marked respectively at the top, Exhibits D-6, 7 and 8; is that right? A. Yes, sir.

Q. Is it your recollection that you did compile a statement for phenol? A. I think so.

Q. Did you search for a carbon copy of that statement? A. No, I did not.

Q. Now, then can you tell us whether the phenol which was produced by the Delaware Company before the fire was sold for a sum in excess of what it costs to produce it? A. I think it was sold at a loss.

Q. At a loss? A. Absolutely.

Q. Can you tell us approximately what loss? A. No, I cannot remember.

The Court: Was that known while the sales were going on, or discovered afterward?

Witness: No; we knew it from month to month.

Q. And notwithstanding the fact that this loss was going on, the manufacture was continued? A. It was continued for about three months, and when we found out there was a loss which we hoped to overcome from month to month, it was then I took it up with Broecker, that he must have someone come in and help him.

Q. You misunderstood my question. My question related to the Delaware company. I want to know what you had produced—what the Delaware company produced in the way of phenol, before the fire, was sold at a sum greater than or less than or equal to the amount of its cost. A. I think that was sold at a profit.

Q. I have reference to the product sold prior to that—how much was the profit? A. I don't know.

Q. Approximately? A. I have no recollection of it.

Q. No approximation? Was it one per cent. or fifty per cent.? A. My recollection is that it was sold at sixty per cent. and I think our cost was about forty. That is only a guess.

Q. That is your present impression? A. Yes, sir.

Q. Well, after the fire did your agreement with the Chemical Engineering & Research Company continue in operation. A. I think that contract

was to cover the manufacture of phenol only and we made no phenol after the fire.

Q. Did you have any kind of agreement, whether verbal or written, with the Chemical Engineering & Research Company after the fire? A. Yes, sir; our relations continued.

Q. Were they in substance the same as was provided for in this written contract with regard to phenol or was there a change? A. Doesn't that refer to salicylic acid?

Q. I don't know. I ask you to tell me. A. I haven't seen it in eight years.

Q. Without reading the entire agreement, perhaps I can shorten it by asking you this question. Subject to correction, from an examination of the paper is it your impression that that agreement was intended to cover not only the manufacture of phenol, but anything else that the company might thereafter manufacture? A. Yes, sir.

Q. And the manufacturing department of the company was from and after the date of that agreement to be generally under the direction and supervision of the Chemical Engineering & Research Company? A. Yes, sir.

Q. Is that your present impression? A. Yes, sir.

Q. Now after the fire I understood you to say that the chemical company proceeded to assemble and install another plant? A. Yes, sir.

Q. And it took about six months before that plant got into operation? A. At least that, yes, sir.

Q. And that plant was not for the manufacture of phenol, but for the manufacture of salicylic acid, is that right? A. Yes, sir.

Q. Now, why was salicylic acid the product contemplated rather than phenol on which you say you

had—it cost you forty and sold for sixty cents? A. The advice we had from the chemical company bureau was that salicylic acid could be made and sold at a greater profit than phenol. As a matter of fact, phenol just at that time was not very much in demand, whereas salicylic acid was very much in demand.

Q. Did the Chemical Engineering & Research Company proceed to purchase all this machinery for salicylic acid—for the manufacture of salicylic acid? A. Lot of new machinery and rebuilt the old machinery for the manufacture of salicylic acid.

Q. Was this special machinery, built for that purpose? A. Some of it was, some of it was specially designed.

Q. You mentioned the amount that was spent for the salicylic, can you remember? A. No, I cannot.

Q. You cannot without referring to your previous testimony. Now that salicylic acid machinery was—some of it was specially built. Will you tell me who it was built by? A. The three principal machines which we call sulphunators were built by a concern in Buffalo or Erie—near Buffalo, and whose name, just for the moment, I cannot remember. J. P. Devine manufactured some of the machinery.

Q. Taking the first concern in Buffalo, how much did they receive approximately? A. My guess is about nine thousand dollars.

Q. Now, the next concern was located where, you say? A. J. P. Devine. Their office is in New York. I have forgotten where their factory was.

Q. They built what, sulphunators also? A. No, sir, something different. I have forgotten what.

Q. What did they get for what they built? A. I don't know.

Q. Approximately. A. I couldn't tell without looking.

Q. Did they build the driers? A. The drier was the thing that gave us a great deal of trouble.

Q. Who built the drier? A. We built one ourself in the plant. That didn't work.

Q. You say, yourself. You mean under the direction of the chemical company. A. That failed to work and then we used one of the sulphunators as a drier.

Q. What did the drier cost you? A. The one we built?

Q. Yes. A. I have no recollection.

Q. You can't tell me what your impression is as to how much you paid for the salicylic acid machinery? A. No, I cannot, without referring to the books.

Q. Well, now, when you testified with regard to this, this was on May 4th, 1925—May 4th of last year—now at that time you did not know what the salicylic acid machinery cost, about, did you? A. I probably looked it up at that time. Yes, sir.

Q. But that is the only way you got your impression was by looking it up. A. Yes, sir.

Q. No impression remained in your mind as to how much you spent? A. No, sir.

Q. Did any impression remain in your mind as to how much you spent for the phenol machinery? A. I have an impression it was about fifteen thousand dollars.

Q. Now, on page 35 of your direct testimony you referred to a figure between forty and fifty thousand dollars, for reconstruction work. Assum-

ing the only reconstruction was that after the fire, is that right? A. Well, we were building at the time of the fire and before the fire. We finished that building and continued to revamp and reconstruct for the manufacture of salicylic acid.

Q. I will state this, the impression I get from page 35 of your testimony, reading it, of that date, is that from forty to fifty thousand dollars was spent for the construction of the salicylic acid plant. Does that refresh your recollection? A. I think that is probably right.

Q. And can you mention the name of any other concern besides the two you have mentioned, with whom that forty or fifty thousand dollars was spent or to whom it was paid? A. One was the Steven Ailsworth Company. I think they were at Elizabeth. Then there were other purchases made of motors, which were bought from either Robbins & Myers or second hand, and some motors were bought from Venino here in Newark, and I think we bought some machinery from the Edison Company.

Q. And these purchases were made on the advice of the chemical company, is that right? A. As to the design and adaptability for the use intended.

Q. And as to the parties from whom the purchases were to be made, did you seek their advice, or did they give you their advice? A. Yes, sir; we did in some cases. We had them guarantee that the machines would do what it was intended that they should, and particularly Steven Ailsworth.

Q. And as to the prices to be paid for the machinery, did they also advise you? A. Yes, sir.

Q. You had to rely upon these people, did you not, under the circumstances? A. I relied upon

them in conjunction with Mr. Carlin, who was in my employ.

Q. He was in your employ? A. He was in my employ at that time.

Q. Was Carlin in there at the time that this salicylic acid plant was constructed? A. Yes, sir.

Q. From the beginning? A. Yes, sir.

Q. Was he the man whom the chemical company put in there to supervise what was going on there in the way of construction? A. No; their man was a Mr. Sommers. Mr. Carlin had worked for the plant, making salicylic acid, and I engaged him to work for me.

Q. Did they get him for you? A. I think so.

Q. Did the Chemical Engineering & Research Company get him for you? A. I think he was a friend of Sommers and Sommers sent him to me.

Q. He was a friend of Mr. Sommers. Now, you have given us—now you have prepared Exhibit D-6, showing you the carbon copy, of the salicylic acid sales from November, 1917, to November, 1918. Can you tell us whether you prepared that statement? A. That statement was prepared by me and my secretary, Miss Reiger.

Q. Tell us how it was gotten up. Will you describe how it was done? A. It is a transcript taken from the invoices which we sent.

Q. Have you the invoices here? A. I think they are here.

Q. In court? A. I think so.

Q. Will you bring them up? I would like to have you identify them as a basis for your statement. A. I don't know where they are.

Mr. Bilder: I want to have him identify them.

The Court: They are upstairs in Mr. Lane's office. You can see them.

Mr. Bilder: All right.

Q. Now, then, you say that this large pile of invoices that you have described, that the name and amount of each invoice was transcribed upon this statement, is that right? A. That is the transcript made of the copy of our invoices which we sent upon the sale of the goods.

Q. And that embraces a large package—— (interrupted). A. I beg pardon.

Q. There is some mistake in saying they embraced a large number of papers. They embrace as many sheets as there are items on those sheets. A. Yes, sir; each of these represents a separate invoice.

Q. You say they are upstairs in Mr. Lane's possession? A. Yes, sir.

Q. Now that totals $146,293.75. Is that right? A. Yes, sir.

Q. And did you make yourself responsible for these figures? I mean by checking up the invoices with this or did you rely upon your stenographer? A. No; I checked them with the invoices.

Q. You did personally. And this was added up on an adding machine, was it? A. No; I think she added it.

Q. You think she added it? A. It wouldn't be right if I did.

Q. We can add it. Now this represents all of the salicylic acid that was sold during the history of this company, is that right? A. Substantially, yes, sir.

Q. Now then, can you tell us, this sheet represents actual sales, does it? A. Yes, sir.

Q. Does it represent sales which were paid for? A. Yes, sir. I think all but possibly a thousand dollars worth that I am not at all certain about.

Q. Now was that sold at a sum in excess of $146,293.75? I mean, does that price represent more than cost or less than cost? A. When I say "cost" I mean total cost of production. A. Well, that would only show by our monthly statements.

Q. I am not asking you that. I am asking you what your knowledge is as to whether it was sold for more or less than cost. A. I think it showed a profit.

Q. Of how much? A. I don't know.

Q. Can you tell by percentage? A. No; I couldn't tell except by reference to the profit and loss statements which we made each month.

Q. On the whole did it show a profit, or did it show a profit one month and loss the next? A. I would have to refer to the statements.

Q. Well, now, Mr. Burdette, you ought to have some impression as to whether the manufacture of salicylic acid from September or November, 1917, to September, 1918, which you tabulate here at $146,000, was at a substantial profit, and approximately what the substantial profit was, approximately, in percentages or thousands of dollars. Don't you think so, that you ought to know? A. I couldn't at this time. The question of chemical cost was a very difficult one, and all I can do is to refer to the monthly profit and loss account which we made each month.

Q. You did refer to that at the time and it has left no impression on your mind as to whether this

was a successful or unsuccessful operation, the manufacturing of salicylic acid. I mean from the standpoint of getting more or less than cost. A. My impression is that we did not make any money during that period.

Q. Now, in your testimony you said that you never succeeded in making U. S. P. salicylic acid, is that right? A. I think we made one barrel.

Q. One barrel. Now, that was the objective that you had when you started with the salicylic acid plant, is that right? A. Yes, sir; we had a contract for the U. S. P. salicylic acid—large contract.

Q. You were not interested in creating a plant for the manufacture of what you call technical salicylic acid, is that right? A. In the manufacture of U. S. P. you had to make technical first and then refine it, and it was in our refining process that it fell down.

Q. So that if you had known you could only manufacture technical and not refined products you would not have created the plant; is that right? A. Not under the plan we were working, for our contract called for the U. S. P.

Q. U. S. P. salicylic acid was being manufactured between November 7, 1917, and November, 1918, by your competitors, was it not? A. I didn't know of any doing it. In fact, it was very very scarce. I know of nobody at that time who actually made it.

Q. Who actually made salicylic acid—— (interrupted). A. In large quantities. It might have been made for druggists' use, but I know of nobody who made it in tonnage quantities at that time.

Q. Were you able to make it in quantities for druggists yourself? A. Oh, yes; we made several hundred pounds of it.

Q. Others were making it in quantities for druggists to use? A. Yes, sir.

Q. In the aggregate it would have to be manufactured in tons to supply the druggists of the United States, wouldn't it? A. That I don't know. But our contract called for a great many tons and to be made in a very short time. I have no idea how much is used for pharmaceutical purposes—can't be very much.

Q. You were entirely in the hands of the Chemical Engineering & Research Company with regard to that, were you? A. No. I made a good deal of investigation on my own account. I had four or five contracts which I got for the sale of the products.

Q. Yes, and in reliance upon the assurance of the Chemical Engineering & Research Company that this plant under their supervision would produce this product. A. Yes, sir.

Q. And you very soon learned that your plant was not producing the product in the capacity—in the quantities in which you needed it to supply your contract, did you? A. Yes, sir; soon after the plant was built.

Q. Did you call other chemists to your assistance—I mean other concerns of experts in the manufacture of salicylic acid to your assistance? A. I knew of none. The only one I knew who had successfully made salicylic acid was Mr. Carlin, who had made it for

Q. Was he in business between September, 1917, and November, 1918? A. No; I think they stopped making salicylic acid when Mr. Carlin left them and came to us. That is my recollection.

Q. The only reason—did you find out whether manufactured this stuff in large quantities and delivered it? A. Well, Carlin made it for them.

Q. How do you know that, because Carlin told you? A. Only from what he said. Also I talked with Mr. Bush, the president of the that Carlin had made it for them in batches of two or three hundred pounds.

Q. Did they have a plant like yours? A. Ours was supposed to be an improvement of theirs.

Q. What happened to their plant? A. I am not certain. I think they had a fire.

Q. Then were you manufacturing para—para products that you have described in your testimony during the same time you were manufacturing salicylic acid? A. No. We were experimenting with it, only making it in small quantities, but we again had to rebuild the plant for the manufacture of paranitroline.

Q. And that reconstruction was also in the same way in which the salicylic acid plant was reconstructed, under the direction and supervision of the Chemical Engineering & Research Company. A. No; they had nothing to do with the building of the paranitroline plant.

Q. Who handled that? A. Mr. Carlin.

Q. Well, Carlin had been unsuccessful in producing salicylic acid, U. S. P. had he not? A. Yes, sir.

Q. Notwithstanding that you permitted him to proceed to install another plant for the manufacture of para products, is that right? A. Yes, sir.

Q. And you spent how much in that? A. I can only guess.

Q. You have no recollection? A. Not at the moment, no.

Q. And the reason you remembered when you were last here was because you had just looked at the records before you testified, is that right? A. Yes, sir.

Q. Well, have you produced here a memorandum which has been marked Exhibit D—or rather statement of sales from August, 1918, to January, 1919, of what I call the para products, para being the first two syllables of the product you described—was that statement made up in the same way in which you made up the salicylic acid statement? A. Yes, sir.

Q. Made by you in the same way? A. Yes, sir.

Q. And the total you have here is $83,151.62. Now does that represent more than this product costs or less than it costs? A. I don't know.

Q. You don't know? Why? Why don't you know? A. Because I have no present recollection. That is also shown in our profit and loss statements.

Q. You have no impression as to whether that was sold at a loss or profit—I mean in the sum total. A. My recollection is that the January statement showed a profit.

Q. You mean January, 1919? A. Or December. I am not certain which. They are all here.

Q. Showed a profit? A. I think so.

Q. Over and above the cost of production? A. Not over and above cost, but profit on the operation, which included all the accounts—statement of profit and loss.

Q. In other words it took into consideration all the factors of the expense in connection with the business of your corporation? A. Yes, sir.

Q. Well, was it a percentage basis of one percent or two percent or fifty percent. A. For that month?

Q. Oh, no. I mean for the whole period. A. I couldn't tell you.

Q. Now, Mr. Burdette, you ought to have some impression, oughtn't you, as to whether the para exposition or enterprise resulted——

The Court: Does that all appear of record?

Mr. Bilder: I would like to get his impression.

The Court: What difference does it make? You want the facts.

Mr. Bilder: It goes into the capacity or rights of this gentleman getting the money that he got from the company.

The Court: You are asking him what his now recollection or impression is. I don't think that will help us. Years have gone by and he says "I do not remember". Did you know at the time?

Witness: Yes, sir; I knew from day to day.

The Court: The figures have slipped you.

Witness: I couldn't remember.

Q. You relied entirely upon the books, is that right? A. For my information?

Q. Yes. A. My books and my daily reports.

Q. Reports that came in from Bound Brook and were entered up by the stenographer in the book. A. Yes, sir.

Q. Now do I understand that this $83,151.62 represents merchandise which was sold and paid for? A. May I look at it?

Q. Yes, sure. A. My recollection is that it was all paid for except one barrel which was sent to H. Kohnstann.

Q. That amounts to how much? A. $180.00. That was returned.

Q. Now all this para machinery which was purchased, was purchased on the advice of Mr. Carlin, is that right? A. Yes, sir.

Q. And the places—concerns from whom this machinery was purchased, was by the advice of Mr. Carlin also? A. Yes, sir.

Q. And the price to be paid was also by the advice of Mr. Carlin? A. No, not the price. He advised me of what machinery he wanted and I shopped around and bought it.

Q. I see. A. Those machines were very scarce at that time, even barrels and kettles were very hard to get.

Q. Now, do you remember shopping around for the machinery? A. Yes, sir.

Q. Tell us what machinery you bought? A. We bought an ice refrigerator, we bought various tanks, stirring apparatus, piping and motors and drying apparatus, and other things which I can't remember.

Q. And do you remember how much you paid for all that? A. No, I don't remember.

Q. Buy it all in one place? A. No, no, sir.

Q. How many places? A. I can't remember.

Q. Do you remember the name of any one place at which you bought any of this? A. We bought

some of that from the Edison Company; we bought some motors, I think, from Venino. I have forgotten the name of the manufacturer from whom we bought the refrigerators. We bought them wherever we could find them, new or second hand.

Q. Did Carlin go with you to the places where these purchases were being made? A. Sometimes, yes, sir.

Q. A lot of this was second hand? A. Yes, sir.

Q. Didn't you leave it to Carlin to tell you whether the second hand machinery was serviceable and would be efficient? A. Yes, sir; he almost always went with me to examine any second hand machinery which we bought.

Q. And he also assisted as to the price, didn't he—as to what price was reasonable? A. Well, there wasn't much choice as to price in those days.

Q. You had to pay what they asked? A. You had to pretty near pay what they asked after you found what you wanted.

Q. Did you buy a drier also? A. Yes, sir.

Q. I am talking now in connection with the para. A. Yes, sir; we did.

Q. Who from? A. I can't remember at all.

Q. How much did you pay for it? A. Several thousand dollars, the shelf drier.

Q. Is that the drier that you constructed yourself that you are referring to now? A. No.

Q. That is another drier? A. That drier was taken down that we constructed ourselves.

Q. Was there any reason for not continuing with the Chemical Engineering & Research Company in the matter of the construction of the para plant? A. The only reason was that the Chemical En-

gineering & Research Company installed and built a plant similar to ours for the manufacture of salicylic acid at Charleston, West Virginia and Mr. Summer and Mr. Guile and Mr. Gray, the engineer, went down to build and operate that plant.

Q. When was that plant finished for operation, do you know? A. I don't know. I should say sometime in the summer of 1918.

Q. And did they have salicylic acid on the market at the same time you had salicylic acid on the market? A. Yes, sir. But I think they never made any U. S. P. salicylic acid. They sold technical the same as we.

Q. Why do you say that? A. My impressions are —— (interrupted).

Q. What is the basis of your impression? A. I think Mr. Guile has told me that.

Q. That they did not succeed in making—— (interrupted). A. I think not.

Q. When did they begin the construction of this plant down south? A. I don't know.

Q. Had they finished the construction of yours when they began that one? A. I think not. I think they were working on both at the same time.

Q. Well, now, you have told us about the effort you made to sell the products of the corporation. Now taking up first phenol. During the time that phenol was being manufactured and sold by the Delaware company— I am not talking about the New Jersey Company— you had a salesman. A. No.

Q. You had no salesman. Did you have a concern who was taking all your phenol? A. My recollection is that the Waugh Chemical Company con-

tinued to take the greater part of it under the contract which we had with them.

Q. They worked under that same contract? A. I think so, yes, sir.

Q. And did the Waugh Chemical Company continue to furnish you with the product—the raw material that entered into the manufacture of the phenol under that contract? A. Most of it; yes, sir.

Q. Right up to the time of the fire? A. I don't remember that. I think possibly, yes, sir.

Q. So there wasn't much selling done by you of the phenol. A. It was sold in the first instance by the making of this contract.

Q. You mean when you made the contract of the New Jersey Company. A. That was continued by the Delaware Company.

Q. The selling consisted merely in this customer continuing to take the product—your manufactured product, under its contract and furnishing you with the raw material under its contract. A. Yes, sir.

Q. Now, then, when you engaged in the manufacture of salicyclic acid you had a salesman, did you? A. Not until the last month or two, I think.

Q. Did you have a broker? A. That was sold the same way, most of that salicylic acid was sold under contract with the National Analine—some sold to Buyer & Company.

Q. That was sold under contract with whom? A. The National Analine Company.

Q. You sold the salicylic acid to the National Analine Company under the contract you had with them, is that right? A. Yes, sir.

Q. Now did you have more than one contract for the sale of salicylic acid? A. Yes, sir.

Q. With whom else did you have a contract with? A. Frank Hemminway, and contract with the Bleeker Export & Trading Company, and I think with McGovern and one name of T. J. Parker. Those are the only ones I remember at this time.

Q. Practically all of your output of salicylic acid was taken by the National Analine Company? A. Very big percentage.

Q. And that customer was procured through a broker, was it not? A. No, I think I got them direct.

Q. You are not sure of that? A. I am not sure of that, no.

Q. You remember that the brokers did get commission for sales of salicylic acid. A. Very much so.

Q. Eh? A. Very much so.

Q. Yes. Why do you say "very much so"? A. Well, the brokers were very active at that time. It got to be so afterwards that it was very difficult to get, either to buy or sell only through brokers and they got commissions both ways, but I paid no brokerage commission on that.

Q. You paid no brokerage commission on the National Analine Company? A. No.

Q. Now, the drug and dye stuffs corporation, were they brokers? A. They were a brokerage concern, controlled by Mr. Guile.

Q. And did that concern get any commission from the Delaware corporation for sales or purchases? A. I think we paid them between two and three hundred dollars on one small order they got.

Q. That was a commission of five percent? A. Yes, sir; I think so.

Q. Isn't it a fact they got a total of twenty-three hundred dollars commission for brokerage or com-

mission for procuring orders or sales? A. I think not. Of course, if they did it would show in the record.

Q. Whatever the record shows would be more correct than your recollection? A. Yes, sir.

Q. The Bleeker Export Trading Company, were orders to them procured through a broker? A. No, sir; I dealt directly with them.

Q. Now the para, Mr. Burdette. I am informed that the Drug & Dye Stuffs Corporation, August 29, 1918, claimed commission at the rate of five percent placed on sixty thousand pounds at 90 cents a pound, $2,700, and that they received on account, $1,100, leaving a balance of $1,600 due them. Do you know whether that information—and that that $1,600 was paid—do you know whether that information is correct? A. I think not. I think we had some dispute with them and they made a claim, but my recollection is we cancelled the contract and they gave us a general release—and my recollection is that we paid them between two and three hundred dollars. Of course that is subject to correction by the books.

Q. Did you use a broker by the name of Bloomburg? To sell merchandise. A. Bloomburg, you say?

Q. Yes. A. I never heard of him.

Q. You don't know whether or not he claimed or received commissions for the sale of para? A. He never had any from me.

Q. Now, your para products, were they sold through brokers? A. The para products were sold, I think, almost entirely to the Edison International Company under a contract which I negotiated with Mr. Emery.

Q. Well, upon this statement, $83,151.62, which is Exhibit C-7, there seems to be a great many names other than the Edison International Corporation as purchasers. Looking at that, would that refresh your recollection as to using any brokers on that? A. Yes, sir. I do not think in any case. I think they were all sales made direct by us, some of whom were brokers who at that time were buying and paying on their own account, but I think no commissions were paid in there.

Q. Didn't these persons who were brokers get five percent reduction because of the fact that they were brokers? A. No.

Q. You had a contract with the Bayer Company. Was that procured through brokers? A. I think that contract was procured by Hemmingway—Frank Hemmingway.

Q. And were they brokers? A. Well, they were brokers and manufacturers.

Q. You paid them a commission? A. I don't think so. I am not certain. I think we sold it to them at a price and they resold it, and we shipped it direct to the buyer.

Q. In the eighty-three thousand dollars which goes to make up Exhibit D-7 you are quite sure that there is only one return of merchandise, and that is an item of a hundred and eighty dollars; is that right? A. My present recollection is that that was one barrel.

Q. You are sure that that is the only return of merchandise? A. That is my recollection, yes, sir.

Q. Didn't the Edison Company return a good deal of merchandise which you sold them? A. No, I think not.

Q. What ever merchandise is charged here to the Edison Company which is charged here to the Edi-

son Company was paid for by the Edison Company, is that right? A. It was paid for in this way. We sold them paranitroacetanilide and paranitroline and we purchased from them some of the raw materials out of which we manufactured, so we always had a debit and credit.

Q. It was set off on the account. A. But my recollection is that we exchanged checks and they paid and we paid, but when the receiver was appointed we owed them a considerable amount of money.

Q. What I want to be sure of is whether upon this statement you charge anything for merchandise which was returned and not paid for, either by Edison or by Bayer. A. I have no recollection of any being returned—yes, I have. May I correct that answer?

Q. Certainly. A. It just occurs to me we did ship —I don't know, maybe eight or ten barrels of paranitroline to the Edison Company which we attempted to dry—we had the same trouble with the paranitroline as we had with the salicylic acid.

Q. I don't want to get all those details. I want to hurry along. Do you want to change your answer by saying there is anything on here that was not paid for? A. I now recollect distinctly that several barrels which we sent to the Edison Company were returned, and I think they were in the plant at the time of the receivership.

Q. You think they are in this list? A. I think they are most likely shown there, yes, sir.

Q. That would call for the reduction of approximately how many dollars from this statement? A. Oh, a couple of thousand dollars.

Q. You mean two thousand dollars? A. Yes, sir, about that.

Q. Now, you had a salesman by the name of Shoedler in the employ of the Delaware company, did you not? A. Yes, sir.

Q. Of course he was supposed to sell goods, wasn't he? A. Yes, sir.

Q. Did he sell goods? A. He sold one or two small orders.

Q. What is that? A. One or two small orders.

Q. He was getting fifty dollars a week, wasn't he? A. Yes, sir.

Q. From March 7, 1917, is that right? A. I do not remember.

Q. He was in the employ of the company from March, 1917, getting a salary, down to what time? A. I don't know.

Q. Well, was he there when the company went into the hands of the receiver? A. Yes, sir.

Q. Did you have difficulty with para also? A. Yes, sir.

Q. What was the difficulty with para? A. The difficulty was in the drying of it. Our orders called for, or most of them, called for dry or powdered paranitroline, and we never succeeded in accomplishing that, except to one order of about eight thousand dollars, which we sent to Japan for the Edison Company.

Q. You paid seven thousand dollars for your drier, didn't you? A. I don't remember.

Q. What? A. I don't remember.

Q. You mean an item of seven thousand dollars wouldn't make any impression on your mind—hadn't made any impression? A. It made a serious impression then; it doesn't now, eight years ago.

Q. It hasn't remained in your mind that you paid seven thousand dollars for a drier which did not work? A. No.

Q. Just one more question on the drier. How did you dry—attempt to dry material, if the drier was defective? A. As I remember it we bought a drier and installed it and were never able to dry successfully. We then experimented trying to dry the paranitroline in one of these old sulphunators in which we made the salicylic acid, which was a revolving steam jacketed kettle, and we didn't have very good luck. One of the serious troubles was in the drying of paranitroline. It gave off a poisonous gas which was very, very harmful, and we practically lost one man.

Q. Was this something new that your company was trying to do in the making of these para products or was it—— (interrupted). A. I don't know. I heard of many others who were making it, but we heard lots of things at that time which were not true.

Q. Was there any para product of the kind you were attempting to make on the market at that time? A. Yes, sir; there was.

Q. So others were making it. A. Yes, sir.

Q. Was any attempt made to study the methods by which it was being made successfully? A. Yes, sir, Mr. Carlin and I tried several times to get in plants where they said it was being made, and got in only one and learned nothing from that experience.

Q. Then I understand when Mr. Carlin and you engaged in installing a para plant and attempted to manufacture it, neither he nor you had had any

—were embarking on what to both of you was an unexplored and undiscovered region—that is, by way of manufacturing, is that right? A. No. Mr. Carlin had done considerable experimenting and had made a very fine product of paranitroline in lots of about fifty and a hundred pounds.

Q. In the laboratory? A. In a laboratory way and some commercially, and our project at that time was to make it in large quantities in that way.

Q. One of your troubles with the sulphunator was that it was cracked, is that right? Just answer that yes or no. A. It wasn't cracked, no. It had porous holes in it.

Q. At any rate, a serious condition. A. It was a defect in the casting.

Q. It was a defect in the casting. It was that which made it defective for your purposes. A. Made it defective because when we applied heat to the steam jacket it expanded these porous holes in the casting and let the steam vapor through into the product which we were trying to dry.

Q. Did you discontinue buying your raw material from the Waugh Chemical Company or did you continue right up to the end? A. We bought what we could, but I think we bought very little, if anything, after we ceased making phenol.

Q. You mean you bought very little from the Waugh Chemical Company after you ceased making phenol. A. Yes, sir; I think so.

Q. Weren't you under a contract that obliged you to purchase? A. We were under contract, but I was very friendly with both Mr. Waugh and Mr. Wolf and he was—they didn't insist upon strict compliance with our contract.

Q. Now, this inventory book that you have referred to in your direct testimony, that was kept in New York because you were there, is that right? There was no reason for keeping it in New York, was there, other than the fact that you were there at that office? A. Why, yes, very good reason for keeping it in New York.

Q. So that you could look at it. A. So that I could follow it and know where I was from day to day.

Q. As a result of having that inventory book there and watching it, what losses, if any, did you save the company from or what changes did you make in the management because of any observations you made? A. It was very necessary for me to know, as nearly as could be ascertained, the amount of raw material which was being used daily, the amount of finished product which was being made daily, showing a daily inventory of the amount of raw material on hand for use at each manufacture, and it was very important that we know the quantity of the raw materials which were being used in each batch and the yield from that batch to determine the chemical cost, and it was also necessary for me to know how much raw material was on hand so as to know when to arrange for shipment of additional or further raw material.

Q. Well, that is just the ordinary inventory that any mercantile concern carries to ascertain how much stock it has on hand, both raw and manufactured, isn't that right? A. Yes, sir, except—— (interrupted).

Q. What was there extraordinary about that?

The Court: Let him finish.

A. The big question in the manufacture of chemicals is the yield you get from it—the product. In other words, if you take so many pounds of one and so many pounds of something else, you will get so many pounds of product. If you put that through a chemical reaction from some chemical therein it is hard to determine what your yield will be. In other words, you might put in fifteen hundred pounds of raw material and get out only seven hundred pounds of finished product. It was this question of yield which was important.

Q. Now, can you mention a particular instance upon which you made a discovery because of this—because of the information you had which resulted in the correction of anything? A. I cannot from memory, no, but I know it was a daily occurrence. We were always checking and rechecking to determine how much of this we used.

Q. I want to know as to whether, as a result of checking or rechecking, some change was made or some improvement was inaugurated or some evil was discovered or some fault was remedied. Tell us one instance you can remember. A. I can't remember any particular instance for the moment, but I know they were being found and remedied as best we could from day to day—week to week.

Q. Was there a duplicate of that kept at Bound Brook? A. No. That was sent to me. The nature of the daliy report——(interrupted).

Q. So that while you had that inventory in New York, you had Mr. Carlin, manager——(interrupted). A. He had duplicate copies of all we

made in New York. In other words, he sent in the daily report and kept copies of those daily reports.

Q. So that he had copies of what you had. A. Yes, sir.

Q. So that he did the same kind of checking in Bound Brook as you did in New York. A. Yes, sir; and that was checked monthly with the physical inventory.

Q. He was more capable of making checkings than you were, because he was a practical man, isn't that right? A. No; it is a question of figures, not question of practice. When it came to the physical inventory of course he had to check it, and very often I checked it with him.

Q. Now, you told us for a time you were drawing three hundred dollars a month for yourself and three hundred dollars a month for the New York office expenses. That is right? I am calling that to your attention, Mr. Burdette. Now, can you tell us whether the office expenses amounted to three hundred dollars a month? A. I think they did.

Q. Isn't it a fact that the office expenses were considerably less than three hundred dollars a month, and that when it amounted to less than three hundred dollars a month, you and your partners divided the difference between you. A. We never divided anything. Up until a certain period I was paid three hundred dollars a month and New York office expenses were paid by the Alpha Chemical Works. At a later date we agreed that three hundred dollars a month was a proper charge for the New York office expenses in addition to my salary and that money was paid to us, out of which

we paid all expenses and never kept any exact account; never knew whether it was over or under.

Q. Well, then, that three hundred dollars and your own salary was paid into the partnership funds of Burdette & Horne in the beginning, is that right? A. In the beginning the three hundred dollars was paid to me and the expenses were paid directly by the Alpha Chemical Works.

Q. Did you turn your three hundred dollars that you received into the partnership fund? A. No.

Q. Your partner had no participation in that? A. No, none whatever.

Q. At the beginning your partner was Horne. A. Mr. Horne, yes, sir.

Q. You had a partnership bank account at that time, did you? A. Yes, sir.

Q. And later on the six hundred dollars a month was paid into the partnership—was deposited in the partnership funds—partnership bank account. A. I don't remember. I think not.

Q. You think not? A. That is all very clear in the papers, but I do not remember it at the time. That would show in the check book.

Q. Now you have testified with regard to the large sums of money which you say you raised, practically all these moneys, or a very large part of the money which was raised and which went into the treasury of the Delaware company came from your father-in-law, is that right? A. Yes, sir; also large sums from Mr. Von Cleff and his mother.

Q. How much from them? A. I think between fifteen or twenty thousand dollars.

Q. How much from your father-in-law? A. My recollection is we lost sixty thousand dollars.

Q. Now you said that after the formation of the Bradette Corporation, the New York office of the Alpha Chemical Works was abandoned and the expenses were taken over by the Bradette Corporation and you were paid five hundred dollars a month from October to January. What do you mean by saying that the New York office was abandoned? A. I should not have said that. I should have said that the expenses were no longer the expenses of the Alpha Chemical Works, but they were paid by the Bradette Corporation. The operation continued exactly the same.

Q. The Alpha Chemical Works had a lease upon that office, did they not? A. Yes, sir.

Q. Lease for eighty-three dollars a month? A. $83.33—thousand dollars a year.

Q. And had to run a number of years? A. It ran, I think, five years from January 1, 1917.

Q. And the company stopped doing business in January, 1919. A. Yes, sir, and the lease was taken over by me.

Q. It had from 1919 to 1921 to run yet, is that right—1922? A. I think so, yes, sir.

Q. About two or three years? A. Yes, sir.

Q. Did that lease have a value in excess of a thousand dollars a year? A. I don't know, but I asked the officers of the building to take it up with the receivers and ask them what disposition they wanted to make and they said they wanted the lease cancelled. They cancelled their lease, and I made a new one.

Q. You mean the building cancelled the lease for the receiver. A. Yes, sir.

Q. With the state court receiver or with the bankruptcy receiver? A. I do not remember.

Q. And was your lease at the same rate? A. Yes, sir.

Q. Do you know whether that lease had any greater value than a thousand dollars a year? A. I think I could have leased any other office similar to mine for the same rate.

Q. Did you make any inquiry to find out? A. Yes, sir.

Q. Where—what building? A. My same building.

Q. What? A. The same building I am in.

Q. And you are working under that same lease yet? A. No; that lease has expired and I have renewed it once or twice.

Q. And the first renewal was at what rate? A. First renewal, $1,800 a year; that was in 1922 or 1923.

Q. Had a sudden jump, did it—values had a sudden jump? A. It took two years to jump that high.

Q. It took two years to jump that high? You recognize this as a photograph of the income tax return which was signed by you and Vom Cleff made to the United States Government? A. That is a photograph of both his and my signatures.

Q. You recognize that as a photograph of both your signatures and that of Mr. Vom Cleff? A. Yes, sir; I recognize those signatures.

Mr. Bilder: I offer that paper in evidence.

Mr. Lane: Where did you get it?

Mr. Bilder: I got it from the trustee and it came from the United States Government.

Mr. Lane: We will admit it, if it came from the United States Government.

(Paper marked Exhibit C-1 of this date.)

Q. I show you another paper and ask you if that is a photograph of your signature and that of Mr. Vom Cleff? A. Yes, sir.

Mr. Bilder: I offer this paper in evidence.

Mr. Lane: Did that come from the same source?

(Paper marked Exhibit C-2 of this date.)

Q. In your direct testimony you said you paid five thousand dollars on account of notes that you were endorser on. A. Yes, sir.

Q. And was that five thousand dollars paid at one time? A. No, sir; it was paid over a period of four years.

Q. Beginning when? A. I would have to look.

Q. Did it begin with the date of the receiver? A. No, later.

Q. Later, after the date of the receivership, and ending when? A. Began in August 26, 1919, and ended January 20, 1924.

Q. Were any of the notes upon which you are an endorser and which you say you helped to reduce—were they ever proven in the bankruptcy proceedings? A. I understand not.

Q. And do you know why they were never filed in the bankruptcy proceedings? A. I don't know. I am not certain whether they were or were not. Mr. Strawn, president of the bank, told me about the time I made my first payment they had not yet filed a claim. Whether he has filed it yet or not, I don't know.

Q. Do you remember telling Mr. Venner, Jr., the gentleman sitting here—telling him on one oc-

10 casion that none of the officers of the corporation—the Delaware Corporation of the Alpha Chemical Works were receiving a salary, this statement being made by you in response to a request on his part for an increase of salary? A. No; I do not remember any such statement on my part.

Q. Do you remember making such a statement on one occasion in November, 1918, at Bound Brook on an occasion when you were about to take the train back to New York? A. No, sir.

20 Q. Had a conversation with you with regard to Mr. Schwartz and Mr. Schwartz's salary? A. I have no recollection of it, no.

Q. Would you say that you never told him such a thing? A. I would say I never told him or anybody that I was never, or any of the officers were never drawing a salary from the Alpha Chemical Works.

Q. Or were not then drawing a salary? A. Yes, sir.

30 Q. No dividends were ever declared or paid by the Delaware corporation? A. No, sir.

Q. And you never engaged in the chemical business after the Delaware went into the hands of the receiver—Delaware company, did you? A. No, sir.

Q. You have never engaged in the chemical business since, have you? A. No, sir.

Q. Or become interested in the chemical business since? A. No, sir.

40 (Adjourned until January 29, 1926.)

In Chancery of New Jersey,

Friday, January 29, 1926.

WALTER A. GUILE, JR., sworn in behalf of defendant.

Direct Examination by Mr. Lane:

Q. Mr. Guile, where do you live? A. Hartsdale, New York.

Q. What is your business? A. Chemical business.

Q. How long have you been in that business? A. Since 1914.

Q. Were you in that business during 1918 and 1919? A. Yes, sir.

Q. And 1917 and 1916? A. Yes, sir.

Q. Do you know Mr. Burdette? A. I do.

Q. Do you know the concern in which he was engaged, the Alpha Chemical Works? A. I do.

Q. Did you have any business relationship with them? A. I did.

Q. What were those relations? A. A concern I owned made a contract to do the engineering and installing processes for the manufacturing of chemicals for them.

Q. When was that contract made? A. During 1917.

Q. Did you do any work under the contract? A. Yes, sir.

Q. What did you do? A. My men went to the plant and made a survey of the capacities, the layout, suggested different processes that could be installed, suggested various machinery that could

be purchased, and submitted a number of processes for the consideration of Mr. Burdette and his company.

Q. How long a time were you engaged in that work? A. Why, we were engaged in that work until the Alpha Chemical Company had a fire. I think that was the following Decoration Day, as I remember.

Q. During your engagement in that work, did you come in contact with Mr. Burdette so that you are familiar with what he was doing for the corporation at that time? A. Yes, sir.

Q. Tell us what he was doing. A. Mr. Burdette was the executive working head of that company; he was all there was to the company. He was the active man. The other men, while interested in that sort of thing, depended entirely upon Mr. Burdette to produce the result they had hoped for.

Q. What did he do physically? A. He made a contract with my company in which an outline was made of what he hoped to do, and we accepted that contract on a percentage basis. In other words, Mr. Burdette got us to negotiate a contract whereby we were willing to accept a portion of the profits against the engineering and the time we spent on this chemical work for him. And occasionally he would call me on the 'phone or possibly come in for a short time and ask me where he could get certain chemicals if he was not able to do that, or certain machinery; and he would call up and ask if I would send a man out to help him at the plant on engineering and chemical work.

Q. Do you know what he was doing at the New York office? A. As far as I know he wasn't doing

any work but chemical work. He was spending all his time at that and told me so many times. That was my agreement, that he was to give all his time because I was not getting any money out of it; somebody had to be there on my contract whereby they limited the expenses of his New York office to $150 a week on the agreement that Mr. Burdette was going to give his time to the chemical business.

Q. Did you get information as to whether he was in fact spending his time on the work? A. Yes, my man reported that.

Q. Was that necessary? A. Yes.

Q. How much experience have you had in this business? A. I built a plant for the Alpha Chemical Works, the Federal Dyestuff; I built a $100,000 job at Charleston, West Virginia; I was under government contract for the Charleston Chlorine plant; and numerous others.

Q. What experience did you have in the selling end of the business? A. I had an organization at 120 Broadway and did the selling for the various plants.

Q. What experience have you had in the operation of the plants? A. I had seventeen chemists and seven engineers working for me in research work and putting that research work into plant operation.

Q. Did you have any experience which would permit you to reach a conclusion as to the reasonable value of services rendered to a concern such as Mr. Burdette rendered to this concern? A. I think I have.

Q. What is your experience? A. When the plant of the Alpha Chemical Company was opened they

were making a dyestuff which was a part of the kahki color of the United States Government uniforms and I installed a plant at Charleston, West Virginia, to make the same color, and I did it on an engineering fee on which I received $12,000 a year and a third interest in the plant; and it was a plant of practically the same capacity as Mr. Burdette's plant.

By the Court:

Q. A third interest? A. Yes, sir, a third of the capital stock.

Q. Nothing paid for the capital stock? A. The processes and the engineering put in; no money.

By Mr. Lane:

Q. Mr. Guile, assuming a man who is a lawyer, not a chemist, becomes head of a concern incorporated for the purpose of doing chemical business during the years 1917, 1918, and 1919; that that man becomes the president of the concern and from the time he becomes its president he devotes his entire time and attention to the work of the company, that the company has a plant at Bound Brook, New Jersey, I think, at which chemicals were manufactured for war purposes to such an extent as that from November, 1917, to November, 1918, there was sold to approximately 40 customers: $146,000 worth of salicylic acid, and from August, 1918, to January, 1919, $83,151.62 worth of paranitroaniline, and that during the same period of time there were sold miscellaneous items of $4,325.93, and that during that period of time

there were also kept at the New York office in charge of the president of the company, assisted by a stenographer, records, Exhibits D10, D11, and D12, which show the inventories, technical reports, and so forth; that he carried on all of the executive business of such a company; what would you say would be the reasonable value of his services per month or per year?

Mr. Bilder: I object to that on the ground that the question presented does not embrace a statement of what that so-called executive work consisted of.

Mr. Lane: I will add to the question "The executive work consisted of attendance to all of the correspondence of the company, general supervision——"

The Court: The managing direction of this plant.

Mr. Lane: Yes, sir.

By the Court:

Q. Would that enable you to form an opinion? A. Yes, sir.

Q. Do you think you are capable of forming such an opinion? A. Yes, sir, I formed an opinion based on the custom and the practice of the trade at that time. For the buying of merchandise, a common commission of five percent was paid; for the sale of merchandise, a commission of five to ten percent was paid. By a contract Mr. Burdette had with me he had the services of one man whom I paid $1,000 a month, $12,000 a year. He had him on call. He had the service of my laboratory,

which meant two or three men with salaries ranging from $2,200 to $5,000. He had the services of two engineers, one the head of a corporation, whose salary was $6,000. I considered that Mr. Burdette negotiated services easily worth from $15,000 to $20,000 to his concern——

Q. A year? A. Yes, sir.

Q. Did you know the Alpha Chemical Works was a failure? A. That wasn't his fault. They had a fire and they had a market. They lost the market—it disappeared. They couldn't get raw materials and had to get a new product. By that time the Armistice came and he lost the market twice—a market for the chemicals. We all had the same thing. I lost $400,000 in one factory when the Armistice came and there was a shrinkage. The government was the only customer. You had to have priority orders to get chemicals. You had to sit and wait. You couldn't get machinery. Those things prevented the development. It all depended on whether the plant ran straight through. The government took all the resources of the foundries, and manufacturers, by being diligent and on the job, you could get a little raw material here and there to get supplies for a peace-time factory——

Q. It was a war-time factory? A. I mean against the munition plants. The benzols and acids were in direct competition with the ammunition plants.

By Mr. Lane:

Q. Leaving out of consideration your justification and reasoning, what would you say would be

the reasonable salary for such a man in such a position as Mr. Burdette was? Give us your estimate per month or per year.

The Court: He said $15,000 or $20,000 a year.

Witness: Yes. He gave up a law practice to go in. I considered he must have some justification.

By Mr. Lane:

Q. Was it the practice during that time for corporations engaged in business of this kind to enter into contracts by which they agreed to pay selling corporations, or selling agencies a certain percentage—— A. Certainly. You mean the price per pound on the product?

Q. Yes, sir.

(The Stenographer reads the last question.)

By Mr. Lane:

Q. (Continuing) A certain percentage—a commission based on percentage of sales. A. Yes, sir.

Q. Have you any knowledge as to the amount of commissions—percentages—paid at that time? A. I have already stated from five to ten percent depending on the chemicals involved.

Q. Assuming the statements contained in the hypothetical question that I have put to you, what would you say as to the reasonableness of the commission of five percent to be paid to a selling corporation which would dispose of the products of

this company and also assume the New York office expense? A. A very low charge.

Cross Examination by Mr. Bilder:

Q. Mr. Guile, Mr. Burdette, you know, had had no experience in the manufacture of chemicals? A. Yes, sir.

Q. And the only experience which he got was that which he got by contract with you and your organization? A. No, sir, he had men of his own; he had his own organization. My men were consultants.

Q. Can you tell us what year you came into the situation? A. 1917.

Q. You made a contract for the manufacture of what? A. I didn't for manufacture; I made a contract to supply engineering for the processes for the installing of the machinery and to furnish processes to be made in that machinery.

Q. That contract was in writing? A. Yes.

Q. That contemplated the manufacture of what? A. Salicylic acid.

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

Q. Did you make a contract which contemplated the manufacture of phenol before that? A. We took hold of the plant when the plant was a failure; they couldn't make anything there.

Q. What were they manufacturing of which they made a failure? A. Phenol.

Q. Then did you proceed to install the apparatus for the manufacture of phenol? A. We made changes so that the plant would run.

Q. For the purpose of manufacturing phenol? A. Yes, sir.

Q. And this was a contract under which you made the necessary changes, as you say, in order to enable them to manufacture phenol? A. Yes, sir.

Q. Then the fire came along and they stopped manufacturing phenol? A. Yes, sir.

Q. You first became acquainted with Mr. Burdette at about the date of this contract, May, 1917? A. I had known Mr. Burdette prior to that.

Q. Had you had business transactions with him prior to May, 1917? A. Yes, sir.

Q. Of what nature? A. I had business with Mr. Brady of the Westinghouse Electric Manufacturing Company and I had met Mr. Burdette through that connection.

Q. Had you had any business transactions with the Alpha Chemical Corporation before May, 1917? A. I think that one of my corporations purchased some materials for them.

Q. What corporation? A. Drug & Dyestuff Corporation.

Q. That corporation had a contract with the Alpha Chemical Corporation by which it was buying and selling? A. No, sir, he only came into my place but he couldn't sell goods any place else.

Q. Tell us about when the first opportunity was that you had to observe Mr. Burdette's conduct in connection with the Alpha Chemical Corporation. A. I think a short time before I went out to the Alpha Chemical Company I met Mr. Burdette and went over the plant. I looked over it with my engineers. They told me what they thought the trouble was and what they suggested to change the plant. They had been talking with me. Mr.

Sommers mentioned in their contract, was the president of the company and I owned the stock, or my wife owned it, and we had talked the thing over before that time and I asked Sommers if he thought we could make some money on the processes——

Q. Who was he? A. He was the expert chemist installing the processes.

Q. What was the difficulty you found when you got there? Why was it a failure up to that point? A. The distillation——

Q. Do you know how long a period it had been a failure? A. From the time it was started, the man who started it got a yellow phenol which was not merchantable.

Q. How long was it that they couldn't make it? A. I don't know.

Q. During the period they were not making merchantable phenol would you say his salary should have been $20,000 per annum? A. He didn't have anything to do with that as long as he did his executive work. We recognized that he was not a technician. I knew he was diligent and spending time at the work. The fact that he was a lawyer had nothing to do with it. He had good, average intelligence.

Q. You have referred to his executive functions as meriting $25,000 a year. I would like you to describe to us some of the things you say Mr. Burdette had to do as an executive, which, in your opinion, would cause you to pay him $25,000 a year if you had to employ a man to perform the functions which you saw him perform. A. The salaries of executives during the time of the war——

Q. I am talking of what you saw him do. A. I am coming to that. The salaries of executives in a responsible position, and this was a responsible position because it involved large sums of money, were approximately four or five times what they were before the war and probably three times what they are now. The hope and expectation of profits from this plant were very large and I saw Mr. Burdette's purchases—my people reported to me what he had done in buying of various chemicals, and they brought reports from time to time what was doing at that time—and I was never able to criticize his policy. Based upon what I was doing I felt he was doing good business for the corporation. I would not have entered into a contract for a percentage unless I had a check on the business, and my people reported from time to time what he was doing. For that reason I had been paying salaries to my chemists and my manufacturing staff and I knew what other people were paying their people because I was bidding for people to run businesses and that sort of thing and I saw no objection to any arrangement that the Alpha had made with Mr. Burdette.

Q. Do you know what arrangement was reported to you as having been made by him and which you were subject to? A. I knew that $150 was allowed for Burdette for his organization and sales while that contract was in force.

Q. $150. A. A week. Naturally that was part of the contract.

Q. He got $150. A. He and the office and the help.

Q. At the rate of $7,500? A. Yes, sir.

Q. Do you think he had any idea that you thought he was worth $25,000 a year, then? A. Well, if Mr. Burdette's plant had produced in proportion to other people's plants such as the Edison plant in Orange and Middlesex Chemical Company in New England, I would say he would have made between $200,000 and $300,000 in profits.

Q. Did you say he or the corporation? A. The Alpha Chemical. And I would not think a man producing an expected profit of business of that sort of thing $15,000 was too much.

By the Court:

Q. You mean assuming that to be so. A. Yes.

By Mr. Bilder:

Q. In drawing this contract you were careful to put down what he should draw because his drawing affected your net percentage? A. Yes.

Q. Did you consider that a fair contract if you contemplated $200,000 of profits and he was worth $25,000 he should be limited in figures to $7,500? A. Naturally he was a stockholder in the corporation.

Q. How do you know he was a stockholder? A. I don't; I knew he was interested in the corporation and I know he expected to get some other profits.

Q. Did you examine the books before you made that contract? A. No, sir.

Q. Did you examine the financial condition of the company? A. No, sir.

Q. Did he suggest he would like to have this contract provide for more than $150? A. I think

he did. If I gambled my portion I think that is all that ought to be assumed by us.

By the Court:

Q. It was a bargain you struck? A. Yes, sir.

Q. And the best bargain you could strike? A. Yes.

By Mr. Bilder:

Q. Did that enhance his value as a business man? A. I thought he drove a good bargain for me.

Q. Did he display any good business sagacity to mak a contract for $7,500 to render services which you thought were worth $25,000? A. I think so; he was doing it for his company.

Q. Did he tell you he didn't own a share of stock in this company? A. I don't know this minute whether he ever had a share or not.

Q. What did he suggest the figures should be? A. I think $200 a week.

Q. You held him down to $150? A. Yes.

Q. You say that one of the things that impressed you with Mr. Burdette's ability as an executive was his performance in the purchase of merchandise? Was that before or after making the contract? A. Both.

Q. Both before and after? A. Yes, sir.

Q. In the manufacture of phenol there are certain definite chemicals used? A. Yes, sir.

Q. They have a definite, known market price? A. In a normal market but not at the time he was engaged; it fluctuated; it depended on various things.

Q. It was simply being at an auction sale and bidding? A. No.

Q. After this contract was made the information as to what chemicals were needed from time to time came from the plant? A. Yes.

Q. No contract was made for phenol. Did this contract contemplate the manufacture of phenol? A. Yes, or any other products which might be desired.

Q. What other products? A. Benzol, sulphuric acid, nitric acid, caustic soda——

Q. In large quantities? A. Very large.

Q. They are usually purchased by telephone from standard houses, aren't they? A. No, you don't make large purchases over the telephone. A telephone conversation is no record in a house of business. It is necessary to go and get a confirmation when you put an order in, especially during war-time because people would come in and offer more and there was nothing to substantiate that an order was placed.

Q. Mr. Burdette having notified the chemical house what was necessary he would take steps to purchase it? A. Yes, sir.

Q. You don't know that he did it? A. I know that he did.

Q. How? A. I have seen him do it; I have gone to his office.

Q. You mean he told you that he did it? A. Yes.

Q. Were you present when he made purchases? A. I have been present when he made purchases.

Q. Tell me of what? A. I saw him purchase benzol of brokers by the name of Wolf.

Q. What is Wolf's full name? A. I can't tell you.

Q. What is the name of his concern? A. It was Eugene Wohl. Wolf was the partner—silent partner,—we called him Wolf.

Q. Don't you know that Burdette had a contract with Wolf that he was to sell all the chemicals the Alpha needed and would charge a percentage on the sales? A. I know nothing about that.

Q. Tell us what you remember about this one purchase of benzol. A. I had a talk with Mr. Burdette. Mr. Wolf came in and he suggested that he was going to buy benzol of Wolf. He told me to sit down; he told me how much he was going to buy. I told him it was a good buy. As I remember, he bought eight or ten drums of benzol at that time.

Q. It was your opinion that resulted in that sale? A. I said he was going to buy.

Q. He had the offer to purchase at that price? A. He said he was going to buy.

Q. Mr. Wolf was right there? A. Mr. Wolf was outside in an outside office.

Q. Do you remember any other purchase? A. I quoted him on chemicals from time to time and he told me he could buy for less than I could quote.

Q. After the fire did you install any plant for any other manufacturing? A. I didn't have anything to do with that situation.

Q. Did you have anything to do with the installation of a plant for the manufacture of salicylic acid? A. Yes, sir, we did some engineering for that.

Q. But this contract was at an end when salicylic acid was to be manufactured? A. Yes.

Q. Why? A. Because I had built a plant for somebody else for the salicylic acid, the Charleston Chemical Company, and I spent my time there.

Q. You had no profits for the sale of salicylic acid? A. I never had any profits from the Alpha Chemical Company in any shape or form.

Q. You were not supposed to receive any profits? A. No, we did what we did to help Mr. Burdette.

Q. Did you receive any compensation for that? A. No.

Q. You did it for nothing?

The Court: He said he received nothing.

Q. Was that plant for salicylic acid constructed for the purpose of manufacturing salicylic acid or U. S. P. salicylic acid? A. I think it was originally U. S. P.

Q. Do you know whether or not it produced any salicylic acid? A. I don't know.

Q. You have no information on that subject? A. No.

Q. You were never informed? A. Never went into that situation with him.

Q. Do you know how it is you didn't know? A. I wasn't interested. I had other business interests that meant much more to me.

Q. Notwithstanding you installed the plant you did not interest yourself? A. Naturally, I gave all we had in the beginning.

Q. You did not contemplate making any profits out of this concern after the manufacture of phenol? A. I surrendered my profits. I gave up $10,000. There was a time this plant made profits, when they were manufacturing phenol.

Q. Will you tell me what else you saw Mr. Burdette do besides making this contract with you and making this purchase of benzol that caused you to think he was entitled to $25,000? I want you to give me what else you saw him do besides making this contract with you and this purchase of benzol. A. As I said before, my chemists and engineers made more or less frequent trips to Bound Brook and came back and reported to me the state of the plant and the average cost of materials——

By the Court:

Q. You knew that the concern was buying and selling manufactured goods and Mr. Burdette was supervising? A. Yes, I had my chemists' reports, checking, abstracts of the books, which led me to believe it was operating satisfactorily.

By Mr. Bilder:

Q. Who was in charge of the plant at Bound Brook at the time you were getting your reports from your subordinates? A. In charge in what way?

Q. Wasn't there someone in charge? A. Mr. Burdette was in charge.

Q. He was in New York. A. He was in Bound Brook half the time.

Q. How do you know? A. I wasn't chaperoning Mr. Burdette. I had people I trusted reporting.

Q. Whatever value you give his services is based on reports you received from your subordinates as to what he was doing? A. Not altogether. I went out occasionally to look the plant over.

Q. Who was directing operations in Bound Brook? A. As I remember, a man by the name of Corlin.

Q. Was he with Sommers? A. No, he came with Sommers.

Q. What was Corlin doing? A. He was process head.

Q. He had charge of the manufacturing of processes? A. Yes, he was Mr. Burdette's assistant.

Q. He was technical man in charge of the processes? A. Yes, sir.

Q. He knew the chemicals needed? A. Yes, sir.

Q. He knew what labor was needed? A. Yes.

Q. Was there any reason why Mr. Corlin at Bound Brook could not arrange for the purchases and the sales? A. Every reason in the world. It can't be done.

Q. Wasn't most of it done through selling agencies and brokers? A. I don't know; I suppose so.

Q. If his sales were arranged through brokers and selling agencies then Corlin from Bound Brook could have attended it as well from Bound Brook as Mr. Burdette from New York? A. Is that your opinion?

Q. I am asking you. A. I said it could not be done.

Q. Do you know a concern by the name of Drug & Dyestuff Corporation? A. Yes.

Q. Did they get commissions for the sale of merchandise? A. I have no recollection of ever selling it. I think we got better prices from other people.

Q. You mean you sold them no goods? A. If we did it was unimportant.

Q. Did you ever sell any of their goods?

The Court: What has that to do with it?

Q. Does the fact that the Alpha produced only a few pounds of U. S. P. Salicylic acid under the executive direction of Mr. Burdette affect your opinion in any way as to whether Mr. Burdette's services were worth $15,000 to $25,000 during the period when the Alpha was making salicylic acid? A. Not at all.

Q. Does not affect it at all? A. Not at all.

Q. Did you produce U. S. P. salicylic acid at other plants during that period? A. Did I?

Q. Yes. A. No.

Q. Were processes installed by you? A. Yes.

Q. Was it produced? A. Yes.

Q. In considerable quantities? A. Yes, for the reason that we spent some $100,000 more than Mr. Burdette spent for equipment.

Q. Did you have anything to do with the installation of any other plant besides the phenol and salicylic? Nothing to do with the installation of the para plant? A. We gave him a little advice. We told him we thought it was a good thing to go into, that is all.

Q. I am informed your Drug & Dyestuff Corporation received $2,600 in commissions from the selling of merchandise. Does that refresh your recollection as to the amount of sales made through you or your concern? A. No, that was small change at that time.

Q. As to quantity it would represent twenty times $2,600. A. It would be small change.

Q. It might mean something to the Alpha? A. You will have to ask Mr. Burdette.

Q. If most of the products were sold through your concern under a contract that would show

whether the amount of it—— A. A contract for the contract?

(The stenographer reads a previous question as follows:) Question: "As to quantity it would represent twenty times $2,600?"

By Mr. Bilder:

Q. If your concern sold approximately twenty times $2,600, that is, a sum amounting to that, of salicylic acid, during the period when salicylic acid was manufactured, and that that constituted a large part of the output of salicylic acid for this concern the selling activities of Mr. Burdette as executive head would have been limited to that sum, to that amount of business? A. I don't understand that question.

The Court: You have formed your own answer, Mr. Bilder, haven't you?

Witness: Mr. Burdette would still have the opportunity of using his executive decision as to whether it was a reasonable and proper sale to make to my concern. It did not preclude his working just the same for the benefit of his concern if I sold it. That is about twenty percent of what was sold. I didn't realize it was so large.

By Mr. Bilder:

Q. If $146,000 of technical salicylic acid was sold, would that indicate to your mind that the company was operating a large loss, taking into consideration they were endeavoring to manufacture salicylic acid? A. No, sir.

Q. Do you know, as a matter of fact, whether this salicylic acid which was sold for $146,000 was sold at a loss or a profit? A. I don't know.

Q. If it was sold at a loss would it change your opinion of the value of his services? A. That would depend on the circumstances. The cost of the raw materials and the cost of other things had advanced after making a contract, plant difficulties and generally, the entire condition.

By the Court:

Q. Even though they had a loss, what difference would it make in your judgment as to the value of his services? A. There is always an equity in the salvage value.

Q. Even though it was sold at a loss would it make any difference in your opinion as to the reasonableness of the value of his services? A. No.

By Mr. Bilder:

Q. Have you offered to give Mr. Burdette any employment on any basis of from $15,000 to $25,000 a year if you needed a man who displayed the capabilities which you have described in the person of Mr. Burdette? A. If Mr. Burdette would raise that amount of money for a plant, I would——

Q. What money? A. For the erection of the Alpha Chemical Company.

Q. What is the sum which you had in mind that he raised? A. He raised considerable money at various times.

Q. That was one of the factors you had in mind in giving your opinion as to the reasonableness of his services? A. Not at all.

Q. It had nothing to do with that? A. Not at all.

By the Court:

Q. It was one of the elements? A. He asked a question if I had need for a man, I said, "Yes, I would."

Q. Raising money was one of the elements that entered into your opinion? A. I considered he was worth that for the work he did outside of that.

By Mr. Bilder:

Q. Then the raising of the money was not one of the elements in your opinion? A. It might have been.

Q. I am talking of the opinion which you have given us? A. I don't think at the time that I made the contract with Mr. Burdette that I had in mind his financial ability to raise money as much as I had of the possibility of profits from plant manufacturing. I consider that he was fully able to handle that situation.

Q. You have endeavored to answer the question which I have propounded to you? A. Yes, sir.

Q. I ask you whether in the opinion which you gave us here in which you regarded the value of his services at from $15,000 to $20,000 you did not take into consideration that he raised money? A. No.

Q. In forming your opinion and testifying as to $15,000 to $20,000 being the reasonable value of his services did you take into consideration that Mr. Burdette had given up a law practice? A. Yes, I think I did.

Q. A valuable law business? A. He had valuable connections.

Q. You did not know how much he was making out of it. A. I know that he had been with Breed, Abbott & Morgan. I knew that he made contracts with the Westinghouse and I knew he had contacts with people that had he continued his law business, there was every prospect of making plenty of money through those contacts.

Q. Were you pretty closely associated with Mr. Burdette at about that time? A. Not at all.

Q. Do you know him socially? A. No, sir.

Q. Are you related to him? A. No, sir.

Q. Have you any business relationship with Mr. Brady? A. I have.

Q. What is your relationship? A. Mr. Brady and I have connections in connection with power.

Q. And those are business relations? A. Business contracts, not business relations.

Q. Aren't you interested with Mr. Brady and Mr. Burdette in a castor oil proposition? A business relating to castor oil? A. Never heard anything about castor oil.

The Court: Please confine yourself to the issue.

Q. Are you and Mr. Brady now associated in any business together? A. No.

Q. Are you under any contract with Mr. Brady? A. No.

Q. You have business relationships, financial relationships? A. Possibly.

Q. Have you had financial transactions with Mr. Brady or any company he is connected with, in the past? A. Yes, sir.

Q. What companies? A. Westinghouse Electric & Manufacturing Company.

Q. Have you or your company any business dealings with the company now? The Westinghouse Company? A. No.

Q. Do you owe Mr. Brady any money? A. No, sir.

The Court: What?

Mr. Bilder: I want to indicate whether he has any bias or interest.

Witness: No, I haven't.

Q. Are you interested in the Haybridge (?) Corporation? A. No, sir.

Q. Do you know there is such a corporation? A. I heard it mentioned at the trial; that is the only knowledge I have of it.

Mr. Bilder: I will ask the court to permit me to take the testimony of Mr. Horne.

The Court: Mr. Guile was not the absent witness?

Mr. Lane: He was in Canada and came down. Mr. Horne is the partner of Mr. Burdette.

The Court: When can you have him here?

Mr. Bilder: There is another expert I would like the court have produced before a master to take his testimony.

The Court: I ought to see him.

Mr. Lane: Then I ask that the court adjourn until the 11th.

(Adjourned until February 11, 1926.)

In Chancery of New Jersey,

April 7, 1926.

Continuation of hearing pursuant to adjournment, in the place and in the presence of the parties as before.

* * *

DAVID H. LITTER, sworn for defendant.

Direct Examination by Mr. Lane.

Q. Where do you live? A Newark.

Q. What is your business? A. Chemical sales agent.

Q. How long have you been in that business? A. For the past five years.

Q. What business were you in during 1918, 1919 and 1920? A. Buying and selling of chemicals.

Q. How long have you been in the business of buying chemicals? A. Seven years previous to the past five.

Q. When you say buying and selling chemicals, tell me what the nature of your business was, what did you do and with whom did you come in contact—what class of people did you come in contact with? A. I was with one concern for—purchasing agent for part of that seven years, buying from producers of chemicals, and for another portion of that seven years I had charge of the Chemical Department of a big concern, buying and selling regularly from producers to consumers—in other words, trading in chemicals.

Q. And do you know Mr. Burdette? A. Yes, sir.

Q. How long have you known Mr. Burdette? A. Oh, several years.

Q. Do you know the Alpha Chemical Works? A. I knew of them.

Q. At the time? A. Yes, sir.

Q. They were in operation? A. Yes, sir.

Q. Did you have any dealings with the Alpha Chemical Works? A. I do not believe I ever did.

Q. Did you have any dealings with Mr. Burdette? A. No.

Q. Personally? How do you know Mr. Burdette? What is your acquaintance with him? A. Why, I knew him the same as you know anybody else in the line of business. I wasn't—I probably met him two or three times during the period of which you speak, and it was through a Mr. Giles that I was asked to come here and testify.

Q. Have you had any experience which enables you to form a judgment as to the reasonable value of services which would be performed by the operation head or executive head of a chemical plant, such as the Alpha Chemical Works?

Mr. Bilder: I object. I think that is a question for the Court to decide, not to be left to the witness.

Mr. Lane: It is a preliminary question. Of course the opinion of the witness doesn't bind the Court in any way, shape or manner.

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

Q. What is your experience—what has been your experience? A. Having been connected dur-

ing that period from 1914 to 1921 and sitting in the council of one of the largest concerns and knowing also what some of the other concerns were doing. One concern I was with we saw grow from nothing to a plant doing a million dollars worth of business in a month, and I sat in at all of the executive councils.

Q. Mr. Litter, assuming that man who was a lawyer with no chemical experience becomes the head of a concern incorporated for the purpose of doing a chemical business, during the years 1917, 1918 and 1919, that he becomes president of the company and from the time that he became its president he devoted his entire time and attention to the work of the company, and the company had a plant in Bound Brook, New Jersey, at which chemicals were manufactured for war purposes to such an extent that from November 1917, to November 1918, there were sold to approximately forty customers, a hundred and forty-six thousand dollars worth of salicylic acid, and from August 1918, to January 1918, eighty-three thousand one hundred and fifty-one dollars and sixty-two cents worth of paranitrolene, and that during the same period of time there was sold miscellaneous products, four thousand three hundred and twenty-five dollars and ninety-three cents; that during that period of time there were kept in the New York offices in charge of the president of the company, assisted by a stenographer, records, Exhibits D-10, D-11 and D-12 (counsel says he assumes that the witness saw those books), which shows the inventories, technical reports and so forth, that he carried on all the executive business of the com-

pany, what would you say as to the reasonable value of his services per month or per year?

Mr. Bilder: I object on the ground that the witness has not qualified as an expert. Now your Honor will probably remember that there was another expert witness on the stand, Mr. Gile, and before he was asked this question it was shown that he was a manufacturing engineer in charge of plants of this kind, was the man who constructed this plant so that—they laid that kind of a foundation for the purpose of showing he was qualified. There is no evidence here of anything else but that he is a salesman or had charge of selling merchandise. There is no suggestion that he was a manufacturer.

The Court: He says that he saw one concern that grew from nothing to——(interrupted).

Mr. Bilder: That he had sat in council; no proof that he had anything to do with the employment of executive heads, observed the salaries which executive heads who did all that is recited or which would indicate that his prior dealings were such as would enable him to give an opinion in this case which would be helpful to your Honor in deciding the case. He simply saw a concern grow from nothing to many thousands of dollars. That may be entirely true, but it may not enable him to determine what a man who knew nothing about a business——(interrupted).

The Court: Did you know what pay the executive head of that concern——(interrupted).

Witness: Yes, sir; I sat in every executive counsel; I knew everything that was going on for seven years.

The Court: What pay he got.

Witness: Yes, sir; what pay everyone in the plant got.

Mr. Bilder: His experience, he says, in that respect, is only that he sat in the council. We don't know whether it was manufacturing this kind of merchandise.

The Court: Was it manufacturing?

Witness: Along the same lines; coal tar products; we made salicylic acid too.

The Court: Do you want to cross examine on his qualifications? Doesn't your objection really go to the weight, rather than to the competency of the testimony? It may be of some value. If it is of some value, even though very slight, I cannot exclude it. Doesn't it really go to the weight?

Mr. Bilder: Well, it occurred to me, unless he showed more than he did, that the testimony would be incompetent.

The Court: No. The former witness qualified preeminently. That testimony is entitled to the weight of a witness who so qualifies, as he did. This man may qualify in a lesser degree. If he has qualified his testimony will be given weight accordingly, having qualified to some extent he will be able to give me some information.

Mr. Bilder: I think his qualification is such, if there is any weight to be given to it, it is very slight.

The Court: I will let it in unless you cross examine.

Mr. Bilder: I do not think I need go any further.

The Court: As far as he has qualified it doesn't amount to much, but I do not feel that I ought to strike it out. A man who did all that Mr. Lane read.

Q. The question was based upon that—such services. What would you say in your opinion would be the reasonable value of those services per month or per year, just as you desire to fix it? A. Could I ask, please, what the total amount of business done was? I did not fix those figures in my mind.

The Court: About a hundred and fifty thousand dollars.

Mr. Lane: About two hundred and fifty thousand dollars, or two hundred and forty thousand dollars.

Witness: I should say from about twelve to fifteen thousand dollars a year.

Q. Have you any knowledge as to the practice during that period of time, of corporations engaged in business of that kind entering into contracts under the terms of which they agreed to pay selling corporations or selling agencies a certain percentage on sales? A. That practice was quite prevalent at that time and, in fact, still continues.

The Court: This was a war enterprise.

Witness: Yes, sir.

The Court: The present concern was a war enterprise, wasn't it?

Witness: It was very prevalent at that time and it still prevails.

The Court: It was not a practice which only prevailed during the war.

Witness: No. In fact, my present business is just that very thing today, selling to manufacturers on a commission basis.

Q. Have you any knowledge as to the percentages of commissions which were paid during that period of time? A. Usually five percent.

Q. What would you say as to the reasonableness of a commission of five percent to be paid to a selling corporation disposing of the products of the company under the circumstances that I have related, which contract also required the selling corporation to assume the New York office expense? A. That would be fair.

Cross Examination by Mr. Bilder:

Q. Did you know Mr. Burdette at any time during the years when he was president of the Alpha Chemical Works, a corporation of New Jersey? A. I might have met him once or twice, but certainly not oftener than that, if at all.

Q. You knew of him? A. I knew of him.

Q. Were you during any time of the existence of the Alpha Chemical Works, during his business career, connected with any concern which did business with the Alpha Chemical Works? A. No.

Q. Will you give me the names of the concerns which you were connected with during the years 1918, 1919 and 1920? A. Calco Chemical Company, Bound Brook, New Jersey.

Q. Calco, Bound Brook, New Jersey? A. I understand——(interrupted).

Q. I am just asking you about the Calco. Was that located near the Alpha Chemical Works? A. It was located in Bound Brook, not very close.

Q. What were they manufacturing? A. Coal tar products.

Q. Used for what? A. Used for dyes and medicinally, the same as salicylic acid; there are many hundreds of products in the same class.

Q. What is the name of the next? A. Marden, Orth & Hastings Corporation.

Q. Where are they located? A. New York City.

Q. Did they do business with the Alpha Chemical Works? A. They might have. I don't remember. That is so far back.

Q. Isn't it a fact that they sold products to the Alpha Chemical Works? A. They may have. I wouldn't remember that. I don't remember it specifically, because we did business with a great many.

Q. When did you become connected with Marden, Orth & Hastings Company? A. I think it was in 1919.

Q. Early or late? A. Oh, it was the first of the year, I think—it would have been on the first of the year.

Q. But during all of 1918—1919—during all 1918 you were with the Calco Chemical Works? A. Yes, sir.

Q. In what capacity? A. Purchasing agent.

Q. Purchasing of what, raw materials? A. Raw materials.

Q. That is all you did? A. Well, those raw materials included what would have been other people's finished products, and while I had the title merely of purchasing agent, my duties covered a lot of other things, because I was there from the start of the concern and my duties just naturally grew, that being my prime function.

Q. At the time did Mr. Gile have anything to do with the Calco Works at Bound Brook? A. Didn't even know him.

Q. When did you become acquainted with him? A. Within the last five years.

Q. When did Mr. Gile ask you to come here as an expert? A. I don't know—about a year and a half ago, whenever this thing started, I have forgotten.

Q. And do you know how it happened that he asked you to come here as an expert?

The Court: Has this case been going on a year and a half?

Mr. Lane: Seven years almost, in the bankruptcy courts and here too.

The Court: I mean this present litigation.

Mr. Lane: One witness testified in January, 1925.

Q. (Question read.) A. He had known of my previous connections with Calco and Marden, Orth & Hastings, and he knew that Calco was one of the biggest concerns in the country and we were buying and selling similar products.

Q. How did he happen to pick you out as an individual, that is what I want to know. Had you been doing business with him at that time? A. No. I think he came in—tried to do some business with us, but we never did any with him.

Q. Who saw you first about being an expert here, Mr. Gile or Mr. Burdette? A. I don't really know. I think it was Mr. Gile. I am not sure.

Q. You think it was Mr. Gile? A. Yes, sir.

Q. And where did he see you about it? A. In my office.

Q. Where? A. New York City.

Q. Where is your office in New York City? A. Woolworth Building.

Q. And Mr. Burdette's office is in the Woolworth Building too, isn't it? A. Yes, sir.

Q. On the same floor where your office is? A. I don't know. I have never been there.

Q. Never been there? Mr. Gile's office in the Woolworth Building? A. No; 30 Church Street.

Q. And how many times have you been to Court here? A. About four, I believe.

Q. And have you been compensated for coming here every time?

The Court: Why do you ask that question?

Mr. Bilder: I'd like to see what particular interest he has in this case, coming as an expert or as a friend of Mr. Burdette.

The Court: You may ask him that.

Witness: Have I been compensated?

Q. Yes. A. No.

Q. Do you expect to be? A. Didn't make any arrangements for it, no.

Q. I am asking you do you expect to be compensated or are you doing this as a matter of friendship? A. As a matter of friendship.

Q. As a matter of friendship for who? A. Mr. Guile.

Q. Who else? A. That is all. I don't know Mr. Burdette. I haven't met him half a dozen times including the four times in court.

Q. Did Mr. Guile tell you whether he was being compensated? A. No, sir.

Q. Did he tell you he was doing it as a matter of friendship? A. I didn't ask him.

Q. Have you been president of a chemical works doing the matters and things that Mr. Burdette is supposed to have done as stated in the hypothetical question put to you? A. No, but I performed the duties of one.

The Court: You hope to be one?

Witness: I have done the duties of one.

Q. In your experience do you remember any case in which a lawyer who knew nothing about the chemical business at the time of the beginning of the chemical manufacturing business, who had had no previous experience in buying or selling of chemical products—did you ever run into a case in which a lawyer of that kind—a person of that kind, ignorant of the business in hand, received fifteen thousand dollars a year? Search your memory and see if you remember such a case. A. Mr. Bilder ——(interrupted).

Q. The answer to that question is yes or no.

The Court: No, no.

Witness: During that war period eighty percent of the executives of chemical concerns knew absolutely nothing about chemicals; some of them professional men, some of them from other walks of life; some received five and some fifty thousand dollars a year. As a matter of fact, the president of the Calco was an electrical engineer drawing thirty-five thousand dollars a year; the vice-president was a civil engineer drawing thirty thousand; the first vice-president in charge of sales was a man that sold burlap.

Q. Is that concern still in business? A. Yes, sir.

Q. Successful? A. Very.

Q. Making the same kind of things that were made by the Alpha Chemical Works? A. To some extent.

Q. Do you know of any case during the war in which the president who knew nothing of the manufacture of chemicals and attempted to perform the duties as a president of such a concern and general manager of it, which concern was unsuccessful, received fifteen thousand dollars a year? A. I don't know of any specific instance, but there were very many.

Q. Well, I am talking now about your knowledge. Do you know of any such case in which the concern was unsuccessful, failed, in which the president thus elected, received fifteen thousand dollars a year.

The Court: That is the reason they failed. Strike it out.

Mr. Bilder: Your Honor has anticipated the argument underlying my question.

The Court: Because they drew such large salaries.

Mr. Bilder: And knew nothing about the business.

Witness: I do not recall any specific instance right now.

Q. Within your knowledge? You do not recall any specific instance right now, do you? A. No, but there were more failed than lasted, regardless of the salaries that they drew; not ten percent in existence today that were in existence during the war period.

Q. When did the war period stop——(interrupted).

The Court: Because there was no market.

Witness: Yes, sir, because prices—competition is keener.

The Court: The war brought on the market, didn't it?

Witness: Yes, absolutely.

Redirect Examination by Mr. Lane:

Q. What is the firm of Marden, Orth & Hastings? A. They are traders and also had manufacturing plants.

The Court: What is "traders"?

Witness: Buying and selling chemicals.

Q. They are one of the largest concerns in the country, are they not? A. They were. They are not in business today.

Q. They were? A. They were. They were in business in 1837, they started, and had eight offices throughout the country.

The Court: Failed?
Witness: Yes, sir.

Q. Started in 1837? A. 1837, and they failed after the war period.

Q. The organization of Marden, Orth & Hastings during the war furnished executives and operating men to a great many chemical concerns throughout the United States, did they not? A. I don't know whether they furnished—they had men in their employ that went from one company to another and had a few subsidiary concerns making different articles and they chose the men from the New York office.

Q. They had a big organization. A. Oh, yes, very large.

Recross Examination by Mr. Bilder:

Q. What is your present occupation? A. Selling agent.

Q. For who? A. For about ten different concerns on a commission basis.

The Court: You are your own master.
Witness: Yes, sir; I have an office of my own in New York. We represent about twelve different concerns.

Q. The business you conduct is conducted under the name of D. H. Litter & Company. A. Yes, sir.

Q. Is Mr. Guile interested in that company? A. I am the sole owner of the company.

Q. Why did you call the Alpha Chemical Works a war proposition? Do you know what they were making at the end? A. They were making paranitrolene, and paranitro-acetenalid, if I looked over the records correctly, anyway, in the coal tar business, Mr. Bilder.

Q. Wait until I ask you another question. Were they making salicylic acid? A. They had been making salicylic acid.

Q. Which did they make last? A. I do not recall.

Q. Was salicylic acid a war proposition? A. It was, positively. It was an intermediate for dyes which we had been receiving from Germany prior to the war.

The Court: Not for shooting purposes?

Witness: No.

Q. Salicylic acid was being made before the war, wasn't it? A. Yes, sir, but to a very small extent.

Q. Was made during the war——(interrupted). A. In large quantities.

Q. Technical and U. S. P.? A. Technical and U. S. P.

Q. And U. S. P.? A. Both.

The Court: What is the difference?

Witness: Technical is not quite as high a grade as U. S. P. U. S. P. is for medicinal purposes and Technical grade is for dyes.

Q. These para products that you mentioned, they were made before the war, weren't they? A. In a very small way.

The Court: You mean on this side.
Mr. Bilder: Yes.
Witness: Yes; very small way.

Q. And they were being made during the war, were they? A. Yes, sir; in large quantities.

Q. Successfully? A. Not as successfully as they are being made today.

Q. But they were being made in merchantable quantities, weren't they? A. At times there was plenty and at others there wasn't.

Q. Did you sell any? A. Did we sell any of those products?

Q. During the war? A. Salicylic acid, yes, sir.

Q. I am talking about the para products. A. We bought and sold paranitrolene.

Q. In large quantities? A. Yes, sir.

Q. At a profit? A. Yes, sir, tried to make it at Bound Brook.

Q. Also salicylic acid? A. We didn't always make money on it. We tried to make paranitrolene and quit, we couldn't do it successfully.

Q. Who is "we"? A. Calco Chemical Company.

By the Court:

Q. These products you have been speaking of that were made in this country during the war, were prior to the war imported? A. Yes, sir.

Q. From Germany? A. They were imported in the finished product. All these are intermediate steps—intermediate raw material.

Q. The finished product was sent here before the war? A. Yes, sir.

Q. The war started and we had to step in and supply our demand—the American demand. A. Yes, sir.

RALPH W. HORN sworn for defendant.

Direct Examination by Mr. Lane:

Q. You are a lawyer and practicing your profession in the city of New York, for how many years? A. Twenty-eight.

Q. And you were, at one time, a partner of Mr. Burdette? A. I was.

Q. Between what dates? A. January, 1917, to December, 1917.

Q. And during that time do you know of your own knowledge how much of the time Mr. Burdette was devoted to the affairs of the Alpha Chemical Works? A. I do.

Q. Will you tell me how much of it was so devoted? A. He devoted his entire time to the affairs of the Alpha Chemical Works during the year 1917 when I was associated with him.

Q. Did you observe what he did in and about the office that had reference to that work generally? A. I did.

Q. Generally, what was it that you observed? A. Mr. Burdette was in daily—had daily conferences and at this time—at the beginning of the year 1917—in establishing a plant at Bound Brook, purchased the machinery and the establishment of the plant in general, and after the plant got running they—he devoted a great deal of time to the

purchase in the market of raw materials and conferences with salesmen of the various companies who stopped at his office there to sell him raw material; he carried on a very extensive correspondence in connection with the company's affairs; he was in almost daily conferences with Mr. Vom Cleff, and at the beginning of the year with his brother, George, concerning the affairs of the company; he supervised the keeping of the books of account—he had a very elaborate set of book accounts which were audited, as I remember, from time to time, and in fact, he devoted his entire time to the affairs of this company while we were together.

The Court: What year?
Witness: 1917.

Q. Did the firm of Burdette & Horn receive any compensation or any moneys of any kind directly or indirectly from the Alpha Chemical Works? A. No, sir.

Q. If there appears to be any checks drawn to the firm of Burdette & Horn from the Alpha Chemical Works, and do you know what those checks were for? A. They would be moneys advanced by Burdette & Horn for the expenses of the Alpha Chemical Works and repayments.

Cross Examination by Mr. Bilder:

Q. Why was the firm of Burdette & Horn formed if Mr. Burdette was devoting all his time to the Alpha Chemical Works? A. Because we were associated in partnership, two lawyers.

Q. If he devoted all his time to the mercantile—this manufacturing enterprise, he had no time for

the practice of law? A. Mr. Burdette and I had conferences from time to time in regard to legal matters that were coming in the office, but they were solely in my charge. He devoted his time to the Alpha Chemical Works and I devoted my time to the law practice we had.

Q. Well, why was he a member of that firm when he had so little to do with the law practice? A. Because that was the understanding in which Mr. Burdette and I became associated.

Q. Tell me what that understanding was. A. That this Alpha Chemical Works was being organized and we had been—prior to its organization Mr. Burdette and I had been considering establishing a partnership, and it came about the end of the year 1916 so that we agreed that we would render our legal services—whatever legal services the Alpha Chemical Works required without making any charge, and the Alpha Chemical Works had to have an office in the city of New York and we were assured of that office on that basis.

Q. Who was to pay for the rent of the office? A. The Alpha Chemical Works, the lease was taken in the name of the Alpha Chemical Works.

Q. Who was to pay the stenographer? A. The Alpha Chemical Works.

Q. During that entire year of 1917 the Alpha Chemical Works paid for the office and paid for the stenographer and paid for the telephone bills. A. Yes, sir; I think Burdette & Horn paid for their share of the telephone bill.

Q. And do you know what Mr. Burdette got from the Alpha Chemical Works as compensation for that year, 1917? A. I do not recall.

Q. Did you ever know? A. Yes, sir; I think I did.

Q. Wasn't that put into the firm bank account and divided between you and him as part of the profits of the law practice? A. Not one cent.

Q. You are sure of that? A. I know it.

Q. And did you give anything to the Alpha Chemical Works in return for the rent and the stenographer which the Alpha Chemical Works paid? A. I did.

Q. What? A. Why, at the outset the first services I performed for the Alpha Chemical Works were assisting Mr. Burdette in its incorporation, cooperating with him in that; the next piece of law business I did for it was the purchase of the property at Bound Brook, and then right through the year I conferred with Mr. Burdette on the affairs of the Alpha Chemical Works.

Q. On its legal affairs or its business affairs? A. Both. We were in constant conferences and communication.

Q. So that you performed considerable services for the Alpha Chemical Works? A. Oh, yes, without charge.

Q. And you did not participate in the compensation at all that Mr. Burdette got? A. Not one cent.

Q. Did the firm of Burdette & Horn derive an income from the practice of law in 1917? A. Yes, sir.

Q. Make an income tax return for that year to the United States Government? A. I do not recall.

Q. Do you know whether or not you paid—whether any income tax was paid to the Government by you for that year?

The Court: The firm, you mean? When you say "you" do you mean you the firm?

Q. Yes—no; I mean himself, for profit derived from the firm, whether he did individually. A. Yes, sir; I paid an income tax, yes, sir.

Q. From profit derived from the firm? A. Whatever income that I received, yes, sir.

Q. There was some considerable law business transacted? A. There wasn't——(interrupted).

The Court: Considerable what?

Mr. Bilder: Law business.

Q. There was enough to justify the payment of an income tax to the Government for your share of the profits? A. No, there was not.

Q. Then you didn't pay anything to the Government. A. I paid an income tax.

Q. But not upon any profits that were derived from the firm, is that right? A. I would include them in my income return together with my other income.

Q. Do you know whether Mr. Burdette paid any income tax to the Government for 1917? A. I do not.

Q. Can you tell us what the profit of the firm was for that year? A. No, I cannot.

Q. Can you tell us approximately? A. No, sir.

Q. Was there a profit? A. Well, if I venture a guess——(interrupted).

Q. I would like to have your recollection rather than your guess. A. Well, from recollection I would say it didn't exceed two thousand dollars if it was that amount.

Q. And that was divided—you divided that with Mr. Burdette, is that right? A. Yes, sir.

Q. You were also in the same office, were you not, with Mr. Burdette, before you began the practice of law? A. Yes, sir; we were employed in the same law office.

Q. You received the same salary that he did when he left the employ of Reed, Abbot & Morgan? A. I don't know, I am sure.

Q. You say you don't know what he was receiving? A. No; I don't even remember what I received at that time.

Q. You are positive you did not directly or indirectly receive any of the moneys which were paid by the Alpha Chemical Works to Lester C. Burdette for the year 1917? A. Not one penny

Q. And you say that every check that was drawn to Burdette & Horn by the Alpha Chemical Works, a Delaware Corporation, was only to reimburse Burdette & Horn for disbursements made by Burdette & Horn, is that right? A. Yes, sir.

Q. You are sure of that? A. That is the only thing that I can account for it.

Q. And checks that were drawn in favor of Burdette & Horn were deposited in the firm bank account? A. Well, if there were any such checks drawn why I suppose they were.

Q. There was a firm bank account? A. There was.

Q. In the name of Burdette & Horn? A. There was.

Q. Kept in what bank? A. Broadway Trust Company.

Q. When you said that you incorporated the company, did you mean you incorporated the Alpha Chemical Works of New Jersey or the Alpha Chemical Works of Delaware? A. New Jersey, the first company. I think the Alpha Chemical Works of Delaware, as I recall it, was incorporated after I left the firm.

Q. You are sure of that? A. That is my recollection.

Q. Are you sure of your dates as to the duration of your partnership with Burdette? A. Yes, sir.

Q. The beginning date was about when? A. Beginning of the year 1917, as I recall.

Q. And when did you leave—when did you dissolve? A. The latter part of November or the forepart of December of that year.

Q. Of 1917? A. Yes, sir.

Q. Do you know what the firm was after you dissolved? A. No, sir.

Q. Was there a man by the name of Stude a partner? A. He was in the office with Mr. Burdette, whether they had any partnership arrangement I don't know.

Q. You were there at the beginning of the taking of this office? A. Yes, sir; when we moved in at the outset.

Q. The conferences that you referred to related all to the New Jersey company, didn't they, the beginning? A. Yes, sir.

Q. Do you know, as a matter of fact, that in April, some time in April, 1917, the Delaware company was incorporated? A. I don't know when it was incorporated.

Q. You know there came a time when the Jersey company was a failure and the new company was organized and took over the assets of the New Jersey company—do you remember that? A. I remember that there was a Delaware corporation incorporated, but I do not recollect when it was.

Q. But you do remember during all of the year of 1917 while you were there Mr. Burdette devoted all his time and attention to the Alpha Chemical Works business? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Paid no attention to the law business? A. Little or none.

Q. Did you have any other business outside of the practice of law at that time, during that year?

The Court: You mean individually?

Mr. Bilder: Yes.

The Court: What has that got to do with this case?

Mr. Bilder: He says the other man devoted all his time to the company. I want to know what he was doing during that time; perhaps he was away part of the time.

Witness: No, I was there all the time; all the time from January 1917, until I left the office.

Q. What causes you to remember now, in April, 1916, that during the year 1917, you were in the office there all the time—what causes you to remember that so well now?

The Court: He was away. He was out playing golf, is that what you mean?

Mr. Bilder: No. I'd like to know if he had anything else.

The Court: He says he has no other business.

The Witness: I had no other business. I was there all the time until I left the firm and entered the United States Attorney's office.

Q. You had no other interests? A. No, sir.

Q. No other business? A. No, sir.

Q. And all you got out of that was a thousand dollars for 1917, is that right? You paid no attention to anything else. A. No, sir.

Q. Is that right? A. Yes, sir. The first year of the war the law practice was very dull in New York.

Q. And you didn't go in anything else. A. No, sir.

Mr. Lane: I want to offer in evidence the exhibits that have been marked for identification.

The Court: All of them will be considered as marked.

Mr. Lane: I want to offer in evidence the series of notes, also the original notes showing the payment by Mr. Burdette of this fifteen thousand dollar note, and the method in which they were paid.

Mr. Bilder: I will make formal objection to their admission.

The Court: Let them go in.

(Papers marked C-1 of this date.)

Mr. Lane: I also offer the release referred to.

The Court: All the documents referred to by the witness or counsel during the course of the trial will be marked in evidence.

TESTIMONY CLOSED.

Exhibit C-1.

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

In Bankruptcy.

Examination Under Section 21A.

Before: Hon. ELMER W. DEMAREST,

Referee in Bankruptcy, as Special Master.

March 27th, 1918.

In the Matter

of

ALPHA CHEMICAL WORKS, INC.,
Alleged Bankrupt.

Appearances:

BILDER & BILDER, Esqs., by David Bilder, Esq., Attorneys for petitioning creditors.

ALFRED H. HOLBROOK, Esq., Attorney for Mr. Burdett.

LESTER C. BURDETT, being duly sworn on his oath, according to law, testifies as follows:

Examination by Mr. Bilder:

Q. Where do you live, Mr. Burdett? A. Palisade, New Jersey.

Q. What address please? A. Bluff Road.

Q. Any number? A. No.

Q. What is your occupation? A. Attorney.

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Q. Are you an officer of the Alpha Chemical Works? A. Yes, sir.

Q. Your office is where? A. My law firm is at 233 Broadway, New York.

Q. You are a member of the New York bar? A. Yes.

Q. Are you a member of the New Jersey bar? A. No sir.

Q. Are you admitted to the Federal Courts of New Jersey? A. No.

Q. What officer are you of the Alpha Chemical Works? A. President.

Q. The Alpha Chemical Works, Inc., the alleged bankrupt in this proceeding is a Delaware corporation? A. Yes sir.

Q. Have you been its president since its incorporation? A. Yes sir.

Q. There has been no other president? A. No sir.

Q. That corporation was organized about when? A. In April, 1917. The latter part of March or April.

Q. Will you give me the circumstances which lead up to the incorporation of this company? A. There was in existence a company called the Alpha Chemical Works of New Jersey, which was organized in December, 1916. That corporation continued business at Bound Brook, until March, 1917. At that time the assets of the Alpha Chemical Works of New Jersey was sold to Mr. Paul T. Brady and Mr. James T. Anyon—that was the latter part of March and during the first week in April, I think, either the 5th or 7th, these assets were conveyed by Mr. Brady and Mr. Anyon to

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the Alpha Chemical Works, organized under the laws of Delaware.

Q. The sale of the assets by the Alpha Chemical Works of New Jersey to Messrs. Brady and Anyon, was that a judicial sale? A. No sir.

Q. By contract? A. By contract.

Q. How did the Alpha Chemical Works of New Jersey acquire these assets? A. At the bankruptcy sale of the United States Standard Chemical Works, which was a New York corporation. That we bought at public auction I should say, during the first week of December, 1916.

Q. The United States Standard Chemical Works bankruptcy was in the New York Federal Court or the New Jersey Federal Court? A. New York.

Q. Who was the Trustee? A. I would have to look at the papers, I don't remember the name.

Q. Was that a sale by a Receiver in Bankruptcy or Trustee in Bankruptcy? A. I think by the Trustee. I am pretty certain by the Trustee.

Q. Were you in any way connected with the United States Standard Chemical Works? A. No sir.

Q. Were you interested in any way in that corporation. A. No sir.

Q. Did you know the officers of the United States Standard Chemical Works? A. I know the president only. His name was F. E. Broecker.

Q. What is his address? A. I don't know.

Q. How did you meet him. A. He was brought in when I was employed by Reed, Abbott and Morgan, in 1916, by some one, I can't think of his name, who lived in Suffern. During 1916, Reed, Abbott and Morgan had a client, the Sulfos Oil Company which owned some property in Texas, on

which there was a deposit from which we thought we could make aichtyol. They were looking for a chemist who could make aichtyol from this deposit. After trying several days, a man, I can't think of his name, brought in a man named Broecker. Broecker represented that he could make aichtyol, as he had made it in Germany. We gave him a sample of the rock and he made a product which he called ichthyol.

Q. You say you were acting on behalf of the Sulfos Oil Company? A. Yes. He then brought to our attention his plant, or the plant of the United States Standard Chemical Works at Bound Brook, which were manufacturing phenol. He told his story about his failure to manufacture and the possible profits and the ideas he had. I took it up with Mr. Vom Cleff, who is a friend of mine and a client and my brother, George F. Burdett. We had several conferences with Mr. Broecker and agreed to buy the plant at the bankruptcy sale if we could get it at a fair price. Mr. Vom Cleff and my brother attended the sale, which was at the office of the Referee, at 2 Rector Street—I forget his name, and at that sale purchased all the assets of the United States Standard Chemical Works for about $7000 in cash. Of course, I can give you the exact facts if you give me a chance to refer to the papers.

Q. We will take it subject to changes. A. The title to the property was taken in the name of Mr. Vom Cleff and Mr. Burdett, my brother.

Q. What did the property consist of? A. It consisted of the plant at Bound Brook.

Q. The real estate? A. No, I think not. The story of that is this: Broecker had purchased the

real estate upon which the plant stood from the Pierce Estate at Bound Brook, for, I think $12,000 under contract. He paid $1000. At the time we purchased there was a default on the second payment of $1000, and any rights which he might have in that contract were acquired. After buying the assets, which consisted of plant, machinery and raw material, we bought the property directly from the Pierce Estate subject to a mortgage of $9000. Title to the assets, consisting of machinery, finished product, raw material, and so forth, came through the Trustee in Bankruptcy.

Q. So the purchase included all the right, title and interest of the Trustee in this contract for the sale of the real estate? A. I am not certain about that, whether we did or not we dealt with the Pierce's and purchased the property from them.

Q. You paid $7000 in cash to the Trustee in Bankruptcy for the assets which you have described and you purchased from Pierce this same real estate, and you paid Pierce how much? A. I think a little over $1000. I would have to refer to the deed or contract to make that exact.

Q. You entered into a formal written contract with the Pierce Estate? A. Yes.

Q. The Pierce Estate is the estate of a decedent? A. Yes.

Q. Do you know the name of the decedent? A. No.

Q. Did you deal with the executors? A. We dealt with one of the executors—V. Mott Pierce.

Q. His address is? He lives in Plainfield and has an office in Bound Brook.

Q. Is he a lawyer? A. I think not.

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Q. Was he represented by counsel? A. He was represented by Asa Randolph.

Q. That contract is in writing and in your possession? A. Is in writing and is in the possession of Mr. Albert C. Wall, dated December 16th, 1915.

Q. You have a list of what you turned over to Mr. Wall? A. Yes.

Q. You find that included in that list? A. Yes, my memorandum describes it as an agreement between V. Mott Pierce, Hugh C. Pierce and Ralph W. Pierce, as executors, and the Alpha Chemical Works, dated December 15th, 1916—that is the New Jersey company.

Q. Then the contract was between the New Jersey company and the executors of Pierce, deceased? A. Right.

Q. And the purchase price was how much? A. My best recollection is about $11,000 and some odd dollars.

Q. The true price whatever it was, is mentioned in the agreement? A. Yes.

Q. There was no collateral agreement? A. No, the contract contains the price.

Q. What was paid on account of that contract in cash, I think you mentioned $1000? A. It must have been enough to reduce it to $9000, which is the present mortgage-the difference between the mortgage and contract price.

Q. It was paid in cash from time to time? A. No, in one sum.

Q. In that contract the price was graded to give credit for the money paid by the United States Standard Chemical Works? A. Yes, that was considered at the time. That was discussed with Mr.

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Pierce and he took that price less what the United States Standard Chemical Works had paid them.

Q. The price was approximately $12,000? A. Yes.

Q. And upon that was credited the $1000 paid by the United States Standard Chemical Works? A. Yes.

Q. Was there any accumulation of interest, so far as you know? A. I think that whatever interest was accumulated was in that price. The price was an odd figure and I think the interest made that up. It was $11,000 and some odd dollars and some cents.

Q. Did you procure this corporation to be organized—this Alpha Chemical Works of New Jersey? A. I organized it myself.

Q. There were incorporators of the company? A. Yes.

Q. Do you know who the incorporators of the company were? A. I can only guess. I think Probably Mr. Vom Cleff, my brother and myself, but I don't know that.

Q. The authorized capital was how much—of that company. A. I don't know.

Q. Did the company issue stock afterwards? A. Yes, the company issued stock. The stock of the company was divided into preferred and common. I can't tell you for the moment how.

Q. Preferred stock was afterwards issued? A. Yes.

Q. What did this company give as consideration for the transfer to it of these assets which were purchased from the Trustee in Bankruptcy of the United States Standard Chemical Works? A. Would it not save time if I got those papers?

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Q. Have you get them here? A. No.

Q. Where are those papers? A. In my office.

Q. These assets were transferred to the New Jersey corporation for a consideration, of course? A. Yes.

Q. And the consideration was what—money or stock? A. As I remember, my brother, Mr. Vom Cleff and their associates——

Q. Who? A. My father and Mr. Vom Cleff's mother had created a fund of $15,000—no, $12,000. They bought this property in their own name and spent other money looking towards the incorporation of the company. At the time the company was incorporated they delivered the assets which they acquired, which consisted of plant and real estate together with the balance of the fund, which was about $5000 and in consideration for that, we issued I think $12,000 of preferred stock.

Q. And that was divided among? A. Among those who put the money into the syndicate.

Q. Was Mr. Broecker among those? A. No.

Q. Mr. Broecker was not interested in the purchase at the bankruptcy sale? A. No, Mr. Broecker did not become interested in the alleged bankrupt—in fact, Mr. Broecker was never interested in the Delaware company. I can tell you how he did get interested in the New Jersey company.

Q. Who purchased these assets at the Trustee's sale? A. Mr. Vom Cleff and my brother, George F. Burdett.

Q. Wasn't Mr. Broecker one of the purchasers? A. No.

Q. Did he contribute any money towards the $12,000? A. None whatever.

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Q. Either directly or indirectly? A. No.

Q. There are stock books of the company in existence? A. Oh, yes.

Q. Of the Alpha Chemical Works of New Jersey? A. Yes.

Q. And the minute books? A. Yes.

Q. What business did it engage in after the transfer of these assets and cash? A. It engaged in the manufacture of phenol at Bound Brook.

Q. Was there a search made of the title to this property? A. Yes.

Q. Have you an abstract of the title? A. I don't know—I think so. I don't believe there was an extensive search—yes, there was.

Q. Who made the search? A. The search was made by Ralph W. Horn, who at that time was my law partner. I think the abstract was drawn by Mr. Randolph, but Mr. Horn checked it up.

Q. What is Mr. Horn's address? A. Some number Morningside Avenue.

Q. Is he practicing law now? A. So far as I know.

Q. What was his last address? A. The last I knew he was with the United States District Attorney in New York.

Q. This New Jersey company continued in business for how long a period? A. Until the end of March, 1917.

Q. Who were its officers? A. I was president, my brother George F. Burdett was vice-president and Robert Vom Cleff secretary and treasurer.

Q. Were there any further contributions to the capital? A. Yes.

Q. By whom? A. It just occurs to me there was one other party interested in the first $12,000.

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Henry H. Abbott and P. DeMoos. I can give you the exact contribution if you like.

Q. Very good. A. I think this is right. Robert Vom Cleff, $3000; C. W. Vom Cleff, $2000, George F. Burdett, $2000; J. F. Burdett, $1000; Charles DeMoos $2000, and Henry H. Abbott, $2000.

Q. What is Demoos's business? A. He is employed by one of the moving picture concerns at Fort Lee—in the labaratory and such where they take pictures.

Q. Where does he live? A. At Fort Lee.

Q. What is his address? A. That would reach him.

Q. Do you know the name of the moving picture concern? A. He lives at Lemoine Avenue.

Q. Is he related to you? A. No.

Q. Is he related to Mr. Paul T. Brady? A. No, I can tell you who he is related to. Here is how he got into this. He married my brother's wife's niece.

Q. The $12,000 that you have mentioned was the initial $12,000? A. Yes—that was paid into what you can call the syndicate, and the difference between that $12,000 and the expenses incurred by the syndicate, together with the assets purchased were delivered to the corporation.

Q. Perhaps this may answer what I want to arrive at—were there any additional contributions to the capital? A. Subsequent to the incorporation —yes.

Q. How much did they aggregate? A. $2500.

Q. Who made these contributions? A. That contribution was arrived at in this way. It was a 25% assessment upon the stockholders, all of whom paid except Mr. Abbott.

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Q. And what did these gentlemen receive for the $12,000 which was originally contributed and the $2500 subsequently contributed—did they get stock? A. Yes—they got preferred and common stock.

Q. Aggregating approximately how much in the whole? A. Aggregating $14,500 preferred and $14,500 common.

Q. And divided in proportion to which they contributed? A. The same proportion—yes.

Q. What was the par value of the common stock? A. $100.

Q. Your best recollection is, subject to correction that $14,500 of common stock and $14,500 of preferred stock was given for these contributions aggregating in the whole $14,500? A. Yes.

Q. For the contribution made by them to the capital, aggregating in the whole $14,500, there was issued by the New Jersey company $14,500 of preferred and the same of common stock? A. No.

Q. What is the fact? A. Preferred stock was issued for the plant.

Q. The minutes will show, I suppose? A. Yes.

Q. Did that include $5000 of cash—in other words was that for the plant without the additional $5000? A. My rememberence is that they conveyed the plant, real estate and its value and paid into the treasury $5200 in cash for the common and preferred stock of the company.

Q. You knew who the first Directors of this New Jersey corporation were? A. Mr. Vom Cleff, George F. Burdett and myself. I don't know, Possibly F. E. Broecker was a Director.

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Q. He became interested in this New Jersey corporation? A. Yes.

Q. What was the extent of his interest? A. I think he received 60 shares of common stock.

Q. What, if anything, did he give for the sixty shares of common stock. A. That was part of the stock issued for the plant given to him.

Q. Was that in addition to the $14,500 of common stock or part of it? A. In addition.

Q. Can you tell me the aggregate of preferred stock and common stock, which was issued for the assets, purchased from the Trustee in Bankruptcy, and $5000 in cash turned over? A. No, I don't believe I can.

Q. Approximately? A. I don't believe I can give even my rememberance——

Q. The life of this corporation, its business life, was from December, 1916 to March, 1917? A. Right.

Q. When it ceased doing business, what was its total issued outstanding stock? A. I can't tell you. I got the two companies confused.

Q. It actually did business during the period that I mentioned—this New Jersey corporation—that is, it manufactured? A. Yes, manufactured phenol.

Q. Manufactured phenol and sold it? A. Yes.

Q. And had books of account? A. Yes.

Q. Those books of account are in existence? A. Yes.

Q. Are they in your possession in New York? A. Yes.

Q. That company had a bookkeeper? A. No.

Q. Who kept the books? A. My stenographer.

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Q. Your stenographer? A. Yes.

Q. In your office? A. The books were opened by an accountant and we kept them the best we could.

Q. By we you mean who? A. She and myself.

Q. What is her name? A. Van Eberhardt.

Q. Do you know her first name? A. She always signed it L. I don't believe I do know her first name.

Q. She is in your employ now? A. No.

Q. Do you know her address now? A. No.

Q. Do you know in whose employ she is now? A. No, I should say she left about September, 1917. The last I heard of her, she was employed by the Gotham Bank, at 59th Street and Broadway. I believe she is no longer there. I don't know where she is.

Q. When did you last see her? A. In September, 1917.

Q. You don't know her present whereabouts—where she lives or where she is employed? A. No.

Q. Will you give me the name of the firm that opened the books of account? A. A man named A. H. Weisker.

Q. What was his occupation at that time? A. Accountant.

Q. Was he in your exclusive employ at that time? A. No.

Q. Did he from time to time inspect these books of account and make entries on them? A. I think for the first month or six weeks he did—after that I don't think so.

Q. How many books were there? A. The only books were kept was an accounts payable book and a cash book.

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Q. Did the corporation have a bank account—I am talking about the New Jersey corporation? A. Yes, had a bank account in the Chatham & Phenix and the Cosmopolitan Bank, in the Bronx.

Q. The officers of that corporation were who? A. Myself president, by brother vice-president and Mr. Vom Cleff secretary and treasurer. I think Broecker was second vice-president.

Q. These bank accounts that were kept in these two banks—were commercial bank accounts, the funds of which were subject to withdrawal by check? A. Yes.

Q. These checks were signed by whom? A. Me as president.

Q. Any one else? A. No—but the checks were subject to the signature of the president or treasurer. I believe I signed all of them.

Q. But the signature card had both names? A. Both names.

Q. You have the stub check books of these two accounts? A. No, we didn't keep a stub. We kept the cash book—instead of keeping the stubs we kept a cash book.

Q. You entered what is usually entered on a stub in the cash book? A. Yes.

Q. You have these checks? A. Yes.

Q. They have all been preserved? A. Yes.

Q. Whatever moneys were taken in by this corporation in its business were deposited in one or the other or both of these bank accounts? A. Yes sir.

Q. And whatever disbursements were made in connection with the business of this corporation,

were made by checks on these bank accounts? A. Yes sir.

Q. And whatever disbursements were made in connection wit hthe business of this corporation, were made by checks on these bank accounts? A. Yes, except petty cash. Occasionally there would be $10 or $15 for petty cash.

Q. Did the company keep any other books than those you had described—you mentioned cash books and bills payable book—did you keep a ledger? A. No.

Q. This bills payable book meant the bills owing by the company? A. Yes, all bills received by the corporation were immediately entered in the bills payable book. When they were paid they were entered on the cash book, giving the number of the invoice, the number of the check and an entry was made in the bills payable book that they had been paid.

Q. Did you have any book which was devoted to the sales made by the corporation? A. I think that showed only on the debit side of the cash book—cash received was put on the debit side.

Q. All the cash received was entered on the debit side, showing the source of the receipts? A. Yes.

Q. Were there sales made for cash or credit? A. Cash—There were times we waited four or five days or a week for the money.

Q. By cash you mean C. O. D.? A. Bill of lading. Sight draft attached.

Q. Have you kept a record of the production of the plant in any way? A. That was kept by reports which I received from the factory.

Exhibit C-1

Q. Were they daily reports? A. They were called daily reports, but I don't receive them daily.

Q. Did you keep them? A. I think they are in existence.

Q. You have them whole? A. Yes.

Q. Was an inventory ever taken of the assets of this corporation? A. No total inventory was ever taken that I know of.

Q. Was there ever a balance sheet prepared in the affairs of the New Jersey corporation? A. A balance sheet was prepared by Barrow, Wade and Guthrie—Mr. Anyon is the head of that concern. I think when the transfer was made, they closed the books and made a trial balance, but I am not sure about this.

Q. Is that trial balance entered in the books or on separate sheets? A. Both.

Q. You received a formal report from that firm? A. Yes.

Q. That is a firm of accountants? A. Yes.

Q. Having an office where? A. 25 Broad Street.

Q. New York City? A. Yes.

Q. That is the only balance sheet that you know of that was ever prepared, relating to the affairs of the New Jersey corporation? A. No, I think we made a monthly trial balance, but I am not certain, but that was a statement of assets and liabilities at that time.

Q. What was the date you fixed for the last balance sheet? A. Just prior to the transfer of the assets.

Q. Did the New Jersey corporation ever pay any dividends? A. No sir.

Exhibit C-1

Q. Did you ever declare any dividends? A. No sir.

Q. Did the balance sheet show that the business of the company had been conducted at a profit? A. The balance sheet or trial balance—the balance sheet was in April, 1917?

Q. Just before the assets were transferred to Messrs. Brady and Anyon? A. Of course, the balance sheet would not show it. I don't think we prepared a profit and loss sheet. If we did, I am certain it didn't show a profit. In other words, there was no profit realized during the existence of the New Jersey company.

Q. Did you ascertain whether a loss had been sustained? A. Yes.

Q. What was the amount of the loss approximately? A. I haven't any idea at all.

Q. Was it a substantial sum? A. I have no idea at all.

Q. Could you get it? A. Yes.

Q. How would you get it? A. I think that would show, on Barrow, Wade and Guthrie's report.

Q. You have that report have you? A. Yes.

Q. Will you tell me whether any one else became interested in the New Jersey corporation before the transfer of its assets to Messrs. Brady and Anyon? A. No.

Q. Did the company acquire any other assets than those which it had purchased originally from the Trustee in Bankruptcy of the United States Standard Chemical Works? A. Yes.

Q. What did it acquire? A. Machinery from time to time, raw material——

Exhibit C-1

Q. That was purchased upon credit or for cash? A. Some for cash and some on credit—mostly for cash.

Q. There was no additional contributions to the capital? A. That is all the capital—this initial capital.

Q. Which was this $14,500 you mentioned? A. The company borrowed during these few months $15,000.

Q. From whom? A. $5000 from the Cosmopolitan Bank, $5000 from the Irving National Bank and $5000 from Mrs. Vom Cleff.

Q. Did these two banks and this lady receive any evidence of that indebtedness? A. Notes.

Q. Whose notes? A. The company's notes.

Q. Endorsed by any one? A. The note of the Cosmopolitan Bank was endorsed by Mr. Vom Cleff and myself. Mrs. Vom Cleff's note was endorsed by Mr. Vom Cleff, my brother, my father and myself.

Q. What is his name? A. John Fletcher Burdett and myself.

Q. Where does your father live? A. Fort Lee, New Jersey.

Q. What street? A. Lemoine Avenue.

Q. And the Irving National Bank? A. The Irving National Bank note was endorsed by Mr. Brady and myself.

Q. Did any of these officers receive any stock for their endorsements? A. No.

Q. Did the holders of any of these notes at any time receive any security from the endorsers or from the company? A. No.

Exhibit C-1

Q. When did Mr. Brady first become an endorser upon the paper of this company? A. I can't guess within a month of that.

Q. Was it soon after the acquisition by the New Jersey company of its assets? A. It was after we spent all our money and the $10,000 we borrowed. It must have been a month or six weeks prior to April 17th.

Q. Did the New Jersey company make a statement of its financial condition to the Cosmopolitan Bank? A. I don't believe it did.

Q. Do you know whether the Cosmopolitan Bank had any knowledge as to the financial condition of the company? A. No, the loan was made purely upon Mr. Vom Cleff's and my endorsements. I know Mr. Williams president of the bank for some time. We assigned to the Cosmopolitan Bank, a contract which we had for the sale of phenol which we were to manufacture. That loan was made just prior to Christmas, 1916, and it was before we had delivered any goods.

Q. Who was that contract with? A. Julius Wolf.

Q. Of where? A. He was then at 5 Nassau Street. He is now with the Waugh Chemical Company of 2 Rector Street. He is treasurer of the Waugh Chemical Company.

Q. You say Mr. Vom Cleff was a client of the law firm where you were employed? A. His company was.

Q. What was the name of the company? A. Vom Cleff and Company.

Q. What business? A. Importers of hardware.

Exhibit C-1

Q. At where? A. 105 Duane Street.

Q. Did the New Jersey Company at any time give the Cosmopolitan Bank a statement of its financial condition? A. I am pretty certain they didn't. I am not sure.

Q. Did the New Jersey Company give to the Irving National Bank a statement of its financial condition at any time? A. No.

Q. Did that company ever give a statement of its financial condition to any mercantile agency? A. I don't remember.

Q. Is it probable that a statement was given to Bradstreet or Dun? A. It is not probable, for the reason that we were buying merchandise and everything for cash. On several occasions Bradstreet and Dun asked for a statement, and my policy was at that time not to give a statement, but I may have given one that I don't remember.

Q. Did the New Jersey Company—by the New Jersey company, I mean the Alpha Chemical Works, the New Jersey corporation, give to any of the persons or corporations or parties from whom it was purchasing goods on credit, a financial statement? A. I can't answer that, but I think not.

Q. Were you dealing with the Edison Company at that time? A. No sir.

Q. From whom did you purchase the supplies which entered into the manufacture of phenol? Many people? A. By supplies, I take it you mean raw material?

Q. Were these supplies purchased on credit? A. I made a contract for the sale of phenol to Wolf.

Exhibit C-1

I made a contract with him to purchase from him, the three principal elements which go to make up phenol—benzol, caustic soda and sulphuric acid. These contracts were all cash against bill of lading.

Q. Both ways? A. Both ways.

Q. When you bought and when you sold? A. Right.

Q. Then I take it that your only customer for the sale of merchandise of your manufactured product, during the period of the existence of the Alpha Chemical Works New Jersey corporation, was Julius Wolf—is that right? A. Yes sir.

Q. He took your entire output? A. I am pretty sure of that.

Q. But substantially all your output? A. I do remember we sold 100 or 200 pounds to some Wisconsin University. That is the only one I recall we sold outside of Wolf.

Q. You had more than one contract with Mr. Wolf? A. Just one—one for selling and three for buying.

Q. It was under these contracts that you worked the factory from the time they were originally made to the time the New Jersey company ceased doing business? A. Right.

Q. This contract was with Julius Wolf or the Waugh Chemical Company? A. That was before the organization of the Waugh Chemical Company. I bought the benzol from Mr. Wolf—he had the agency for the Tennessee Copper company. It must have been after that contract was executed by the company. Sulphuric acid was bought from the Central Chemical Company, and I think exe-

cuted before. The transaction was through Wolf. Caustic soda was from Mr. Wolf or Waugh, his present partner.

Q. Broecker is a chemsit? A. Yes, he claimed to be.

Q. Was he in charge of the works? A. Yes.

Q. You looked to him to turn out the output? A. Yes.

Q. He was the practical man? A. Yes.

Q. You had a number of employees? A. Yes.

Q. You have a record of the payrolls from week to week? A. Yes.

Q. He remained in the employ of the company until the formation of the Delaware corporation? A. Until possibly a week or ten days—before the formation of the Delaware corporation.

Q. What is his present address? A. I haven't any idea.

Q. What is his last known address? A. Bound Brook—he lived in a hotel at Bound Brook.

Q. What is his full name? A. Franz E. Broecker.

Q. Is he a married man with a family? A. Married, but I think no family at that time.

Q. Living with his wife at Bound Brook? A. Yes.

Q. At what hotel? A. The Annex, I think the name is.

Q. When did you see him last? A. I think about the middle of March.

Q. What year? A. 1917.

Q. Was he under contract—did he have a contract with the company? A. No.

Q. What was his compensation? A. I think $35. and then $50.

Exhibit C-1

Q. Was he discharged or did he resign? A. He resigned.

Q. Was his resignation asked for? A. No.

Q. What led up to his resigning? A. When we got into this business with Broecker, he represented that if we would buy the plant and put in $5000 of capital, he could make a ton of phenol with the present plant, I think at a cost of 35c a pound. We found that he could not make over three or four thousand pounds a week. I think four thousand was the highest week's production. So far as we could determine the cost was far in excess of 35c. I asked Broecker or told Broecker that I intended to get some expert chemist to make an examination of the plant and to make recommendations with a view of increasing our output and reducing our cost. He said if this was done, he would not work for us. The next day he came into the office in New York. I spent practically the whole day talking along these lines. I insisted that we must have some one to check up the work with a view of making money instead or losing money. He walked out of the office and said, "I am through." (B. 1 pp. 29, 30.)

Q. Did you receive any salary at the time you were president of the New Jersey corporation? A. Yes.

Q. What salary did you receive? A. $300 a month.

Q. Did the New Jersey corporation have a New York office? A. Yes.

Q. What was the expenses of the New York office? A. Approximately $300 a month.

Q. In addition? A. Yes.

Exhibit C-1

Q. Where was this New York office? A. In the Woolworth Building, 233 Broadway.

Q. They had an office in that building? A. Two rooms.

Q. Two rooms in that building? A. Yes.

Q. When you say $300 per month, you mean that was the rent of this office? A. That was expenses—office rent, stenographer, telephone and incidentals.

Q. You say that rent, stenographer and telephone incidentals were paid for in a lump sum, $300 a month? A. The Alpha Chemical Works of New Jersey paid all the New York office expenses. What they were during that period I can only guess. Later they were $300 a month.

Q. Did the Alpha Chemical Works of New Jersey have a lease for the office? A. Yes.

Q. In its own name? A. Yes.

Q. From whom? A. Broadway Park Place Company, dated December 6th, 1916.

Q. Who is the Broadway Park Place Company? A. That is the owner of the building.

Q. The rate of rent reserved in that lease was how much? A. $1000 a year.

Q. What was the period of the lease? A. It ran to April 30th, 1922.

Q. Rent payable how? A. $83 and something.

Q. $83 and one-third a month? A. Yes.

Q. That covered these two rooms? A. Yes.

Q. Was there any other business conducted in these two rooms? A. Yes.

Q. What other business? A. The law firm of Burdett and Horn.

Q. What was the number of these two rooms? A. 1508 and 1510.

Exhibit C-1

Q. You say there were two rooms—were these two rooms subdivided in any way? A. One room subdivided into three. It was what you would call an ideal suite—an outside office and two private rooms.

Q. It was the space 1508 and 1510, subdivided into three rooms? A. Yes.

Q. The inside offices were occupied by whom? A. One by myself and one by Mr. Horn—my law partner.

Q. The outside office was occupied by whom? A. The stenographer.

Q. Whose stenographer? A. The Alpha Chemical Works.

Q. Is that the lady whose name you mentioned? A. Yes.

Q. Did the law firm have a stenographer? A. No.

Q. Who did the stenography for the law firm? A. She did.

Q. Did the law firm contribute anything to the rent during the period which the New Jersey corporation was in business? A. No.

Q. Was there a telephone there? A. Yes.

Q. In whose name? A. The Alpha Chemical Works. Of course, we had our names listed.

Q. Who paid for that telephone? A. The Alpha Chemical Works.

Q. Did the law firm contribute anything to the telephone bill? A. I don't know.

Q. What was the salary of the stenographer? A. $20. a week, I think.

Q. During the period of the duration of this business at Bound Brook of the Alpha Chemical Works of New Jersey, who paid the landlord the

rent—whose checks paid the landlord the rent? A. The Alpha Chemical Works of New Jersey.

Q. Were these rooms the office of any other concern during the period of the business of the New Jersey company? A. No.

Q. What names were there on the door? A. On the door was the Alpha Chemical Works and on the other door was the name of Burdett and Horn and his name and my name.

Q. That has continued in the same way up to the present time? A. No.

Q. Now, talking about the period of business of the New Jersey corporation, at the same time during the life of the New Jersey corporation, I understand you to say that the New Jersey corporation paid for it, the sum of $300 per month? A. That is not so.

Q. The New Jersey corporation just simply paid all expenses—rent, stenographer, telephone? A. Yes.

Q. What else? A. Just those things.

Q. The law firm of Burdett and Horn did not contribute anything towards the expenses of the office? A. The only expenses that remained were the expenses incurred by the law firm, such as stationery, files, stamps—I don't remember—telegrams and things of that sort.

Q. And that law firm continued in existence until the formation of the Delaware corporation? A. Yes.

Q. Did any one else receive any salary besides you and Mr. Broecker? A. No one, except the laboring men. My brother used to be there all the time and never received a salary.

Q. Received no compensation? A. No compensation whatever.

Q. Did the secretary and treasurer receive any compensation? A. None whatever.

Q. Was there an income tax return made by the New Jersey corporation to the Treasury Department? A. Yes.

Q. More than one? A. I suppose we must have filed it in 1916 and 1917. We had been doing business part of 1916 and 1917.

Q. Have you a copy of that report? A. I think I have.

Q. What led up to the transfer of the assets of the New Jersey corporation to the Delaware corporation—give us in your way the history and formation of the Delaware corporation? A. After Broecker had left us and had shown that he couldn't make this product at a profit and quantity sufficient to enable us to make a profit and having spent $15,000, we were without further working capital.

Q. The $15,000 you have mentioned consists of the $5000 originally advanced and the $10,000 loan? A. $15,000, no, consisted of the three $5000 we borrowed. We were without a chemist or superintendent as you might call him and without any money. I then went to Mr. Brady for the first time since he endorsed that note.

Q. Is Mr. Brady related to you? A. He is my father-in-law. I told him the situation. He said "Well, if anything can be made out of it, let's do it."

Q. What is his full name? A. Paul T. Brady.

Q. What is his business? A. He is with the Westinghouse Manufacturing and Electric Works.

Q. Located in New York? A. 165 Broadway.

New Jersey State Library

Exhibit C-1

Q. Is he an officer of the company? A. Not to my knowledge.

Q. Do you know what his position with the company is? A. No, I can't define his position.

Q. Did you ever hear that he was vice-president of the company? A. I have seen it in the newspaper.

Q. You don't pretend to know that he is? A. I know that he is not.

Q. What does he do there, do you know? A. I don't know.

Q. Is he in the financial department, engineering or manufacturing department? A. He is in the sales department. I then got hold of a man named Franklin P. Sommers, who was a chemist. He claimed that he could make phenol. We went over the situation generally. He said if he had $5000 he would show that he could make phenol at our plant at a cost of about 35c and a reasonable good production. I then took it up with Mr. Brady and Mr. Anyon. At that time our current obligations were $16,100——

Q. Made up how? A. Three $5000, and $1100 note to Wilbutt Company. They agreed, Mr. Anyon and Mr. Brady did to put in $2500 of money in the Delaware company. They agreed to put in $2500 each. Mr. Brady agreed to take up and pay the note he endorsed of the Irving National Bank and Mrs. Vom Cleff agreed to take preferred stock of the new company in payment of the $5000 note which she held. A stockholders' meeting of the New Jersey corporation was then held upon notice to stockholders and the assets transferred to Mr. Brady and Mr. Anyon and by them transferred to the Delaware corporation, in which transfer they paid $2500 each in cash. Mrs. Vom Cleff sur-

rendered her note and took stock. Mr. Brady and Mr. Anyon took $5000 of preferred and $5000 of common stock in the Delaware company.

Q. You have a list of the papers you turned over to Mr. Wall? A. Yes.

Q. Did you carry any fire insurance upon the property which was transferred to the Delaware corporation? A. Yes.

Q. Do you remember how much fire insurance was carried upon the building? A. No, I can't tell you. I think about $7500.

Q. How much did you carry upon the machinery, stock and material? A. I can't tell you that.

Q. Approximately? A. Approximately $10,000.

Q. You have those policies in your possession? A. I don't know that I have. Yes, I think they are.

Q. Was that insurance written in Bound Brook or New York? A. It was written by the London, Liverpool and Globe and the Niagara, I think.

Q. How did you arrive at the sum of $7500 as the sum for which you should insure the building? A. I think that was the request made by Mr. Pierce, the mortgagee.

Q. Did you form any opinion as to the value of the building? A. No.

Q. Neither the New Jersey corporation nor the Delaware corporation constructed the building? A. What building? There are three or four buildings. The Alpha Chemical Works, the New Jersey company, finished the construction of one building.

Q. What kind of a building was that? A. Brick building.

Q. What did that cost? A. I don't know.

Q. Is there a record of the cost of that in your books? A. There must be.

Exhibit C-1

Q. That brick building is devoted to what use? A. At present?

Q. I mean when the company was last in business? A. Devoted to the manufacture of para-nitranaline.

Q. This New Jersey company found already on the premises all the other buildings there now? A. No.

Q. What buildings were there? A. The plant today consists of a building which we will call concrete blocks—that was the main building, a brick building which was partly finished—that the Alpha Chemical Company of New Jersey finished. The Delaware company has since built a building, which we call the dryer building, and we had an addition built on the brick building.

Q. Can you tell us approximately what the cost of these two buildings were? A. No.

Q. I show you that book and ask you if that is the minute book of the Alpha Chemical Works, Inc., of Delaware? A. Yes.

Offered in evidence and marked Exhibit P-1, March 27th, 1919.

Q. And is this the stock certificate book of the same corporation? A. Yes, that is the transfer stock certificate book.

Offered in evidence and marked Exhibit P-2, March 27th, 1919.

Q. What book is this? A. Stock ledger, I think it is.

Offered in evidence and marked Exhibit P-3, March 27th, 1919.

Exhibit C-1

Q. What book is that you have? A. Common stock.

Offered in evidence and marked Exhibit P-4, March 27th, 1919.

Q. I show you this book and ask you what that is? A. Ledger.

Q. What ledger? A. Ledger of the Alpha Chemical Works of Delaware.

Offered in evidence and marked Exhibit P-5, March 27th, 1919.

Q. Will you tell me what book this is? A. Accounts payable.

Q. Of this corporation of Delaware? A. Yes.

Offered in evidence and marked Exhibit P-6, March 27th, 1919.

Q. And these books? A. Both cash books of the company.

Offered in evidence and marked Exhibits P-7 and P-8, respectively, March 27th, 1919.

Q. Does this paper which I show you set forth a list of certain documents which you have delivered to Mr. Wall? A. Yes.

Offered in evidence and marked Exhibit P-9, March 27th, 1919.

A. This is the cash book of the Alpha Chemical Company of Delaware from April 12th, 1917, to August 22nd, 1917.

Exhibit C-1

Offered in evidence and marked Exhibit P-19, March 27th, 1919.

Q. That is among the books which you produced today? A. Yes.

Q. What is the date of the first entry in that cash book? A. April 12th, 1917. The first deposit was $2918.40.

Q. What was the source? A. I can't tell from this, but I assume it was from the New Jersey company.

Q. The moneys transferred from the New Jersey company? A. I can't tell at all.

Q. I ask you whther this paper is an agreement made between James F. Anyon and Paul T. Brady, and the Delaware corporation—Alpha Chemical Works, dated April 9th, 1917, transferring in consideration of $1.00 to the Alpha Chemical Works, the assets of the Alpha Chemical Works of New Jersey? A. Yes.

Offered in evidence and marked Exhibit P-20, March 27th, 1919.

A. Strictly the assets of the Alpha Chemical Works which were prior transferred to Mr. Brady and Mr. Anyon.

Q. So that all the meetings of the stockholders and directors of the Delaware corporation are all recorded in this book? A. Yes.

Q. I call your attention to page 4 of the By-laws, and ask you when the alteration which appears on Section 7 was made? A. Was made before the adoption of the By-laws set forth. This Delaware corporation was organized by the United States Corporation Company, and you will see that these were a form set of By-laws printed, and as you re-

Exhibit C-1

member, there was a law in Delaware that each Director must own three shares of stock in the corporation and that was stricken out—so when that came from the United States Corporation Company, those lines were struck out. They were old forms used.

Q. The first bank accounts of the Delaware corporation were opened in what banks? A. The first deposit seems to have been in the Irving National Bank.

Q. About when? A. August 12th, 1917.

Q. Who had the power to sign checks? A. The president and treasurer.

Q. Who was the first president? A. I.

Q. The Delaware corporation never had any other president? A. No.

Q. Who was the first treasurer? A. Mr. Vom Cleff.

Q. He continued to serve as treasurer until the corporation went into the hands of the Receivers? A. Yes.

Q. You and Mr. Vom Cleff were directors from the beginning? A. Yes.

Q. Who were the other directors? A. My brother, Mr. George F. Burdett.

Q. Any other directors of the Delaware corporation? A. No, Mr. Vom Cleff was secretary and treasurer.

Q. Did he ever sign any checks? A. I don't believe he did.

Q. What other bank did you have a bank account in besides the Irving National Bank? A. Chatham & Phenix.

Q. They had his signature on the signature card? A. Yes.

Exhibit C-1

Q. There was contributed by Mr. Brady and Mr. Anyon $2500 each? A. Yes.

Q. Did Mr. Anyon contribute that from his own funds? A. Yes sir.

Q. And what was he to receive? A. I believe he was to receive $2500 of par value of preferred and some of the common stock of the Delaware company.

Q. Did you receive any stock in the Delaware company? A. No.

Q. You never received any stock in the Delaware Company? A. No.

Q. Can you tell us why you never received any stock in the Delaware Company? A. No.

Q. What do you mean by that answer, that you can't tell us or that it was intended that you should not receive any? A. It was intended that I should receive 10 per cent in payment and the stock was increased from time to time and I never received any or asked for any after that.

Q. What interest did you have in the Delaware Company at its formation? A. None.

Q. Do I understand you to say that the Delaware law requires that an officer must be the owner of stock? A. No.

Q. There is no such qualification, except you must be a director.

Q. You were a director? A. Yes.

Q. Did you understand that there was a requirement in the Delaware law that a director must be the owner of the stock of a company to be qualified and serve as a director? A. My memory is that originally the Delaware law required that a director should own three shares, but that section

Exhibit C-1

of the Delaware law was repealed prior to the incorporation of this company.

Q. Did the Delaware company receive the assignment of this lease of these offices? A. The New York office?

Q. Yes. A. No.

Q. Did the Delaware company continue the New York office? A. Yes,—paid the rent.

Q. Was it intended that the Delaware corporation was to acquire the rights of the New Jersey company in this lease? A. Yes.

Q. Who paid the rent for these offices from and after the acquisition by the Delaware company of the New Jersey corporation's assets? A. The rent of the offices there was paid by the Alpha Chemical works of Delaware, from April, 1917, to January or February, 1918, and since January, 1918, or February, was paid by the law firm of Burdett and Study.

Q. The financial arrangement, its record on the books, continued the same, so far as the Delaware corporation was concerned—it paid by its check? A. It was understood by the directors of the Delaware company that they should pay the expenses of the New York office.

Q. Was its business conducted at the New York office? A. The buying and selling was.

Q. Did the Delaware corporation acquire this contract with Mr. Wolf at the time the Delaware corporation succeeded to the ownership of the assets of the New Jersey corporation—what business was the New Jersey corporation engaged in at its plant? A. The manufacture of phenol. I am wrong about that. You asked me of the Delaware com-

pany succeeded to the rights of the contract with Mr. Wolf—they did.

Q. You continued the manufacture of phenol? A. Yes, and delivered it to about Decoration Day of that year—1917.

Q. That is about two months? A. Two months —April and May.

Q. During that time, of course you had one customer to whom you sold and purchased your merchandise from about four concerns—during these two months? A. There were times we bought five tons of soda ash here and there to keep things going.

Q. After Decoration Day what did you manufacture? A. On Decoration Day we had a fire which burned up one of our buildings. That was the last we manufactured phenol, and didn't do anything for two or three months, and planned then to manufacture salycilic acid and began the operation in October or November, 1917.

Q. You didn't begin manufacturing until October or November, 1917? A. Yes.

Q. During the intervening period between Decoration Day and that date, nothing was done in the way of manufacturing? A. Right.

Q. Some time between June, 1917, and the 1st day of November, 1917, you borrowed money from the stockholders with which to purchase machinery? A. Yes sir.

Q. How much about? A. Of course, I can't tell how much was borrowed for machinery and how much for raw material.

Q. How much was borrowed altogether? A. Well the only way I can say that, is that between that period and the filing of the Bill in the Chan-

cery Court, against the Delaware corporation, there was about $60,000 borrowed.

Q. From the stockholders? A. Yes. The only way I might put it is that on January 20th, 1919, this corporation owed $53,450.

Q. For borrowed money? A. Borrowed money.

Q. That was distributed how? A. Robert Vom Cleff, $5350. C. W. Vom Cleff, $2500. Wilbutt Corporation, $44,600. James T. Anyon, $1000.

Q. Does your cash book show the dates and amounts in which these sums were received from these four persons? A. Yes.

Q. Can you tell me how much of that money was spent for machinery? A. I can, I think from the ledger.

Q. Is it summarized? A. The machinery account in the ledger has been listed in full.

Q. You began manufacturing about November 1st? A. Yes, salysilic.

Q. 1917? A. I guess it was.

Q. Who were your customers for that? A. The National Aniline and Chemical Corporation.

Q. Did you have a contract with that concern? A. Yes, I had a contract with them for 60,000 pounds of what we call technical salysilic.

Q. And that contemplated the absorption by that concern of your product? A. No, I had two other contracts—one with the Bleecker Export Company for U.S.P. or refined salysilic and one with Bayer Company for U.S.P. salysilic.

Q. Who has these contracts now? A. I must have them.

Q. Who procured these contracts? A. These contracts were procured by the Drug and Dye Stuff Corporation.

Q. Who were they? A. Brokers.

Q. Did you employ them for that purpose? A. Yes.

Q. What were they to receive for that? A. 5 per cent commission on the selling price.

Q. They procured all these contracts? A. Yes.

Q. The first thing you did after November 1st, was the manufacture of saylsilic acid? A. Yes.

Q. Did you at the same time manufacture anything else? A. No.

Q. Did you continue the manufacture of salysilic acid, solely for a period of time. A. Yes.

Q. How long? A. I guess it ran until either June or July, 1918.

Q. For these customers you mentioned? A. The only contract of these three which we filled was that with the National Aniline and Chemical Corporation. We never succeeded in making U.S.P. salysilic. We never delivered any to Bayer Company. We delivered 600 pounds to the Bleecker Export Company which they rejected as not being U.S.P. That was subsequently sold by us to the Atlantic Dye Stuff Company, of Barrage, Massachusetts, as a technical product. It did not conform to the requirements of U.S.P.

Q. As I understand it, you continued to manufacture technical salysilic acid, until some month in 1918—what month did you mention? A. I should say June or July.

Q. Then did you take up the manufacture of anything else? A. Then the price of salysilic acid had dropped and there was no longer any profit in it, so we began to manufacture what is called paranitroline and paranitroacetanilide.

Exhibit C-1

Q. Those are two products which you took on in addition to the first or in substitution for the first? A. I think we did manufacture the other very slightly.

Q. Did you make contracts for the sale of these two products? A. We made a contract for the sale of paranilitaline.

Q. And did you make that contract the same way —through these brokers? A. No.

Q. Did you get customers for these two products? A. Yes.

Q. Who were they? A. The Edison International Corporation.

Q. What did they become customers for? A. I had a contract for paranilitaline and subsequently sold them upon order paranitroacetanilide.

Q. How did you get that contract? A. I got it from Mr. Lyman of the Edison International Corporation.

Q. Where is there office? A. 165 Broadway.

Q. Did you get that without the intervention of a broker? A. Yes.

Q. And the other product you sold them also? A. Paranitroacetanilide I sold them from time to time.

Q. When you started the manufacture of Paranitroniline you had practically discontinued the manufacture of salipilic acid? A. I think we made a few hundred pounds, which we delivered during the time we were getting ready for the other product.

Q. Did you install special machinery for the manufacture of the product? A. Of paranilitaline?

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Q. Yes. A. Yes.

Q. How much did it cost? A. $25,000 to $30,000.

Q. The salysilic acid machinery—did that go into the discard? A. Some of it did and some we used.

Q. About what proportion? A. I don't know.

Q. Who was the chemist who succeeded Broecker? A. A man named Franklin P. Summers.

Q. What is his address? A. He was at 120 Broadway.

Q. Where is he now? A. I think he is still there. We never had a contract with Summers. We never paid Summers any salary or percentage. The Chemical Engineering and Research Bureau—whose office was at 120 Broadway sent him over. That company and the Drug and Dye Stuff Company were in the same affice. We made a contract, I think in May, 1917, with the Chemical Engineering and Research Bureau to install the process and operate the plant for a period of one year and we were to pay them 25 per cent of the profits. Summers went to work at our plant about the 1st of May or the middle of April and worked on phenol until Decoration Day. That is when we had the fire. Then he took up the planning and the building of the plant for salysilic acid and worked on that until January 2nd, 1918.

Q. Was that contract in writing? A. Yes.

Q. Have you the contract in your possession? A. I think Mr. Wall has that contract.

Q. That contract provided so far as the division was concerned, for 25 per cent of the gross or net

Exhibit C-1

profits? A. It is a definite sum in there—the money was used for overhead and office expenses.

Q. Was any money ever paid to that concern under that contract? A. No, the only money that was ever paid was paid to Summers for expense money. I think we paid his commutation ticket.

Q. In the aggregate that amounted to how much? A. $50 or $60. $8.00 or $9.00 and something a month.

Q. You started the manufacture of these two products and continued until when? A. Until about January 15th, 1919.

Q. You began some time in June or July? A. No, we began the manufacture of paranilitaline in September or October, 1918, and continued until January 15th, 1919—this year.

Q. During that period did you engage in the manufacture of any other product? A. The only other product which we manufactured and sold was a product known as neroline.

Q. What lead up to the manufacture of neroline? In Janauary 2nd, 1918, was the end of Summer's services—since that time up until January 30th, or 31st, R. A. Corbin took charge——

Q. What does the R stand for? A. Roy.

Q. Is he under salary? A. Yes.

Q. How did you come to employ him? A. He was employed by Summers to make salysilic acid and he continued with us after Summers left.

Q. What salary did you pay him? A. I think he started at $35 and then was raised from time to time.

Q. What was he receiving at the end? A. $500 a month—that was since September 1st, 1918.

Exhibit C-1

Q. Has he a contract? A. No.

Q. How was he paid—by the week or month? A. He never had a written contract. I should say once a month.

Q. His salary at first was $35.00 a week? A. $35.

Q. He was then advanced to—what was the next sum he was advanced to? A. I don't know. $50 I guess. I would have to check up to find out.

Q. What brought about the increase from $35 to $500 a month? A. That was after he was earning money for us——

Q. Were you turning out the product? A. We were, during the time he was earning that salary.

Q. You began with him about September 1st, 1917? A. Yes.

Q. At what rate were you turning out this paranilitaline? A. I can't exactly answer that unless I check it up. I don't know. We delivered some in September. I think the first delivery was tripled in October.

Q. What was the largest amount you delivered in one week after Carlin got on the payroll? A. You mean of paranilitaline?

Q. Yes. A. We delivered as high as 10,000 pounds a week, but we didn't make that up in a week.

Q. That was an accummulation? A. I should say the highest we ever made was from 4,000 to 6,000.

Q. The highest in any one week? A. Yes.

Q. Do you know how much the total output was which was sold from and after October 1st, 1918? A. I should say about 50,000 pounds.

Exhibit C-1

Q. That was at what selling price? A. Ranging from $1.55 to $1.80.

Q. Have you any idea as to what it cost you—how much of that $1.55 or $1.80 represented the cost? A. You mean the complete cost?

Q. Your cost? A. The only way to get that is by the profit and loss statement.

Q. Has that been worked out? A. Yes.

Q. Did you attempt to determine from the books whether or not you were working at a profit or loss? A. Absolutely.

Q. Did you find that during any of the months beginning with October, 1918, and ending with January, 1919, that this product was being manufactured and sold at a profit—at a net profit? A. I think that our profit and loss statement would show that they were.

Q. Substantial profits? A. If my memory serves me, in October it showed about $1700, and I think in November, there was a loss of a few hundred dollars.

Q. Do you remember how much it showed in December? A. You will appreciate that these things could not be separated from month to month. I believe the profit and loss statement for December showed a profit of $3500, and then there was a reduction on the return of certain articles. In other words we shipped to a firm $3500 of goods and they returned them.

Q. That reduction was for the goods? A. The reason they were returned was that they were not according to specification.

Q. Did you find that they were right? A. Yes.

Q. Was it any one's fault that they were not according to specifications? A. I don't think I

could say it was anybody's fault. Everybody was doing the best they could. When that particular product was made, I don't know.

Q. Did you find there was a profit in January, 1919? A. I have no statement—I could by the books.

Q. Who made up the profit and loss statement? A. A. H. Weisker.

Q. Who was the concern which returned the goods? A. T. J. Parker, of 100 William Street.

Q. From whom was the sale made to Parker? A. My contract was with the Edison International Corporation, and they sold to T. J. Parker.

Q. Practically your sole customer for this paranilitaline was the Edison Internation Corporation? A. No, our principal customer and the one to whom we delivered most of our product was Bayer Company.

Q. You had a contract with them? A. Yes.

Q. Who did you get that contract from? A. I believe that contract came from Dr. Schroedler.

Q. How did that come to you? A. Dr. Schroedler was working for me in the selling of paranitraniline and had been in my employ since March, 1918. In other words, he was the salesman which we had.

Q. At the same time the Dye Stuff Corporation was acting as selling agent, did you have any one else acting as an agent? A. The Dye Stuff Corporation acted as selling agent only up to the time they made these three contracts for salysilic acid, which I described. From then on I was the broker.

Q. You paid them their commissions? A. Yes.

Q. The orders of these brokers was in connection with the sale of paranilitaline and paranitroacetanilide? A. No, purely salysilic acid. I think

Exhibit C-1

Dr. Schroedler was on the payroll from March, 1917.

Q. What did he receive? A. $50 a week—he was druming up trade continually.

Q. Where did he take his orders to? A. To New York.

Q. When did he leave your employ—or the employ of the company? A. He worked for the Alpha from about March, 1917, until I think September, 1918.

Q. During the time he was a salesman, you didn't use any other brokers? A. I did, then he became a salesman on the payroll of the Bradette Corporation, which was organized as a selling corporation for the Alpha Chemical Works, since October or September, 1918, and since that date he has received a salary from that corporation.

Q. Did you sell any merchandise to Frank Hemingway? A. I said before that I thought Dr. Schroedler sold paranitraniline to Bayer Company. Frank Hemingway sold that to Bayer and Company.

Q. He was a broker? A. He was a broker.

Q. And received a commission of how much? A. I didn't pay him commission—I sold him at one price, and I believe he got 10c a pound higher. I don't know. He is not strictly a broker. He does selling on his own account.

(Bill dated December 31st, 1918, marked Exhibit P-14).

Mr. Bilder: I offer in evidence original memorandum, dated October 24th, 1918, Alpha

Exhibit C-1

Chemical Works to the Bound Brook works with regard to procuring insurance of sixty cents per pound on a car of crude acetanilid to be received that week or next from Silver Lake.

(Marked Exhibit P-15).

Q. And it was with regard to this car of crude acetanilid this letter of Mr. Emery to Mr. Buttles speaks? A. Yes.

Q. You will observe in the first bill, Exhibit P-14 of this date, of Edison to Alpha for the acetanilid consumed out of this car they used the words "being consumption reported by Mr. Burdett for the period 11/9/18 to 11/16/18". Is it possible that you reported—— A. (Interrupting) I am perfectly sure now to say that car was not received by us prior to November 18th, and the factory warehouse book shows that it was received on November 29th.

(Bill dated January 31st, 1919, to Alpha Chemical Works, for 21,705 pounds of crude acetanilid at sixty cents a pound, $13,023, marked Exhibit P-16).

Q. You have given us the substance of all the conversations that you had with Mr. Emery and Mr. Lanahan at the time the subject of sending back what was left of the crude acetanilid was discussed? A. I think so; yes.

Q. There was nothing said who was to pay for the truckman? A. No.

Q. Now, I ask you whether you had any other correspondence with Edison on the subject of the

crude acetanilid. A. That is a letter, January 29th, advising of the first shipment.

(Letter marked Exhibit P-17).

Q. And this is another letter on the same subject? A. Yes.

(Marked Exhibit P-18).

Q. Was there any other correspondence on that subject? A. No.

Q. Did you have any correspondence with them generally relating to you account originally—that is, after, say, November 1st? A. I think the only correspondence I had with them in regard to the account were those letters which I got from Mr. Emery.

Q. Did they at any time ask you for a statement of the financial condition of the corporation? A. No.

Q. I show you this paper and ask you whether that is the lease which you made with the Alpha of New Jersey and the Broadway Park Place Company for the offices in the Woolworth Building, which you have referred to in your previous testimony. A. Yes.

(Lease marked Exhibit P-19).

Q. Did I understand you to say that it was intended that the Alpha Chemical Works of New Jersey shall transfer to Amyon & Brady all the assets of every kind and nature of the New Jersey corporation? A. Yes.

Q. That included accounts receivable and claims? A. Yes.

Exhibit C-1

Q. I show you this paper and ask you whether it is the bill of sale of the Alpha Chemical Works, a New Jersey corporation, to the Alpha Chemical Works, Incorporated, a Delaware corporation? A. Yes.

Q. Who prepared that bill of sale? A. I and Mr. Horne.

Q. And it was the intent by that instrument to transfer all of the assets of every kind and nature of the Alpha Chemical Works, Incorporated, a New Jersey corporation, to Alpha Chemical Works, Incorporated, a Delaware corporation? A. Yes.

Q. Were there any accounts receivable owned by the Alpha Chemical Works, Incorporated, a New Jersey corporation? A. I doubt it very much. You see, most of the New Jersey stuff was sold for cash or on two or three days time.

Q. Did the New Jersey corporation have any cash in bank? A. Yes.

Q. In what bank? A. In the Chatham & Phenix and in the Cosmopolitan.

Q. Do you know how much cash? A. Well, I can only guess. The account of the Alpha Chemical of Delaware opened in the Irving Bank on April 10th, 1917, with a balance of $2,918.48, which, I assume, was the cash of the New Jersey company in that bank.

Q. You mean cash transferred by the New Jersey company to the Delaware company? A. Yes. The cash of the New Jersey company in the Chatham & Phenix Bank would simply run along in the same bank. We never changed books. Whatever deposit we had we simply ran along in the same passbook.

Exhibit C-1

Q. In other words, the moneys of the Delaware company were deposited in the account of the New Jersey company in that bank, the Chatham & Phenix? A. Yes.

Q. That continued so up to the time of the appointment of a receiver? A. Yes. In other words, all the moneys of both companies which went into the bank went into this book.

Q. Did the Delaware corporation receive a thousand dollars which Amyon & Brady were to pay under their agreement as part of the purchase price? A. No.

Q. That was never paid? A. Never paid.

Q. Do you know why it wasn't? A. I do not believe I can say. I felt that they were doing so many different things for the Delaware company that I never demanded it.

Q. What else was the New Jersey company doing for the Delaware? A. No, I mean Mr. Brady and Mr. Amyon.

Q. Well, the New Jersey corporation was to pay its accounts payable out of its cash on hand and in bank. Was that done? A. I don't know whether the New Jersey corporation signed the checks, but whatever funds the New Jersey corporation had, you may say, merged into the account of the Delaware company, and the checks of the Delaware company were used in the payment of all claims for both companies.

Q. You have the bank account of the Delaware company in the Irving National Bank, have you? A. Yes.

Q. And you have stated that the first deposit was $2,918.48. You thought that was a transfer

of the funds of the New Jersey company? A. I think so.

Q. If I remember correctly, you testified that part of this first deposit was $2,500 which had been received from Mr. Brady. A. I do not remember testifying to that.

Q. You do not remember testifying that it was part of that sale that Amyon and Brady were to advance to the Delaware corporation $2,500 each, or $5,000—— A. (Interrupting) Right.

Q. —and that you thought in this deposit of $2,918.48 there was $2,500 advanced to the Delaware corporation by Brady or Amyon? A. I do not remember testifying to that, but I think the facts are these: I think the $2,500 received from Mr. Amyon was deposited in the Irving Bank, and is shown as a credit in the Jersey passbook, which I do not happen to have,—I did not bring it,— and when the transfer was made, which was a few days later, April 10th, it may be included in that; I don't know.

Q. Can you tell us how much money the New Jersey corporation had of its own on the date the assets were transferred by the New Jersey corporation to the Delaware company? A. I could not tell you without making a careful examination of the books.

Q. Well, what books would you examine? A. Cashbook.

Q. And what is the date which you fix as the date of the transfer of those assets? A. I should say about April 5th. What is the date of the bill there?

Q. April 5th? A. April 7th.

Exhibit C-1

Q. That $2,500 deposited in the New Jersey account was intended to be deposited in the account of the Delaware company, wasn't it? A. Well, I should say yes. I wasn't very strict about it. We were going on with the same amount of cash.

Q. There was no understanding that this money should become a part of the assets of the New Jersey company? A. No; there was no such understanding.

Q. Would the deposit be shown in the cashbook of the New Jersey corporation, this $2,500? A. It is in either of the two; I don't know which. (Witness refers to book.) There is an entry here, a deposit by the Jersey corporation on April 10th of $2,500 in the Irving Bank. I take it that that was the $2,500 received from Amyon.

Q. Do you think it moght as well also have been a discount of a note of $2,500 of that bank? A. No. I think there was a note of $2,500 discounted shortly after that in the Chatham Bank. On May 12th there was a twenty-five hundred dollar note discounted. There was only one note they discounted in the Irving Bank.

Q. If that $2,500 received from Mr. Amyon was deposited in the account of the New Jersey corporation in the Irving National Bank that was an inadvertence; it should have been deposited in the Delaware? A. Yes, and the proceeds came over.

Q. If you substract that, therefore, from the funds on hand of the New Jersey company that would leave, I take it, $418.48 as the balance of the funds which the New Jersey company had in the Irving Bank on the date of this transfer. A.

Exhibit C-1

Well, it may not be, because I find since April 10th the Jersey company paid bills amounting to about $250. Can't I get for you the exact balance of the Jersey company in each of these books?

Q. Yes, the exact balance after taking out of it any part of this $5,000—— A. (Interrupting) I can give you a statement which will show you the balance of the Jersey company in each of the three banks.

Q. Can you tell us what the accounts payable of the New Jersey company were on the fifth day of April, 1917? A. Well, I can tell you only by going through the accounts payable books of the New Jersey company.

Q. While you are on that subject, if you will look at the cash book of the New Jersey company, page 20, you will find an item of $2,500 cash, apparently credited to the account, and you will find on the same day also an item of $2,500, debiting the account. What would that indicate to your mind? A. Why, my thought at the moment is this: There was the Irving Bank since February a five thousand dollar note. That note was dated February 9th; it was a three months' note and fell due on April 10th. I take it that I received from the Wolbutt Corporation $2,500 which I deposited in the Irving Bank, and then drew a check against it and paid it on account of the five thousand dollar note. So that now makes it clear to me that that $2,500 was not Amyon's.

(Bank passbook of the Delaware Corporation with the Irving National Bank marked Exhibit P-20).

Exhibit C-1

Q. Can you approximate, Mr. Burdett, the accounts payable that were owing by the New Jersey corporation on April 5th, 1917? A. Well, I can only guess; I haven't any idea; but I could certainly get it for you.

Q. Did they amount to more than the cash which the New Jersey corporation had? A. I think probably they did.

Q. How much more? A. I haven't any idea; I cannot answer that question. I will get up for you a statement. I haven't seen these books for two years.

Q. Turn to page 2 of that book (indicating). Can you read from that pags the accounts payable which were owing by the New Jersey company on April 5th, 1917? A. Do you want me to give you the accounts payable of the New Jersey company?

Q. Yes. Do you find any accounts payable of the New Jersey company listed on that page that were paid by the Delaware company? A. Well, I have no way to distinguish, but I assume there are some I would have to——

Q. (Interrupting.) Isn't there a character in lead pencil or ink on page 40 in front of some of these items to indicate that it is a New Jersey account? A. There are characters preceding several accounts, but they are not intelligible to me; I don't know what they mean.

Q. Don't you suggest that it is your guess that they are New Jersey accounts? A. I guess they are; yes.

Q. Now, what would you have to do to find out if they are or are not? A. I would have to check them with the accounts payable book of the New Jersey company.

Exhibit C-1

Q. Have you got it here? A. Yes.

Q. The first that I find on that list seems to be Brewster & Company; suppose we take that up. Were the New Jersey company's invoices numbered differently from those of the Delaware company or do they continue consecutively? A. I think they begin with No. 1. Voucher No. 187 to T. F. Williams of the New Jersey company is paid by check No. 606 of the Delaware company.

Q. That was a New Jersey account payable? A. Yes.

Q. That T. F. Williams' account payable was $120.04? A. Yes. The next is Knickerbocker Ice Company, $2.25.

Q. That was a New Jersey account payable and paid by the check of the Delaware company? A. Yes.

Q. Have you got check No. 601, Brewster & Company—what was Brewster & Company's business? A. Insurance.

Q. Did you pay your insurance bills in advance or after the premiums were earned? A. After they were earned, you mean?

Q. Yes. A. No; we always paid them in advance. I don't know why it isn't here.

Q. Suppose we let that go for the present. A. I don't seem to find that.

Q. The next one is the New York Telephone Company. A. Yes, the New York Telephone Company is voucher 191, $17.60.

Q. That was a New Jersey account payable. A. Yes.

Q. E. S. Houghton. A. $5.50.

Q. That was a New Jersey account payable. A. Yes.

Exhibit C-1

Q. Paid by the Delaware company's check? A. Yes.

Q. Will you give me so far as you can other accounts payable of the New Jersey company which were paid by the Delaware company's check? A. New York Telephone Company, $10.50; James Cosick, $27.27; H. W. Johns-Mansville Company, 94c; Standard Oil Company, $163.24; Ralph L. Fuller Company, $1,072.48. The invoice of the Ralph L. Fuller Company was $1,890, and on April 27th the Delaware company paid $1,072.48.

Q. Have you any record there that the company afterwards paid the balance? A. I haven't run across it yet.

Q. What is that account for? A. Sulphuric acid.

Q. Now, give me the rest of the acounts payable of the New Jersey company which were paid by the Delaware company. A. There is one here by the Fairbanks Company which is marked by that character, $22.50. Paul Jaehnig, $204.73; Crowell Manufacturing Company, $73.50; New Brunswick Iron Works, $7.50; Standard Oil Company, $123.97.

Q. The Public Service Gas & Electric Company under date of June 8th. A. Check 720 is in payment of vouchers 114, 115 of the Delaware company of May, 1917.

Q. You have those vouchers, I suppose. A. Yes. It takes in 114, 115, 139 and 140. Should we list those or do you want to leave them out?

Q. You say those are not of the New Jersey company? A. Yes.

Q. Can you tell us why so late as May and June accounts payable of the New Jersey company were being paid by the checks of the Delaware company?

Exhibit C-1

Q. Well, my understanding was my thought in carrying this plan out was for the Delaware company to take over the assets and liabilities of the New Jersey company. Whether I expressed that in the bill of sale I do not know, but having that in mind I thought it was perfectly proper for the Delaware company to continue to pay any liabilities which have accrued on those of the New Jersey company.

Q. You remember that the agreement was that Amyon and Brady were to receive the assets of the Jersey company in consideration of the payment of $1,000 in cash and the assumption of certain specified liabilities, being notes amounting to $16,000? A. $16,100.

Q. Yes. And it was also distinctly understood in the agreement that the New Jersey corporation shall pay its accounts payable as of the date of that agreement, which is the third day of April, 1917, and out of its cash on hand and in bank, and you also know that the Delaware corporation assumed —well, received an assignment in substance of this agreement, and would assume the obligations of the agreement? A. Yes. I might say, however, that I did not remember that that clause was in the bill of sale that they were to pay the liabilities of the New Jersey company of its cash on hand and in bank.

Q. You were requested, I think, to produce here to-day the cancelled vouchers and checks of the Delaware company. You haven't brought them, have you? A. No.

Q. Why haven't you brought them? A. Why, the only reason was you called me up too late; I didn't have a chance to get them here.

Exhibit C-1

Q. I want to remind you, however, that in the course of our conversation yesterday morning I suggested that among the things we wanted here——— A. (Interrupting) I understand that it was one particular check for $17,000 which I paid Edison on or about November 21st.

Q. Haven't you been in your office this morning? A. Well, to get these papers. When you 'phoned me yesterday I had all these papers I have here in an envelope, ready to deliver them.

Q. It was four o'clock when I telephoned. A. Well, I didn't get back to the office until a quarter after five.

Q. You will produce those at the next session, will you, what I asked for? A. What you asked for over the 'phone?

Q. Yes, all the things I asked for. A. No. I will produce all the books, papers and correspondence, vouchers, cancelled vouchers, bills paid and unpaid of the Alpha Chemical Works of New Jersey, Alpha Chemical Works of Delaware, and the Bradette Corporation, but I don't feel I ought to produce the boks of the Wilbutt Corporation.

Q. Well, I understand you are to produce everything relating to the corporations except the Wilbutt Corporation. A. Yes.

Q. You are an officer of that corporation? A. Yes.

Q. And you will produce those books that you agreed to produce at the next session? A. Yes.

(Argument).

Q. You have all of the checks of both corporations and the vouchers—that is to say, the bills

which those checks paid, and also of the Bradette Corporation, the same things with regard to the Bradette Corporation—bank passbooks of both corporations. Are there any purchase books or sales books? A. No purchase books. Well, we had a sales book that we kept. I will bring it for what it is worth.

Q. Now, you produced, as I understand, all the letters received from Edison and all the letters sent? A. Yes.

Q. And have you produced the balance sheet of March 17th made by Barrow, Wade & Guthrie? A. I think I was mistaken when I said that I had a balance sheet made by them at that time. I had in mind the one they made in August, that I will bring, and if I find any working papers of any sort I will bring those.

Q. Did I understand you to say that he did not make a balance sheet of the Jersey company? A. No, I do not know if he did. I haven't found one. I don't think he did.

Q. I want to suggest to you that those cross marks (indicating on book) would indicate— A. (Interrupting) The books of the Jersey company were closed and the books of the Delaware company were opened by Mr. Bennett of Barrow, Wade & Guthrie. Whether he made a trial balance of that I do not know, but I will get what I can, and if you want it made I will have it made.

(At this point an adjournment was taken at two o'clock p. m.)

Exhibit C-1

AFTER RECESS

(Mr. Holbrook, counsel for bankrupt, was not present at afternoon session).

LESTER C. BURDETT continued.

By Mr. Bilder:

Q. We will resume the matter of obtaining from you statement of the accounts receivable of the Alpha New Jersey, which was paid by the Delaware checks. Was there paid by the Delaware Company to the Foxboro Company $52.82 about December 14, 1917? A. Yes, $52.

Q. That was an account payable of the New Jersey corporation? A. Yes.

Q. And was paid with the Delaware moneys? A. Yes.

Q. Can you tell me whether three items amounting to 50c, $4.00, $2.34, the invoices 198, 199 and 200, were paid to the Public Service Gas & Electric Company about April 12th? A. For $2.34 and $4.50. Those were paid by the Delaware company on April 12th, and they were the accounts of the New Jersey Company.

Q. Did you pay to W. C. Sedam $113.41 about April 6th? A. W. C. Sedam, $113.41.

Q. That was a New Jersey account payable? A. Doesn't look so.

Q. What is the date of payment? A. The date of payment is April 6th; it must have been because the Delaware had no accounts payable. I think it is marked here voucher No. 1134.

Q. What was that for? A. Why, it was for insurance. I assume, it is marked "legal" here.

Q. Was there a judgment obtained for it? A. Oh, I know what that is; yes. That is in payment of a judgment which was entered in New Brunswick for services rendered to the Jersey company. This was the attorney.

Q. For services rendered by him to the New Jersey? A. No. In payment of a judgment secured by him by one who claimed he was employed by the company.

Q. And that was paid by the Delaware company? A. Yes.

Q. Did the Delaware Company pay a debt owing by the New Jersey company to J. Marshall amounting to $25? A. Yes, J. Marshall, $25.

Q. April 7th? A. Yes; that was a salary.

Q. Owing by the New Jersey company? A. Yes. Well, it was strictly two days for the Delaware and four days for the Jersey at the time. You say it is dated the seventh of the month. I cannot tell what period that covers.

Q. And also a payment to L. Van Eberhard, salary, $20. A. Yes.

Q. Who is he? A. The stenographer.

Q. In New York? A. Yes.

Q. You find a payment of $150 to the Chemical Engineering & Research Company about April 10th? A. Yes; that is not dated.

Q. And that was a claim against the New Jersey company? A. Well, that was $150 paid them for making a report on phenol for the Delaware company.

Q. That was paid with Delaware funds? A. Yes, sir.

Exhibit C-1

Q. Now, W. C. Sedam, April 10th, $15. A. Well, that is part of the—I don't know exactly what that is. It is in addition to that $113.41.

Q. And that is a claim owing by the New Jersey Company? A. Yes.

Q. Did the Delaware Company pay a claim owing by the Jersey company to the Broadway & Park Place Company of $83.33, the claim being paid about April 12th? Refer to page 40. A. Well, that was $83.33 for the month of April.

Q. For the rent of two rooms in the Woolworth Building? A. Yes.

Q. Then there were two payments, one of $4.45 and the other of 40c to the Public Service Electric Company about April 12th? A. Well, we did pay —I think this goes with those $2.34 and $4.50.

Q. No, this is $4.45 and 40c. A. $4.85?

Q. Yes. A. Well, I guess we paid the two together. Yes, there is a payment here of $4.85 to the Public Service Electric Co.

Q. On April 12th? A. Yes.

Q. And was that a debt owing by the New Jersey company on April 1st. A. I cannot be sure, but I presume it was; it was to be for power on the previous week.

Q. There is on May 14th to the Green-Tweed Company of 75c. A. There is a payment made, but I cannot tell; the voucher number isn't given; but I would have to look at the voucher or the accounts payable of the Jersey.

Q. You cannot tell from that? A. No.

Q. Chemical Engineering & Research Company, $8.80, payment made April 12th. Can you tell whether that was an account with the Jersey company and paid by the Delaware money? A. That

was a commutation ticket for Summers, the man from the Chemical Engineering, for either in April or March.

Q. Runyon-Fields & Company, $57.42, about May 14th. A. I cannot tell from this unless I look at the—that Runyon-Fields, all of these in fact,—the Runyon-Fields bill for $57.42 is voucher No. 6 of the Delaware Company. Whether that was for materials furnished during the time of the Jersey company or not I could not tell; most likely it was.

Q. You find the date of entry of that voucher is April 1st? A. Yes.

Q. Wouldn't that indicate to your mind that it is a New Jersey obligation? A. It must have been.

Q. And that was paid with the Delaware funds? A. With the Delaware funds.

Q. Then there is an item of $2, Kanouse Mountain Water Company, that was entered April 21st, and is entered in the Delaware accounts as voucher No. 7 of the Delaware Company? A. Yes.

Q. That was an obligation of the New Jersey company? A. New Jersey company.

Q. Now there is a claim in the accounts payable book in favor of Maffa Company, being invoice No. 164 for $251.10, in the New Jersey accounts payable book. A. $251.10. It is shown as an account payable of the New Jersey company dated February 9th.

Q. Has it been paid? A. There may have been a later bill sent, which was either for more, including it, or for some adjustment; but as far as I know there is no record of it being paid.

Q. Will you produce the other bank passbooks? A. (Witness does so).

Exhibit C-1

Q. Is this the bank passbook of the Alpha Chemical Works, Incorporated, of New Jersey, upon its account with the Irving National Bank of New York? A. Yes.

(Offered in evidence and marked Exhibit P.-21.)

Q. And this is the bank passbook of the Alpha Chemical Works, Incorporated, of New Jersey upon its account with the Cosmopolitan Bank of New York? A. Yes. That bank passbook also includes the deposits of the Alpha of Delaware. The same with the Chatham.

Q. In other words, you continued to make deposits of the Delaware corporation's moneys in the bank account of the New Jersey corporation in the Cosmopolitan Bank? A. Yes.

(Offered in evidence and marked Exhibit P-22.)

Q. Tell us what led up to the formation of the Bradette Corporation. A. The Bradette Corporation was first contemplated in June, 1918. The reason it came up is this: Mr. Brady had advanced through the Wilbutt Corporation large sums of money from time to time in the nature of loans. In June we were contemplating the manufacture of paranitranaline. I made several trips to Wilmington, Delaware, and Philadelphia with a view of raising funds which I required, about twenty to twenty-five thousand dollars. He said: "If you cannot get it anywhere else, and the proposition looks as though it will pay, I authorize the Wilbutt Corporation, or I will advance the money."

I never asked him again after that for the money. I then talked with Mr. Vom Cleff and my brother, who is a director.

Q. Who is the director? A. My brother, George Burdett.

Q. Director of what? A. Alpha Chemical of Delaware. And they said they didn't think it was fair that Mr. Brady had advanced as much money as he did without getting some quick returns. In other words, they had no idea how much money he advanced from time to time, that is, during the first six months of 1918, and when I showed them the statement showing the moneys advanced by Mr. Brady. They asked if we could not devise some way by which he could get his money out without waiting for dividends. I talked with Dr. Schoedler, and we discussed several times the organization of a brokerage corporation which would buy and sell chemicals, and possibly get into the importing and exporting, the fact being that Dr. Schoedler was on the road each day trying to sell paranitranline, and received many inquiries for other chemicals, which orders we thought possibly we could fill. It was then agreed that this corporation should be organized and that a commission of five per cent be paid to Mr. Brady or the company when organized on all goods of the Alpha sold and one per cent on all goods purchased, Dr. Schoedler to give his time to the selling of chemicals and to receive $50 a week plus one-fifth of the profits of the company.

Q. Was such a corporation organized? A. Yes, the corporation was organized in about October or November, 1918.

Exhibit C-1

Q. Under the laws of what state? A. New York.

Q. Have you the minute book of that corporation here? A. No; I haven't. I got cancelled vouchers.

Q. The corporation was organized under the laws of New York, and who were the subscribers to its capital? A. The subscribers to the capital were Mr. Brady, myself, Miss Rieger.

Q. That is, your stenographer? A. Yes.

Q. At that time how much did the Alpha Chemical Works, Incorporated, of Delaware owe Mr. Brady? You said you showed them a statement of how much the company owed Mr. Brady. A. I think about $40,0000.

Q. Is that money he had loaned the company? A. Yes.

Q. Upon any security? A. No.

Q. Did he have any evidence of indebtedness, a note or anything? A. No. Never gave him a note.

Q. Was there an account in the book with him showing his advances? A. You mean with the Alpha?

Q. Yes. A. Yes.

Q. Was that made with him or with the Wilbutt Corporation? A. Wilbutt Corporation.

Q. The Wilbutt Corporation is a corporation organized under the laws of what state? A. New York.

Q. And who are the officers of that corporation? A. Mr. Brady is president and I am secretary and treasurer. The Wilbutt Corporation is a corporation organized before the organization of the Alpha Corporation for the purpose of handling the securities and things of that sort which belong to Mr. Brady.

Exhibit C-1

Q. And has that any issued stock? A. Yes.

Q. And who owns stock in that corporation besides Mr. Brady? A. No one.

Q. He owns all of the issued stock? A. Yes.

Q. And you are nominally a director? A. Yes.

Q. Also an officer? A. Yes.

Q. You said you were secretary and treasurer? A. Well, I am not sure about secretary. I think Mr. Study, my law partner, is secretary.

Q. You have a bank account? A. Yes.

Q. You signed checks on that account? A. Yes.

Q. Solely or with someone else? A. Solely.

Q. And have since the organization of the company? A. Yes.

Q. That was organized about when? A. I think in December, 1916; possibly November.

Q. Has it any more than one bank account? A. No.

Q. And that bank account is in what bank? A. Irving Bank.

Q. Of New York. And the signature card provides for any other signature than yours to draw moneys on that account? A. No other signature.

Q. Checks are withdrawable only upon your signature? A. Yes.

Q. Have books of account been kept in connection with the Wilbutt Corporation? A. I think that I ought not go any further with the Wilbutt Corporation. I am willing to produce the cancelled vouchers of the Wilbutt Corporation which were paid to the Alpha Chemical Works, but I do not feel I ought to be compelled to go into the Wilbutt Corporation any further, as I do not think

there is any connection between the two except the payment of those moneys.

Q. There are books of account of the Wilbutt Corporation? A. Yes.

Q. And they are kept by you? A. Yes.

Q. And are in your control at your office in the Woolworth Building? A. At my home.

Q. And the stock which has been issued by the Alpha Works, Incorporated, of Delaware to the Wilbutt Corporation, that was issued in various certificates; is that right? A. Yes.

Q. And those certificates are held by whom? A. Certificates are held by the Wilbutt Corporation.

Q. Have they been transferred by the Wilbutt Corporation to anyone? A. No.

Q. Have they been endorsed in blank? A. No.

Q. They are in the same condition—that is, so far as any endorsement or assignment thereof has been made—as the day they have been issued? A. Yes, sir.

Q. They are the property of the Wilbutt Corporation and in your custody? A. Yes, sir.

Q. Coming back to the Bradette Corporation, will you tell me just what Dr. Schoedler had to do with the formation of the Bradette Corporation? A. The actual corporation?

Q. Not with the legal work of the incorporation, but with the reasons for this incorporation, the promotion of it. A. The reason for the incorporation of the Bradette Corporation was fully discussed with Dr. Schoedler, and it was clearly understood that he was to receive $50 a week, plus one-fifth of any profits realized.

Exhibit C-1

Q. And upon the formation of the Bradette Corporation did he cease to be on the payroll of the alleged bankrupt? A. Yes.

Q. Now, then, did the Bradette Corporation ever pay any money to the alleged bankrupt? A. No.

Q. Did they ever receive any money from the alleged bankrupt? A. Yes.

Q. How much did they receive? A. To date?

Q. Yes. A. According to the passbook of the Bradette Corporation they received $2,000, all of which was received from the Alpha Chemical Works.

Q. And the book you have in your hand is the bank passbook? A. Of the Bradette Corporation. May I correct the last answer. Upon examining the bank statements and cancelled vouchers of the Bradette Corporation I find that $2500 was received from the Alpha Chemical Works and deposited in the account of the Bradette Corporation.

Q. And the dates and amounts of its receipt are as follows: November 4th, 1918, $1,000; November 29th, 1918, $500; December 20th, $500, and January 20th, $500? A. Yes.

Mr. Bilder: I offer bank passbook in evidence and also deposit slip.

(Bank passbook marked Exhibit P-27 and deposit slip Exhibit P-28).

Q. What were those sums paid to the Bradette Corporation for? A. They were paid on account of the five per cent commission for selling and one per cent. commission for buying which was due the Bradette Corporation according to its contract.

Exhibit C-1

Q. What results had the Bradette Corporation made upon which it was entitled commissions? A. I cannot answer that without going into the thing in detail.

Q. Where would you get information from? A. I don't know. From the correspondence.

Q. Correspondence that you have in your office? A. I am not strictly right there. Let me say this: The contract providing for the payment of five per cent. to Mr. Brady or a corporation to be organized by him was on all goods sold by the Alpha Chemical Works and a commission of one per cent. on all goods purchased by the Alpha Chemical Works during that period.

Q. What period? A. I think from July 9th to date.

Q. July 9th? A. 1918

Q. How did you fix July 9th, 1918? A. That, as I remember, is the date of the meeting of the directors of the Alpha Chemical Works at which the authorization for the making of the contract was passed.

Q. When was the Bradette Corporation organized? A. I think in October, 1918, the first deposit to its credit having been made in the United States Mortgage & Trust Company on November 4th, 1918.

Q. Was there a contract made betwteen the Alpha Corporation and the Bradette Corporation? A. No, the contract was made between the Alpha Chemical Works and Mr. Brady and assigned by him to the Bradette Corporation.

Q. Was that in writing? A. Yes.

Q. Have you it here? A. I think so. I think it is here.

Exhibit C-1

Q. I would like to have that contract. One of the contracts isn't here, which is the Alpha's contract. It is, I think, probably with Mr. Wall, but I have the other original which Mr. Brady has.

Q. Will you produce that? A. Yes.

Q. I want to clearly understand the arrangement. Mr. Brady had advanced, as you say, through the medium of the Wolbutt Corporation, which was practically his dummy, a large sum of money, the sum you already mentioned? A. I think—you should not call the Wolbutt Corporation a dummy. Mr. Brady authorized me as treasurer to make these advances by the Wolbutt Corporation to the Alpha Chemical Works.

Q. Mr. Brady, you say, owns all the stock of this corporation? A. Yes.

Q. And he owned all the stock from the start, hasn't he? A. I refuse to answer.

Q. And you refuse to answer that on what ground? A. On the ground that I do not think the answer would be pertinent to the Alpha Chemical Works.

Q. Now, there has been advanced a large sum of money through the Wolbutt Corporation by Mr. Brady? A. Upon Mr. Brady's authorization.

Q. Upon Mr. Brady's authorization, and there was no prospect of his receiving any repayment of those sums? A. No. Mr. Brady would never receive any payment of the money advanced by the Wolbutt Corporation.

Q. Was the Wolbutt Corporation expecting any payment at the time that you met on July 9th, we will say, 1918? A. Yes; I should say they would

be very hopeful. The Alpha Chemical Works was very hopeful to repay these moneys with a profit.

Q. But there was no immediate prospect for getting repayments? A. No.

Q. And you had gone around to various places for the purpose of endeavoring to raise money with which to continue the operations of the Alpha Chemical Works, the alleged bankrupt? A. Yes.

Q. And you were contemplating getting further advances from the Wolbutt Corporation or Mr. Brady? A. I felt if it was necessary we could have gotten further advances by the Wolbutt Corporation.

Q. And was that your idea in forming this Bradette Corporation, the idea of getting further advances? A. No. The reason for the organization—the reason for the giving of the contract and the payment of a commission to Mr. Brady and later to the Wolbutt Corporation was, as I said, as in acknowledgment of the fact that he had authorized the Wolbutt Corporation to advance large sums of money to the Alpha Chemical Works.

Q. Then the real purpose of this agreement was that Mr. Brady, and later the Bradette Corporation was to compensate him for the advances he had made? A. No, not to compensate him for the advances he had made, but to provide a way which we thought was proper to enable him to receive moneys from the Alpha Chemical Works other than by the payment of dividends. May I have a minute?

Q. I would like to get whatever explanation you want to make on the record. A. I said before this corporation was not organized, or the organization

of the Bradette Corporation was not contemplated for the sole purpose of handling the products of the Alpha Chemical Works. We had seen a possibility of acting as broker in other sales for other parties, and in fact did negotiate some sales, and advertised not only the Alpha Chemical Works' goods but the goods of other companies for sale.

Q. Mr. Brady never sold any goods for the Alpha Chemical Works? A. No. Mr. Brady in a good many ways brought me in touch with parties from whom we bought or sold goods for the Alpha Chemical Works.

Q. And Mr. Brady never bought any goods for the alleged bankrupt after July 9th, 1918? A. You mean assisted in the purchase of any goods or——

Q. Put it any way you want. A. Mr. Brady never bought any goods from the Alpha Chemical, but, as I said, he put me in touch with persons to whom we sold or from whom we bought goods for the Alpha Chemical Works.

Q. Before July 9th or after? A. Before, and I think after.

Q. How did you compute $2500 which was paid? A. I made a rough calculation on the amount of goods which had been sold by the Alpha Chemical Works since July 9th and had been bought, and found the amount due under the terms of that contract was in excess of the payments which I made to the Bradette Corporation.

Q. To whom had goods been sold after July 9th, 1918, by the Alpha Chemical Works, the alleged bankrupt? It had one customer, didn't it? A. I think some goods were sold to the Consolidated Color & Chemical, which is the Herman Metz Com-

Exhibit C-1

pany; some were sold to John Campbell; some were sold to Frank Hemmingway, Edison International Corporation, J. Wheeler McGovern, United Color & Chemical; some leather finishing company I have forgotten the name of.

Q. Did Dr. Schoedler receive any salary after July 8th or 9th, 1918, from the Alpha Chemical Works, the alleged bankrupt? A. Mr. Schoedler received $50 a week from the Alpha Chemical Works up to and including, I think, September, 1918.

Q. And he sold goods to these customers that you mentioned? A. He sold goods to some of those customers and tried to sell to others.

Q. And during the same period the brokers received commissions for selling goods to these customers? A. By brokers you mean outsiders?

Q. Outsiders; after July 9th, 1918, the Alpha paid commissions to brokers selling these people? A. I think in one case only. That was to the Williamson & Company, which was a sale for one or two hundred pounds of paranitranaline, and the commission amounted to about $50.

Q. You made some sales too, didn't you, after July 9th, 1918? A. Yes.

Q. Did you make many sales? A. It is pretty hard to say whether I made the sale or whether Dr. Schoedler made the sale. He visited the trade, and they called the officer either personally or by telephone, and either he or I would answer it and close the deal.

Q. The customers after July 9th, 1918, were substantially the same customers who traded with the alleged bankrupt prior to that date? A. I should

say all the customers which traded with the Alpha Chemical Works subsequent to July 9th—by "traded with" I mean bought from 1919—were new customers.

Q. After July 8th? A. Yes.

Q. Procured how? A. Procured by calls from Dr. Schoedler, and the contract was either closed by him or by me, the order taken possibly over the telephone or by mail.

Q. Is there an account in the books with the Bradette Corporation? A. There is no account in the books with the Bradette Corporation except, I think, in the checkbook.

Q. You mean entries in the cashbook showing the payments made? A. Yes. And in the ledger of the Alpha Chemical Works, Inc. I think it is charged to brokerage.

Q. Have you the cancelled vouchers of the Bradette Corporation? A. Yes.

Q. I show you these seven checks. Will you take them up one after the other and tell us the purpose of each of those disbursements? A. Check No. 1, dated November 6th, 1918, to the order of Burdett & Study was to reimburse them $311.60 for moneys which they advanced to Dr. Schoedler during October for the account of the Bradette Corporation, and the organization expenses which were disbursements only of the Bradette Corporation. Check No. 2, dated November 8th, 1918, to the order of Burdett & Study, for $300, was to reimburse them for the office rent of the Bradette Corporation for the month of October, it having been agreed that the Bradette Corporation should pay to Burdett

Exhibit C-1

& Study $300 a month. Check No. 3, dated November 8th, 1918, to the order of Ulrich Schoedler, in payment of salary.

Q. Salary for what? A. Well——

Q. For whom? A. Dr. Schoedler.

Q. Salary for the Bradette Corporation? A. Yes. Check No. 4, dated November 8th, to the order of Burdett & Study, for $50, was to reimburse them for $50 which they paid to Dr. Schoedler for one week's salary for the account of the Bradette Corporation. Checks Nos. 5 and 6 for $50 each to the order of Dr. Schoedler was for salary. Check No. 7 to the order of Burdett & Study for $300 was in payment of office expense during the month of October.

Mr. Bilder: I offer checks 1 to 7 inclusive and ask that they be marked as one exhibit, but separately lettered.

(Marked Exhibit P-29-a, b, c, d, e, f, and g).

Q. I show you these checks and ask you to tell us the purpose of those checks. A. Checks Nos. 8, 11, 13, and 14 for $50 each in payment of salary to Dr. Schoedler, check No. 10 for $300 to the order of Burdett & Study was for office expenses during December; check No. 12 for $25, dated December 24, to the order of A. Rieger, was a Christmas present.

Mr. Bilder: I offer those in evidence and ask them to be marked as one exhibit, but separately lettered.

Exhibit C-1

(Marked Exhibit P-30-a, b, c, d, e, and f).

A. Check No. 8, to the order of Dr. Schoedler, for $100, was given to him on account of traveling expenses on a trip he made to Albany, Troy and Schenectady and that section.

Q. For what purpose? A. Selling of goods.

Q. I show you blank checks and ask you to describe them and tell us their purpose. A. Checks Nos. 9, 16, 17, to the order of Dr. Schoedler, in payment of salary.

Q. And they are for how much? A. Aggregate $200. Check No. 15, for $85.60, drawn to order of cash, endorsed by J. D. Snyder, was payment on account of advertising expenses.

Q. Who is Snyder? A. A printer.

Q. Located in New York? A. He is with the West Side Printing Company. He cashed that check and gave me the money and I gave him the cash. Check No. 22, to the order of Burdett & Study, $300, is for January office expenses. Checks 18 and 19, to the order of Lester W. Schwartz, one for $33.33, and one for $10.69, for payment to him of salary for the account of the Bradette Corporation, he having made a trip to Philadelphia and spent part of each of those weeks away from the factory at Bound Brook, working for the account of the Bradette corporation with a view to help selling its goods.

(Seven checks marked Exhibit P-32-a, b, c, d, e, f and g).

Exhibit C-1

A. Check No. 22 for $44.45, to the order of cash was for petty cash. The check No. 23 for $32.25 is to the order of West Side Printing & Supply Company in payment of balance due for printing advertising matter.

(Two checks marked Exhibit P-33-a, and Exhibit P-33-b).

Q. At the time of the fire the money was paid over by the insurance companies, and you said that amount was something like $12,000? A. Oh, no; I do not know, but nothing like that.

Q. You think it is about $1200? A. I think it is about $2,000.

Q. Whatever it was was paid over in drafts? A. Part of the money was paid to the Alpha Chemical Works for the loss of machinery and stock, and part was payable to the Alpha Chemical Works and the Pierce Estate, mortgages for the loss incurred by the fire on the buildings. These checks, as I remember, were endorsed by Mr. Pierce, returned to us, and deposited to our account.

Q. Can you tell me how much the issued and outstanding stock of the Bradette Corporation——. A. (Interrupting) 50 shares.

Q. And what is the par value of that? A. There is no par value.

Q. Has any capital been paid into the treasury of that corporation? A. None, except the contract which Mr. Brady had with the Alpha Chemical Works.

Q. And that was considered capital, was it? A. That was—there was stock issued for that.

Exhibit C-1

Q. How much? A. 50 shares.

Q. Who holds that? A. Mr. Brady.

Q. Did anyone else ever hold any part of that stock? A. Yes. The stock was originally issued 10 shares to Miss A. Rieger, and 20 shares to Lester C. Burdett, and 20 shares to Mr. Brady. This stock was immediately endorsed and delivered to Mr. Brady.

Q. And neither you nor Miss Rieger paid anything for the stock? A. No.

LESTER C. BURDETT, recalled.

By Mr. Bilder:

Q. Has the Bradette Corporation done any other business? A. The Bradette Corporation sold two other lots, one of betanaphthol and one of monosulphonic acid.

Q. That was sold for whom? A. It was manufactured by the Po Ambo Chemical Company of Matawan, New Jersey.

Q. And sold for them? A. Yes.

Q. What was the aggregate purchase price of those two lots? A. About two hundred and fifty to three hundred dollars, I should think.

Q. And where was that merchandise that was sold; where was it at the time it was sold? A. At the factory of the manufacturer, Po Ambo Chemical Company.

Q. Was it in the factory of the Alpha Chemical Works? A. No; it was shipped direct.

Q. Was it merchandise that had previously been purchased by the Alpha Chemical Works? A. No.

Exhibit C-1

We found in many cases manufacturers of paranitranaline were also manufacturers of betanaphthol, which together make a certain color, our competitors, especially Sherwin-Williams Company, Ault & Wiborg Company—We then made this connection with the Po Ambo Chemical Company who manufacture betanaphthol and other products to sell the same in connection with our paranitranaline.

Q. Did the Bradette Corporation pay any salaries to anyone? A. Only to Doctor Schoedler, as I stated at the last meeting.

Q. You are president of that company, are you? A. No, I am treasurer.

Q. Who is the president? A. Mr. Brady.

Q. Has he derived any financial benefit from this company? A. No.

Q. Has he received any dividends of any kind or nature? A. No. The only checks were drawn as I described at the last meeting.

Q. The checks which were drawn to you personally were for what? A. No checks were drawn to me personally.

Q. Were checks drawn to the firm of Burdett & Study? A. Yes, the checks to Burdett & Study were for the $300 office expenses.

Q. That was supposed to cover what? A. Well, to cover all the expenses of the Bradette Corporation in New York, it being understood that the Alpha Chemical Works should no longer pay any part of the New York office expenses. It was practically a substitution of payment by the Bradette for what was formerly paid by the Alpha.

Exhibit C-1

Q. The Delaware corporation had theretofore paid $300 a month to Burdett & Study? A. Since February, 1918—which was the time Mr. Study and myself entered into partnership—the Alpha Chemical Works paid $150 a week to Burdett & Study, which included my salary. I, as president of the Alpha Company, was taking $300 a month and the Alpha Company was paying the New York office expenses, which amounted to about $300 more. So from February, 1918, they paid $600 a month and I took nothing from the Alpha.

Q. From February, 1918? A. Yes.

Q. Down to what date? A. To October or November, 1918. Then from October, 1918, the Bradette Corporation has been paying $300 a month? A. Yes.

Q. For office expenses? A. Yes.

Q. Have you been receiving a salary? A. From the Bradette?

Q. No, Alpha. A. Yes. Since October to January I received $500 a month.

Q. $500 a month salary? A. Yes.

Q. As I understand it, subsequent to October you were receiving $500 a month from the Alpha Corporation as a salary and the Bradette Corporation has been paying Burdett & Study at the rate of $300 a month for office expenses? A. Right.

Q. Thus making the total sums thus received by yourself and Burdett & Study in the aggregate $800 a month? A. Right.

Q. That has been for what period altogether? A. November, October, December, 1918, and January, 1919.

Q. That is, four months? A. Yes.

Exhibit C-1

Q. Or an aggregate of $3,200? A. Right.

Q. Can you tell me how you reached $300 a month for office expenses? A. In the beginning the Alpha Chemical Works was paying all of the expenses. That was the arrangement which I had with the directors of both the Delaware and the Jersey companies. They amounted to approximately $300 a month.

Q. How did you get at that? A. Well, from the books. Roughly I should say they figured in this way: The rent was $83.33, paying the stenographer $25 a week, and the other incidental expenses—telephone, telegraph, stationery and messenger services and things of that sort.

Q. What make up the difference between the telephone and telegraph bill of the $300? A. I do not say exactly $300. While the Alpha was paying it amounted to approximately $300 a month, and I then took it up with the directors and suggested that they pay $300 a month in a lump sum.

Q. Was any resolution passed? A. I would have to look at the book. My idea is that it was not.

Q. Was there any resolution ever passed by the Alpha of Delaware authorizing the payment of $300 a month for office expenses to Burdett & Study? My previous question is, I think, related to the Jersey company. A. Well, if it related to the Jersey company my thought is that the Jersey company had a resolution authorizing the opening of a New York office and the payment of its expenses. I do not think there was any resolution authorizing the payment of $300 a month to Burdett & Study.

Q. Was there any resolution authorizing the payment of a salary of $300 a month to you by the

Delaware? A. My remembrance is there was a resolution on the minutes of the Jersey company. I do not know whether or not there was a resolution on the Delaware.

Q. Was there a resolution on the minutes of the Delaware company authorizing a payment to you of a salary of $500 a month? A. Yes.

Q. And was that passed before you received the first $500? A. Yes.

Q. What led up to the increase of your salary from $300 to $500? A. The resolution authorizing that increase was passed at the meeting of the Board of Directors held on July 9th, 1918. The resolution, as far as I was concerned, was to go into effect October 1st, 1918.

Q. Is that in the resolution? A. Yes, beginning October 1st, 1918. The reason for this was that I had given a great deal of time to the corporation, and we felt that I had never—the directors felt that I had never been adequately paid, and at that time we hoped and expected to make good return on the manufacture of paranitranaline, which we expected to begin on September, October, November, December, 1918, and with that in mind these increases to myself and Mr. Carlin were authorized.

Q. Who was on the Board of Directors? Who sat at the meeting which passed that resolution? A. Mr. Vom Cleff, my brother and myself.

Q. Did you vote in favor of the resolution? A. Yes.

Q. Now, you were practising law in the Woolworth Building during that period, weren't you, during which Burdett & Study were receiving $300 a month from the Delaware corporation? A. Yes.

Exhibit C-1

Q. Did you ever contribute anything to the Delaware corporation as your share, for the share of the law firm's use of those offices? A. We received $300 a month as the share of the Alpha and we paid the rest is my understanding.

Q. Well, the rent was only $83 a month? A. True.

Q. Well, what rest was there to pay? A. Well, maybe there wasn't any rest to pay. Our agreement with the Alpha was that we were to receive $300 a month for the office expenses.

Q. Was there any agreement with the Alpha that the firm of Burdett & Study were to receive $300 a month from the Delaware company for office expenses? A. The firm of Burdett & Study received from the Alpha company $600 a month.

Q. What you want us to understand is that the firm of Burdett & Study received $600 a month, of which $300 was office expenses and $300 was salary? A. Yes.

Q. As a matter of fact, the law firm contributed nothing toward that $300, did it, or reimburse the company for the reasonable value of so much for the use of those offices as Burdett & Study derived therefrom? A. No. There was an agreed amount that the Alpha Chemical Works should pay the firm of Burett & Study for the use of those offices, stenographer, and so forth, each month.

Q. The lease of those premises was in the name of the Alpha of New Jersey? A. Yes, but the rent was paid since February, 1918, by Burdett & Study.

Q. Mr. Burdett, did Mr. Vom Cleff receive anything out of the Alpha Chemical Works of Delaware directly or indirectly? A. No.

Exhibit C-1

Q. Did you pay him any part of the $500 salary that you received either directly or indirectly? A. No; nothing.

Q. Did he receive any part of the $300 office expenses? A. No.

Q. Did Mr. Brady receive any part of those office expenses directly or indirectly? A. No.

Q. Did he receive any part of the salary directly or indirectly? A. No.

Q. I understood you to say that Mr. Brady received nothing from the Bradette Corporation. A. Yes.

Q. And Mr. Vom Cleff received nothing directly or indirectly from the moneys paid out by the Bradette Corporation. A. No.

Q. When were these minutes of the special meeting of the directors of July 9th, 1918, written out? A. Probably a day or so after the meeting.

Q. When was that meeting held? A. July 9th, 1918.

Q. Did you prepare those minutes? A. Yes.

Q. Were they typewritten in your office? A. Yes.

Q. By whom? A. Miss Rieger.

Q. Were they dictated by you to her? A. Yes.

Q. Will you tell me about when they were dictated? A. Well, I cannot say; most probably about several days after the meeting. That is our custom, to dictate the minutes as promptly after as I can.

Q. Did you take notes of the proceedings at the meeting? A. Sometimes I did; sometimes I didn't.

Q. Was she present at the meeting? A. No.

Q. Was Mr. Vom Cleff present at the meeting? A. Yes.

Exhibit C-1

Q. Was your brother present? A. Yes.

Q. There were only three directors at that time? A. Yes. She was in the office, but she was outside. Our door was shut probably.

Q. Was that meeting held in the morning or afternoon? A. Afternoon. I don't remember.

Q. Was there any notice of the meeting? A. No, except a verbal notice, and the notice was waived.

Q. When was the waiver of notice, before the meeting or after the meeting? A. Before the meeting.

Q. When was it signed? A. Before the meeting.

Q. Did you discuss this meeting with Mr. Vom Cleff before the meeting? A. Very likely; yes.

Q. Did you discuss it with your brother? A. I do not know. I should say yes.

Q. You are sure he was present at the meeting? A. Absolutely.

Q. How long did the meeting last? A. I do not know how long the meeting lasted. We sat there and talked probably for an hour or so.

Q. Did you open the meeting formally and close it formally, or was it just a talk and afterwards a preparation of minutes? A. Why, it was called by me as president, and these matters were discussed, a vote taken and approved. I do not know how formal that would be.

Q. There was an actual vote? A. Oh, yes.

Q. You say the notice of meeting was not in writing? The notice of this special meeting was not in writing? It was verbally given or was there a letter sent? A. Verbally, possibly over the telephone to my brother and possibly over the telephone or in person to Mr. Vom Cleff.

Exhibit C-1

Q. And when did you start to draw $500 a month? A. October, 1918.

Q. Why did you in July fix October as the time you would start to draw the money? A. Because that was the time we estimated in October, 1918, we would make a delivery of paranitranaline. We decided that Carlin should get an increase to $500 a month beginning in September.

Q. Why did you have to in July decide as to something that would happen in September? A. We didn't have to.

Q. Why was it taken up in July? A. Because it was a part of the general discussion, which was the manufacture of paranitranaline.

Q. Were you then manufacturing it? A. No.

Q. You were contemplating its manufacture? A. Yes.

Q. Were you experimenting with it? A. I cannot answer that.

Q. Were you experimenting as to the manufacture of it? A. Most probably yes; but I don't know.

Q. When did Carlin first find out that his salary was to be increased? A. Shortly after the meeting.

Q. Or did he first find it out in September? A. No.

Q. Had Carlin in any way suggested the increase of his salary? A. He never directly asked for the increase in salary, but at the time salicylic acid was declining in price and we were letting off the manufacture. He discussed with me or asked me wether we were going to continue or whether he had not better look for another job which he could get at a good price, and I told him if we could work

out the manufacture of paranitranaline, we would put it through and make this increase.

Q. About when did you have this conversation with him? A. I should say it was upon the day of that meeting.

Q. Before the meeting or after? A. Before I should say, but I do not know.

Q. How much had he been receiving then? A. I think about $75 a week.

Q. And did you tell him at the time if he would stay how much more he would get? A. Yes.

Q. How much did you tell him? A. $500 a month.

Q. When you decided to let him have $500 a month you had no idea what your resources were going to be? A. What do you mean?

Q. You had no idea where you were going to get the money from definitely with which to pay this increase? A. As I said in one of the prior meetings, I was assured that if I could not secure the money from others I could have had it from the Wilbutt Corporation.

Q. Up to that time you had been unsuccessful insofar as making profits are concerned? A. No.

Q. What do you mean by no? A. We had not been unsuccessful.

Q. Had you made any profits? A. Yes.

Q. But the losses exceeded the profits? A. In July I do not know, but during the first three or four months in 1918 we made about $8,000.

Q. But it wasn't in the treasury, was it? A. In cash?

Q. Yes. A. No.

Q. That was from salicylic acid? A. Yes.

Exhibit C-1

Q. Of course the price of that had dropped, so you knew there was no profit further to be made out of that; that is true, isn't it? A. Yes. That drop in price took place, I should say, about June or July, 1918.

Q. Knowing already that which you had made profit out of could not any longer be manufactured you proceeded to increase salaries as of September for Carlin without know whether or not you were going to make profits; that is true? A. Not exactly. I was paying Carlin for the ability which he showed and the work which he did. The fact that the prices dropped in salicylic acid was not, of course, his fault, and I believed when we made the synopsis that we could make considerable money in paranitranaline.

Q. How long had he been working at $75 a week? A. I don't know without looking at the book.

Q. Approximately? A long time? A. I should say since about January of that year.

Q. So he worked from about January to September at the rate of $75 a week—approximately $300 month. He was willing to work for $75 a week, wasn't he? A. He didn't work unwillingly at that rate, did he? A. Carlin never worked unwillingly. He did suggest if we could not increase his salary, or continue to make something other than salicylic acid, which he saw at that time didn't pay, he——

Q. (Interrupting) It was because he feared you would go out of business that he talked to you about getting another job somewheres else, is that right, and not because he wanted his salary increased? A. No. Carlin always expected and

hoped that he could make a great deal more than $75 a week if he was successful.

Q. You said you had made $8,000 profit from January to July. Why didn't you increase his salary during that period? A. I cannot answer that.

Q. You found it was a definitely profitable enterprise at that time, didn't you? A. I cannot answer that. He probably never spoke to me. It probably never occurred to me.

Q. Don't you regard it as somewhat unusual that the enterprise was in such shape that he thought he ought to look for another job, and that you should proceed to increase his salary and increase your own salary? A. No, he never said he was going to look for another job, but he threatened to look. The question before was whether or not we were going to continue in business, and that depended upon our ability to make paranitranaline. If he was assured of that he said he would stay during the summer to work the process out if when we were manufacturing we would increase his salary.

Q. You knew that the company's ability to pay these increased salaries would depend upon its ability with which to pay it? A. Right.

Q. You said that it was not only your increased salary but the salary of Carlin. The ability of the company to pay your increase from $300 to $500 depended entirely upon its ability to get the money which which to pay it? You said if you did not get the money from other sources you expected to get it from the Wolbutt Corporation? A. Yes.

Exhibit C-1

Q. Did you contemplate getting from the Wolbutt Corporation the money with which to increase your salary from $300 to $500? A. No.

Q. What difference did it make to you whether the money came from the Wolbutt Corporation or whether it came from other sources? A. It didn't make any. I wasn't raising money to pay salaries. I was paying for the installation cost of machinery for the manufacture of paranitranaline, out of which the salaries were to be paid.

Q. You mean you wanted to raise money with which to install machinery for a new enterprise, not of manufacturing paranitranaline? A. Yes.

Q. And you contemplated as part of that your salary too? A. No.

Q. Did you get the money with which to put up the machinery? A. Yes.

Q. From whom? A. From Mr. Venner.

Q. And it was out of that that you paid the increased salaries? A. No. I do not know where the money came from. The money went into the funds of the company.

Q. You had nothing over and above your expenses, did you; no profits from and after July 9th? A. I did not get the money until September.

Q. So you were practically at a standstill between the 9th of July and the first of September? A. No, we were manufacturing salicylic acid.

Q. That was at a loss, wasn't it? A. It turned out to be; yes.

Q. Did it turn out between July 9th and September you were manufacturing at a loss? A. Yes.

Q. Your receipts between the 9th of July and the first of September was from the sale of salicylic

acid, is that right? You didn't get any money other than from the manufacture of the product during that period, did you? A. I think not.

Q. It was about the 11th of September, wasn't it, that you received the first money from Mr. Venner? A. 10th or 11th. Yes.

Q. You received how much? A. $10,000.

Q. And that was put into the bank account of the corporation? A. Yes.

Q. Which bank account? A. I think the Chatham. I would have to look at the passbook to make sure.

Q. Is it in that bank that the bank account of the New Jersey corporation was continued on without change? A. Yes.

Q. So you put it in the bank account of the New Jersey corporation? A. No.

Q. Why do you say no? A. Because it isn't so. The fact that we didn't change passbooks doesn't necessarily follow that we didn't change bank accounts.

Q. You never changed the signature card up there, did you? A. Probably not.

Q. You never filed with the bank a resolution showing who the officers of the Delaware company are who are authorized to sign checks on that bank account, did you? A. I do not know, but such a resolution was passed, I believe.

Q. Was a copy of it ever filed with the Chatham & Phenix Bank? A. I do not know.

Q. Where is the office of the Wolbutt Corporation? Where was it between the date from and after its incorporation? A. I refuse to answer.

Exhibit C-1

Q. Was the office of the Wolbutt Corporation at the same rooms which were regarded as the offices of the Alpha Corporation of Delaware? A. I refuse to answer.

Q. Was the name of the Wolbutt Corporation upon the doors of any of those offices? A. No.

Q. What is the office of the Wolbutt Corporation stated upon the stationery of the Wolbutt Corporation stated upon the stationery of the Wolbutt Corporation? A. I think it was originally 60 Wall Street, and then it changed to 233 Broadway.

Q. That is the Woolworth Building? A. Yes.

Q. And the room number is that of the Wolbutt Corporation? A. Where we received the mail, yes.

Q. And the books of the Wolbutt Corporation are kept in those offices, are they not? A. No.

Q. The name of the Wolbutt Corporation is in the directory in the Woolworth Building? A. I do not know.

Q. And is the Wolbutt Corporation listed in the telephone book as the same telephone as Burdett & Study? A. I think not. I am quite certain it isn't.

Q. Is the telephone number of Burdett & Study and that of the Alpha Corporation the same? A. Yes.

Q. And is the Alpha Corporation listed in the telephone book for New York? A. Yes. There was a period of time when we had a separate wire for the Alpha Chemical, a separate number. That was several months, I think.

Q. Can you tell me approximately how much money that Mr. Venner put in was paid out to Burdett & Study and to the Bradette Corporation? A. I should say none of it.

Exhibit C-1

Q. You mean by that that the money was put in the bank account in the Chatham & Phenix Bank and in the Irving, and subsequently drawn out by checks upon those bank accounts; is that right? A. I mean that the money which Mr. Venner put in was put in either one or both of those banks and was mingled with our other cash assets, and checks drawn on them in the usual course of business.

Q. And the business of the Alpha of Delaware continued to be conducted at these offices at 233 Broadway until the appointment of the receiver? A. Yes. That is the part which I conducted. Of course, the business which I conducted was principally down there.

Q. In other words, you want us to understand that the business was conducted both at its place of business at Bound Brook and from the offices at 233 Broadway? A. Yes.

Q. As a matter of fact, your salary began with October, is that it? A. I think so, yes.

Q. That is to say, the first salary at the rate of $500 a month you started to get in October? A. Yes, I think so.

Q. Were there any profits in October to justify the payment to you of $500 salary? A. My salary wasn't based upon profits.

Q. What was it based up? A. Work done.

Q. At that time the Bradette Corporation had already been organized and was to receive commissions for buying and selling? A. The Bradette Corporation was organized in October, I think, 1918.

Q. And you were getting so that the buying and selling was supposed to be done by the Bradette Corporation? A. Yes.

Q. So you had nothing to do with that? A. Yes. I said before I had a great deal to do with it.

Q. After eliminating the buying and selling, what else was there left for you to do? A. The payment of bills, checking of accounts, and the executive management of the plant at Bound Brook, where I went several times a week.

Q. What was Carlin supposed to do? A. He was superintendent of the plant.

Q. He was capable, wasn't he? A. Of what?

Q. He was a capable superintendent, wasnt he? A. Yes.

Q. Was there anything that you did in connection with the plant there that he was not fully capable of doing for you? A. No, his business was the manufacturing of the product; my business was to find policies and to carry out business, generally executive, of the corporation.

Q. Will you give us an idea of some of the policies that you were to find from and until the time you got $500 a month salary? A. I discussed with Carlin in many ways the manufacture of the product, equippage of apparatus, the installation of machinery, methods of manufacture, handling of labor, and things of that sort. Carlin was absent from the factory during the entire month of December, during which time I was there.

Q. Why was he absent? A. Very sick with influenza.

Q. He was receiving salary for that month? A. Yes.

Q. Were you able to take his place in the factory? A. I did as far as I could.

Q. Well, you were not a practical man? A. No.

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Q. You would only know about those things what Carlin would tell you? A. No. I knew what I learned during two years' experience in the factory.

Q. Whatever information you got in this business was what you learned as an officer of this company? A. Yes.

Q. Of course, you received right from the beginning, as I understand it, at the rate of $300, at the time you knew nothing? At the time you started you knew nothing of the manufacture of this product or of any of the products of this company? A. I knew nothing of the manufacture of them; no.

Q. So your education was at the beginning, at the rate of $300 a month, at the expense of the company; that is true? A. No; I hope not.

Q. That is, your education as to this particular business? A. I wasn't being paid for the manufacture of chemicals. I was being paid as an executive of the corporation.

Q. Of course, the matter of checking a bill, that is bookkeeping, isn't it? You have bookkeepers for that work. You wouldnt call that executive work, would you? A. No; superintending that would be seeing that it was done.

Q. How much would you pay a bookkeeper a week? A. Never had a bookkeeper.

Q. You did the bookkeeping work, did you? A. No.

Q. The stenographer did it? A. Yes.

Q. Did you regard this as a rather responsible position that you occupied? A. I regarded my connection with the Alpha Chemical Works as responsible.

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Q. Did you regard the keeping of the records of this company as an important matter? A. Yes.

Q. You did not keep in connection with this company the usual books which are kept by corporations of their receipts and disbursements in business, did you? A. I cannot answer that question.

Q. Why cant you? A. I dont know. The books were opened by an accountant.

Q. The books which are here received in evidence? A. Yes.

Q. You want us to understand that those books were by this accountant started just in the way in which we find them started? A. I do not exactly know what you understand. I want you to know the facts, and I want you to know that all books here were opened by an accountant.

Q. The method of keeping those books was prescribed by that accountant? A. Yes.

Q. The books of the New Jersey company were opened by whom? A. Mr. Weisker. The books of the Delaware company were opened by Barrow, Wade & Guthrie.

Q. Did you pay the physicians' bills, the medical expenses of Mr. Carlin during and before the period he was sick? A. Some of them; yes.

Q. How much did they amount to? A. I think I paid the doctor about $75 and the nurse about the same—$70, I think.

Q. Why did the company pay these expenses? A. Because in my opinion it was a proper charge of the company. I felt Carlin was a very sick man, and I asked my personal doctor to attend him. The doctor had since told me he was a very sick man when he got there, and I told him to give him all the attention he could and get a nurse. It was

very necessary that Carlin return as promptly to the plant as he could.

Q. Well, he was receiving $500 a month at that time; that was sufficient to pay his medical expenses. A. I have given you the reason why I paid it.

Q. During the time you received $25,000, I understand it, from Mr. Venner, between September 10th and October 25th—That is true, isn't it? A. I received $25,000 from Mr. Venner I think between September 10th and October 23rd.

Q. (Continuing)—during that period what was the source of your other receipts? A. Sales of goods.

Q. Do you know how much they amounted to approximately? A. No.

Q. You are quite sure that the decision to increase your salary from $300 to $500 a month didn't take place after Mr. Venner had made his first payment of $10,000? A. Very certain. The agreement was made before I had Mr. Venner's name or anything about it.

Q. Did you discuss the increase of your salary with Mr. Brady? A. Yes.

Q. Before it was increased or after? A. Both before and after.

Q. Where? A. Probably at his office; maybe at his home; maybe at my home; maybe in the subway.

Q. Will you tell me the substance of the first conversation you had with him on that subject? A. No.

Q. Why did you discuss it with him? A. Because he was the one from whom I expected to get $25,000.

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Q. Was that the sum you had in mind of getting? A. Twenty-five or thirty.

Q. For what purpose? A. For the purpose of buying sufficient machinery and the raw material for the manufacture of paranitranaline.

Q. How much of that twenty-five did you figure would be for machinery? A. I do not believe I could answer that. I could only say how much was spent a little later.

Q. Was there any approximation before, in advance? A. Oh, I can only guess; about fifteen for machinery and ten for raw material.

Q. Was the machinery purchased after Mr. Venner put his money into the company? A. I would have to look at the book to be exact, but my impression is that most of all of the machinery was contracted for, some of which was delivered, prior to the time he put his money in.

Q. You want us to understand that you had already purchased some machinery? You say both had been contracted for before you received the money from Mr. Venner? A. Yes.

Q. Was the machinery afterwards delivered? A. Yes.

Q. Did you know approximately how much was contracted for? A. Oh, somewhere between fifteen and twenty-five thousand dollars.

Q. All to be purchased from one concern? A. No.

Q. But it was afterwards delivered, was it? A. Most of it; probably all of it.

Q. Was it paid for? A. Yes.

Q. All paid for? A. Do you mean at the moment?

Exhibit C-1

Q. No; subsequently. As it stands now, is that machinery paid for? A. My impression is that the only machinery that is not paid for at this time is a filter press which we bought from the Thomas Edison Company for $250, and a tank which we bought from them for $250 plus cost of filter plates, and there is another tank which we bought and which was delivered a few days prior to the receivership, and some filters and things of that sort. I would have to check that pretty carefully to be exact.

Q. I wanted to get some idea as to some of the policies that you inaugurated as president of this company from and after October 1st, when your salary was increased to $500. A. I don't know as I can define those. All I can say is that I spent ninety-five percent. of my time in the Alpha Chemical Works, exercising my best judgment for its benefit.

Q. You had nothing to do with the buying and selling after October 1st? A. Yes. At the last hearing I said that I had.

Q. Oh, the Bradette Corporation was not supposed to do anything with regard to that? A. Yes, they were.

Q. Whatever was done you did? A. As I said before, Doctor Schoedler was continually drumming the trade. There were times when the telephone would ring and he would not be there, and I would take the order.

Q. The Bradette Corporation was not organized until October? A. October, 1918.

Q. The $2,500 that was paid to the Bradette Corporation was your approximation of commissions,

I understand, from July 9th to about October 1st? A. No.

Q. What period did that cover? A. I think it covered the period from October 1st to the date of the making of the payments. In other words, I checked back roughly and determined how much had been sold and how much bought, and the calculation showed if there was justification to pay $500 I would pay it. Otherwise no money was taken from the Bradette Corporation except sufficient money to pay Doctor Schoedler for his expenses.

Q. Then your approximation was not in regard to how much was sold, or was it just a coincidence that they were both the same? A. They were not the same.

Q. What was the amount that you thought was the approximate sum that the Bradette Corporation was entitled to? A. As I said before, I made a rough calculation of the goods that was bought and sold, and figured commission, and found that there was an excess before making the payment.

Q. What was the excess? A. I do not know.

Q. Why didn't you pay the full amount? Why did you content yourself in making the payment $500? A. There was no more reason for paying them the full amount than to other creditors. I paid when I could.

Q. Then that payment, as you regarded it, was a payment of an antecedent indebtedness, which was necessary to pay the Bradette Corporation in order that the Bradette Corporation in its turn could pay Burdett & Study; is that the way you figured it out? A. No.

Exhibit C-1

Q. Have you any idea as to how much money has been paid by this alleged bankrupt to Burdett & Study since its incorporation? A. About $2,000, I should say; between $2,000 and $2,500. No, that is not right.

Q. You are multiplying the number of months? A. Well, the best answer to that is they paid $600 a month, I think, beginning with February, 1918, down to and including September, 1918, and I think October, November, December and January they paid nothing.

Q. You would say seven months at $600 a month would be $4,200. That is from February to September, 1918. The months that you mentioned was February 18th to September 18th? A. Yes.

Q. Then I am right in assuming that there was paid to Burdett & Study $600 a month for seven months—$4,200? A. I am not sure if it is six or seven months.

Q. Didn't I understand you to say that the Alpha of Delaware was incorporated in April of 1917? A. Yes.

Q. Didn't Burdett & Study from April, 1917, to February, 1918, receive any money from the Alpha Corporation? A. Burdett & Study was not organized until February, 1918.

Q. From April, 1917, to February, 1918, the money was paid to Burdett & Horne; is that right? A. I think not.

Q. Well, how was it paid? A. I think the Delaware company paid the office expenses and paid nothing to Burdett & Horne.

Q. By checks—— A. (Interrupting.) To the creditors themselves.

Exhibit C-1

Q. Have you made a computation as to the moneys which you received during the life of the Delaware company for yourself? A. No.

Q. Did you ever tell Mr. Venner that you had not received any salary from the Alpha Chemical Works, Incorporated, of Delaware? A. No. I told him, as I remember it, that I had not been receiving a salary directly from the Alpha Chemical Works, and I also think that I told Mr. Venner that it had been voted that my salary should be $500 a month beginning in October, 1918.

Q. Then it is true that you told Mr. Venner that you had not been receiving any salary from the Alpha Chemical Works, Incorporated, of Delaware? A. No, I should not say that is true.

Q. Well, what did you tell him on that subject?

Mr. Holbrook: I object to that. This has nothing to do with the bankruptcy matter. It is about some conversation with Mr. Venner.

Mr. Bilder: I insist upon an answer to the question. Here is an opportunity for the Master to certify.

(Last question read.)

A. My best recollection is I told Mr. Venner at that time I wasn't receiving any salary from the Alpha Chemical Works but that the Alpha Chemical Works was paying a certain amount—I do not know whether I mentioned it or not—to Burdett & Study, and that my pay was coming out of that.

Q. You told him that? A. Yes.

Q. In whose presence? A. I do not know that anybody was present.

Exhibit C-1

Q. Where did you tell him that? A. In his office.

Q. In New York City? A. Yes.

Q. And was that before you wrote him a letter setting forth the terms upon which you would be willing to receive $25,000 from him?

Mr. Holbrook: Same objection. It is immaterial; has no connection with the bankruptcy proceedings.

Mr. Bilder: I insist upon an answer to that question.

The Special Master: I am sitting as a Special Master.

Mr. Bilder: I am merely calling your Honor's attention to the witness' failure or refusal to answer the question.

(Last question read.)

A. Yes, it was during the negotiations for that money.

Q. And did you tell him how much it was that the Alpha Chemical Works of Delaware was paying to Burdett & Study? A. I do not remember.

Q. Did you tell him that the Alpha Chemical Works were paying Burdett & Study $600 a month? A. I do not believe the amount was mentioned. I said the company was paying the New York office expenses. I do not know whether or not it was mentioned.

Q. Why didn't you tell him that the Alpha Chemical Works, Incorporated, of Delaware, were paying Burdett & Study $600 a month?

Mr. Holbrook: Same objection, that this has nothing whatever to do with the bankruptcy proceedings.

A. No reason I can think of. If he had asked that question I would have answered him.

Q. You were desirous of obtaining on behalf of the corporation this $25,000 from him? A. Not specially; no.

Q. Not specially? A. No.

Q. At least to the extent of writing this letter that you did write him. A. No, I didn't write the letter. The letter was dictated at Mr. Venner's office, by him, and I signed it.

Q. You signed it of your own accord? A. Yes.

Q. You didn't sign it unwillingly? A. No.

Q. The statements in that letter, they are your statements? A. The statements in that letter were —I would like the letter to find which one we are discussing answering this question.

Q. You know what letter I am referring to? You know I am referring to the letter dated September 10th, 1918, signed by you as president of the Alpha Chemical Works, Incorporated, and addressed to Clarence H. Venner and Clarence H. Venner, Junior? A. I would like to see the letter before answering it, if I may.

Q. You mean you like to see the letter before answering it in order to determine whether the statements in that letter were true? A. Yes.

Q. Whatever was in that letter was true? A. To the best of my knowledge and information was true.

Q. Have you learned since that any of it was false? A. No.

Q. Why didn't you put in that letter that the firm of Burdett & Study were receiving $600 a month, out of which $300 was being paid to you for salary, the other $300 being for office expenses?

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Mr. Holbrook: I object to that. He has already stated that he did not write the letter. Mr. Venner dictated it himself, as is his custom, to have people sign things. He put it in his own language and to suit his own purposes.

(Last question read.)

A. I do not know; it never occurred to me at the time to put it in or out. It was not considered. I assumed it could be understood that the New York office had expenses, and we didn't go into the details any more than Mr. Venner asked.

Q. As you entered that New York office would there be anything about it that would indicate to a stranger that it was anything but a law office? As you enter what you call the New York offices of that company, I ask you if there is anything that would indicate to a stranger that those offices are other than law offices? A. There is no indication that they are law offices.

Q. Is there anything on the outside door that indicates that there are counsellors of law? A. No; simply Burdett & Study and each of our names.

Q. And the inside of those offices in no way indicate that there are lawyers there engaged in the practice of law? A. Nothing except the law books that I can think of at the moment.

Q. Did you tell him anything about the Bradette Corporation? By "him" I mean Mr. Venner. During the course of these negotiations did you tell him anything about the Bradette Corporation? A. No.

Q. Why didn't you? A. The Bradette Corporation was not organized. I did tell him that we were

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paying out commissions for the buying and selling of our goods.

Q. Did you tell him that commision was paid to a corporation organized just as you described it here and for the reasons stated? A. No.

Q. Why didn't you? A. Well, I didn't have occasion to. I told the son later, after the organization of the company.

Q. Of course, you knew full well, didn't you, that if you had disclosed to Mr. Venner the fact that Burdett & Study were receiving $600 a month and that the Bradette Corporation was organized in the way you have described and for the purposes you have mentioned in this testimony it might have an adverse effect to his putting money into the company? A. I do not see how it possibly could have had.

Q. You didn't imagine that telling him these things at that time would induce him to put his money in, did you? A. It didn't occur to me at the time.

Q. Did you tell Mr. Vennor or his son during the course of these negotiations and before the letter of September 10th, 1918, was signed by you of the intent to organize the Bradette Corporation? A. I do not remember telling him specifically. All I can say is I talked with him from time to time about the selling, and showed him the card which we sent to the trade offering our paranitranaline and other products signed "Bradette Corporation".

Q. You did show him such a card, and that card was printed when? A. I cannot tell.

Q. You are sure that that card had already been printed then? A. Already when?

Exhibit C-1

Q. When you showed that to him during the course of those negotiations? A. Oh, no; that card was not printed until, I think, in December of last year.

Q. Nor did you tell Mr. Venner that the organizors—that the persons who would be interested in this corporation would be yourself and Mr. Brady, and that the reason of the organization of this corporation was because you could not give Mr. Brady dividends, and this was the only way you could give him money? A. I didn't tell that to Mr. Venner.

Q. You didn't think it would induce the payment by him of the money to tell him these things, did you, of this $25,000? A. I didn't go very far to induce Mr. Venner to put his money in. He sent for me. I called upon him at his office. After doing so he dictated this letter, and put the money in.

Q. You didn't call upon him to tell him anything except what he wanted to know? A. I didn't feel that I should tell him anything except the facts; answer his questions. I may have suggested many things which he did not ask. This happened to be one that I didn't.

Q. Did you tell him that the Delaware company succeeded the New Jersey company? A. No.

Q. Did you tell him that the New Jersey company was unsuccessful? A. No, never mentioned the Jersey company.

Q. Who is Harry W. Burdett? A. My brother.

Q. Was he in the employ of the company? A. No.

Q. Did he ever receive any money from the company? A. Yes.

Exhibit C-1

Q. What for? A. Trucking goods from Silver Lake to Bound Brook.

Q. Is he a truckman? A. Yes.

Q. Mr. Burdett, can you definitely tell us where you were on July 9th, 1918, which is the date on which this meeting was held that you have referred to in your previous testimony? A. I was in my office for a certain part of the time.

Q. You are quite sure you were in New York on that day? A. Yes.

Q. It is not possible you are mistaken as to your whereabouts on that day? A. No.

Q. Is James T. Amyon related to Mr. Brady or to you? A. No.

Q. By marriage or blood? A. No.

Q. Where does Mr. Amyon reside? A. I do not know without looking in the telephone book; somewheres in the Seventies, on the west side.

Q. He lives in New York City? A. He lives in New York City.

Q. And his residence telephone is listed? A. I think so.

Q. Do you know whether there was any resolution passed by the stockholders or directors of the alleged bankrupt authorizing the issuance between April 5th, 1917, and July 18th, 1918, of $15,000 of preferred stock of the alleged bankrupt? A. I would have to look at the record, but I do not remember exactly.

Q. If the minute book does not show such authorization you do not think any resolution was passed? A. Well, if the minute book shows no resolution none was passed.

Exhibit C-1

Q. As I understand it, at the directors' meeting on July 9th, 1918, it was resolved to discontinue the New York office of the alleged bankrupt. A. It was resolved to discontinue it, but I do not know what date it was to become effective without looking at the resolution. I do not remember if it was July 9th or if it was put over to the time of the manufacture of the paranitranaline. (Witness looks at book.) Upon looking at the minute book I find the resolution in regard to this matter reads as follows: "Resolved that the president be paid a salary of $500 per month for a period of one year beginning October 1st, 1918, and that the New York office of this company be discontinued on that date with no further expense to this company."

Q. You have been receiving $300 a month for yourself as salary and $300 a month for office expenses, and the substance of that arrangement, as I understand it, was to reduce the lump disbursement to the corporation to $500? A. Yes. The purpose of this was to discontinue the payment by the Alpha Chemical Works of the office expenses at New York and to pay me as president a salary of $500 a month.

Q. The expenses of the New York office were regarded as paid and included in that $500 salary; is that right? A. No.

Q. Well, what did you regard that arrangement, one that increased the net disbursements of the company, or its expenses, or decreased it? A. The reason for that——

Q. (Interrupting) I want to see whether in a financial matter which resulted in an increase of the expenses or an increase of the payment, it would appear that, inasmuch as you had thereto-

fore received $300 a month salary and $300 a month for office expenses that this resolution which discontinued the New York office and paid you $500 a month resulted in a decrease of expenditure of $100 a month. A. That question can hardly be answered that way. The fact was this: Up to October 1st the Alpha Chemical Works was paying Burdett & Study $150 a week to cover office expenses. That was arrived at, as I told you before. $300 was for actual expenses and $300 was my monthly salary.

Q. Now, I am mistaken as to the figures here. $150 a week, which would make it approximately more than $600 a month for office expenses—— A. I am not sure whether it was $150 a week or $600 a month. Another reason for arriving at that——

Q. So that that arrangement would have reduced the expenses of the company? A. Yes.

Q. From $900 a month to approximately—— A. (Interrupting) No.

Q. Well, $600 for office expenses and $300 to you. A. This is all in the testimony at the last hearing very clearly. I will tell it again if you wish. From February, 1918, to and including September, 1918, the Alpha Chemical Works paid Burdett & Study $150 a week. I received no salary during that period from the Alpha Chemical Works.

Q. Well, you need not go over that. I mean the status as of July 9th. At that time, July 9th, there was being paid to Burdett & Study at what rate? A. $150 a week.

Q. And to you $300? A. No.

Q. Nothing? A. No; nothing from the Alpha Chemical Works.

Q. How much of that $150 a week did you receive from Burdett & Study? A. I could not say.

I took $100, $150, $250, when I needed it. There was no understanding between Burdett & Study that I should receive any particular part of that.

Q. Well, it went to the firm? A. Yes.

Q. And you divided equally between you the profits of the practise? A. Yes.

Q. As a matter of fact, did the Alpha Chemical Works discontinue the use of this New York office after October 1st, 1918? A. Well, I used it as president of the Alpha Chemical Works.

Q. The office was practically used in the same way after that as it had been before the business of the Alpha Chemical Works, hadn't it? A. Yes.

Q. The same things that had been done and for which the company paid $150 a week was continued in the same way? A. Yes.

Q. The only change was the method of payment? A. I should say that.

Q. Did the Alpha Company ever transfer its lease to Burdett & Study? A. No. I might add, so to make it complete—upon the appointment of Mr. Wall I discussed this with him and ask him if there was any objection to transferring the lease. He said he thought there would not be if I would find out if the landlord would cancel the lease of the Alpha Chemical Works to the offices given me. The answer was: "I took it up with the Broadway & Park Place Company and told them the condition and they said that they would transfer the lease to Burdett & Study and release the Alpha Chemical Works." Since then they have sent me a form of lease, but I have neglected to sign it. That is the status to-day.

Q. So title of the lease is still in the Alpha Chemical Works? A. Yes.

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Q. Are offices renting for more money in that building—— A. I do not know.

Q. —than that lease provides for? A. I do not know. All I know is that I asked to transfer it. They sent me up the form of lease they sent me.

Q. You do not know whether rents have increased during that period in that building? A. I do not know.

Q. Before October 1st, 1918, and during the period of this lease, the corporations and concerns which transacted their business in those offices were first Burdett & Horne, then Burdett & Study—— A. Yes.

Q. —and the Wilbutt Corporation? A. The Wilbutt Corporation I should not say transacted any business there. We acted as attorneys for the Wilbutt Corporation and did certain things that we could for them as a client.

Q. The Wilbutt Corporation had no other office? A. No. I kept the books at my house.

Q. And what other concerns transacted their business from that office—the Bradette Corporation? A. Yes.

Q. Any other? The Whitney Yeast Company? A. No.

Q. Is their name on the door? A. The Whitney Yeast Corporation is a New York corporation, whose books and records are kept in Boston, and I have permitted them to put their name on the door and keep their stock ledger there, it being their principal office in New York City.

Q. What did they pay for the right? A. They paid me $150 a year retainer, which includes that.

Q. I understand you to say that you have kept

the books of the Wilbutt Corporation at your house in New Jersey and not in the office. A. I have had them in both my places; but they have been at my house for some time.

Q. You mean they have last been at your house? A. They are at my house now.

Q. They have been there how long? A. Several months.

Q. Before that they were in New York? A. Some have; some in my home.

Q. You personally made whatever entries there were to be made in the books of the Wilbutt Corporation? A. Yes. May I add there to complete the record and make it full that when I went into partnership with Horne we came from Breed, Abbott & Morgan? Horne had organized a corporation which he called the Newfields Producing Company, and he received his mail at our office after we moved. I never had any relations with it and do not know anything about it.

Q. The firm of Burdett & Horne received compensation from this Producing Company ? A. No, we didn't receive any.

Q. Where was this company incorporated, do you know? A. I think New York.

Q. And its principal office was designated as these offices? A. I do not know that. I never knew a thing about that.

Q. Was its name on the door? A. No. Its mail was received there. I never knew anything about the corporation whatever.

Q. Did you ever see any of its letterheads? A. I do not remember.

Q. What was its business? A. Moving pictures.

Exhibit C-1

They produced one or two pictures. May I explain that to this extent? It may seem queer that I did not see its letterheads. When we left Breed, Abbott & Morgan we took Miss Von Eberhard, who was Horne's stenographer, and she did his work for him.

Q. Can you tell us the reason for the purchase by the alleged bankrupt from Henry H. Abbott of $100 of the stock held by him in the alleged bankrupt? A. Yes. During the last week in December Mr. Abbott 'phoned me several times. I 'phoned him several times and never got him, and I was at the works a great deal during that month. That was the time Carlin was sick. On the last day of December, which I think was a Saturday, I 'phoned Mr. Abbott and he asked me how things were going and discussed things generally, and then asked if I didn't think he ought to sell his stock. I said that was a question for him to decide; that I could not answer it. He then said that he had advertised that stock for sale at the exchange salesroom on Vesey Street at noon for that day. I then asked him why he did not give me notice of this sale as it might injure our company very much to have its stock sold at public auction. After discussing it he asked me if the company would buy this stock for any sum. I said that I considered the common stock of the company at that time was of no value, but would give him a small sum to forestall the sale at public auction.

Q. His stock was common stock? A. He had common stock only.

Q. How many shares? A. Twenty, I think.

Q. For which he had paid—— A. $2,000.

Q. Can you tell me what caused him to offer or

advertise the stock at public auction; what brought that about? A. Well, I do not know, of course, but I can only guess. I think he did so for the purpose of taking his loss on the last day of December to charge it up to his income tax. That is my guess. I do not know any reason why he did. He never gave me any reason.

Q. As a matter of fact, is the company now the owner of that stock? A. Yes.

Q. Was actually delivered? A. Yes.

Q. At that time was Miss Van Eberhard in the employ of Mr. Abbott? A. No; not to my knowledge.

Q. She was still in your employ? A. No.

Q. She had left your employ? A. She left my employ in September, 1917, I think.

Q. Has never been in your employ since? A. No; never seen her since.

Q. Did she ever enter the employ so far as you know of Mr. Abbott's firm? A. After leaving me?

Q. Yes. A. I think she never did. As I said before, I heard that after she left she went with the Gotham National Bank. That is all I know about it.

Q. Was there any other stenographer? Did you employ any other stenographer after that who had formerly been in the employ of Breed, Abbott & Morgan? A. No.

Q. Or any clerk? A. No.

Q. Did the reverse situation ever arise with regard to the employment of stenographers? A. We only had—I have only had three stenographers. One was Miss Van Eberhard, the other was a girl whose name I cannot remember, whom we had during Miss Van Eberhard's vacation and I think a

week or two after, and our present stenographer, Miss Rieger.

Q. I show you a proxy signed by Mr. Amyon and ask you whether the words—Mr. Study's name on the bottom of the proxy is your handwriting. A. No; Mr. Amyon's handwriting.

Q. And is the date in your handwriting; the date of the proxy? A. I could not say.

Q. Would you say that it is not in your handwriting? A. Well, it is simply two figures, and I do not think it is in my handwriting.

Q. Did you get it by mail? A. Mail, I think.

Q. Do you know why Mr. Study's name was filled in and not yours? A. My name was written in, typewritten, as you see, and he filled in Mr. Study's, probably at my suggestion. He said he could not come to the meeting in person and asked me to whom he could give the proxy.

Q. Have you that letter? A. I doubt whether there was a letter with it. This was a conversation.

Q. When would you say this stockholders' meeting was actually held? A. The stockholders' meeting was held on January 20, 1919.

Q. Is it quite possible that meeting was held after that date? A. No. That meeting was held eleven o'clock, I think, in the morning of January 20.

Q. How do you account for the fact that this proxy is dated January 24th, 1919? A. I cannot account for that.

Q. As a matter of fact, did you receive that proxy after the meeting? A. No. That proxy was at the meeting; I am certain.

Q. You affixed the stamp on the proxy, didn't you? A. Yes. I affixed that stamp and cancelled

it on January 20th, 1919, by marking across the face "L. C. B. January 20, 1919".

Q. Did you cancel it on that day? A. Yes, sir. I am very certain.

Q. Then when you received this proxy it was not stamped? A. No.

Q. And the same thing applies to the proxy of Celine Vom Cleff; when you received that proxy it was not stamped? A. No.

Q. And you voted upon twenty-five shares of stock in the name of James T. Amyon at that meeting, did you, on January 20th, 1919? A. If the record shows I did, I did. (Witness looks in book). Yes.

Q. Do you know who Rupert L. Hughes is, the witness to the proxy? A. Yes. He is one of the employes of Mr. Amyon.

Q. At the accounting office? A. At 25 Broad Street.

Q. And do you know who David F. Phalen is? A. No, I do not; but I think that is Mrs. Vom Cleff's attorney in New Jersey. I am only guessing at that; I do not know. It may be her son-in-law.

Q. Was this meeting held in your office or in the Bound Brook office? A. In New York.

Q. What was the purpose of issuing that to Carlin? A. None particular.

Q. He was used as the dummy, the conduit through which the stock was to be issued? A. Yes.

Q. That resolution for the issuance of that common stock, was that passed pursuant to a notice given to the stockholders? A. The only notice which was given to the stockholders was a notice of the meeting, a copy of which is in the minutes.

Exhibit C-1

Q. That was a special meeting? A. Well, I do not know whether you call it a special meeting or adjourned annual meeting or deferred annual meeting. I never had it in mind.

Q. Well, in the notice it was stated that one of the things that would be done would be the issuance of this stock to Carlin? A. I think not; but that the notice would show.

Q. I call your attention to a paragraph of the certificate of incorporation of the alleged bankrupt which reads as follows: This, I think, is from the eighth paragraph, which says: "In furtherance and not in limitation of the powers conferred by the State of Delaware the board of directors is expressly authorized, without action by the stockholders, to issue and sell the authorized common shares of the capital stock of the corporation from time to time for such considerations and upon such terms as in the discretion of the board of directors may seem for the best interests of the corporation." Was that provision of the certificate of incorporation called to the attention of the board of directors at the time this stock issued to Carlin was authorized? A. No.

Q. Was it in your mind at the time? A. No, I did not think of that.

Q. There was no consideration of the question as to the right of the directors to issue stock without consideration? A. No. The thought was that the consideration, if any, was in further consideration of work which he had done. That was the only suggestion that was made.

Q. Work that Carlin had done? A. Yes.

Q. But it was not expressed in the minutes? A. No.

Exhibit C-1

Q. He was paid for whatever he had done, hadn't he—a salary? A. Well, yes.

Q. He was not in a position to demand any more than he had received? A. No.

Q. The salary which he had received was intended to be and was understood by him to be in full compensation of services rendered by him? A. Except that I said to him that we would some day give him five per cent. interest in the stock, which we never did; but that wasn't any part of this.

Q. That five per cent. interest to be computed upon what? A. I do not know whether it was to be issued or simply—I simply said to him that I would give him five per cent. interest in the common stock of the company.

Q. Well, at that time the total issued stock amounted to how much? A. I cannot remember the time at all.

Q. The authorized amount of the common stock was, as I understand it, a thousand shares? A. Prior to the increase?

Q. Yes. A. Yes.

Q. At the time when you must have made him this promise—— A. (Interrupting) Yes.

Q. —that would have been fifty shares? A. Yes. But this is the understanding that this was not a part of that. I am not trying to say that work was in consideration of this.

Q. It wasn't in performance to what your agreement called? Frankly stated, he was just used as a dummy or conduit for the purpose of issuing to the persons to whom that stock was issued 534½ shares. A. Yes.

Q. Was there any occasion for the use of a dummy or conduit? Why wasn't it issued to them

directly? A. I don't believe I can give any good reason for doing it that way.

Q. Did you have any reason in your mind at that time? A. I cannot think of any. Probably it was a foolish thing to do. I do not know why I did it.

Q. Was it at the request of any of the transferees? A. No.

Q. I am informed that in December, 1918, $400 was paid to Barrow, Wade & Guthrie. Can you tell us what that payment was made for? A. Payment was never made.

Q. It wasn't? A. No; they are still one of the creditors. I can tell you what the bill was for; but the bill was never paid.

Q. Is it your recollection that the Irving National Bank had a note upon which Mr. Brady was the maker, the proceeds of the discount of which was credited to the account of the alleged bankrupt? A. I think Mr. Brady was an endorser on that note; I am quite certain of that.

Q. What you have handed me constitutes all of the balance sheets of the Alpha Chemical Works, Delaware corporation, that were ever contained in that binder? A. Yes; taken out bodily and put in that form. That first one was never in the book, but you don't care about that.

Q. Then everything that is contained in this book that you have handed me, except the typewritten sheets, four in number, have been taken by you from that black binder? A. Yes.

Mr. Bilder: I offer in evidence what we will hereafter refer to as the book of balance sheets.

(Marked Exhibit P-3 of April 29th, 1919.)

Exhibit C-1

Q. Now, the handwriting on these sheets is whose? A. H. Weisker.

Q. Do you remember exhibiting to Mr. Venner a list of orders which the alleged bankrupt had on hand in September, 1918? A. Yes.

Q. Have you that list in such form that you could submit it to us? A. I believe the only list I had I submitted to Mr. Venner, which is probably taken from our books. I think I can identify it though.

Q. You mean you verbally gave him the list and he took it down? A. No; I think I gave him this. I am not certain of that. I think I gave him a statement made by Wiesker showing what orders we had on hand.

Q. Did you keep a copy of what you gave him? A. I do not know.

Q. Were these compiled from books or papers? A. This was probably compiled from books and the original orders.

Q. I understood you to testify on a previous occasion that you never had any stock in your own name in the Bradette Corporation. A. Well, I do not remember testifying in those words: "I never owned any stock." I think I did testify that the stock was originally issued ten shares to Miss Rieger, twenty to myself and twenty to Brady, which was endorsed, naturally.

Q. And do you know when those were issued? A. In October, I think. I will have to look at the transfer book.

Q. Is this paper which I show you in your handwriting? A. No; that is Mr. Weisker's writing. I guess this is the paper I had in mind.

Exhibit C-1

Q. Can you, in your own way, tell me, referring to that paper, what the aggregate amount of the orders—in dollars—unfilled amount to; also the number of pounds of material remaining undelivered? You might take up each item and give it to us so we may put it in the record. A. Do you mean undelivered now?

Q. No, then undelivered, pursuant to that paper, so as to make it clear to you, I understand that paper shows the amount of unfilled orders that were on hand at the time of the delivery of that paper. A. I think so. Now, do you want me to say: "Hemmingway, 5,000, for——"?

Q. Well, does that show that there? A. Yes.

Q. Can you give me the sum of the total? A. Yes. According to this statement there was unfilled orders for 91,727 pounds of paranitranaline.

Q. At how much? A. Well, the prices vary from $1.55 to $1.80.

Q. Set forth on that paper? A. Yes, per pound.

Q. I show you this paper and ask you whether that was delivered by you to Mr. Clarence H. Venner, Senior? A. As I remember, this was the paper which Mr. Weisker made and delivered to Mr. Clarence Venner, Junior, as he was getting on the train to go North.

Q. Why was that delivered, do you know? A. Yes; it was asked for by Mr. Venner, Junior.

Mr. Bilder: I ask that paper be marked for identification.

(Marked Exhibit P-6 of April 29th, 1919, for identification.)

Q. And that paper was delivered about when? A. About its date, I think.

Exhibit C-1

Q. And what is the date that you refer to? A. August 29th. I think that is about the date.

Q. 1918? A. 1918. Mr. Venner, Junior, asked for that statement as he was going up to the country, and I told him it may be difficult to make it on the twenty-ninth of the month, as our books are closed at the end of the month; but we said we would do the best we could, and Mr. Weisker delivered it to Mr. Venner, as I understand it, as he was leaving on the seven o'clock train.

Q. Per your instruction? A. Yes. I never saw the paper, however.

Q. You instructed him to prepare an accurate balance sheet? A. I instructed him to prepare as near as he could on the twenty-ninth of the month.

Q. Do you know whether the facts set forth on Exhibit P-4 for identification of this date—whether the statements set forth on Exhibit P-4 of this date are true? A. Every detail, you mean?

Q. Well, you can answer that—— A. (Interrupting.) Well, suppose I answer it this way: I know that we had an order from Hemmingway for 5,000 pounds; an order from Blumberg for 4,000 pounds; Edison 2,000 pounds, and Edison 48,000 pounds paste at $1.58. Consolidated Color 500 pounds, Hemmingway 30,000 pounds. Now, let me tell you about these next two. Siegel and Kohnstamn gave us an order for a barrel, and I spoke to Doctor Schoedler, and he said in the ordinary trade a barrel is considered 400 pounds, and that is the reason we made it in this way. It ought to have read "One barrel of paranitranaline."

Q. You have reason to believe that your assumption was correct? A. Since then Doctor Schoedler

has confirmed it and said it was customary to deliver those big lots. We therefore delivered only part of those. We never packed paranitranaline in 400 pounds each. Campbell 2,000 pounds. That order to us was from J. Whelan McGovern, who was acting as broker for Campbell, and Western—that is, Western Dry Color—was also an order for one barrel. I think we shipped him 300 pounds.

Q. Now, you have now referred to every order on this paper, have you? A. Yes; I think so.

Q. Now as to the prices. Have you reason to believe that the statement of prices set forth upon that memorandum is true? A. These prices are true, except the order for 30,000 pounds to Hemmingway, which was the Bayer order for powder at $1.65. We found difficulty in furnishing powder, and upon their consent we delivered to them paste at a price of $1.55. I think that also refers to the first order for Hemmingway.

Q. Is that the first decreased price? A. I do not quite understand this.

Q. Did you see the statement which is marked Exhibit P-6 for identification before it was delivered to Mr. Venner, Junior? A. No, I did not.

Q. Did you furnish any information which went on that statement? A. Well, it is all taken from the books.

Q. Now, did you verbally furnish any information to Mr. Weisker on or about the time he was engaged in preparing that statement to enable him to prepare it? A. I think all of these entries were taken from the book except the last paragraph, which reads: "Estimated profit average 40c on 98,330 pounds, $39,332." I guess that estimate of the profit was probably mine.

Exhibit C-1

Q. Did you assist him in any way in the compilation or preparation of that statement? A. I do not know. I may have talked to him. He did the actual work.

Q. Were you personally present and saw him engaged in writing? A. I had worked with him during the afternoon helping to get the facts from which this statement was made.

Q. He showed you a draft of the statement that he expected to deliver to Mr. Venner, did he? A. I doubt it. This was really the draft. You see, it was done in such a hurry we didn't have a chance.

Q. You didn't retain a copy of that? A. I never found one.

Q. Did you ever retain one? A. I asked Weisker for that this morning and he said he thought there was a copy in the office, but I haven't been able to find it.

Q. You saw that statement in Mr. Venner's possession? A. Yes.

Q. You mean Mr. Venner, Senior? A. Yes, at Mr. Venner, Senior's office.

Q. And that is the statement referred to in your letter of September 10th, 1918, addressed to Mr. Clarence H. Venner and Clarence H. Venner, Junior? A. Yes.

Q. Now, were the allegations set forth in that statement true? A. I think so; yes.

Q. I mean at the time? A. Well, yes. The estimate of profit did not prove to be true, but it was my best knowledge at that time.

Q. In what respect did the estimate of profit prove not to be true? A. Well, we didn't average a profit of 40c a pound on those orders.

Exhibit C-1

Q. Well, what did you average? A. I do not know.

Q. You mean you averaged less? A. Yes.

Q. Substantially less? A. Yes.

Q. As a matter of fact, you didn't make any profit on those orders? A. The profit and loss statements which are in with those trial balances would show our profit and loss during this period.

Q. Well, do they indicate a net loss or net profit during that period? A. My impression is a net profit, but I will have to check that with the profit and loss statement.

Q. Of course, you know that during that period a considerable amount of labor on the payroll was charged from the machinery account into the real estate account. You know that, don't you? A. A considerable amount of the labor done at Bound Brook was charged to—I don't know what you mean by considerable, but the books will show that a certain amount was charged to machinery and a certain amount to real estate, buildings and so forth.

Q. And if that which was thus charged to real estate, and labor account had been charged to cost of production or added to the cost, it would have resulted in what did, that there was no net profit? A. Well, most likely, if you charge expenses which were properly chargeable against improvements and machinery and real estate against the cost of operation you would show a loss.

Q. The questions with regard to which your counsel has objected you have stood silent. You refuse to answer them? A. At the advice of counsel I refuse to answer them.

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Q. All the questions which remain unanswered you refuse to answer? A. Yes.

Q. Did you telephone to Mr. Barbrick after Judge Rellstab refused to dismiss the bankruptcy proceedings?

Mr. Holbrook: Same objection.

Q. You refuse to answer that question? A. Yes.

Q. Is this the stock certificate book of the Bradette Corporation? A. Yes.

Mr. Bilder: I offer that in evidence.

(Marked Exhibit P-10 of April 29th, 1919).

Q. And this is the minute book of the Bradette Corporation? A. Yes.

Mr. Bilder: I offer that in evidence.

(Marked Exhibit P-11 of April 29th, 1919).

Q. And this is the stock ledger of the Bradette Corporation? A. Yes.

(Marked Exhibit P-12 of April 29th, 1919).

Q. And is this the checkbook of the Bradette Corporation? A. Yes.

(Marked Exhibit P-13 of April 29, 1919).

Q. Can you tell me whether this first meeting of the Board of Directors of this company was held upon the date of the first meeting of the incorpora-

Exhibit C-1

tors of this company was held on—October 9th, 1918? A. Yes.

Q. And the first meeting of directors was held on the same day? A. Yes.

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

Q. Do you know when those minutes were actually typewritten? A. No. Probably a few days after the meeting.

Q. But in the month of October, 1918? A. I think so; yes.

Q. Your signature, whereever it appears, was appended there in the month of October, 1918? A. Yes.

Q. Such certificates of stock as bear your signature as treasurer of the Bradette Corporation in the stock certificate book of the Bradette Corporation, which I show you, were signed by you in the month of October, 1918? A. I think so; yes.

Q. Positive about it? A. I think so; yes.

Q. Is there any doubt in your mind about it? A. Not at the moment; no.

Q. Well, do you think that on some future occasion you are liable to change your testimony on that subject? A. It is possible, in case I am wrong. I should change my testimony. My impression is that it was signed in October.

Q. Is it possible that they were not signed until some time in January? A. That is not possible.

Q. Or some time in November? A. Possibly in November.

Q. Late in November? A. Possibly; I don't know.

Q. Or late in December? A. No; I think not.

Exhibit C-1

Q. Then you may be wrong in saying that it was some time in October that you signed those certificates? A. Yes; I may be wrong.

Q. It might be that you signed them some time in the year 1919? A. May I tell my best recollection of this?

Q. That is what I am asking. A. Certificates Nos. 1, 2 and 3 and 4 were signed by me on or within a few days subsequent to October 9th, 1918. You will notice that on certificates Nos. 1 and 2 the Alpha Chemical Works' seal is affixed. It was done by mistake. That was done by Miss Rieger. She then gave me the certificates and we issued these later certificates to take their place.

Q. Give the numbers. A. 5 and 6. I was then very careful to get the Bradette seal on it, and instead of cancelling the original two I by mistake cancelled these, cutting those names through there. If I had certificates No. 1 and 2, that takes care of the original issue. Now, this certificate may have been signed by me at any time; I do not know when.

Q. What certificate are you referring to? A. No. 6.

Q. Made out to Lester C. Burdett. When was that made out? A. I do not know.

Q. Made out in 1918 or 1919? A. I should say 1918.

Q. What leads you to believe that? A. Well, I have no recollection of having anything to do with that certificate for several months. That certificate was later transferred to Mr. Brady, together with the two certificates for Miss Rieger.

Exhibit C-1

Q. Well, now, will you look at that certificate No. 5 and certificate 6 again and tell me whether you still say that those two certificates were not signed by you in 1919? A. Yes; they were not signed by me in 1919, to the best of my recollection.

Q. I call your attention to the date of cancellation of the stamp and ask you what year the date of cancellation is. A. It looks like January 7th, 1919.

Q. When was the cancellation stamp put on there? A. That was put on on that date and that was cancelled on that date.

Q. The cancellation stamp, when did you put your stamp on,—at the time of cancellation or at the time of issuance of the transfer and original stamp? A. At the date of issuance.

Q. And when was that transfer made? A. That transfer was made January 7th, 1919,—that is, these certificates were taken in, 5 and 6 were taken in. That (indicating) is stamped on that date. And when certificates 7 and 8 were issued and delivered I could not say exactly. I never held them more than a week or two.

Q. Certificates No. 7 and No. 8 were delivered in 1919? A. Yes; they were actually delivered in 1919.

Q. Can you tell me what date was placed upon certificate No. 7? A. Why, October 9. I was trying to carry out the original thought; that was that all the stock belonged to Mr. Brady and we held it and did not transfer it from time to time.

Q. So in January you dated the certificate October 9? A. Yes.

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Q. So that the entry on the stub of certificate No. 7 was made on January 7th, 1919? A. That is right.

Q. And the entry on the stub of No. 8 was made on January 7th, 1919, and not on October 9th? A. If I had done that promptly I would have transferred it on October 9th, but we delayed it and delayed it and held it up, as you see, at the time.

Q. Where was this book purchased, referring to the stock certificate book, Exhibit P-10? A. Brown-Green Company.

Q. Was it purchased from the West Side Printing Company? A. No; purchased from Brown-Green Company, 48 John Street.

Q. Was it paid for by the check of the Bradette Corporation? A. Probably not; probably paid for by Burdett & Study.

Q. Will you please ascertain the fact that if it was paid by check of Burdett & Study? Will you produce the bill and the check? A. Yes.

Q. I call your attention to the minutes of the first meeting of the board of directors of the Bradette Corporation, wherein it is stated: "Resolved that the company open an office at 233 Broadway, Borough of Manhattan, City of New York, and the treasurer is authorized to negotiate for said office at a monthly expenses of $300. Upon motion duly seconded and carried it was resolved that the president and treasurer be paid for a salary of $500 per month", and I ask you whether any negotiation was had and if it was with whom? A. Negotiations were had with Burdett & Study.

Q. You mean you negotiated with yourself or you negotiated with Mr. Study? A. Mr. Study.

Exhibit C-1

Q. Was that necessary? A. I cannot answer that.

Q. At that time who had the lease for the office? A. Alpha Chemical Works of New Jersey.

Q. Why shouldn't the negotiation have been with the Alpha Chemical Works? A. I do not know.

Q. Mr. Burdett, you are reported as having testified that you were to receive ten per cent. of the stock of the alleged bankrupt pursuant to an agreement that you had in that behalf. Do you remember testifying to that effect? A. You said that I had received it?

Q. You are reported to have so testified, that you were to receive it. A. That I was to receive it?

Q. Yes. A. Yes.

Q. Was that a written agreement? A. No.

Q. That was a verbal agreement? A. Yes.

Q. With whom? A. With my brother and Mr. Vom Cleff.

Q. You never received it? A. No.

Q. Did you ever make any effort to get that stock? A. No.

Q. Why didn't you? A. It probably never occurred to me.

Q. You never had any conversation with any one of the stockholders in which you suggested that you should receive one-tenth of their stock pursuant to the agreement? A. No. I may have discussed it with my brother and Vom Cleff from time to time. We simply delayed in doing it.

Q. Of course, the real reason was you knew, of course, the stock wasn't paying any dividends and it wasn't likely to pay any dividends and therefore the ownership of one-tenth of the stock would not mean much for you? A. No.

Exhibit C-1

Q. I mean, it wouldn't mean as much for you to have one-tenth of the stock as the financial arrangement which was then in force? A. I do not follow you. I do not know what financial arrangement you mean.

Q. Well, rent and salary. A. This agreement was in addition. The stock was in addition to any cash consideration.

Q. You remember a provision of the by-laws of the alleged bankrupt which provides that no compensation should be paid to a director except the fee and expenses of attaining means by which— A. (Interrupting) Oh, I do not just remember. It is probably there.

Q. Section 9 of the by-laws? A. Yes; that is here.

Q. Did you regard that provision of the by-laws as any obstacle at all, in the way of your receiving the salary and rent which you received during the life of this alleged bankrupt? A. None whatever.

Q. Did you ever consider it at all or didn't you know anything about it; forgotten about it? A. Oh, I have that in mind that that is generally in the by-laws of the Delaware company.

Q. You were director all the time? A. Yes.

Q. And that provision of the by-laws was always in force? A. Yes.

Q. And that was never repealed? A. May I read the entire section of the by-laws, as you read part of it?

Q. I will look at it. I show you this paper and ask you whether that will refresh your recollection as to whether or not the note which in the morning session I directed your attention to was not the

Exhibit C-1

note of Paul T. Brady. You stated that it was the note of the alleged bankrupt endorsed by Paul T. Brady. A. I still think so.

Q. You think the memorandum that you have before you does not indicate to your mind that Mr. Brady was the maker of it? A. No. The notes are still in existence.

Q. Why is it indicated there as the Brady note? A. I do not know.

Q. Is the furniture in the office now occupied by Burdett & Study the property of the alleged bankrupt? A. All but one book case is.

Q. Is that a sectional book case? A. Yes; two sections.

Q. Was any of it originally purchased in the name of Burdett & Horne? A. I think some of the bills may have been made to Burdett & Horne, but I do not remember that. It was not bought and paid for by Burdett & Study.

Q. Whatever furniture that is now in the office of Burdett & Study, excepting one book case, was paid for out of the funds of the Alpha Chemical Works, a New Jersey corporation? A. Some of them; mostly by the New Jersey, and some by the Delaware.

Q. And in some cases the bills were rendered in the name of Burdett & Horne? A. I do not know that they were; they may have been.

Q. And in some cases the bills were rendered in the name of Burdett & Study? A. I think not. I think no furniture was paid for by Burdett & Study.

Q. In whose name is the insurance on the furniture? A. There is none.

Exhibit C-1

Q. There never was? A. No.

Q. So that the desk used by Mr. Study in his office was paid for—was bought and paid for by the Alpha Chemical Works of New Jersey? A. I have said that every piece of furniture in there was paid for by the Alpha Company of Delaware and New Jersey except one book case.

Q. Well, I wanted to make sure. That includes the typewriter? A. Yes.

Q. In any statement made or balance sheet prepared was the New York office furniture included as an asset? A. I think it was.

Q. Can you show me anywhere in the balance sheets in Exhibit P-3 of this date where furniture in the New York office is listed as an asset? A. Not specifically. I think that Weisker put that into the machinery and equipment account. I do not know what he did with them. It is on the books somewhere.

Q. I show you this check and ask you what that check was in payment for? A. That check was paid to Ralph W. Horne, dated January 4th, 1918, for the office furniture in the New York office which belonged to him.

Q. What was the amount of that check? A. $132.75.

Q. And is that a check of the New Jersey company or the Delaware company? A. Delaware company.

Q. What kind of furniture was it that that check was in payment of? A. When we originally opened the New York office the Alpha Chemical Works of New Jersey paid for the furniture in my room. Horne paid for the furniture in his room, and we each bought half of the furniture in the outside room, and when he left my office and left the furni-

Exhibit C-1

ture behind him I gave him this check to reimburse him for the furniture which he bought.

Q. As I understand it, the New Jersey company paid for the furniture in the room, which consisted of what? A. Well, the desk and the office chair, and one or two other chairs, and possibly the carpet. I do not remember.

Q. His room having been used by him in the practice of law with you as partner? A. Yes.

Q. And you say he had contributed one-half to the payment of the furniture in the outside office? A. In the beginning; yes. There were some one or two pieces which we bought later on. There were some paid for by the Delaware company and some by the Jersey company. So that to-day all of the furniture, with the exception, I think, of one book case, belongs to the Alpha Chemical Works of Delaware.

Q. Well, the room which he left was immediately afterwards occupied by Mr. Study, wasn't it? A. Within a month, I think.

Q. Anyone occupy it in between? A. No.

Q. On the date of this check had Mr. Horne left already? A. No. My guess is that he left a week or two after that.

Q. Did he buy that furniture for his room at the time you moved into the offices in the Woolworth Building? A. The furniture was all bought from the Hale Desk Company, and he gave his check for his part.

Q. Well, it was bought about the time you moved into the offices and sent from the furniture dealer or factory direct to these offices? A. Right.

Exhibit C-1

Q. In December, 1916? A. Well, I think it was in January, 1917. I don't think we opened then.

Q. How did you arrive at the amount of that check? A. This check?

Q. Yes. A. He gave me a statement showing what he paid.

Q. Isn't it a fact that he gave to the New Jersey company at some time a check for some furniture that had originally been bought by the New Jersey company? A. Yes; I think he did.

Q. I show you Exhibit P-11 of March 27th, 1919, and ask you whether you find an entry there relating to this refund? A. Yes.

Q. How does it read? A. It is an entry of a check having been received from Horne for $106.75, and under that it is marked "Ditto, freight $5.47". I don't know what that means.

Q. What do you think that is? A. Some freight refund we got. It probably was freight on some other article of the works. I do not know.

Q. That is a check that the Alpha got from Horne? A. Yes.

Q. What was the original consideration to Horne which caused him to give up that much money to the company? A. It was understood, as I said before, that he should buy his furniture and half of the outside furniture. The Alpha bought the furniture and paid for it and he refunded his part to the company.

Q. You cannot give us the details of how it was made up? A. No. Generally it was made up of a desk, chairs and carpets.

Q. Was that when he left in January, 1918, the Alpha purchased from him the furniture in his

room and so much of the furniture in the outside room as he had bought? A. Yes.

Q. Will you tell me why that was done; why the Alpha bought the furniture in his room, which had been devoted to the use for a firm in which you and he were engaged in the practice of law; why the Alpha was interested in maintaining that room and keeping it furnished? A. Well, the room was only a part of the whole office. We had to maintain the office, and the furniture was there, and there were lots of times that the Alpha could use both rooms; many times. I thought it was perfectly proper they should keep the two rooms furnished.

Q. In the room that Horne occupied was there a roll-top desk or flat-top desk? A. Flat-top.

Q. Drawers? A. Drawers.

Q. Lock in the drawers? A. Yes.

Q. Drawers kept under lock and key? A. I do not know.

Q. You never used the drawers? A. Occasionally.

Q. Well, the drawers in that desk did not at any time contain the files and the papers of the company? A. They did likely; yes.

Q. Do you know if they did a tthe time of Mr. Horne's occupancy of the room? A. Yes.

Q. You said that ordinarily the files of the company were not kept in the drawers of the desk. A. Yes; but some of the records and some of the check books, as I remember it, were kept in there and were used very often by Miss Von Eberhard or Miss Rieger in doing accounting and things of that sort.

Q. Were there any book cases in that room? A. Yes.

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Q. Law book cases? A. Yes.

Q. And the company bought that also? A. I do not know whether they bought that or it was the one I had.

Q. Were there any filing cabinets in Mr. Horne's room? A. No.

Q. In your room? A. No.

Q. In the outside office? A. Yes.

Q. Were they used to file legal papers? A. Yes.

Q. Were they used to file any of the company's papers? A. Yes.

Q. Of what nature? A. Correspondence principally; contracts, orders, memoranda of all sorts.

Mr. Bilder: I offer check which witness has identified, dated January 4th, 1918, for $132.75, of alleged bankrupt to Ralph W. Horne, on the Irving National Bank, New York, in evidence.

(Marked Exhibit P-11 of May 7th, 1919).

Q. Can you tell me why it is that Mr. Horne in the beginning paid for any of the furniture; why the Alpha didn't pay for it at the beginning? A. When the organization of the Alpha Chemical Works was contemplated, the parties primarily interested were Mr. Vom Cleff and my brother. They were putting up the whole of the money. I was at that time employed by Breed, Abbott & Morgan, and so was Mr. Horne. It was arranged between them and me that they would go into the chemical business, open a New York office, pay all its expenses and buy its furniture and permit Mr. Horne to join me as a law partner to try to build up a law practice. This was done. I spoke to Mr. Horne.

It was agreeable to him, and he said: "I think that I ought to pay for the furniture which I am using myself," which he did.

Q. Do you know whether as a matter of fact the initial purchase of the furniture by the Alpha of New Jersey is indicated anywheres in the New Jersey books? A. Most probably yes.

Q. Is it found anywheres among its statement of assets in the books? A. I should assume so; yes. Here it is; right here (indicating).

Q. Do you find it in the ledger? A. I find it on page 3 of the book before me, which is the cash-book.

Q. In the ledger of the Delaware company is the New York office furniture and fixtures included as an asset? A. Yes, and I think the item is $132 and something, which we paid Horne.

Q. That is the only thing which is included? A. I think so; yes.

Q. Do you know why the rest of the furniture was not included? A. Because it did not show as an asset. It was never shown as an asset in the ledger. If my previous answer is right, and assuming that the other accountant crossed it off or depreciated it a hundred per cent., it did not show in the books at any time, and I do not see why it was reinstated as an asset if it was crossed off.

Q. Of course, that is upon the assumption that that is the reason it does not appear. You have no basis for such an assumption, have you? A. No.

Q. As a matter of fact, the fact that the $132 which you paid to Horne appears as an asset in the Delaware company's ledger would indicate that

Delaware company's ledger would indicate that per cent. of the office furniture and fixtures in the New York office. A. No, it was not. If the depreciation was made at all it was made by the accountant who closed the books of the Jersey company as is shown by the statement dated April 3rd, 1917, contained in the report of Barrow, Wade, Guthrie & Company dated August 22nd, 1917.

Q. Have you paid any money to the firm of McCarter & English for any services to be rendered by them in connection with the bankruptcy proceedings? A. No.

Q. Have you agreed to pay them any? A. No.

Q. Has Mr. Brady? A. No.

Q. Directly or indirectly? A. No.

Q. Did you pay Mr. Egner's expenses to Bound Brook? A. I took him out in my automobile.

Q. From where? A. From Newark.

Q. Did the Bradette Corporation refund to Burdett & Study the money paid to Brown Green Company? A. Yes.

Q. Can you tell us by which check that refund was made? A. Yes. (Witness looks on paper) I do not recognize this. I think it was check No. 1 for $311.60. This is marked on account of Doctor Schoedler's salary. I think that is a mistake.

Q. Well, did you give the Bradette Corporation an itemized statement or bill of any kind indicating what the various checks were for that were given to Burdette & Study by the Bradette Corporation? A. That check, which included this Brown Green among other disbursements, was itemized in full in a statement which they gave.

Exhibit C-1

Q. Now, the petty cash in the New York office was all paid by Burdett & Study with their checks? A. The general thought was that we should advance the petty cash and make this distribution. There may have been one or two charges—the little book will show from whom it was received.

Q. As I understand it, then, in that book there was an attempt to keep track of all petty cash disbursements for the Alpha and Burdett? A. And we later segregated it the best we could.

Q. I show you these checks and ask you whether they were for petty cash. A. Yes. I think they were all for petty cash.

Q. In the New York office; is that right? A. Well, it included that same principle of paying for things which were properly chargeable against the works; but these checks were a part of what we call the New York office petty cash account.

Q. Does this book which you refer to give credit for those checks? A. Yes; it must.

Q. In other words, there would be two sides to this book, one for receipts and the other for disbursements? A. It would show from whom the petty cash was received and the disbursements made.

Q. I show you these checks, describe them and tell us their purpose? A. Check of the Alpha Chemical Works to Lester C. Burdett for $700, dated February 10th, was the repayment of an advance made by Lester C. Burdett to the Alpha Chemical Works which was deposited in the Cosmopolitan Bank and represented by another check, which I have here, dated February 10th, for $700.

Check of the Alpha Chemical Works rereferred to by witness offered in evidence and marked Exhibit P-15, May 8th, 1919.

Exhibit C-1

Check of Lester C. Burdett referred to by him, dated February 10th, 1917, for $700, offered in evidence and marked Exhibit P-16, May 8th, 1919.

Q. Will you please describe the check before you and tell me its purpose? A. Check dated February 10th, 1917, to the order of R. W. Horne, in the sum of $100——

Q. Whose check is that? A. Check of Alpha Chemical Works of New Jersey. These disbursements show on page 13 of the cash book, and on page 12 of the cash book, the following entry under receipts—"February 10th, R. W. Horne, contra, $100".

Q. What does that mean? A. That means that I received from Horne $100 on that date.

Q. Can you show me the deposit in the bank account of that money? A. I can't show that without the bank book and the statements of the different banks.

Q. Have you these books of the different banks before you? A. Let's have the statements—that will be clearer. The statement of the account in the Irving National Bank—there were three deposits made on February 7th, one for $700, which is one of the items above described, one for $300, and one for $20. It is probably in that entry of $300. I can't tell without a deposit slip.

Q. This is the check you have just testified about? A. Yes.

Check of $100, dated February 10th, of the New Jersey Company on its bank account in the Irving National Bank offered

in evidence and marked Exhibit P-17, May 8th, 1919.

Q. I show you a check dated December 1st, 1917, made by you to the National Carbonic Gas Company for $194.04, and check of the Alpha Chemical Works, dated December 3rd, 1917, to the order of Lester C. Burdett for $194.04 and ask you to tell me the purpose of these checks? A. As I remember they were short of carbonic acid gas, which is used in the manufacture of salysilic acid. I was home over a holiday or a Saturday afternoon, and received a 'phone from Carlin that they had to get carbonic acid gas. I then called the National Carbonic Gas Company on the 'phone and told them that I would send them my check for $194.04, for sixty-six tubes of carbonic acid gas, which I mailed from my house. My check dated December 1st, 1917, to the National Carbonic Gas Company for $194.04, is the check I have reference to. The check of the Alpha Chemical Works to my order, dated December 3rd, 1917, in the sum of $194.04, is a repayment to me of this.

Checks offered in evidence, which are referred to by the witness and marked Exhibits P-18 and P-19, respectively, May 8th, 1919.

A. The reason I sold it for 90c was this, our output for paranitroacetanilid was greater than we could make paranitraniline, and it was shown that we could sell paranitroacetanilid at 90c, and make a profit, which I was glad to do. That which I sold to Edison for 90c was in the paste form. That which

Exhibit C-1

I bought from Edison at $1.10, was in the powder form, which makes more than that difference, in my idea.

Q. I show you this sheet and ask you whether you gave that paper to Mr. Venner, Junior? A. I don't remember doing it, but most likely I did.

Q. Does it look like the typewriting from your office? A. It was made in my office.

Q. You are familiar with the facts therein set forth? A. Yes.

Q. And were the statements which are contained in that paper true at the time it was delivered to Mr. Venner, Junior? A. This statements as it reads is a conservative estimate of the cost of manufacture. It did not prove to be true.

Q. Was this based upon past performances? A. No.

Q. Was it in part based upon past performances? A. It was based upon work in the laboratory.

Q. It was not based upon any manufacturing process theretofore engaged in by the bankrupt? A. Not to the extent of the estimate. The estimate is based upon a production of 15,000 pounds per month. This was based upon a small production of lots of probably 50 or 100 pounds.

Q. Did anybody assist you in procuring the figures and data upon that statement? A. Yes.

Q. Who? A. Mr. Carlin.

Q. The greater the production, the smaller pro rata the cost of production? A. It ought to be.

Q. Have you had any occasion to learn since, that the estimate contained in that statement was erroneous? A. Yes.

Q. In what respect was it erroneous? A. In that the work at the factory showed that our cost was in excess of our estimate.

Exhibit C-1

Q. Was there any way that error might have been avoided, in the preparation of the estimate set forth on that paper? A. No, that estimate was a very careful, true and honest estimate of what we thought we could do and it was presented to Mr. Venner as to what we thought we could do, based upon experiments as shown there.

Q. That experimental work was labaratory experimental work? A. Yes.

Q. Didn't you have any experience in the manufacture of any of the items which are set forth upon that statement? A. The experience we had was making paranitraniline in small lots, where we got certain results.

Q. Was this paper which we have been referring to delivered to Mr. Venner, Junior, at the same time that the balance sheet was delivered to him? A. I don't remember.

Q. Do you know who delivered that to him? A. No.

Q. Was it by you or Mr. Weisker? A. You are talking about that train that night—I don't know.

Q. You remember there was an occasion when Mr. Venner, Junior, was leaving for the Mountains, and Mr. Weisker met him at the train and handed him a balance sheet? A. About August 28th.

Q. That is the balance sheet that Mr. Weisker prepared in your presence? A. Not in my presence.

Q. This is the same sheet which you have heretofore testified about? A. Yes.

Q. That is the balance sheet in question? A. Yes, I never saw that balance sheet until it was presented to me here. (Referring to P-6, for Identification, which is shown to witness.)

Exhibit C-1

Q. This paper which is headed at the top "Paranitraniline" was delivered to Mr. Venner, you are informed, at the same time that P-6 was? A. I haven't any recollection of it, I don't know.

Q. It was prepared about the same time the balance sheet was prepared? A. That I don't know—I think it was prepared prior?

Q. For what purpose was it prepared? A. For my own satisfaction. We were considering the manufacturing of paranatraniline and we were trying to estimate the cost so as to arrive at possible profits.

Q. So this one had been prepared you think, when this balance sheet, this P-6, for Identification was delivered? A. It may have been.

Q. You think it was? A. I don't know. I prepared four or five copies of this. I don't know when that was prepared.

Q. Did you deliver to Mr. Weisker an estimate of the cost of manufacture of paranitraniline? A. I don't remember, and my recollection is that I presented that paper or a copy of it to Mr. Venner at his office?

Q. Can you tell about when? A. Early in September, 1918.

Offered in evidence and marked Exhibit T-2, July 23rd, 1919.

Q. By early in September you mean before the letter was written in which you set forth the status of the company? A. Yes.

Q. The letter was written to him and his son in which you set forth the status of the company.

Hearing adjourned.

Exhibit C-3.

ANALYSIS OF GROUP OF CHECKS OF ALPHA CHEMICAL WORKS, INC., RECEIVED IN EVIDENCE AS EXHIBIT C-2.

		Cosmopolitan Bank	Chatham & Phenix Nat'l Bank Check No.	Irving Nat'l Bank Check No.	Lester C. Burdette	Burdette & Horne	Burdette & Study	G. W. Study	Ralph W. Horne	Bradelle Corp.
1917										
Apr	14	....	....	624 C41	150	....	....	....	....	....
	30	....	....	659 C42	150	....	....	....	....	....
May	10	....	120	C43	....	....	....	325	....	....
	14	....	123	43	75	....	....	....	....	....
	15	....	137	C44	150	....	....	....	....	....
June	15	....	....	732 C48	150	....	....	....	....	....
	27	....	131	C49	150	....	....	....	....	....
July	19	....	....	775 C52	150	....	....	....	....	....
	26	....	....	790 C53	100	....	....	....	....	....
Aug	16	....	....	819 C55	200	....	....	....	....	....
	21	....	....	829 C56	....	650	....	....	....	....
	30	....	....	258 B2	300	....	....	....	....	....
Sep	17	....	....	950 B9	150	....	....	....	....	....
	28	....	181	B11	150	....	....	....	....	....
Oct	15	....	252	B15	150	....	....	....	....	....
	31	....	393	B17	150	....	....	....	....	....
Nov	15	....	314	B19	150	....	....	....	....	....
	29	....	....	1029 B21	150	....	....	....	....	....
Dec	3	....	....	1054 B25	194 04	....	....	....	....	....
	14	....	370	B27	150	....	....	....	....	....
	31	....	....	1159 B33	150	....	....	....	....	....
1918										
Jan	4	....	....	1198 B35	....	....	....	....	132 75	....
	14	....	....	1230 B37	....	75 85	....	....	....	....
	15	....	402	B37	150	....	....	....	....	....
	31	....	448	B41	150	....	....	....	....	....
Feb	9	....	....	1270 B47	....	....	150	....	....	....
	15	....	....	1289 B47	....	....	150	....	....	....
	23	....	504	B51	....	....	150	....	....	....
Mar	1	....	527	B55	....	....	150	....	....	....
	9	....	....	1432 B59	....	....	150	....	....	....
	15	....	539	B61	....	....	150	....	....	....
	27	....	....	1468 B63	....	....	150	....	....	....
Apr	5	....	619	B65	....	....	150	....	....	....
	8	....	620	B65	....	....	150	....	....	....
	8	....	....	1846 B65	....	....	158 34	....	....	....
	12	....	664	B69	....	....	150	....	....	....
	18	....	699	B69	....	....	150	....	....	....
	25	....	428	B71	....	....	150	....	....	....

Exhibit C-3.

		Cosmopolitan Bank	Chatham & Phenix Nat'l Bank Check No.	Irving Nat'l Bank Check No.	Lester C. Burdette	Burdette & Horne	Burdette & Study	G. W. Study	Ralph W. Horne	Bradelle Corp.
May	4	....	752	B75	....	....	150	....	....	....
	9	....	784	B77	....	....	150	....	....	....
	18	....	807	B77	....	....	150	....	....	....
	23	....	848	B81	....	....	150	....	....	....
	31	....	878	B81	....	....	150	....	....	....
June	7	....	884	B85	....	....	150	....	....	....
	14	....	898	B87	....	....	150	....	....	....
	21	....	927	B89	....	....	150	....	....	....
	28	....	953	B91	....	....	150	....	....	....
July	5	....	977	....	....	....	150	....	....	....
	11	....	....	999 B95	....	....	150	....	....	....
	19	....	....	1024 B95	....	....	150	....	....	....
	26	....	1057	B97	....	....	150	....	....	....
Aug	8	....	1106	B101	....	....	150	....	....	....
	2	....	1097	....	....	....	150	....	....	....
	16	....	1142	B105	....	....	150	....	....	....
	23	....	1174	B107	....	....	150	....	....	....
	30	....	1203	B109	....	....	150	....	....	....
Sep	6	....	....	1593 B111	....	....	150	....	....	....
	12	....	1236	B113	....	....	150	....	....	....
	30	....	1263	B115	....	....	150	....	....	....
	28	....	1275	B115	....	....	150	....	....	....
Oct	15	....	1312	B117	250	....	....	....	....	....
	23	....	1320	B119	300	....	....	....	....	....
	30	....	1352	B119	250	....	....	....	....	....
Nov	4	....	1362	B123	....	....	....	....	....	1000
	14	....	....	1626 B123	250	....	....	....	....	....
	27	....	1394	B125	....	....	171 57	....	....	....
	27	....	1396	B125	250	....	....	....	....	....
	27	....	1397	B125	....	....	....	....	....	500
	27	....	1398	B125	....	....	500	....	....	....
Dec	20	....	....	1632 B131	....	....	....	....	....	500
	27	....	1498	B131	500	....	....	....	....	....
1919										
Jan	7	....	1575	D3	100	....	....	....	....	....
	14	....	1522	D3	250	....	....	....	....	....
	16	....	153	D3	....	....	....	....	....	500
	30	....	....	1646 D5	250	....	....	....	....	....
					5669 04	725 85	5929 91	325	132 75	2500

L C Burdette	5669 04
Burdette & Horne	725 85
Burdette & Study	5929 91
G M Study	325
Ralph W. Horne	132 75
Bradette Corpn	2500
	15282 55

Exhibit C-4.

Checks of Bradette Corporation, signed by Lester C. Burdett, President, to the following persons, in the following amounts:

Dec. 6, 1918—to Ulrich Schoedler	$100.00
Dec. 20, 1918—to Ulrich Schoedler	50.00
Dec. 20, 1918—to Burdett & Study	300.00
Dec. 24, 1918—to A. Rieger	25.00
Dec. 28, 1918—to Dr. Ulrich Schoedler	50.00
Dec. 28, 1918—to Dr. Ulrich Schoedler	50.00

Exhibit C-5.

Checks of Bradette Corporation, signed by Lester C. Burdett, Treas.

February 5, 1919—to Cash endorsed by A. Rieger	$44.45
February 20, 1919—to West Side Printing & Supply Co.	32.25

Exhibit C-6.

Checks of Bradette Corporation:	
Nov. 6, 1918—to Burdett & Study	$300.00
Nov. 8, 1918—to Burdett & Study	300.00
Nov. 8, 1918—to Ulrich Schoedler	50.00
Nov. 18, 1918—to Burdett & Study	50.00
Nov. 23, 1918—to Dr. Ulrich Schoedler	50.00
Nov. 27, 1918—to Dr. Ulrich Schoedler	50.00
Nov. 27, 1918—to Burdett & Study	300.00

Exhibit C-7.

Checks of Bradette Corporation:	
Dec. 14, 1918—to Dr. Ulrich Schoedler	50.00
Jan. 3, 1919—to Cash, endorsed by J. D. Snyder	85.60
Jan. 4, 1919—to Ulrich Schoedler	50.00
Jan. 8, 1919—to Ulrich Schoedler	150.00
Jan. 18, 1919—to Lester W. Schwartz	33.33
Jan. 18, 1919—to Lester W. Schwartz	10.69
Jan. 30, 1919—to Burdett & Study	300.00

Exhibit C-8.

PUDER & PUDER
Certified Public Accountants
Essex Bldg., 31 Clinton Street
Newark, N. J.

Telephone 947 Mulberry

A. H. Puder, C. P. A.
H. S. Puder, C. P. A.

Surveys
Examinations
Systems
Estate Accounting
Auditing

May 26th, 1919.

Mr. David Bilder,
c/o Bilder & Bilder,
Kinney Bldg.,
Newark, N. J.

Re—Alpha Chemical Works, Inc.

Dear Sir:—

Pursuant to your instructions, we have prepared from the books and records of the Alpha Chemical Works, Inc., as of August 29th, 1918, a Statement of Assets and Liabilities, and have noted against the figures prepared by us, the Statement rendered to Mr. C. H. Venner by the Alpha Chemical Works, Inc., as follows:

COMPARATIVE STATEMENT OF ASSETS AND LIABILITIES AT AUGUST 29th, 1918.

Statement as Rendered by:	Alpha Chemical Works	Puder & Puder
ASSETS		
Current Assets:		
Cash in Banks	$2,844.16	$2,187.38
Cash Liberty Bonds	100.00	100.00
Accounts Receivable	3,219.00	5,512.15
Factory Petty Cash		40.73
Office Petty Cash		15.67
L. W. Horne		100.00
L. C. Burdette		20.00
Total Current Assets	$6,163.16	$7,975.93

Exhibit C-8.

Working:					10
Inventories at Cost:					
Para Materials & Supplies	8,653.30		7,120.85		
Materials & Supplies	9,116.73		9,030.68		
Finished Goods	353.40				
Total Inventories		18,123.43		16,151.53	
Deferred Items:					
Prepaid Insurance		565.06	565.06		
Deposit Account			200.00	765.06	
Plant:					
Real Estate & Bldg.	$8,487.62		$13,735.50		20
Machinery & Equip.	60,402.80		40,862.32		
N. Y. Office Furniture			472.58		
Laboratory Equipment			859.62		
Factory Equipment			1,236.35		
Artesian Well			886.90		
Dryer Building			1,111.25		
Total Plant & Equipment		$68,890.42		$59,164.52	
Para:					
Equipment	8,733.59		6,988.71		
Total Para Equipment		8,773.59		6,988.71	30
TOTAL ASSETS		$102,515.66		$91,045.75	
LIABILITIES					
Current Liabilities:					
Commissions Payable			$10,106.47		
Accounts Payable,					
Merchandise	$6,096.84		11,789.87		
Machinery Dispute	1,997.50		1,997.50		
Loans—Banks	15,000.00		15,000.00		
Accounts Payable—Para	14,623.44		14,839.64		40
Total Current Liabilities		$37,717.78		$53,733.48	
Mortgage Payable				9,000.00	
Capital:					
441 Shares Common—No Par Value					
150 Shares 6% 1st Preferred	15,000.00		15,000.00		

Exhibit C-8.

Subscription Account:				
534 Shares Common—No Par Value				
534 Shares 6% Preferred	53,400.00		53,400.00	
		68,400.00		68,450.00
TOTAL LIABILITIES		$106,117.78		$131,183.48
Deficit, August 29th, 1918		$3,602.12		$40,137.73

We have not included in the Statement prepared by us, as of August 29th, 1918, the amount of $2,031.99, due the Alpha Chemical Works, Inc., of Delaware, by the Alpha Chemical Works, Inc., of New Jersey, for two reasons: first, that such item was not included in the Statement prepared by the Alpha Chemical Works, Inc.; second, that we are of the opinion that this asset is not collectible, and, therefore, apparently of no value.

In the absence of the Insurance Policies, and any record thereon, we have accepted, for the purposes of this Statement, the amount of prepaid Insurance at August 29th, 1918, as shown by Statement prepared by the Alpha Chemical Works, Inc.

In view of the fact that no depreciation has been provided for by the Alpha Chemical Works, Inc., on the Statement prepared by them, we have followed the same procedure, and show no provisions for depreciation on Real Estate or Machinery and Equipment.

We beg to quote herewith Resolution dated July 9th, 1918:

"RESOLVED: THAT the officers of this Corporation be, and they hereby are, authorized to appoint Mr. Paul T. Brady, or a corporation to be organized by him, as the representative of the Alpha Chemical Works, Inc., to buy and sell all chemicals used or manufactured by said Alpha Chemical Works, Inc., for a pediod of two years.

It was further agreed to pay the Corporation a commission of five percent, on all sales made by said Corporation for the account of the Alpha Chemical Works, Inc., and a commission of one percent on all purchases made by said Corporation, for the account of the Alpha Chemical Works, Inc.

It is understood that a contract shall be executed by the officers of this Corporation when a sales corporation is organized by Mr. Brady for this purpose, and that commissions be paid on all contracts negotiated for this corporation from July 9th, 1918."

Based upon the above Resolution, we find that on Purchases of $9,344.00, for the above period, at one percent, there is a commission due Mr. Brady of,	$93.44	
on Para Sales of $157,889.90, at the rate of 5% commission due Mr. Brady of,	7,894.50	
on Salycilic Acid Sales of $9,166.50, at the rate of 5%, commission due Mr. Brady of,	458.33	
giving a total commission, as per Resolution of July 9th, 1918, due Mr. Paul T. Brady at August 29th, 1918, of,		$8,446.27

Exhibit C-8.

There is also due the Drug & Dyestuff Corp., at August 29th, 1918, commissions at the rate of five percent, based on:

60,000 lbs. @ $.90 lb.,	$2,700.00	
There was paid from March to July on account of this commission,	1,100.00	
leaving due at August 29th, 1918, a further commission of		$1,600.00
Commission due Mr. A. Blumberg, on contract secured by him on August 23rd, 1918, for sale of Para Nitroniline, which commission was paid him on October 24th, 1918, in the amount of,		60.20
or a total commission of,		$10,106.47

There was purchased from the Stevens Aylsworth Co., on August 8th, 1917, Machinery in the amount of, $360.00

and on August 21st, 1917, Machinery in the amount of, 2,000.00

or a total of, $2,360.00

which Machinery has been paid for subsequent to August 29th, 1918. The above Machinery has been returned to the Stevens Aylsworth Co., and we understand that a suit has been brought by the Stevens Aylsworth Co., based upon this return of Machinery, and that the Alpha Chemical Works, Inc., were required to pay an additional $350.00 without any credit for Machinery thus returned. There has been no credit entered to the Machinery Account for this $2,360.00 return to the Stevens Aylsworth Co. All of this, however, occurred subsequent to August 29th, 1918.

Faithfully yours,

PUDER & PUDER.

Exhibit C-9.

ALPHA CHEMICAL WORKS, INC.

Aug. 29, 1918.

ASSETS

Current:			
Cash in Banks	$2,844.16		
" Liberty Bond	100.00		
Accounts Receivable	3,219.00		
		$6,163.16	
Working:			
Inventories at cost			
Material & Supplies	9,116.73		
Finished Goods	353.40		
		9,470.13	
Deferred prepaid Insurance		565.06	
			$16,198.35
Plant:			
Real Est. & Building		8,487.62	
Machinery & Equipment		60,402.80	
			68,890.42
Para:—Installation outlay			2,803.45
			$87,892.22

LIABILITIES

Current:			
Accounts Payable—Mdse.	$6,096.84		
Mchy. in dispute	1,997.50		
Loans—Banks	15,000.00		
		$23,094.34	
Capital:			
441 shr. Com.	no par value		
150 " 6% 1st Pfd.	$15,000.00		
Subscription Account:			
534 Com.	no par value		
534 6% Pfd.	$53,400.00	68,400.00	$91,494.34
Deficit			$3,602.12
Para Equipment	$8,773.59		
" Matl. & Supplies	8,653.30		
	$17,426.89		
" a/c Payable	14,623.44		
Orders on hand	$159,970.50		
Estimated Profit are 40c on 98330 lbs.	39,332.00		

Exhibit D-1.

New York, September 10, 1918.

Messrs. C. H. Venner and
Clarence H. Venner, Jr.,
New York City.

Gentlemen:

Referring to my conference with you this morning, I will, as requested, summarize the important facts in regard to the Alpha Chemical Works, Inc., its business, financial condition and proposition to you for the purchase of shares of its capital stock.

The Company was incorporated under the laws of the State of Delaware by the filing of a Certificate of Incorporation on the 3rd day of April, 1917, copy of which is herewith enclosed. It has a plant at Bound Brook, New Jersey, located on a plot 100 x 250 feet, on which there are buildings and in which there is installed divers apparatus and machinery for the manufacture of Salicylic Acid, paranitraniline and other chemicals. The real estate was purchased for $12,000, subject to a mortgage of $9,000, which matures in February, 1920. There has been expended upon the plant, exclusive of the mortgage debt approximately $69,000, exclusive of the so-called para equipment and materials and supplies amounting to $17,426, against which there are accounts payable of $14,623.

The debts of the Company, including bank loans of $15,000, are, in round figures, $23,000, exclusive of the accounts payable on the para equipment above noted.

The cash assets, including accounts receivable of $3,219, amount to $6,163. Materials and finished

Exhibit D-1.

goods on hand amount to $9,470. The foregoing as shown by balance sheet of Aug. 29, furnished you.

Of the authorized capital stock of $50,000 preferred and 1,000 shares of common stock, there have been issued, $15,000 par value of preferred stock, and 295 shares of the common stock; and subscriptions have been made and paid in full for 534 shares of additional preferred stock and 686 shares of common stock. All of the preferred stock issued or subscribed for has been sold for par in cash.

The Company desires to increase its preferred stock to the sum of $100,000, and common stock to 1,300 shares of no par value, and to sell the additional stock as a means of increasing the working capital.

We desire to interest you in this enterprise, either jointly or severally, and to that end, offer you $25,000 of preferred stock, together with 250 shares of common stock for the sum of Twenty-five Thousand Dollars ($25,000), to be issued and delivered as soon as necessary steps can be taken to file an amended Certificate of Incorporation; payment to be made for same: "$10,000 forthwith, and the balance at your option—$5,000 on or before September 30th, and $10,000 on or before October 25th, 1918. The shares of preferred and common stock are to be delivered in equal proportions as the payments are made, or as soon thereafter as the same can be issued under the proposed amended certificate. Until the stock is so issued, the payments to be made hereunder shall be upon the three months promissory notes of the Company.

In consideration of the foregoing it is agreed that Clarence H. Venner, Jr., shall be employed by the Company at a suitable salary.

Exhibit D-1.

The foregoing proposition has been submitted to the Directors of the Company and received their approval.

Respectfully,

ALPHA CHEMICAL WORKS, INC.,

By LESTER C. BURDETT
President.

The foregoing proposition is hereby accepted and the first payment of Ten Thousand Dollars ($10,000) made simultaneously.

(Signed) C. H. VENNER.

Received the above mentioned Ten Thousand Dollars ($10,000) and delivered promissory note as above provided.

Exhibit D-2.

Letter of January 24, 1919 sent by Alpha Chemical Works, Inc. to Clarence H. Venner which cannot be found.

Exhibit D-3.

New York, January 24, 1919.

Continential Securities Co.,
No. 10 Wall Street,
New York City.

Gentlemen:

We learn that you are the owner and holder of the promissory note of the Alpha Chemical Works, Inc., for $15,000, dated December 28, 1918, payable with interest on February 28, 1919.

This Company also has outstanding a note for $10,000, dated October 25, 1918, and payable with interest on January 25, 1919.

The present available cash resources of the Company are not sufficient to pay in full the said note due on the 25th instant, nor is there any present prospect that the Company will be in position to meet at its maturity the $15,000 note held by you due February 28th, next. We desire to make such arrangements as will enable us, through extension of time, to liquidate the indebtedness represented by both of said notes. If you will consent to the plan hereinafter set forth, it now seems probable that we can arrange to carry the same out.

To enable us to meet the $10,000 note due on the 25th inst., we expect to borrow $10,000 from the General Investment Company on ten promissory notes of the Alpha Chemical Works, Inc., each for the sum of $1,000, bearing six per cent. interest, one of said notes payable on April 1, 1919, and one on the first and fifteenth days of each month thereafter until all are paid, the last one to be due September 1, 1919. We will not, however, be able to

Exhibit D-3.

borrow the $10,000 payable as aforesaid unless you are willing to hold our present note for $15,000 due February 28, 1919, subject to the following conditions, viz.:

The said $15,000 note not to be presented for payment until after payment in full of the $10,000 of notes above referred to, unless there shall be default in the payment of any one of the said last mentioned notes, in which event the $15,000 note held by you shall at once be relieved of the condition above imposed and you will be at liberty at any time to present the said note for payment and enforce the same without objection or defence on our part.

In the event that the said ten notes amounting to $10,000 shall all be paid as the same fall due, then we will execute and deliver to you in exchange for our present note for $15,000 held by you, fifteen notes for $1,000 each, one of said notes to be payable on September 15, 1919, and one each on the first and fifteenth days of each month thereafter until all are paid, said notes to draw six per cent. interest; and we will pay in cash February 28th, next, the interest accrued to that date on the said $15,000 note; and will also pay in cash on the first day of each month thereafter the interest on said note while the same remains outstanding.

Exclusive of the $25,000 of notes hereinabove referred to, the Company on December 31, 1918, had current liabilities of $64,861.78 inclusive of $9,000 mortgage due February, 1920, and bank loans of $14,500. Since January 1, 1918, we have reduced our liabilities about $16,000, principally from the sale of goods and collection of accounts receivable and bank balances. In December, 1918, the Company made a profit of about $3,869.

Exhibit D-3.

We will, if desired by you, furnish you monthly statements of our operations and balance sheet by the tenth of each month for the previous month, and you may at any time, through your accredited representative, examine the books.

While any of the notes amounting to $25,000 herein referred to remain outstanding unpaid, we agree not to add to our plant by way of new machinery or other equipment, or acquisition of real estate. This promise, however, shall not preclude us from making such repairs as may be necessary to maintain the present plant in efficient workable condition.

We further agree that, except as to current accounts due for merchandise and supplies heretofore, or which may hereafter be, purchased for the conduct of the business, we will make no payments on account of indebtedness without at the same time making to you or the General Investment Co., such payments on account of the $25,000 of notes held by them, as will equal in percentage that which may be paid upon the other notes.

The foregoing proposition has been fully authorized by the Board of Directors of the Company and upon its acceptance by you will constitute a binding agreement.

Respectfully,

ALPHA CHEMICAL WORKS, INC.,

By

President.

Attest:

Secretary.

Exhibit D-4.

ALPHA CHEMICAL WORKS, INC.

233 Broadway

New York, January 24, 1919.

C. H. Venner, Esq.,
10 Wall Street,
New York City.

Dear Sir:

In consideration of services rendered by you in obtaining a loan from the General Investment Co. ($10,000), and securing the acceptance by the Continental Securities Co. of our proposition of even date in respect of $15,000 of our notes held by that Company, we hereby cancel and release you from any and all claim which we may have for, and in respect of any matter or thing contained in our proposition by letter dated September 10, 1918, accepted by C. H. Venner on September 11, 1918; and we herewith surrender our executed copy of said proposition and acceptance.

The release and cancellation hereinabove set forth extends also to C. H. Venner, Jr., and the same have been duly authorized by the Board of Directors of this Company at a meeting held on January 24, 1919.

Respectfully,

ALPHA CHEMICAL WORKS, INC.,

By

President.

Attest:

Secretary.

Exhibit D-5.

AGREEMENT, made this 1st day of May, 1917, between Alpha Chemical Works, Inc., a Corporation organized under the Laws of the State of Delaware, party of the first part, and Chemical Engineering & Research Corporation, a Corporation organized under the laws of the State of New York, party of the second part.

WHEREAS, the party of the first part is desirous of securing the services of the party of the second part in connection with its chemical business at Bound Brook, New Jersey; and

WHEREAS, the party of the second part is desirous of acting in an advisory capacity in connection with the said Chemical Plant;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, That for and in consideration of the sum of One ($1.00) Dollar and other valuable consideration, each to the other in hand paid, the receipt whereof is hereby mutually acknowledged, it is covenanted and agreed, as follows:

First: The party of the first part hereby retains the party of the second part to act through its General Manager, Franklin P. Summers, for a term of One (1) year, as Chemical Director, and agrees to pay the party of the second part therefor a sum of money equal to Twenty-five (25) per centum of the gross profits derived from its business at Bound Brook, New Jersey, or wherever the processes perfected by the party of the second part are used by the party of the first part during the term of this agreement. The said Twenty-five (25)

per centum shall be computed in each and every month, and be paid to the party of the second part on or before the fifteenth day of the following month.

Second: The term "gross profits", as used in this contract, is hereby defined to be the sum remaining after deducting the cost of materials, including heat, light and power, maintenance repairs to apparatus, and the amount expended for labor directly engaged in manufacturing the product at the Factory from the gross amount obtained from orders received and paid. It is distinctly understood that nothing shall be included in the amount so deducted for what has been expended for administrative purposes, amortization, insurance, interest or individual charges, deductions for plant or construction account, or for any other purpose except what is hereinbefore stated excepting that an allowance of One Hundred and Fifty ($150.00) Dollars per week shall be made for New York office charges, and One Hundred ($100.00) Dollars per week for depreciation.

Third: The party of the first part shall also pay to the party of the second part all travelling and general expenses incurred by its General Manager, Franklin P. Summers, or his associates, in travelling between New York City, New York, and the Plant at Bound Brook, New Jersey, and such sums shall be paid by the party of the first part to the party of the second part monthly.

Fourth: The party of the second part agrees to act through its General Manager, Franklin P. Summers, as Chemical Director, and devote such time

Exhibit D-5.

to the said business of the party of the first part as its General Manager, Franklin P. Summers, shall deem necessary, and its General Manager, Franklin P. Summers, shall have full supervision of the chemical processes in use and to be used at said Plant, and the party of the second part shall furnish such new processes as may be suitable for operation at said Plant as its General Manager, Franklin P. Summers, shall deem best.

Fifth: IT IS MUTUALLY COVENANTED AND AGREED, That all sums of money expended for labor or material for the Plant shall be subject to the joint approval of the party of the first part and the party of the second part, acting through its General Manager, Franklin P. Summers.

Sixth: In case of the death of Franklin P. Summers, or in case he should cease to be connected with the party of the second part, or in case said party of the second part and said Franklin P. Summers, or either of them, shall fail to perform the covenants contained in paragraph "Fourth" hereof, this agreement may, at the option of the party of the first part, be terminated, except that the party of the second part shall continue to receive for the said term of One (1) year the Twenty-five (25) per centum of the gross profits, hereinbefore referred to, derived from such chemical process that has been perfected.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their Presi-

dents, and their Corporate Seals hereunto affixed, the day and year first above written.

ALPHA CHEMICAL WORKS, INC.,

By LESTER C. BURDETT,
President.

[SEAL]

Attest:
ROBERT C. VOM CLEFF,
Secretary.

CHEMICAL ENGINEERING & RESEARCH CORPORATION,

By FRANKLIN P. SUMMERS,
President.

[SEAL]

Attest:
G. R. STORTTNER,
Secretary.

CITY, COUNTY AND STATE OF NEW YORK, SS.:

On this 1st day of May, 1917, before me personally came LESTER C. BURDETT, to me known, who, being by me duly sworn, did depose and say: That he rides at Palisade, Bergen County, New Jersey; that he is the President of the ALPHA CHEMICAL WORKS, INC., the Corporation described in, and which executed the foregoing instrument; that he knows the Seal of said Corporation; that the Seal affixed to said instrument is such Corporate Seal;

New Jersey State Library

that it was so affixed by order of the Board of Directors of said Corporation; and that he signed his name thereto by like order.

C. VON EBERHARD,
Notary Public Kings Co.
Certificate filed in New York Co. #27.

CITY, COUNTY AND STATE OF NEW YORK, SS.:

On this 10th day of May, 1917, before me personally came FRANKLIN P. SUMMERS, to me known, who, being by me duly sworn, did depose and say: That he resides in the Borough of Queens, City of New York; that he is the President of the CHEMICAL ENGINEERING & RESEARCH CORPORATION, the Corporation described in, and which executed the foregoing instrument; that he knows the Seal of said Corporation; that the Seal affixed to said instrument is such Corporate Seal; that it was so affixed by order of the Board of Directors of said Corporation; and that he signed his name thereto by like order.

FRIEDA HOEING,
Commissioner of Deeds of the City of New York,
Residing in Queens County.
Certificates filed in New York, Kings, Queens and Bronx Counties. Clerk's offices
N. Y. Co. Clerk's No. 272.
Commission expires Sept. 26, 1918.
[SEAL]

Exhibit D-6.

Sales: November 1917 to September 1918

SALICYLIC ACID

Name	Barrels	Amount
Consolidated Color & Chemical Co.	8	912.00
Jacques Wolf & Co.	8	787.50
Holiday-Kemp Co. Inc.	5	513.00
Consolidated Color & Chemical Co.	8	931.00
Consolidated Color & Chemical Co.	8	988.00
Consolidated Color & Chemical Co.	8	1,026.00
Consolidated Color & Chemical Co.	8	912.00
Holiday-Kemp Co. Inc.	4	456.00
Consolidated Color & Chemical Co.	8	1,007.00
Consolidated Color & Chemical Co.	7	855.00
Consolidated Color & Chemical Co.	6	779.00
Holiday-Kemp Co. Inc.	4	456.00
Roesseler & Hasslacher Chemical Co. (Glaubers Salts)	6	29.00
Consolidated Color & Chemical Co.	7	798.00
Consolidated Color & Chemical Co.	7	798.00
Imperial Color Works	7	766.50
Amalgamated Dyestuff & Chemical Co.	13	1,660.00
Consolidated Color & Chemical Co.	7	798.00
Holiday-Kemp Co. Inc.	1	114.00
Holiday-Kemp Co. Inc.	1	114.00
National Aniline & Chemical Co.	15	2,022.75
Consolidated Color & Chemical Co.	7	817.00
Consolidated Color & Chemical Co.	7	798.00
National Aniline & Chemical Co.	12	1,653.00
National Aniline & Chemical Co.	13	1,805.25
National Aniline & Chemical Co.	9	1,261.50
National Aniline & Chemical Co.	9	1,174.50
National Aniline & Chemical Co.	9	1,239.75
National Aniline & Chemical Co.	32	4,524.00
National Aniline & Chemical Co.	33	4,676.25
United Selling Co.	1	148.75
National Aniline & Chemical Co.	42	6,133.50
National Aniline & Chemical Co.	46	6,242.25
National Aniline & Chemical Co.	48	6,503.25
National Aniline & Chemical Co.	52	6,981.75
National Aniline & Chemical Co.	52	7,047.00
National Aniline & Chemical Co.	38	5,307.00
Consolidated Color & Chemical Co.	26	3,200.00
National Aniline & Chemical Co.	48	6,962.61

Exhibit D-6.

	Name		Barrels	Amount
	National Aniline & Chemical Co.		13	1,890.00
	National Aniline & Chemical Co.		5	787.50
	National Aniline & Chemical Co.		8	1,161.00
	National Aniline & Chemical Co.		12	1,890.00
	National Aniline & Chemical Co.		23	3,375.00
	National Aniline & Chemical Co.		14	1,890.00
	National Aniline & Chemical Co.		7	934.20
	National Aniline & Chemical Co.		8	1,040.40
	National Aniline & Chemical Co.		10	1,350.00
	National Aniline & Chemical Co.		20	2,849.40
	National Aniline & Chemical Co.		10	1,530.00
	National Aniline & Chemical Co.		8	1,125.00
	National Aniline & Chemical Co.		17	2,497.50
	National Aniline & Chemical Co.		7	1,102.50
	National Aniline & Chemical Co.		8	1,250.00
	National Aniline & Chemical Co.		6	945.00
	National Aniline & Chemical Co.		4	630.00
	National Aniline & Chemical Co.		6	943.00
	National Aniline & Chemical Co.		3	450.00
	National Aniline & Chemical Co.		3	472.50
	National Aniline & Chemical Co.		8	1,080.00
	National Aniline & Chemical Co.		5	787.50
	National Aniline & Chemical Co.		8	1,080.00
	National Aniline & Chemical Co.		6	810.00
	National Aniline & Chemical Co.		8	1,080.00
	National Aniline & Chemical Co.		8	1,080.00
	National Aniline & Chemical Co.		9	1,215.00
	National Aniline & Chemical Co.		10	1,350.00
	National Aniline & Chemical Co.		14	1,890.00
	National Aniline & Chemical Co.		8	1,080.00
	National Aniline & Chemical Co.		5	675.00
	National Aniline & Chemical Co.		3	405.00
	Bleecker Export & Trading Co.		1	135.00
	National Aniline & Chemical Co.		8	1,080.00
	Bleecker Export & Trading Co.		1	135.00
	National Aniline & Chemical Co.		7	945.00
	Bleecker Export & Trading Co.	450 lbs.		22.50
	Bleecker Export & Trading Co.		1	135.00
	Bleecker Export & Trading Co.		4	570.00
	National Aniline & Chemical Co.		11	1,485.00
	National Aniline & Chemical Co.		5	675.00
	National Aniline & Chemical Co.		6	810.00
	National Aniline & Chemical Co.		10	1,350.00

Exhibit D-6.

Name	Barrels	Amount
National Aniline & Chemical Co.	10	1,350.00
National Aniline & Chemical Co.	13	1,215.00
National Aniline & Chemical Co.	5	675.00
National Aniline & Chemical Co.	5	675.00
National Aniline & Chemical Co.	6	810.00
Atlantic Dyestuff Co.	4	570.00
National Aniline & Chemical Co.	5	675.00
Dyeproducts & Chemical Co.	1	125.00
National Aniline & Chemical Co.	5	675.00
National Aniline & Chemical Co.	5	675.00
Atlantic Dyestuff Co.	4	475.00
National Aniline & Chemical Co.	7	945.00
National Aniline & Chemical Co.	8	900.00
National Aniline & Chemical Co.	8	900.00
National Aniline & Chemical Co.	2	180.00
Consolidated Color & Chemical Co.	6	684.00
Holliday-Kemp Co.	2	285.00
Consolidated Color & Chemical Co.	28	3,183.64
		$146,293.75

Total [Exhibit D-6]	$146,293.75
Total [Exhibit D-7]	83,151.62
Total [Exhibit D-8]	4,023.94
	$233,469.31

Exhibit D-7.

Sales: August 1918 to January 1919

PARANITRANILINE AND PARANITROACETANILID

Name	Barrels	Amount
Frank Hemingway, Inc.	4	$1,006.50
Edison International Corp. 6 lbs.		9.90
Ralph L. Fuller & Co.	2	660.00
J. Early Wood, Inc. 2 lbs.		3.60
American Color Mnfg. Co. 1 lb.		1.80
J. Wheeler McGovern 1 lb.		1.65
Edison International Corp.	3	1,116.27
Frank Hemingway, Inc.	6	3,219.55

Exhibit D-7.

Name	Barrels	Amount
H. Kohnstamm & Co.	1	180.00
Edison International Corp.	21	10,080.00
Ralph L. Fuller & Co.	2	660.00
T. J. Parker, Inc.	8	2,530.33
Frank Hemingway, Inc.	11	3,173.52
J. Wheeler McGovern	5	1,451.50
Marden, Orth & Hastings Corp. 4 lbs.		6.90
G. Siegele Co.	1	315.00
Consolidated Color & Chemical Co.	2	700.00
Frank Hemingway, Inc.	4	1,497.35
Western Dry Coler Co.	1	450.00
Edison International Corporation	14	2,075.73
Edison International Corporation	8	1,207.74
T. J. Parker, Inc.	7	1,621.38
J. Wheeler McGovern	4	1,375.00
Frank Hemingway, Inc.	15	3,502.07
Frank Hemingway, Inc.	18	7,406.05
Edison International Corporation	9	3,569.55
Edison International Corporation	5	698.53
Consolidated Color & Chemical Co.	1	437.50
J. Wheeler McGovern	1	603.50
Graham, Hinkley & Co.	2	790.39
Edison International Corporation—1821 lbs.		116.48
Frank Hemingway, Inc.	23	9,212.14
Noil Chemical & Color Co.	1	180.00
G. Siegele Co.	1	89.00
Leather Finishing & Dyestuff Co.	1	87.50
United Color & Chemical Co.	3	1,944.00
Frank Hemingway, Inc.	15	5,361.42
Frank Hemingway, Inc.	11	3,614.46
Leather Finishing & Dyestuff Co.	1	87.50
Edison International Corp.	17	1,672.02
Edison International Corp.	6	816.46
Edison International Corp.	1	232.65
Frank Hemingway, Inc.	28	8,673.68
H. D. Rosen Co.	1	165.00
Noil Chemical & Color Co.	1	413.00
John T. Lewis & Bros. Co.	1	135.00
		$83,151.62

Exhibit D-8.

MISCELLANEOUS SALES

Colgate & Co.	6½ lbs. Neroline Crystals	$29.25
Colgate & Co.	7 lbs. Neroline Crystals	34.31
National Aniline & Chem. Co.	14½ oz. Neroline Crystals	4.53
Organic Products Corp.	3 barrels Beta Naphthol	280.00
Sigmund Ullman Co.	1 box Beta Naphthylamine—1-Mono Sulphonic Acid	56.25
Monsanto Chemical Co.	4 oz. Ortho Amido Phenol	2.00
Calco Chemical Co.	One C/L—70 drums Caustic Soda	3,617.60
		$4,023.94

Exhibit D-13.

Minutes of a special meeting of the Board of Directors of the Alpha Chemical Works, Inc., a Delaware corporation, at which were present all of the directors, George F. Burdette, Robert Vom Cleff and Lester C. Burdette.

The following resolution was adopted:

"Resolved: that the officers of this corporation be and they are hereby authorized to appoint Mr. Paul T. Brady or a corporation to be organized by him, as the representative of the Alpha Chemical Works, Inc., to buy and sell all chemicals used or manufactured by said Alpha Chemical Works, Inc., for a period of two years.

It was further agreed to pay the corporation a commission of five per cent. on all sales made by said corporation for the account of the Alpha Chemical Works, Inc. and a commission of one per cent. on all purchases made by said corporation for the account of the Alpha Chemical Works, Inc.

It is understood that a contract shall be executed by the officers of this corporation when a sales corporation is organized by Mr. Brady for this purpose, and that commissions be paid on all contracts negotiated for this corporation, from July 9, 1918."

And the following resolution was adopted:

"Resolved: that the president be paid a salary of $500.00 a month, for a period of one year, beginning October 1, 1918, and that the New York office of this company be discontinued on that date with no further expense to this company."

Exhibit D-13.

Upon motion duly seconded and recorded, it was

"Resolved: that Roy A. Carlin, superintendent of the works at Bound Brook, N. J., be paid a salary of $500.00 a month, for a period of one year, beginning September 1, 1918."

ROBERT VOM CLEFF,
Secretary.

Exhibit C-1 of July 5, 1926.

Corporation income tax return of Alpha Chemical Works, Inc., a New Jersey corporation, for the calendar year 1917. The same in substance sets forth that the total gross sales and other income of said corporation for said year was $11,659.78 and the total disbursements and expenses for said year aggregates the sum of $15,684.22, showing no net income of profit for said year.

Exhibit C-2 of July 5, 1926.

Corporation income tax return of Alpha Chemical Works, Inc., a Delaware corporation, for the calendar year 1917. The same in substance sets forth that the total gross sales and other income of said corporation for said year was $27,639.80 and the total disbursements and expenses for said year aggregates the sum of $33,618.33, showing no net income or profit for said year.

Exhibit C-1, April 7, 1926.

List of notes offered by defendant at close of testimony and marked C-1 of April 7, 1926.

Notes drawn to order of Lester C. Burdett and Robert Vom Cleff, signed by Alpha Chemical Works, Inc., Lester C. Burdett, President, payable at Chatham & Phenix National Bank, and all endorsed by Lester C. Burdett and Robert Vom Cleff.

Date	*Amount*		*Due*
May 12, 1917	$2500.00	(Paid)	Aug. 12, 1917
Aug. 13, 1917	2500.00	(Paid)	Nov. 11, 1917
Oct. 29, 1917	1500.00	(Paid)	Jan. 29, 1918
Nov. 12, 1918	2500.00		Feb. 12, 1919
Nov. 21, 1918	1000.00		Feb. 21, 1919
Jan. 29, 1919	1500.00		Apr. 29, 1919
Feb. 5, 1919	5000.00		May 5, 1919

Series of notes, signed by Robert Vom Cleff and Lester C. Burdett, to order of the Chatham & Phenix National Bank of the City of New York, all stamped "Paid"—

Notes signed August 26, 1919—

Amount	*Due*
$1000.00	Sept. 15, 1919
500.00	Oct. 15, 1919
500.00	Nov. 15, 1919
500.00	Dec. 15, 1919
500.00	Jan. 15, 1920
6000.00	Feb. 15, 1920

Notes signed February 16, 1920—

$4750.00	July 16, 1920
250.00	Mar. 16, 1920
250.00	April 16, 1920
250.00	May 16, 1920
250.00	June 16, 1920

Exhibit C-1, April 7, 1926.

Notes signed July 16, 1920—

Amount	*Due*
$ 250.00	Aug. 16, 1920
250.00	Sept. 16, 1920
250.00	Oct. 16, 1920
250.00	Nov. 16, 1920
3500.00	Dec. 16, 1920

Notes signed December 16, 1920—

$ 150.00	Jan. 15, 1921
150.00	Feb. 15, 1921
150.00	Mar. 15, 1921
150.00	April 15, 1921
2650.00	May 15, 1921

Notes signed May 16, 1921—

$ 150.00	July 15, 1921
150.00	Aug. 15, 1921
150.00	Sept. 15, 1921
150.00	Oct. 15, 1921
1900.00	Nov. 15, 1921

Notes signed November 15, 1921—

$ 150.00	Dec. 15, 1921
1600.00	Jan. 16, 1922

Notes signed Jan. 16, 1922—

$ 100.00	Feb. 16, 1922
100.00	Mar. 16, 1922
100.00	May 16, 1922
1050.00	June 16, 1922

Exhibit C-1, April 7, 1926.

Notes signed June 16, 1922—

Amount	*Due*
$ 100.00	July 16, 1922
100.00	Aug. 16, 1922
100.00	Sept. 16, 1922
100.00	Oct. 16, 1922
100.00	Nov. 16, 1922
450.00	Dec. 16, 1922

Notes signed December 16, 1922—

$ 350.00	Three months

Three notes, $125.00 each, due in three months each from the following dates—

April 20, 1923
July 20, 1923
October 20, 1923

Two notes, signed by Alpha Chemical Works, Inc., Lester C. Burdett, President, to order of Celine W. Vom Cleff, dated January 8, 1917, on demand, in the sums of $2000.00 and $3000.00 respectively.

New Jersey Court of Errors and Appeals

CECIL H. McMAHON, as Trustee in Bankruptcy of Alpha Chemical Works, Inc., Complainant-Respondent, *and* LESTER C. BURDETTE and GEORGE F. BURDETTE, Defendants-Appellants, *and* ROBERT VOM CLEFF, Defendant.	On Appeal from Chancery. Bill of Trustee in Bankruptcy to Recover Moneys Alleged to Have Been Paid Officials of Corporation Bankrupt in Excess of Reasonable Compensation, etc. Decree Partly for Complainant. Defendants' Appeal. Sat Below: Backes, V. C.

(Italics, etc., mine, except where otherwise noted.)

BRIEF FOR DEFENDANTS-APPELLANTS.

Statement of the Case.

The bill of complaint (p. 1), filed June 30th, 1923, by a trustee in bankruptcy of the Alpha Chemical Works, Inc., a corporation of Delaware, incorporated in April, 1917, and engaged in the business of manufacturing chemicals in East Bound Brook, Middlesex County, New Jersey, alleged that: ever since its incorporation, defendant, Lester C. Burdette, was its president and a director; the other defendants, George F. Burdette and Robert Vom Cleff were directors; Lester C. Burdette received, from time to time, between the date of the incorporation of said corporation and the 3rd day of February, 1919, sums of money aggregating upwards of $11,000; these moneys should be repaid to the trustee; about the month of October, 1918, defendant Lester C.

Burdette caused a corporation to be organized under the laws of the State of New York known as the Bradette Corporation, of which Lester C. Burdette became an officer; between the 1st of October, 1918, and the 1st of February, 1919, Lester C. Burdette caused to be paid to the Bradette Corporation, without consideration, the sum of $2,500, of which a sum upwards of $1,500 was, by said Bradette Corporation, paid over to said Lester C. Burdette for his own uses and purposes.

The bill made parties defendants Lester C. Burdette, George F. Burdette, his brother, and Robert Vom Cleff directors of the bankrupt corporation and prayed for an accounting, and that the defendants be directed to pay the moneys above mentioned, together with costs and counsel fee.

Lester C. Burdette answered (p. 4) admitting the receipt of money but not acknowledging the amounts, and alleging that whatever moneys he had received were for full and adequate consideration, and setting up: (1) that the Court has no jurisdiction, and that he was entitled to a trial by jury; (2) laches.

He also filed a cross bill (p. 5) setting up that he was an accommodation endorser upon certain notes of the bankrupt corporation, which he had been required to pay, and praying for a decree against the trustee in bankruptcy and for other relief.

George F. Burdette filed an answer (p. 7). He was one of the directors of the bankrupt corporation and was sued as such. His answer is, in effect, the same as that of Lester C. Burdette. No decree was made against Vom Cleff for he was not served with process (p. 14) and did not appear.

The trustee answered the cross bill denying knowledge or information as to its charges and alleging that: claims based upon the promissory

notes had been filed by persons other than the defendant in a cause entitled "In the matter of Alpha Chemical Works, Inc., bankrupt" pending in the United States District Court for the District of New Jersey, and that defendant, Lester C. Burdette, had failed to file any claim in said bankruptcy matter based upon the allegations contained in the counterclaim; the counterclaim lacked equity; defendant had a complete and adequate remedy at law; the Court had no jurisdiction.

Upon the issues made by these pleadings testimony was taken before the Court and voluminous evidence taken before the Referee in Bankruptcy under the provisions of section 21a of the Bankruptcy Act was offered in evidence (Ex. C-1, p. 197).

Hereafter in this brief that testimony will be referred to as B. T. (Bankruptcy testimony) and the testimony taken in the Court of Chancery will be referred to by page number.

The opinion of the Court is found on page 11. It is difficult to explain without a consideration of the testimony. Its effect was to determine:

(a) The salary directed to be paid the defendant, Lester C. Burdette, by a resolution of December 2, 1916, of the Board of Directors of a preceding New Jersey Corporation the obligations of which were taken over by the Delaware Corporation, of $300. per month was fair and reasonable and "not open to adverse criticism" (p. 13).

(b) The salary of $500. a month to defendant Lester C. Burdette fixed by the resolution of the Board of Directors of the bankrupt corporation of July 9, 1918, was not warranted. "There was no change in service or circumstance that earned it. There must be an accounting for the excess" (p. 13).

(c) The allowance of $300. per month for the New York office expense of the bankrupt corporation could not be sustained, the Court below stating: "The appropriation of flat $300. a month to Burdette's law firm for office expense cannot be sanctioned" (p. 13).

(d) The advance by the bankrupt corporation of $2500. to the Bradette Corporation, as a result of a contract, approved by a resolution of the Board of Directors of the bankrupt corporation, on July 9, 1918, could not be sustained (p. 14).

(e) The defendants Lester C. Burdette and George F. Burdette must account for the moneys mentioned in "b", "c", "d" with interest and should pay costs and a counsel fee of $1,000.

The opinion did not deal with the counterclaim of defendant, Lester C. Burdette, although it appeared in the case that he had paid $5000. on account of his endorsements and the defendant Vom Cleff had paid $5,000 and Brady, Burdette's father-in-law, had paid $5,000. (pp. 77, 145).

From this decree both Lester C. Burdette and George F. Burdette appealed (notices of appeal, pp. 18, 20; petitions of appeal, pp. 22, 26).

The Trustee in Bankruptcy also appealed from that portion of the decree which was adverse to him, but his appeal has been abandoned and the only questions before this Court are:

(1) Was the Court below justified in assuming jurisdiction?

(2) Is the determination of the Court below that the increase of the salary of Lester C. Burdette, as president, from $300 to $500 a month could not be sustained warranted?

(3) Is the determination of the Court below that the payment of $300 a month for New York office expense could not be sustained warranted?

(4) Is the determination of the Court below that the payment of $2,500 to the Bradette Corporation could not be sustained warranted?

(5) Was the Court justified in declining to allow any off-set against any claim of the trustee in bankruptcy because of the liability of Lester C. Burdette upon his endorsements of the bankrupt company's notes and because of the money which he had paid upon such endorsements?

(6) Was the Court below justified in charging defendants with interest, costs and counsel fees?

Substantially, as to the second, third and fourth points, the claim of appellants is that the matters involved were matters of *business judgment* and that the Court below substituted *its* judgment for the judgment of the directors without evidence to indicate fraud or bad faith or unreasonableness and in the face of evidence of reasonableness.

Statement of the Facts.

While the trustee has abandoned his appeal from that portion of the decree which denied him relief, it is necessary, for a determination of the other matters involved, to present the full picture.

Lester C. Burdette was a lawyer in New York (p. 48); about November or December, 1916, he, then employed by Breed, Abbott & Morgan, lawyers of New York, heard of a chemical proposition which a client of the firm had intended to become interested in and took the matter up with George F. Burdette, his brother, and Vom Cleff; Vom Cleff, Vom Cleff's mother, one or two others and

Lester C. Burdette and his brother George F. agreed to buy the plant at Bound Brook at a bankruptcy sale of the United States Standard Chemical Company (p. 49); a corporation was formed under the name of Alpha Chemical Works under the laws of this State in late 1916 or early 1917; the assets were purchased; Lester C. Burdette was elected president; at a meeting of the Board of Directors held December 2, 1916, it was: "On Motion duly seconded and carried it was resolved that a salary of $300 per month be paid to the president of the corporation" (p. 51); the offices of the company were at Rooms 1508-1510 Woolworth Building, New York City (p. 52); the lease was in the name of the Alpha Chemical Works, Inc. (p. 52); at the office all of the buying and selling of the raw material, machinery, etc., was done (p. 52); an arrangement was made with respect to the New York office expenses between Alpha Chemical Works, Inc., and Lester C. Burdette and Van Horne, Van Horne being the partner of Lester C. Burdette in the law business; some $14,500 was invested in the business (p. 54); in April, 1917, a new corporation was organized known as the Alpha Chemical Works, Inc. (the same name) under the laws of Delaware (this is the bankrupt corporation); Lester C. Burdette had been a stockholder of the New Jersey Corporation but did *not* become a stockholder of the Delaware Corporation (under the law of Delaware he did not have to be a stockholder to be a director) and there were others who had been stockholders in the New Jersey corporation who did not become stockholders of the Delaware corporation (p. 55); the officers of the Delaware corporation were the same as those of the New Jersey corporation, *i. e.*, Lester C. Burdette, President, George F. Burdette, Vice-President, and Robert Vom Cleff, secretary and

treasurer (p. 55); when the Delaware corporation was organized it took over the business and all liabilities of the New Jersey corporation through a third party and formal agreements were made and resolutions passed (B. T. 198, 199, 200); the intent was to substitute the Delaware corporation for the New Jersey corporation, and the Delaware corporation continued the New York office, paid the rent and carried on under the same arrangements which had been made with the New Jersey corporation (B. T. 231); Lester C. Burdette continued as president and executive head of the Delaware corporation; it continued to pay him the sum of $300 per month, which had been fixed by resolution of the directors of the New Jersey corporation and all of the directors of the Delaware corporation knew of this payment of $300 a month and acquiesced therein (p. 71); on May 1st, 1917, a contract was made between the Delaware corporation, the bankrupt, and the Chemical Engineering and Research Corporation, under the terms of which the Chemical Engineering and Research Corporation agreed to operate the plant under certain conditions (Ex. D-5, p. 360); as a result of that contract a change was made in the matter of the method of payment of expenses, etc., by the bankrupt corporation (p. 71); the overhead for all administration expenses, including the salary of Lester C. Burdette and the New York office expenses was figured at $600 a month, and a provision to that effect was written into the contract (p. 72); in October of 1918 the Bradette Corporation was organized (B. T., pp. 259, 260, 261; and testimony before the Court below, pp. 73 *et seq.*).

On July 9th, 1918, at a special meeting of the Board of Directors of the bankrupt corporation, at which all of the directors, George F. Burdette, Robert Vom Cleff and Lester C. Burdette, were

present, the following resolution was adopted (Ex. D-13, p. 370):

> "Resolved; That the officers of this corporation be and they hereby are authorized to appoint Mr. Paul T. Brady or a corporation to be organized by him, as the representative of the Alpha Chemical Works, Inc., to buy and sell all chemicals used or manufactured by said Alpha Chemical Works, Inc., for a period of two years.
>
> It was further agreed to pay the corporation a commission of five per cent. on all sales made by said corporation for the account of the Alpha Chemical Works, Inc. and a commission of one per cent. on all purchases made by said corporation for the account of the Alpha Chemical Works, Inc.
>
> It is understood that a contract shall be executed by the officers of this corporation when a sales corporation is organized by Mr. Brady for this purpose, and that commissions be paid on all contracts negotiated for this corporation, from July 9, 1918."

And the following resolutions were also adopted:

> "Resolved, That the president be paid a salary of $500.00 a month, for a period of one year, beginning October 1, 1918, and that the New York office of this company be discontinued on that date with no further expense to this company."

Prior to the adoption of these resolutions, Lester C. Burdette had made investigation and had ascertained that commissions for selling and purchasing products, including such services as was intended to be performed by the Bradette Corporation under the contract, ranged as high as fifteen per cent. for the selling of products and as high as from 3 to 5 per cent. for the purchase; Bradette Corporation under the agreement assumed the New York office expense; it was paid

some $2,500 during the three months that there was operation under the contract and those moneys were used by it in paying the New York office expenses, the obligation of the bankrupt corporation which Bradette Corporation had assumed; no part of these moneys went to Lester C. Burdette; some part of these moneys *did* go to the firm of Burdette and Study, but this was for office expenses; the insolvency prevented the further carrying out of the contract (pp. 73 to 75).

We now come to the injection of Clarence H. Venner which led to this litigation (p. 36).

Venner and his son Clarence, Jr., were the only witnesses for complainant (pp. 36, 44) and the trustee attempted to make a case by, I submit, their false testimony.

The company was short of money and Venner became interested and finally advanced $25,000 (p. 37); that $25,000 was advanced under a proposal made by the bankrupt corporation through Lester C. Burdette by letter dated September 10th, 1918 (pp. 43, 353), which appears in the minutes of the meeting of directors of the bankrupt corporation of the 14th of January, 1919; it was reported to the Board on that date; the proposition contemplated that Venner should purchase 250 shares of common stock for the sum of $25,000 and, on September 10, 1918, he paid $10,000 on account; at meetings of January 14, 1919, of directors and stockholders an increase in the capital stock to provide for these shares was authorized; at a directors' meeting, held on the 20th of January, 1919, the chairman reported that Venner had paid into the treasury of the company $25,000 and that, in pursuance of the contract, Clarence H. Venner, Jr., had been employed by the corporation since the date of the contract at an agreed salary of $130 a month; Venner took his interest in the name of his corporation "General Invest-

ment Company''; in February of 1919, Venner, through his representative, Pollitz, filed an application for the appointment of a receiver of the corporation in the Court of Chancery of New Jersey, and, on February 10, 1919, Albert C. Wall, of Jersey City, was appointed receiver; Venner then immediately filed a claim against the corporation for $25,000, which represented the money he had advanced on account of stock; this claim was rejected by Mr. Wall, or at least indications given that it would be rejected, and he fixed March 28th, 1919, as a date for the hearing on the claim; Venner applied for a continuance of the hearing and it was adjourned until April 11th.

In the meantime, Venner, not satisfied with the forum in which he then was, succeeded in having a petition in bankruptcy filed in the United States District Court, with the result that Cecil H. McMahon, Esq., was appointed receiver, and finally elected trustee; Venner immediately filed his claim against the bankrupt corporation with the referee, and immediately there was a dispute which, so far as I know, has never been resolved; proceedings were forthwith taken on behalf of Venner for an examination under 21a and the matter was referred to Elmer Demarest, Esq., who was the Referee in Bankruptcy and voluminous testimony taken, pages after pages of examination of Lester C. Burdette, part which was offered in evidence in this case; on behalf of the Trustee in Bankruptcy, turn over proceedings were then instituted against Lester C. Burdette before the Referee; objection was made by Lester C. Burdette upon the ground that the Court was without jurisdiction to entertain such proceedings as he was an adverse claimant; the Referee held that he *had* jurisdiction and declined to decide the preliminary question as to whether Lester C. Burdette's claim, as an adverse claimant, was with color of right; a petition

for review was filed and came on for argument before Judge Lynch, and, on the 23rd day of September, 1920, he granted the petition of review "to the extent that the Referee is directed to hold a preliminary inquiry as to the evidence before determining the question of jurisdiction raised in respondent's answer"; the matter then came on before the Referee, and, after a hearing, he handed down a memorandum in which, after reciting the facts, he said:

> "The petition alleges overpayments beyond the value of the services and for some items for which Mr. Burdette was not entitled to any compensation. If Mr. Burdette is entitled to any compensation whatever, it would appear to me that he has colorable right to a part of the moneys that he received, and that his defense is interposed in good faith. Had he, as an officer of the bankrupt corporation, obtained and wrongfully withheld moneys or property belonging to the corporation, the situation might be different, but in this case the moneys paid to him were authorized and ordered paid under certain resolutions of the Board of Directors. *Such payments, where brought about by the influence of the officer, are not necessarily void but voidable and would be voidable not as a whole but to the extent that the payments were unreasonable.*
>
> There is no doubt in my mind that the allegations of the petition are a proper subject for an accounting suit by the Trustee against Mr. Burdette upon an original bill for an accounting, but I do not think that this can be had, under the circumstances of this case as a part of the bankrupt proceeding."

In pursuance of that opinion on June 17, 1921, an order was made by the Referee ordering:

> "That said petition of said trustee be dismissed for lack of jurisdiction, without prejudice to the right of said trustee to institute

such suit or suits against said Burdette for the recovery of any and all moneys claimed by said trustee from said Burdette."

Not satisfied with this order of the Referee, the trustee filed a petition for a review with the United States District Court, and that matter was argued and, on November 20th, 1922, an order was made by Judge Rellstab dismissing the petition of review and affirming the order of the Referee.

Thereupon, this action was started in the name of the Trustee, but in reality by Venner.

There was great delay; the administration of the estate was held up; various attempts have been made, pending the proceedings, to get rid of them by compromise, and, upon at least two occasions, the matter has been presented to the Referee, creditors have been heard, and all of the creditors and stockholders, with the exception of Venner, have been anxious that the procedings be discontinued; Venner has always appeared and opposed the discontinuance of the proceedings with the result that the Referee has never ordered them discontinued.

Venner, Sr., over objection of Lester C. Burdette (p. 37), was permitted to testify that, at a conference which he had had with Lester C. Burdette on the 10th of September, 1918, at the time they were discussing Venner's investment, Lester C. Burdette informed him that he, Burdette, "was receiving no salary himself; that no salaries had been voted, and that he expected to make his money in the enterprise out of the common stock of no par value to be subsequently issued"; Venner stated that it was upon the faith of that statement that he advanced the money.

Clarence H. Venner, Jr., his son, testified (p. 45), that he had had a conversation with Lester C. Burdette about August 22nd, 1918, and that Burdette said "nobody was getting a salary ex-

cept at the plant, and that Dr. Shoedler was getting commissions on the sales—otherwise no salaries being paid''.

Lester C. Burdette denied the making of any such statements (p. 79) and his denial is consistent with the probabilities, whereas, the statements of the two Venners were not, and, indeed, the circumstances indicate, almost beyond the possibility of dispute, that they were never made.

I ask the Court to read the cross-examination of the two Venners (pp. 36 and 44).

Venner stated that the item of salaries was *important* and that he relied upon the statement of Lester C. Burdette. Venner is an experienced gentleman and, to bind Lester C. Burdette and the bankrupt corporation, he, Venner, dictated the letter of September 10th, 1918 (Exhibit D-1, p. 353). In that letter he put the bankrupt corporation and Lester C. Burdette in the position of making representations as to the assets of the company, the debts of the company, the amount of stock, the nature of the business, and so on, and is careful to include ''in consideration of the foregoing, it is agreed that Clarence H. Venner, Jr. shall be employed by the company at a suitable salary''.

Not a word was in these representations, dictated by Venner, as to *this* important item, viz.: that no salaries were being paid to anyone except at the factory, nor is there any adequate explanation for the omission (pp. 41, 42).

There were further letters received by Venner and his corporation (Exhibits D-2, D-3, D-4, pp. 43, 44). Venner, Sr. equivocated as to the receipt of certain of these letters. See his testimony at pages 43, 44. It finally developed that Exhibits D-3 and D-4 (pp. 356, 359) were forms prepared by Venner to be signed by the bankrupt company (p. 48). They were never signed. There was no

concealment on the books of the bankrupt corporation of the payments to Lester C. Burdette. A casual examination would have disclosed them. The minutes of July 9, 1918, as of a date two months prior to Venner becoming interested, disclosed that the salary of Burdette had been fixed at *$500 a month* for a period of one year beginning October 1, 1918. This was in connection with the Bradette proposition. It is incomprehensible that Lester C. Burdette should have made a representation to the effect that he was receiving no salary when a casual inspection of the books would indicate that such a statement was false. It is impossible to believe that, had this statement been made and had Venner relied upon that statement, as he said that he did, as an *important* element, when, the matter of salary being in his mind, for he was insisting upon a salary for his son, he dictated the representations of September 10, 1918, (Ex. D-1, p. 353) so that he might have in writing representations upon which he might claim he advanced his money, he should have omitted this very important item, *i. e.,* that no salary was being paid to Lester C. Burdette, or to anyone else, except those employed at the factory.

The evidence given by Venner is false and the assertions were made by him for the purpose of founding an action for deceit against Lester C. Burdette, and Venner had, at the time of the hearing below, a suit pending in New York against Lester C. Burdette on these alleged representations (p. 43).

All of this testimony of Venner was objected to; it was wholly unimportant. Suppose Lester C. Burdette *had* informed Venner that he had been receiving no salary. The *fact* was otherwise. Such a statement might have been made the basis of an action for deceit by Venner against Lester

C. Burdette. It was not probative either upon the question as to whether the bankrupt corporation could recover salary which in fact had been paid or upon the question of the reasonableness of the salary. Highly reprehensible as such a statement might be considered from the standpoint of Venner, it had absolutely and utterly nothing to do with the issues in this case. It is mentioned here in detail because it was relied upon by the Trustee below and, while not mentioned by the Vice Chancellor in his opinion, may be relied upon by the trustee here.

ARGUMENT.

POINT I.

The Court of Chancery of New Jersey should not have sustained the suit which involved the internal affairs of a Delaware Corporation.

The bankrupt corporation was a corporation of Delaware, incorporated in April, 1917. The determination of the case required a consideration of the *bona fides* of the action of the Board of Directors in fixing compensation to the president and in determining the amount to be paid for the New York office expense and the validity of a contract made by the corporation with the Bradette Corporation in 1918. It involved a consideration of the duties of directors, who were also officers and the Court exercised the general supervisory jurisdiction of a court of equity over the conduct of directors of a company with respect to transactions having to do with one of their members.

Jackson v. *Hooper,* 76 N. J. E. 592;
McDermott v. *Woodhouse,* 87 N. J. E. 615;

Goff v. *Goff Electric Co.*, 89 N. J. E. 258; *Eckrode* v. *Endurance Tire Co.*, 90 N. J. E. 129, affirmed 91 N. J. E. 153.

The latter case involved an attempt by a stockholder of a foreign corporation to, for the benefit of himself and all other stockholders, have a deed and bill of sale for the corporation's real and personal property, which was located in the State of New Jersey, set aside upon the ground that the transfer was *ultra vires* and there was a prayer also for other specific relief. The Vice Chancellor held that the Court of Chancery in this State could not entertain such a bill upon the ground that it involved the internal affairs of a foreign corporation and his conclusion was affirmed by this Court.

This case is stronger against the granting of relief, for in this case there is no charge of *ultra vires*. The charge is that the directors of the foreign corporation granted compensation to the president, one of their members, of a larger amount than warranted and also abused their discretion in appropriating certain sums of money for the so-called New York office expense and likewise abused their discretion in making the contract with the Bradette Corporation and advancing upon that contract the sum of $2,500. The power exercised by the Court of Chancery in this case was visitorial.

In fact, it was a review of the proceedings of the directors, back in 1918, upon the charge that the directors *had abused their discretion.* It was the exercise of the right of a Court of Equity, at the suit of a minority stockholder, under certain circumstances, to substitute *its* judgment of proper compensation and the like for the judgment of the directors where the person to whom the compensation had been paid had been a member of the Board.

As will be indicated in a consideration of the different items upon which the Vice Chancellor decided there could be relief, there will be no question, I submit, but that *each* one involved the exercise of all that visitorial power of a Court of Chancery which may be exercised, where a board of directors has been dealing with one of its members, to protect minority stockholders.

While the suit in this case is brought by the trustee, the relief which was granted to the trustee is such relief as is granted to a minority stockholder speaking presumptively in the right of the corporation as representing all stockholders.

The trustee's right rests, not upon the fact that he represents creditors, but upon the fact that he represents *the corporation* and the extent of the relief which may be granted to him is such relief as might be granted to a minority complaining stockholder, suing in the right of the corporation.

POINT II.

The Court erred in its conclusion that the increase in October, 1918, of the salary of Lester C. Burdette from $300 to $500 was unwarranted and that Lester C. Burdette should pay to the trustee $600 with interest from January 1, 1919, being the excess paid by the bankrupt corporation for the months of November and December, 1918, and the month of January, 1919, over the sum of $300 a month.

The Court held that the salary fixed prior to October, 1918 at $300 a month was proper (p. 12). With respect to the increase, which was by resolution of the Board of Directors of the bankrupt corporation of July 9, 1918, the Court said, and all that it said was, "The increase of $500 a month

was not warranted. *There was no change in service or circumstance that earned it.*'' There was no evidence in the case that the $300 a month, which had been paid to Lester C. Burdette prior to October, 1918, was the limit of adequate compensation to him. On the contrary, all of the evidence (which, under the following points, will be specially mentioned) which was offered indicated that the sum of $300 a month was *not* adequate compensation. There was no evidence in the case that the $500 a month provided for by the resolution of July 9, 1918, was unreasonable. On the contrary, the *only* evidence in the case was to the effect that it was reasonable.

The matter is not one of law but of business. *The Court simply substituted what it conceived to be its business judgment for the business judgment of the directors.*

Assuming that, under the cases, it was open to the Court of Chancery to examine into the salary paid Lester C. Burdette (*Lillard* v. *Oil, Paint and Drug Co.,* 70 N. J. E. 197, at p. 204; *Mills* v. *Hendershot,* 70 N. J. E. 258, at p. 265; *Booth* v. *Beattie,* 95 N. J. E. 776, 27 A. L. R. 300), the matter is one purely of reasonableness. Lester C. Burdette described his services in great detail under examination by Mr. Bilder in the proceedings before the Referee under 21a (B. T. pp. 216 to 235, etc.); he again described his services in the court below in great detail, commencing at page 48, and, with respect to the fact that he spent *all of his time* on the affairs of this company, he was corroborated by Mr. Horne (p. 187). With respect to the reasonableness of his compensation he was supported by the testimony of Guile (p. 149) and Litter (p. 177) and, were I to detail the nature of his services, I would be but repeating what these witnesses said.

Counsel for the trustee in the court below criticized the qualifications of Guile and Litter, and he also attempted to discredit Guile because he had some interest in the case. It is true that Guile's concern had a contract with the bankrupt corporation but, as against the effect of his interest, is the fact that his knowledge as to what was actually done adds to his qualifications to speak, and the fact that *his interest* required that the compensation to, and expenses of, Lester C. Burdette should be kept as *low* as possible.

Counsel for the Trustee might have produced *some* proof to the Court that the amounts paid to Lester C. Burdette were unreasonable. Upon this subject he was silent.

The matter is not one of law, but of business. If, in the conduct of the business, business men conceived it to be reasonable to pay the salaries which were paid in this case, the Court may not substitute its judgment. The question is one of fact to be determined by business practice.

There is not one word of proof in this case, not even from Venner, that the salaries paid were unreasonable.

The Trustee took the position below that, because the business was unsuccessful, no salaries should have been paid. Of course, this position is wholly untenable and the court below declined to accept it (p. 12). He did not suggest to the Court what compensation he considered to be reasonable. He left the Court completely in the dark as to his views upon the subject and yet that was the most important element in the case for it must be conceded that, under the law, if considered strongest against Lester C. Burdette, he was obliged only to account for that sum which has been paid to him which represented *unreasonable* payment.

It is easy enough, after a corporation has been running for a certain period of time and has failed, for counsel for the Trustee to go over the testimony and pick out "this and that" and say that "this and that" should not have been done, and that, if "this and that" had not been done, the result would have been more favorable to the corporation. Hind-sight is much better than fore-sight. There was not, however, in this case a scintilla of evidence which indicates that Lester C. Burdette, at the time the acts were performed, did not conceive the acts to be for the best interest of the corporation, and in his belief he was supported by the best expert opinions which he could get.

It was suggested by counsel for the Trustee below that Lester C. Burdette, when he went into this project, was a lawyer and had continued his law business. What of it? There are many lawyers who are heads of manufacturing concerns and it has never been suggested that, because they are lawyers, they are incompetent to act as executive heads, or that, because they are lawyers and not brought up in the business of which they are executive heads, they are not entitled to compensation.

The proofs showed that Lester C. Burdette gave his entire attention to the business of this company, and that he did his utmost to make it a success, and its failure was no fault of his, in the legal sense at least of that term. He was not a *stockholder* of the Delaware corporation, the bankrupt company. He was nothing but a paid employee and had no interest in it except as such. While it has been said that stockholders may have the matter of compensation reviewed by a court of equity, as Vice Chancellor Emery said in *Mitchell* v. *United Box Board and Paper Co.*, 72 N. J. E. 580:

> "The power of the stockholders to affirm the contract made with a director was recognized in this case, and for the reason that such contracts are voidable only as against the company considered as composed of the whole body of stockholders, not voidable by each stockholder in his own individual right".

There were no stockholders of this company complaining. The only person who complained was Venner, and Venner claimed that he was not a stockholder.

It is immaterial whether the burden was upon Lester C. Burdette to establish the reasonableness of the payments made by him, or whether the burden was upon those attacking the reasonableness of the compensation to prove their case, for Lester C. Burdette carried the burden. He at least carried the burden to the extent of shifting the going forward with the testimony, and the trustee did not go forward with the testimony and did not produce any proof to the effect that the moneys paid represented more than reasonable compensation.

I submit, however, that the burden was not on Lester C. Burdette under the circumstances of this case.

In *Seitz* v. *Union Brass & Metal Mfg. Co.*, 1922, 27 A. L. R. 297, 152 Minn. 460, 189 N. W. 586, the Court gathered the cases together and said:

> "In determining whether salaries are excessive and unreasonable, so that there should be a restoration, *courts proceed with some caution. An intolerable condition might result if the courts should too lightly undertake the fixing of salaries at the suit of dissatisfied stockholders.* An issue as to the reasonable value of the services of officers is easily made. It is not intended that courts shall be called upon to make a yearly audit and adjust salaries. The dissenting stock-

holder should come into court with proof of wrongdoing or oppression, and should have more than a claim based on mere differences of opinion upon the question whether equal services could have been procured for somewhat less. Were it otherwise efficient executives, able to command in competition large salaries, risking their capital on the faith of control, and a steady employment, would find themselves and their capital periled by the uncertain view which a court might take. The right of majority control must be given effect, and the minority cannot, through the courts, interfere with an honest and fair majority policy. Thus, in Matthews *v.* Headley Chocolate Co., 130 Md. 523, 100 Atl. 645, a suit by a corporation to require its officers to account for excessive salaries, the court said: 'The court would not be authorized to substitute its judgment for theirs (directors) as to what are proper salaries, provided they acted in good faith, within their powers, and the salaries fixed by them were not clearly excessive.'

In Fillebrown *v.* Hayward, 190 Mass. 472, 77 N. E. 45, the court, referring to an allowance of salary to a woman who was treasurer, said: '*But if the amount of compensation compared with her actual duties seems to be unduly large, yet it is stated in these findings that she and the directors, acting in good faith, regarded the salary as a fair valuation of her services to the company, which, during the time, was doing a profitable and extensive business . . . That she was a member of the board, which also included her daughter, would not invalidate its action, for there is no evidence of any purpose to appropriate corporate profits unlawfully under the guise of salary,* the abstraction of which would impair either the solvency of the company, or the right of minority stockholders to a reasonable division of surplus earnings in dividends.'

In Beha *v.* Martin, 161 Ky. 838, 171 S. W. 393, where the right of a minority stockholder

to relief, where excessive salaries are allowed, is recognized, the court said: 'In a case like this, where the compensation is fixed by the board of directors, who also are a majority of the stockholders, *it does not devolve upon the director whose compensation is in question to prove that the compensation is fair; but the objecting stockholder must establish affirmatively that the salary or compensation is unreasonable and oppressive.*'

We do not stop to review the cases. The holdings are in confusion and not always in accord with the rule we adopt. Sometimes statutes affect the result. Sometimes the question arises when the officer has participated in the fixing of his salary, or when a salary is voted as an incident to an office where no more than ordinary and largely formal duties are performed, or where there is manifest wrongdoing or fraud, and sometimes where the officer seeks recovery in implied assumpsit. We are content to hold, under the facts before us, that the salaries were regularly fixed, and that a dissenting stockholder attacking them has the burden of proving that they are unreasonable and excessive, so that a substantial wrong is done him if they are retained.''

POINT III.

The Court erred in holding that the payments of $300 a month to Burdette and Horn, the law firm of which Lester C. Burdette was a member from April 1st, 1917, to February 1, 1918, and the payments of $300 a month to Burdette and Study, the law firm of which Lester C. Burdette was a member from February 1st, 1918, to October 1, 1918, were unlawful and that the defendants, Lester C. Burdette and George F. Burdette should account for such sums being credited however for any sum which they might prove actually represented one-half of the normal expense of the office for the period from April 1, 1917, to February 1, 1919, of the bankrupt corporation, and said Burdette and Horn and Burdette & Study respectively, in the Woolworth Building, New York City, as well as such items of expense for said office of which said bankrupt corporation had exclusive benefit during said period.

When the company was first organized it was considered essential that a New York office should be maintained (p. 2), and the Court below did not criticize the maintenance of the New York office (pp. 13, 14) and indicated that the establishment of that office in Lester C. Burdette's law office in New York was, perhaps, advantageous and held that this was a matter for the judgment of the directors "and the *bona fides* is not challenged or reviewed" (pp. 13, 14).

The Court then said, however, that "saddling the entire cost on the company for only a share of the benefit was an imposition." * * * "It may well be that the law partnership business was negligible; that is irrelevant. The partners were fledglings, neither having practiced independently,

both had been law clerks, but it was manifestly unfair to make their venture at the Bar at the company's expense. They should have paid their share of the joint use of the office and facilities."

The necessity for the New York office is clearly indicated by the testimony of Lester C. Burdette, on page 52 *et seq.*

The arrangement was that the bankrupt corporation should pay the rent and permit Lester C. Burdette and his partner, Mr. Horn, to use the New York office as a law office without expense "except such things as were incidental to our own business, such as telephone, telegrams and stationery, and things of that sort" (p. 52).

The arrangement was made in connection with the fixation of the salary at $300 a month (pp. 96, 97, 98, 99, 100, 101).

Lester C. Burdette was a lawyer and those who were interested in the bankrupt corporation and had invested money in the business desired his attention to the affairs of the corporation and he gave practically his exclusive attention to the business including, among other things, the purchase of materials and the sale of the product and the books were kept at the New York office.

On May 1, 1917, the contract was made between the bankrupt corporation and Chemical Engineering and Research Corporation (Ex. D-5, p. 360, p. 56), which contract contemplated the payment of $150 per week for the New York office expense, or $600 a month (p. 361) which included the salary of Lester C. Burdette and the New York office expense. Here, again, the agreement for compensation and the agreement that the bankrupt company should pay $300, approximately, for the New York office expense was part of a single contract and there *is no evidence in the case that this contract was in any way disadvantageous to the company.* Guile, who controlled the Chemical En-

gineering and Research Company (pp. 147, 148) explained what that company did under the contract and also what Lester C. Burdette did, and he said (p. 418):

> "Q. Do you know what he (Lester C. Burdette) was doing at the New York office? A. As far as I know he wasn't doing any work but chemical work. He was spending all his time because I was not getting any money out of it; somebody had to be there on my contract whereby they limited the expenses of his New York office to $150 a week on the agreement that Mr. Burdette was going to give his time to the chemical business."

He explained (p. 149) that Lester C. Burdette spent all of his time on the work of the bankrupt company and he reviewed the services performed by Burdette (pp. 150, 151) and said that, in his opinion (and he qualified as an expert), Lester C. Burdette's services were of the value of from $15,000 to $20,000 a year (pp. 152, 153) and he also said (p. 153):

> "Q. Assuming the statements contained in the hypothetical question that I have put to you, what would you say as to the reasonableness of the commission of five per cent. to be paid to a selling corporation which would dispose of the products of this company and also assume the New York office expense? A. A very low charge."

He was cross-examined upon the subject (pp. 157, 158, 159) and stated that he considered that the amount allowed for expenses of the New York office was reasonable. *This man was interested in keeping the expenses as low as possible.* By keeping down the expense he increased his opportunity for profit. His company was to be compensated by a share of the profits. It is to be presumed that he would not permit the expenditure of more

for New York office expense than he considered reasonable. He testified (p. 158):

> "Q. Did he (Lester C. Burdette) suggest he would like to have this contract provide for more than $150? A. I think he did. If I gambled my portion I think that is all that ought to be assumed by us.
>
> By the Court:
>
> Q. *It was a bargain you struck?* A. *Yes, sir.*
> Q. *And the best bargain you could strike?* A. *Yes.*
>
> By Mr. Bilder:
>
> Q. Did that enhance his value as a business man? A. I thought he drove a good bargain *for me.*
> Q. Did he display any good business sagacity to make a contract for $7,500 to render services which you thought were worth $25,000? A. I think so; he was doing it for his company."

And (p. 159):

> "Q. What did he suggest the figures should be? A. I think $200 a week.
> Q. *You held him down to $150?* A. *Yes.*"

We have not only, therefore, the judgment of the Board of Directors, of which Lester C. Burdette was a member, that these expenditures for New York office expense were proper but also the judgment of a business man acquainted with the situation and on the spot at the time *whose interest it was to keep down the expense, to the effect that that expense was reasonable.*

The Court of Chancery, I submit, now has substituted *its* judgment for the judgment of those who were present and knew the facts and circumstances and *without any evidence whatever that*

the allowance for New York office expense was unreasonable. We not only have the judgment of Guile, who was on the spot at the time and whose interest it was to keep down the expense, but we also have the expert opinion of David H. Litter, who is a sales agent of chemicals and who qualified as an expert (p. 171, etc.) and who, in reply to a hypothetical question, said (p. 177):

> "Q. Have you any knowledge as to the percentages of commissions which were paid during that period of time? A. Usually five per cent.
>
> Q. What would you say as to the reasonableness of a commission of five per cent. to be paid to a selling corporation disposing of the products of the company under the circumstances that I have related, which contract also required the selling corporation to assume the New York office expense? A. That would be fair."

The effect of his testimony is (p. 176) that proper compensation to Lester C. Burdette would have been from twelve to fifteen thousand dollars a year.

When Lester C. Burdette was receiving a salary of $300 a month, he was receiving $3,600 a year and $300 for office expense, another $3,600 a year, or a total of $7,200, or $5,000 less than the lowest figure fixed by Litter as reasonable compensation.

The business was a war enterprise and Litter indicated his familiarity with such enterprises (p. 181) and his familiarity with compensation which was paid to other executives. And he said (p. 181):

> "Q. In your experience do you remember any case in which a lawyer who knew nothing about the chemical business at the time of the beginning of the chemical manufacturing business, who had had no previous experience in buying or selling of chemical prod-

ucts—did you ever run into a case in which a lawyer of that kind—a person of that kind, ignorant of the business in hand, received fifteen thousand dollars a year? Search your memory and see if you remember such a case. A. Mr. Bilder (interrupted).

Q. The answer to that question is yes or no.

The Court: No, no.

Witness: During the war period eighty per cent. of the executives of chemical concerns knew absolutely nothing about chemicals; some of them professional men, some of them from other walks of life; some received five and some fifty thousand dollars a year. As a matter of fact, the president of the Calco was an electrcial engineer drawing thirty-five thousand dollars a year; the vice president was a civil engineer drawing thirty thousand; the first vice president in charge of sales was a man that sold burlap.

Q. Is that concern still in business? A. Yes, sir.

Q. Successful? A. Very.

Q. Making the same kind of things that were made by the Alpha Chemical Works? A. To some extent.

Q. Do you know of any case during the war in which the president who knew nothing of the manufacture of chemicals and attempted to perform the duties as a president of such a concern and general manager of it, which concern was unsuccessful, received fifteen thousand dollars a year? A. I don't know of any specific instance, but there were very many."

Ralph W. Horn, who was the law partner of Lester C. Burdette, testified (p. 187), to the work performed by Lester C. Burdette and also to the fact that *he* (Horn) performed considerable service for the bankrupt corporation without charge (p. 190) and that he did not participate in the compensation which was received by Lester C. Burdette in any manner (p. 190).

The Court below has now directed that there be an accounting by Lester C. Burdette and his brother, George F. Burdette (the latter because, as a director, he permitted the payment of $300 a month for New York office expense, although no fraud was shown) and that there be allowed to Lester C. Burdette and George F. Burdette "one-half of the normal expense of the office for the period from April 1, 1917, to February 1, 1919, of said Alpha Chemical Works, Inc., and said Burdette & Horn and Burdette & Study respectively, in the Woolworth Building, New York City, as well as such items of expense of said office of which said Alpha Chemical Works, Inc., had exclusive benefits during said period". Upon what basis the Court reached its conclusion, *upon the testimony,* that the expense of the New York office should be divided between the law firms and the bankrupt corporation, fifty-fifty does not appear. There was no evidence. The only evidence in the case was that there was practically no law business done and that practically the entire time of Lester C. Burdette was taken up in the business of the bankrupt corporation. The Court below conceded (p. 14) that, "It may well be that the law partnership business was negligible", but the Court said "that is irrelevant". I submit that it was *not* irrelevant.

Those who had money invested in the business of the bankrupt corporation wanted Lester C. Burdette. It was necessary that there should be a New York office. He was entitled to compensation. There would be an expense for the New York office. Lester C. Burdette would not act unless he were permitted to carry on, with his partner, such law business, as they might be able to handle, they just having left the New York law firm of Breed, Abbott & Morgan (p. 48), at the office. There would be expense but to attempt to divide

that expense in dollars and cents would be almost impossible.

The result was the agreement that a lump sum should be paid for the New York office expense, and it was in the light of that lump sum allowed for New York office expense that Lester C. Burdette agreed to take the salary which was less than any testimony in the case showed he was entitled to.

Now the Court, by the decree, has put the burden upon Lester C. Burdette and George F. Burdette to prove in court: (a) the normal expense of the office over a period from April 1, 1917 to February 1, 1919; and, (b) such items of expense of said office of which the bankrupt corporation had exclusive benefit during said period; a task impossible to perform.

In the light of the agreement that the bankrupt corporation should pay a lump sum for the New York office expense, no books were kept from which the information required to make such proof as is directed by the decree of the Court of Chancery can be obtained.

POINT IV.

The Court below erred in requiring Lester C. Burdette and George F. Burdette to account for the payments of $2,500.00 made to Bradette Corporation.

The contract made with the Bradette Corporation is embodied in the minutes of a special meeting of the Board of Directors of the bankrupt corporation, at which there were present George F. Burdette, Robert Vom Cleff and Lester C. Burdette (Exhibit D-13, p. 370) and provided that the Bradette Corporation should be paid five per cent. on all sales made by said corporation for the

account of the bankrupt corporation and a commission of one per cent. on all purchases made by said corporation, the Bradette Corporation to assume the expense of the New York office.

Two thousand five hundred dollars was paid to the Bradette Corporation on account of that contract and the performance of the contract by the Bradette Corporation was prevented by the appointment of a receiver of the bankrupt corporation in February, 1918 (p. 61).

The story of the Bradette Corporation contract is found on page 73 of the record:

> "Q. Mr. Burdette, who was the Bradette Corporation? A. The Bradette Corporation was organized by me. It was organized for the purpose of buying and selling chemicals or doing a brokerage business. This corporation bought and sold for brokers and from brokers and for manufacturers and from manufacturers chemicals, dyestuffs, and so forth, and the Alpha Chemical Works gave to it a contract to sell its products at a commission of five per cent. on the sale and to buy its products at one per cent. on its purchase.
>
> Q. Before that contract was entered into had you any knowledge or had you acquired any information as to the customary charges for brokerages for selling and purchasing products? A. Yes, sir.
>
> Q. What did you ascertain? A. I found that commissions as high as fifteen per cent. was being paid for the sale of products and as high as three to five per cent. for the purchase.
>
> Q. What was the arrangement between the Bradette Corporation and the Alpha Chemical Works with respect to the New York office expense? A. The Bradette Corporation assumed the New York office expenses, and the—that is, took it over from the Alpha Chemical Works.
>
> Q. There was some amount of money, $2,500, I think, paid to the Bradette Corpora-

tion? A. Yes, sir. That amount of money was paid to the corporation during a period of three months, I think. I don't know.

Q. And what was it used for? A. It was used to pay its expenses.

Q. Which were what? A. Which were the New York office expense and the salary of Dr. Shoedler, who was a salesman employed by it.

Q. Was any part of that money used to pay you individually? A. No, sir. The only check that I remember which was paid to me was a check for the actual disbursements of the organization of the corporation. I received no fee for the work done.

Q. And that was paid to you by the Bradette Corporation? A. Yes, sir.

Q. There was certain of those moneys paid to the firm of Burdette & Study, were there not? A. Yes, sir.

Q. What was that for? A. That was for the New York office expenses.

Q. Did the Bradette Corporation in fact sell any products? A. Yes, sir.

Q. Do you know how much? A. I couldn't answer that.

Q. The $2,500 which were advanced to it were on account of what? A. Sales they had made and to be made.

Q. The insolvency prevented the carrying out of that contract. A. Yes, sir, at the time of the filing of the petition we could not complete the contract because we had nothing to sell."

That the amount agreed to be paid to the Bradette Corporation was not unreasonable was proven by the testimony of Guile (pp. 153, 154) and the testimony of Litter (p. 177) and *there was no evidence whatever to the contrary.*

Before there could be a recovery against Lester C. Burdette and George F. Burdette, I submit there must have been proof to the effect that the making of the contract with the Bradette Corporation was a deliberate fraud, and this applies both

with respect to Lester C. Burdette and the director George F. Burdette because Lester C. Burdette received no moneys as a result of this contract, except such moneys as were paid under it for New York office expense, and his liability, if any, is precisely the same, and must rest upon the same basis, as the liability of any other director of the corporation.

Fraud is never presumed and the burden was upon the trustee to prove the fraud.

> *Van Pelte* v. *Vechte,* 14 N. J. L. 207;
> *Guerber Engineering Co.* v. *Stafford,* 96 N. J. Law 280;
> *Pahy* v. *Pahy,* 107 N. J. Eq. 538.

The effect of the contract was that the Bradette Corporation assumed obligations of the bankrupt corporation. Before making the contract, as I have already indicated, Lester C. Burdette made inquiry and ascertained that the usual commissions for the performance of the work which the Bradette Corporation agreed to perform were in excess of that allowed by the contract (p. 74).

With respect to this he is supported by the testimony of Guile (pp. 153, 154), and also by the testimony of Litter (pp. 176, 177).

The trustee did not present any evidence whatever that the contract between the Bradette Corporation and the bankrupt corporation was unreasonable in its terms.

The Bradette Corporation was only paid $2,500. That payment was made on account of sales which they had made and to be made (p. 75). The further performance of the contract was prevented by the insolvency of the bankrupt corporation.

For the breach of that contract, the Bradette Corporation had a cause of action against the bankrupt corporation and there was nothing before the Court below to indicate whether the

Bradette Corporation owed the bankrupt corporation or whether the bankrupt corporation owed the Bradette Corporation.

It is intimated in the opinion of the Court (p. 14) that one of the reasons for the formation of the Bradette Corporation was that Lester C. Burdette desired that Brady, his father-in-law, should get some benefit from the bankrupt corporation, he having advanced considerable money to it. This may have been *one* of the matters in the mind of Lester C. Burdette but that fact does not prove that the contract between the bankrupt corporation and the Bradette Corporation was not only unreasonable in its terms but so fraudulent as that the directors who voted for it are liable to account to the corporation for the moneys paid under it by the bankrupt corporation to the Bradette Corporation.

As above stated, fraud is not presumed. It must be proven.

The Court erred in directing Lester C. Burdette and George F. Burdette to account for the $2,500 advanced to the Bradette Corporation.

POINT V.

The Court erred in not permitting Lester C. Burdette to offset against any amount which might be found due from him to the bankrupt corporation, the amount paid by him on obligations of the bankrupt corporation upon which he was endorser.

It is conceded that Lester C. Burdette was endorser upon notes of the bankrupt corporation to the extent of $15,000 and that he paid on account of his endorsements the sum of $5,000.00 (pp. 77, 78). He held the notes of the company which he

had paid (Exhibit C-1 of April 7, 1926, p. 373). By his counterclaim he prayed credit for the amount which he had paid on those notes (p. 6).

He was entitled to that credit.

The Bankruptcy Act, Section 68, which is found in 11 U. S. C. A., sec. 108, page 255, provides as follows:

> "Sec. 108. Set-offs and counterclaims. (a) In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.
>
> (b) A set-off or counterclaim shall not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate; or (2) was purchased by or transferred to him after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent, or had committed an act of bankruptcy." (July 1, 1898, c. 541, sec. 68, 30 Stat. 565.)

The author of Remington on Bankruptcy, Section 1451, page 162 says:

> "Sec. 1451. Right of Set-off and Counterclaim Unimpaired.—The right of set-off and counterclaim *is as valid against the trustees as it would have been against the debtor had he not gone into bankruptcy,* and the trustee takes choses in action and other property subject thereto."

He also says, Section 1455, page 167:

> "Sec. 1455. Off-set Need Not Be Due, if Owing.—The debt sought to be set off *need not be due at the date of adjudication, if owing.*"

He also says, Section 1456, page 168:

> "Sec. 1456. And May Be Only Contingently Owing.—Indeed a debt not due and only contingently owing may be set off; as the *bankrupt's liability as endorser on discounted paper not yet due may have offset against it a deposit in bank.*"

He also says, Section 1460, page 174:

> "Sec. 1460. But Claim Not Proved within Year, Nevertheless Available as Offset.—But claims that are provable in their nature and have not been 'proved' (filed) within the year *are nevertheless available as off-sets,* if otherwise proper offsets. * * *
>
> This rule would seem to apply to cases where the trustee in bankruptcy has recovered a preference and the preferential transferee has failed to prove his claim in the bankruptcy court within the year."

He also says, Section 887, page 284:

> "Sec. 887. Claims Not Proved within Year, Nevertheless Available as Offsets.—Where a claim is provable in its nature, but has not been proved within the year, *it is nevertheless available as an offset in an independent suit brought by the trustee against the claimant, if otherwise a valid offset.*"

He cites many cases for his conclusions.

In *Building & Engineering Co.* v. *Northern Bank of New York, et al.,* 206 N. Y. 400, 99 N. E. 1044, the headnote which fairly expresses the conclusion of the Court is:

> "While, under Negotiable Instruments Law (Consol. Laws 1909, c. 38), sec. 3, which provides that the person primarily liable on an instrument is the one who, by the terms thereof, is absolutely required to pay the same, and section 55, which provides that an accommodation party is liable to a holder for

> value, notwithstanding such holder, when taking the note knew him to be only an accommodation party, accommodation makers of a note which was discounted by a bank with knowledge of its character are liable to such bank, as a matter of law, on the note, the Negotiable Instruments Law was not intended to prevent the courts from determining, in equity, all questions between the bank as an insolvent holder of the note and the person primarily liable thereon; and an order permitting the setting off against the liability on such note of a sum on deposit to the credit of the accommodation payee was proper."

Under these rules Lester C. Burdette is, I submit, entitled to off-set against his liability under any decree below the amount of $5,000 which he paid on account of his endorsements of the notes of the company and it is immaterial whether such payment was made before or after insolvency or bankruptcy because, under the rules heretofore mentioned, the contingent liability of an endorser may be set off against any claim.

There can be no question but that, if the bankrupt corporation was itself suing Lester C. Burdette, he would be entitled to the off-set and there is nothing in the bankruptcy act which changes the situation for, on the contrary, the bankruptcy act recognizes the right of set-off specifically providing for it, nor is there anything in the suggestion of the trustee in bankruptcy in his answer to the counterclaim that no claim was filed in the bankruptcy proceeding by Lester C. Burdette for, under the rules heretofore mentioned, the right of set-off exists even if the claim be not proven if it be a provable claim, and there is no doubt but that Lester C. Burdette had a provable claim against the bankrupt estate for the amount which he paid on account of his endorsements.

Nor is there anything in the suggestion of the trustee in bankruptcy in the answer to the counterclaim that there are claims filed against the bankrupt estate upon the same obligation. It was not proven in the case that such claims had been filed and, if it had been proven, it would make little difference because the proofs in the case indicate that, no matter who had filed claims upon these notes, the real claimant, to the extent at least of $5,000 is Lester C. Burdette, and it was the duty of the Court of Chancery to adjudicate whether, in fact, the bankrupt corporation owed Lester C. Burdette this $5,000 paid on account of his endorsement.

Nor is there anything in the suggestion of the trustee below that Lester C. Burdette was only entitled to such dividend as an off-set as might be declared upon his claim for the $5,000 paid by him on account of his endorsement. Such contention ignores the right to set-off recognized by the Bankruptcy Act.

It is therefore submitted that the Court below erred in not allowing against any liability of Lester C. Burdette the sum of $5,000 paid by him on account of his endorsement of obligations of the company, with interest, from the date of payment.

POINT VI.

The Court below erred in charging defendants with interest, costs and counsel fee.

The decree allowed interest as against defendant Lester C. Burdette and defendant George F. Burdette (the latter liable only because he was a director of the corporation) upon the amount which the Court found had been overpaid Lester

C. Burdette for salary and directed that such interest should be paid by the defendants upon the other amounts as should by the Court be thereafter determined and directed the defendants to pay the costs to be taxed and a counsel fee of $1,000 (pp. 15, 17).

The Court below did not find any fraud.

Its determination, in effect, was based upon the hypothesis that its judgment as to what should be allowed for salary, expenses and the like should take the place of the judgment of the directors.

At no time was Lester C. Burdette in the position where he could determine any amount due from him to the bankrupt corporation and certainly at no time was George F. Burdette in a position when he could determine what amount was owed by him, if anything.

The claim of the bankrupt and its trustee was never liquidated and, under such circumstances I submit that no interest could be allowed at law.

Speer v. *Van Orden,* 3 N. J. L. 232;
Faber v. *City of New York,* 222 N. Y. 255, 118 N. E. 609;
Horst Co. v. *Breidt City Brewery,* 94 N. J. L. 230

in which this Court said:

> "But it is urged the Court improperly allowed interest on the amount estimated for the loss on the shipments of hops for the years 1915-1918, from October 1st, 1914, to the date of the rendering of the verdict, of $1,951.65. We think this point is well made and the Trial Court was in error in allowing interest on these shipments; interest is not allowed on an unliquidated damage *that is not capable of ascertainment by mere computation,* for the reason that the person liable does not know what sum he owes; he cannot compute the interest, and therefore he is not in default for not paying (22 Cyc. 1512; 8 R. C. L. p.

533, section 85) not on uncertain and unascertained damages. Speer *v.* Van Orden, 3 N. J. L. 232; Philbrick *v.* Mundy, 93 *id.* 43."

White v. *Miller,* 71 N. Y. 118;
Mansfield v. *New York Central & H. R. R. Co.,* 21 N. E. 735, 114 N. Y. 331;
8 Ruling Case Law, p. 533, sec. 86,

at which point the author says:

"It may be stated as a general rule, however, that interest is not allowed on unliquidated damages *or demands,* for the reason that the person liable *does not know what sum he owes,* and therefore can be in no default for not paying. The damages in such cases are generally of an uncertain quantity, depending upon no fixed standard, and can never be made certain except by accord or verdict or decree; and hence, where this is the condition, *they are not allowed, either in actions arising from a breach of a contract, or on tort.*"

17 C. J. title "Damages", secs. 137, 139, pp. 815, 818;
33 C. J. title "Interest", sec. 72, p. 211;

Equity does not allow interest in all cases in which interest would be allowed at law. It allows interest only if equitable to do so, and at such rates as may be equitable.

Agnew Co. v. *Board of Education, City of Paterson,* 83 N. J. E. 49, affirmed 83 N. J. Eq. 336.

The Vice-Chancellor said at 83 N. J. E. 67:

"It should be borne in mind that the whole tendency of courts of law and courts of equity for a considerable period of time, has been to break away from hard and fast rules and charge and allow interest in accordance with

principles of equity, in order to accomplish justice in each particular case."

See, also,

Hills v. *Aetna Life Insurance Co.,* 39 N. J. L. 132 (opinion by Circuit Judge Speer);
Le Branthwait v. *Halsey,* 9 N. J. Law 4;
Backus v. *Crane,* 87 N. J. E. 229, 100 Atl. Rep. 900;
15 R. C. L., tit. "Interest" 34 sec. 31.

In this case it was neither legal nor equitable to charge defendant with interest. They have been guilty of no fraud. Lester C. Burdette thought he was entitled to the monies paid him as salary, the monies advanced for expenses were spent, he in no proper sense of the word had the use of the monies during the time for which interest is charged. George F. Burdette received no benefit whatever from the monies.

It was not equitable to tax the costs or to allow counsel fee against the defendants.

We have recited in this brief, page 10 *et sequi.,* the proceedings taken by the trustee against the defendant Lester C. Burdette in turnover proceedings in the Court of bankruptcy. The trustee took the position that Lester C. Burdette should be directed by the referee in bankruptcy to turn over all the moneys which he had received from the corporation, the payment of which was questioned by the trustee. The referee sustained the position of the trustee in bankruptcy; it was necessary for Lester C. Burdette to go to the United States District Court on petition for reveiew; the District Court held that it was the duty of the referee to take testimony upon the question as to whether Lester C. Burdette had a colorable right to retain the moneys; the referee then took that

testimony; he then held that Lester C. Burdette had such colorable right; not content with this determination of the referee the trustee filed a petition of review with the United States District Court, which resulted in an order of November 20, 1922, confirming the referee's adjudication; it was not until after all this litigation that the trustee in bankruptcy filed the bill in the Court of Chancery, June 30, 1923; that Lester C. Burdette was right when he asserted that he had at least a colorable right to retain the moneys and that no proceedings could be taken against him except of a plenary nature is not only indicated by the referee's decision, confirmed by the United States District Court, but by the decree of the Court below, which declines to grant the trustees the full relief he asked and which holds that, at least with respect to one claim of the trustee, he was wholly wrong and with respect to the other claims that he had the right to an adjustment; the circumstances were such as that the trustee in bankruptcy and his counsel should have known that the United States District Court in bankruptcy had no jurisdiction in turnover proceedings and yet they litigated for more than two years upon this subject, causing great expense for costs and counsel fees to Lester C. Burdette.

The United States District Court in bankruptcy has no power to allow counsel fees to Lester C. Burdette and the result was that, in all of this litigation in the United States District Court *in which Lester C. Burdette was successful,* he received no payment from the trustee in bankruptcy on account of his expenses and counsel fees.

Under the circumstances I submit that, when the trustee in bankruptcy came into the court below and was *partly* successful, he should not have been allowed either costs or a counsel fee.

It is respectfully submitted that the decree at least should be modified by striking out the provisions with respect to interest and costs and counsel fees.

CONCLUSION.

It is respectfully submitted that the decree below should be reversed and the record remitted with directions to the Court below to dismiss the bill with costs and a reasonable counsel fee to defendants Lester C. Burdette and George F. Burdette, or if in some respects the said decree is right, then with directions that the said decree should be modified in one or more of the particular matters adverted to in this brief.

Respectfully submitted,

MERRITT LANE,
Of Counsel with Appellants.

17 MAY.T.1931

18 MAY.T.1931

Filed after the Oral Argument by leave of Court.

New Jersey Court of Errors and Appeals

CECIL H. McMAHON, as Trustee in Bankruptcy of Alpha Chemical Works, Inc.,
Complainant-Respondent,

and

LESTER C. BURDETTE and GEORGE F. BURDETTE,
Defendants-Appellants,

and

ROBERT VOM CLEFF,
Defendant.

Nos. 17, 18.
May Term, 1931.

(Italics mine, except where otherwise noted.)

REPLY BRIEF FOR DEFENDANTS-APPELLANTS.

I.

On page 7 of his brief respondent states that he is not called upon or required to make any answer to the statements in our brief on pages 10, 11, 12, 42 and 43, because the statements of fact therein set forth are not supported by anything in the printed state of the case. The statements referred to are matters of history in the litigation and are statements which appear in the records of the United States District Court and of the Court of Chancery, and were all referred to in the brief which was submitted and considered in the

Court below. They are particularly important upon the question as to whether or no interest and costs should be allowed against appellants if a decree should go against appellants, which is considered under Point VI, page 39, *et sequi* of our brief.

II.

To follow respondent in his statement of facts from page 8 to page 40 of his brief, would be to make this reply brief as long as respondent's, and we must content ourselves with a reference to the statement of facts contained in our brief with the suggestion that, if it takes upwards of thirty pages of respondent's brief to indicate what Lester C. Burdette did, for that in substance is what the pages are devoted to, although the purpose was to show what he did not do, it would seem that he performed *many many* items of service for the corporation.

Respondent has stated, on page 34 of his brief, that Lester C. Burdette informed Clarence H. Venner that no one was receiving any salary except the persons employed by the plant and that he had other conversations with Venner in which representations were made, relied upon by Venner as if the testimony of Venner and his son had not been met. We have considered this testimony, page 12, *et sequi* of our original brief, and have nothing to add. At various points in his brief, respondent has criticized Lester C. Burdette for not being able to testify in detail as to figures. How could he, after the lapse of time?

III.

From page 40 to page 46 of his brief, respondent criticizes the expert testimony produced by

appellants. We have considered this expert testimony, page 25, *et sequi* of our brief, and we suggest that, if the testimony of the experts produced by the appellants was so fallacious, it would have been easy for respondent to have produced *some* little testimony in answer thereto.

The criticism of Guile because of his interest is met by the fact that his interest required that he should keep the expenses, so far as the compensation of Lester C. Burdette was concerned, as low as possible, page 26, *et sequi* of our brief.

IV.

Answering Point I of our brief, respondent (p. 47) insists that this case does not involve the internal affairs of a foreign corporation. In Thompson on Corporations, Third Edition, Vol. 3, Sec. 1832, we find:

> "The amount of compensation to be paid directors and officers of a corporation is a matter of the internal management of the corporation."

V.

On page 64 of his brief, the respondent indicates what is his real complaint, i. e., that the enterprise was unsuccessful, and from that he deduces, in effect, that there should be no compensation, and *that* was his claim below and seems to be his claim here, to wit, that Lester C. Burdette was entitled to no compensation whatever.

As the Vice Chancellor said below (p. 13):

> "It is the complainant's argument that Burdette was not entitled to compensation because the enterprise was not successful. That is neither reasonable nor fair. All his time and energy were devoted to making it

> succeed. It was not lack of spirit nor effort nor labor on his part that it did not. * * * Burdette did the financing. * * * The prospects were bright. * * * Burdette bought the installation, or helped; he bought raw materials and sold the finished product, together approximating $500,000, and he made the contracts and the collections. Of course, he had assistance, some competent, in managing the business, but he had the supervision. He had the final word. The responsibility was upon him. If success in business were the price of compensation, few would pay the fare. The salary is not open to adverse criticism."

The Vice Chancellor was then speaking of the salary of $300 per month.

The answer to respondent's statement on page 66 of his brief that:

> "There is no proof that there was anything so peculiar about this company that it required a New York office,"

is found in the statement of the Vice Chancellor (p. 13):

> "An office in New York may, under the circumstances, have been essential; and in Burdette's law office perhaps advantageous. They were matters of judgment of the directors and the *bona fides is not challenged or reviewed.*"

VI.

On page 74 of his brief, the respondent states that the matter of the offset has been "*conclusively*" settled adversely to appellants. We submit that there is no conclusive adjudication referred to by respondent.

He quotes from Collier on Bankruptcy, Vol. 2, edition of 1923, page 1608, and italicizes the words, "*nor may the liability of a director of a*

corporation be setoff against a claim by said director as a creditor.''

There is one case, and one case only, cited for this language by Collier, and that is the case of La Jola Lumber & Mill Co. in the District Court of the Southern District of California in 1917, 243 Fed. 1004, and a reference to that case will indicate that it does *not* justify the italics or the language of Collier italicized in respondent's brief (p. 74). In that case the liability spoken of was one under a statute of California which made the director liable if debts were created beyond the subscribed capital stock both to the corporation and its creditors for the full amount of the debt contracted.

It is obvious that there could no more be an offset as against this *statutory* liability, than could there be an offset against the liability of stockholders upon subscriptions to capital stock. Both liabilities are created for the purpose of *creating* a trust fund for the benefit of creditors, and, to permit an offset, would destroy the purpose of imposing the liability upon stockholders and directors. We concede that it has been held that there can be no offset by a stockholder against his liability for unpaid subscriptions; Remington on Bankruptcy, Sec. 1468. It was so decided in *Williams* v. *Traphagen,* 38 N. J. Eq. 57.

The reasoning which leads courts to hold that the ordinary doctrine of setoff does not apply in favor of a stockholder called upon to respond to his liability upon unpaid stock subscriptions, or a director called upon to respond to a statutory liability for the amount of debts, has no application in the instant case.

Nor is there any case so holding. *Putnam* v. *Handy,* Mass. Supreme Judicial Court, mentioned on page 75 of respondent's brief and reported in

251 Mass. 196 and 146 N. E., page 264, is not an authority. Reference to *Putnam* v. *Handy,* 247 Mass. 406, 142 N. E. 77, will indicate that the cause of action against the director there involved was one based upon a deliberate fraud upon the corporation and in effect upon the stealing of the corporation's property through legal proceedings on the eve of bankruptcy.

It was in the light of those facts that the Supreme Court of Massachusetts used the language which it did and said that the claim of the trustee

> "was not a debt, nor in the nature of a debt, claim or demand springing from the obligation of an express or implied contract or arising from implication of law."

Nor was the element of mutuality of obligation between the debtor and the creditor in the same right present. The language of the Court is (146 N. E., p. 265):

> "The terms 'mutual debts' and 'mutual credits' are correlative and to authorize a set-off on the record the element of mutuality of obligation between debtor and creditor in the same right is necessary. It is absent, and the decree is affirmed with costs."

Directors may act as officers of a corporation and may have their salaries fixed. It is true that those salaries, when so fixed, are subject to judicial review, Thompson on Corporations, Third Edition, Vol. 3, sec. 1832, but, in the first instance, the directors have the right to fix the compensation, and they did so in the case at bar.

If, upon a judicial review, the Court comes to the conclusion that the amount fixed by the directors was excessive, then there may be a recovery, but the recovery is *not* upon the theory that the assets of the corporation have been misappro-

priated by the directors or the officers receiving the salary, but *upon the theory of an implied contract to return that which the Court has held should not have been paid.*

The basis of the right of recovery is the contract "arising from implication of law", and the case of *Putnam* v. *Handy,* relied upon by respondent on pages 75 and 76 of his brief, recognizes the right of setoff in such a case.

If the rightto recover was based upon fraud or upon misappropriation of the assets, then the officers or directors would not be entitled to retain any of the salary, yet it *is recognized that it is only the amount which the Court feels has been paid in excess of that which, under all the circumstances, should have been paid, that may be recovered.*

There was no fraud found by the Court below in the instant case. It simply found that it differed with the directors of the company as to the amount which should have been paid for the salaries and other expenses, and so differing, the judgment of the Court as to the amount of salaries and other expenses became substituted for the judgment of the directors, with the result that an implied contract arose on the part of the officers to repay to the corporation moneys had and received by those officers for the benefit of the corporation, a pure debt. There is just as much justice in allowing a setoff in a case of this kind, as there is in a suit against a treasurer for an accounting, in which event he is entitled to credit for the amount of his salary. 14-A Corpus Juris, Title Corporations, sec. 1930, p. 154.

It is suggested, page 77 of respondent's brief, that an allowance of a setoff would give Lester C. Burdette a "preference over the other creditors." It would not give him any more of a preference over the other creditors than is given in

any case of a setoff, and there is just as much justice in allowing him a setoff as there is in allowing a setoff in any case.

It was not claimed below nor insinuated that the expenditure of these moneys resulted in the bankruptcy so that a claim of the trustee might sound *in tort,* as was the case in *Putnam* v. *Handy, supra.*

In *Kinman* v. *Roberts,* Supreme Court of Washington, 1929, 151 Washington 35, 274 Pacific 719, a suit was brought by a trustee in bankruptcy for an accounting against a president, who was also general manager and a member of the Board of Trustees, of a bankrupt corporation and the marital community, consisting of himself and his wife, "for funds of the company alleged to have been appropriated by him both before and after their marriage". The result was a judgment awarding recovery against the president personally in the sum of $13,875 and against the community of $5,944 of that sum. The president claimed a credit upon the ground that prior to the insolvency of the corporation it had become indebted to one Treede upon a note endorsed by him in the sum of $2500 and that after becoming insolvent he, the president, gave his personal note to Treede, for that amount and took over from him the note on which he was obligated for the company as endorser. At the time he did this there was $6,000 owing by him to the company. The Court said: "We are of the opinion that Roberts is entitled to the credit of $2,500 as a setoff against the $6,000 owing by him to the company, and that, in so far as the judgment of the trial Court denied him such setoff, it is erroneous."

In re W. & A. Bacon Co., District Court of the United States for the District of Massachusetts, 261 Fed. 109, the situation was: certain claimants

collected parcels from the stores of the corporation and delivered them to purchasers, and for that service charged a certain rate per parcel; some of these parcels were C. O. D.; on them the claimants collected the price and returned it to the store, making in some cases an additional charge for the collection; bills were rendered by the claimants to the bankrupt monthly or semi-monthly, but the amounts collected on the C. O. D. parcels were paid over to the bankrupt within a few days after the collection and did not figure in the monthly bills; it was understood between the bankrupt and claimants that the latter were responsible for all parcels for which they receipted, and must either return a parcel or pay for it; the money received by the claimants on C. O. D. parcels were, except for one or two of them, deposited in the general bank accounts of the claimants and was remitted by check; the amount due the claimants would frequently exceed the amount of collections in its hands, and did so at the time of the bankruptcy; the claimants applied the moneys in their hands as the result of the collections on C. O. D. parcels to the amount of the indebtedness of the bankrupt corporation due them; the question was whether they had a right to make this setoff, or whether they must return the C. O. D. moneys to the bankrupt.

The Court held that they were entitled to setoff and said (p. 110):

> "The course of business was such that there were mutual accounts between the bankrupt and the claimants; no distinctions were made, so far as appears, as to the character of the claimant's liability (whether at law or in equity), in regard to any items entering into the account, except that the moneys collected by them were paid over within two or three days after collection, instead of monthly or semi-monthly when the bills were

rendered. That of itself does not show, I think, that the money so paid over was regarded, or should be treated, as trust funds. It was money which belonged to the bankrupt, and which a proper dispatch of the business intrusted to the claimants by the bankrupt required should be promptly paid over.

But the fact that one person has collected money for, and has in his possession money belonging to, another, does not, without more, establish the relation of trustee and cestui que trust between them. Although an agent is bound to act with all fidelity in regard to matters intrusted to him by his principal or by a bailee, he is not a trustee, nor accountable as such. For any violation of his duties and obligations towards his principal he is liable to an action at law in which he can avail himself of the defense of set-off or recoupment, as the case may be. If one of the parties be acting for an undisclosed principal, a set-off might result in the application of money belonging to one person to the payment of a debt due from another; but that is not the present case. The money which the claimants seek to set off belongs to the bankrupt, and will be applied by the set-off to the payment of the bankrupt's own debts. *The doctrine of set-offs is in itself eminently just, and is increasingly favored in courts of bankruptcy, because of its essential fairness.* See Clifford, Trustee *v.* Oak Valley Mills Co. (D. C.), 229 Fed. 851, 853, and cases cited."

So in the case at bar, Lester C. Burdette was not a trustee for the corporation of the amount of moneys which he had been overpaid. He was a contractor with the corporation and in error had been paid more than was due him, as the Court later found, and I repeat the obligation to return does not rest upon a breach of fiduciary duty, but upon a contract implied by the law.

We have conceded that it has been held that a stockholder may not set off a debt due from the corporation to him as against an unpaid stock liability. Courts differ upon that subject, for we have the statement in Thompson on Corporations, sec. 5839, Third Edition, Vol. 7, 1927:

> "There is a hopeless conflict in the decisions on the question of the right of a stockholder to set off an indebtedness of the corporation to him when sued by or on behalf of creditors to compel the payment of unpaid amounts due on his subscription or to enforce the individual liability of the stockholders under statutes authorizing that remedy. It is the view of a number of the courts that the stockholder when sued by a corporate creditor on his several liability has no right to set off this indebtedness, but he must pay for his stock and then come in as a creditor and share pro rata with the other creditors. The theory is that the individual liability of a stockholder is in the nature of a guaranty or a superadded security to the creditors and not a debt due by the stockholders to the corporation."

And sec. 5840:

> "A diametrically opposite view is taken by equally strong courts and here the rule is that a stockholder of an insolvent corporation, in an action against him on his liability by an individual creditor or by a receiver or assignee in insolvency may set off a bona fide demand which he has against the corporation. 'Stockholders have the same right,' says the New York court of appeals, 'to deal with the corporation that other persons have, and, as creditors, they are entitled to the same measure of protection. It may be, as argued, that the rule might enable officers of corporations to make preferential payments to favored creditors, and thus work injustice to others; but, if any restrictions or limitations in this respect are necessary, the remedy is with the

> legislature. Nothing appears in this case to warrant an inference of bad faith on the part of the defendant. * * * I see no reason why the defendant, as a creditor, does not occupy as favorable a position as the plaintiff, and there is no justice in permitting the latter to recover money to which the former has an equal claim, in an action where it can not regularly be ascertained, but that other portions of the aggregate fund, which are accessible to the plaintiff, are sufficient to satisfy his demand.' In a later case the same court said: 'If now the stockholder sued is himself such creditor to an amount equaling his statutory liability, he has quite as good a right to the fund which is pursued, as the pursuer. Indeed, he has the better right, because it is already in his possession, and it would be inequitable to take it from him for the benefit of another creditor who has no superior equity.' ''

With this difference of opinion as to the right of setoff, even where a trust fund theory is involved, how can an extension of the denial of the right of setoff be justified in a case of this kind, where the sole question is as to whether the judgment of the Court as to what should have been paid the officers, should be substituted for the view of the directors, and where there is no fraud involved?

VII.

On page 78, dealing with the matter of interest, respondent says that I cited the case of *Backus* v. *Crane,* 87 N. J. Eq. 229. I did not cite that case. It was decided by me.

The case of *Cooper* v. *Hill,* 94 Fed. 582, is not an authority for the allowance of interest in the instant case. In that case definite funds were used by the directors of the National Bank for pur-

poses for which they had no authority whatever to use the funds. The appropriation was for a purpose unauthorized by law, and the amount of the appropriation was at all times definitely fixed from the date of the appropriation onward. We have no such situation in the case at bar. Lester C. Burdette was entitled to compensation and the directors had the right, in the first instance, to award him compensation, and to pay the expenses which they directed paid.

Not until the Court of Chancery spoke, did Lester C. Burdette know the extent to which he had been overpaid, and, until the Court spoke, there was no obligation on his part to repay, nor did he know how much to repay, nor did any implied contract to repay arise.

I submit that, for the reasons stated under our Point VI, page 39, in no event should any interest have been allowed.

Respectfully submitted,

MERRITT LANE,
Of Counsel with Appellants.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

NEW JERSEY

Court of Errors and Appeals

CECIL H. MACMAHON, as Trustee in Bankruptcy of Alpha Chemical Works, Inc., Complainant-Respondent, and LESTER C. BURDETTE and GEORGE F. BURDETTE, Defendants-Appellants, and ROBERT VOM CLEFF, Defendant.	On Appeal from Chancery. Bill of Trustee in Bankruptcy to recover moneys alleged to have been paid officials of corporation bankrupt in excess of reasonable compensation, etc. Decree partly for Complainant. Defendants Appeal. Sat below: Backes, V. C.

BRIEF FOR COMPLAINANT-RESPONDENT.

Statement of the Case.

The bill of complaint (p. 1) was filed by Cecil H. MacMahon as trustee in bankruptcy of Alpha Chemical Works, Inc., a Delaware corporation, against Lester C. Burdette, George F. Burdette and Robert Vom Cleff. The defendants, except Robert Vom Cleff, filed answers, the subpoena upon the latter being returned by the sheriff not served. The bill of complaint sets forth in substance that the said corporation was engaged in the business of manufacturing chemicals, having a plant at East

Bound Brook, Middlesex County, New Jersey; that since its incorporation the defendant Lester C. Burdette was its president and a director, George F. Burdette and Robert Vom Cleff directors; that the moneys of said corporation were by said Burdette, with the consent and knowledge of the directors, from time to time deposited in bank accounts in the name of said corporation, the checks for the withdrawal of said funds therefrom being in almost every instance signed by said Burdette as president of said corporation solely; that said Lester C. Burdette received from time to time between the date of the incorporation of said corporation and February 3, 1919, sums of money aggregating upwards of $11,000 and that said moneys ought to be repaid to the trustee and that the same forms a part of the estate of said bankrupt and constitutes assets thereof; for greater particularity the complainant refers to the checks upon the bank accounts aforesaid by means of which said funds were withdrawn from said bank accounts and paid by said Burdette as an officer aforesaid to himself, some of said checks being drawn to the order of Burdette and Study or Lester C. Burdette or Burdette & Horn; in October, 1918, the defendant Lester C. Burdette caused a corporation to be organized under the laws of the State of New York, known as the Bradette Corporation, of which said Lester C. Burdette became an officer; between October 1, 1918, and February 1, 1919, he caused to be paid to said Bradette Corporation, without consideration, out of the funds of said bankrupt, the sum of $2,500, of which sum upwards of $1,500 was paid by said Bradette Corporation to Lester C. Burdette for his use and benefit and for greater particularity complainant refers to the checks upon the bank account of said bankrupt constituting the payment of

said funds to Bradette Corporation, as well as the checks of Bradette Corporation upon the bank account of said Bradette Corporation, whereby said funds were transferred to said Lester C. Burdette. The bill prayed that the defendants may be directed to account for and pay over to the complainant all of said moneys and the interest thereon, as well as costs and counsel fees of the suit.

The defendant Lester C. Burdette filed an answer (p. 4) alleging that the moneys received by him were for full and adequate consideration, denying the jurisdiction of the court, claiming to be entitled to a trial by jury, laches and by way of cross-bill alleged (p. 5) that he was an endorser upon certain notes of the bankrupt corporation therein referred to, which notes had been discounted by the Chatham Phenix National Bank and the proceeds paid to the bankrupt, and that when said notes became due said bankrupt did not pay the same, whereupon he was obliged to and did in fact pay on account of the same the sum of $5,000, and praying for a decree against the trustee in bankruptcy and for other relief.

George F. Burdette filed an answer (p. 7) admitting that he is and was a director of said bankrupt. His answer is, in effect, the same as that of Lester C. Burdette.

Process not having been served upon Robert Vom Cleff, he did not appear.

The trustee answered the cross-bill denying knowledge or information as to the allegations as to its charges and alleging that said defendant Lester C. Burdette is not the owner of the notes referred to and described in said cross-bill; that the claims based upon said promissory notes have been filed by persons other than said defendant in the matter of Alpha Chemical Works, Inc., pending in

the United States District Court for the District of New Jersey and that the defendant Lester C. Burdette had filed no claim in said bankruptcy matter based upon the allegations contained in the cross-bill or counterclaim and is barred from any recovery thereon pursuant to the Acts of Congress relating to bankruptcy; that said counterclaim lacked equity; that the defendant had a complete and adequate remedy at law and the court had no jurisdiction.

In addition to the testimony taken before the court, certain testimony taken before the Referee in Bankruptcy under Section 21-A of the Bankruptcy Act was received in evidence (Exhibit C-1, p. 197). The testimony taken in the Court of Chancery will, in this brief, be referred to by page number and the bankruptcy testimony will be referred to as B. T. (Bankruptcy Testimony), followed by the appropriate page number where the same is to be found in the State of the Case.

Although Vice-Chancellor Backes in his opinion in the court below stated in substance (p. 11) the trustee in bankruptcy of Alpha Chemical Works, Inc., a Delaware corporation, sues to recover from the directors salary paid to the president and other moneys alleged to have been misappropriated, the Vice-Chancellor finds against said trustee upon the trustee's claim for salary at the rate of $300 per month paid to said Burdette for the period from the creation of the corporation and ending in October, 1918, when said Burdette's salary was increased to $500 a month, but finds that said increase was not justified and that the allowance of $300 per month for the New York office expense of the corporation could not be sustained, the court below stating, "The appropriation of flat $300.00 a month to Burdette's law firm for office expense cannot be sanctioned" (p. 13), and that the advance

of $2,500 to the Bradette Corporation could not be sustained (p. 14), the court saying (p. 14), "Paying to that company a commission on purchases and sales was a scheme of the directors to set aside a percentage of the income of the Delaware company for Burdette's father-in-law, Brady, who had advanced a large amount, $60,000 of its capital, to give him an immediate profit on his investment instead of waiting for a stock dividend."

By the decree filed September 19, 1930 (p. 15), it was adjudged, among other things, as follows:

> "1. That the payment, by said Alpha Chemical Works, Inc., a Delaware corporation, to the defendant Lester C. Burdette, of the sum of $500 per month for the months of November and December, 1918 and the month of January, 1919, making the aggregate sum of $1,500 was unlawful and excessive to the extent of $600 which last mentioned sum of $600, together with interest thereon from the 1st day of January, 1919 the said defendants, Lester C. Burdette and George F. Burdette are hereby ordered and directed to forthwith pay to the said complainant.
>
> 2. That the payments by the said Alpha Chemical Works, Inc., a Delaware corporation, to Burdette & Horn from April 1, 1917 to February 1, 1918 of the sum of $300 per month and to the firm of Burdette & Study from February 1, 1918 to October 1, 1918 of the sum of $300 per month, aggregating in the whole the sum of $5,400 was unlawful; that the payments by said Alpha Chemical Works, Inc., to Burdette Corporation of the following sums, to wit:
>
> $1,000 on November 4, 1918
> 500 on November 9, 1918
> 500 on December 20, 1918
> 500 on January 20, 1919

aggregating in the whole the sum of $2,500 was likewise unlawful, except that the said defendants are entitled to have credited upon said respective sums of $4,500 and $2,500 respectively, aggregating in the whole, the sum of $7,900, in the event that they shall prove or establish the same in this Court, one-half of the normal expense of the office for the period from April 1, 1917 to February 1, 1919 of said Alpha Chemical Works, Inc., and said Burdette & Horn and Burdette & Study respectively, in the Woolworth Building, New York City, as well as such items of expense of said office of which said Alpha Chemical Works, Inc., had exclusive benefits during said period and that said defendants pay to the complainant the sum of $7,900 less such credit, if any, as shall be by this Court allowed thereon, together with interest as shall hereafter be by this Court determined.

3. It is further ORDERED that it be referred to Homer C. Zink, Esq., one of the Special Masters of this Court, to ascertain and report, with all convenient speed, what sum should be credited against said sum of $7,900 for one-half of the normal expense of the said office for said period of said Alpha Chemical Works, Inc., and said Burdette & Horn and Burdette & Study, respectively, in the Woolworth Building, New York City, as well as such items of expense of which said Alpha Chemical Works had exclusive benefits during said period. Said Master shall likewise ascertain and report what sum shall be paid by said defendants as interest upon said sum of $7,900 or any part thereof.

4. That the defendants pay to the complainant the costs of this suit to be taxed in which shall be included a counsel fee of $1,000, and that execution issue therefor."

We contended in the court below, and respectfully insist here, that Lester C. Burdette rendered no services of value to the bankrupt corporation, that the history of said bankrupt so demonstrated; that its vast losses were attributable to his incompetence and bad management, and that the opening and maintenance of a New York office was a useless expense, and a mere device and pretext to enable said Burdette to maintain his law office in the Woolworth Building in New York at the bankrupt's expense and to be supported by said bankrupt while endeavoring to establish a law practice.

The complainant-respondent is not called upon or required to make any answer to the statements of defendants-appellants in their brief on pages 10, 11, 12, 42 and 43 because the statements of fact therein set forth are not supported by anything in the printed state of the case. The subject matter of said unsupported statement as set forth on said pages relates to the contents of minutes of the board of directors of the bankrupt regarding the purchase by Mr. Venner of stock of the bankrupt corporation, an application for the appointment of the receiver for the bankrupt in the Court of Chancery, the filing of a claim for $25,000 by Mr. Venner with the receiver, the proceedings thereon, the circumstances under which the petition in bankruptcy was filed, and by whom, the filing by Venner of his claim against the bankrupt corporation in the bankruptcy proceedings, the application for an examination under 21-A, the turnover proceedings against Burdette and the proceedings arising out of and resulting therefrom. Consequently this respondent will not discuss the same.

Brief Statement of the Facts.

Lester C. Burdette and Ralph H. Horn were in December, 1916, law clerks in the office of Breed, Abbott & Morgan, New York lawyers. Burdette learned through a chemist, one Broecker, that there was a bankrupt chemical concern about to be sold out at Bound Brook, New Jersey, which concern had been engaged in the manufacture of phenol, a wartime product. Burdette then conceived the idea of procuring his father-in-law, Brady, and said Vom Cleff and Vom Cleff's mother to advance money for the purchase of said chemical plant, the formation of a corporation to engage in the business of manufacturing said chemical which should have a New York office, at which New York office Burdette and Horn should embark in the practice of the law in their own behalf under the firm name of Burdette & Horn. The plan seemed to be that while the chemical corporation was supporting him by the payment to him of $300 a month as salary and paying the expenses of the "New York office," he and his fellow clerk would be building up a law practice in said "New York office." The assets of said bankrupt concern were purchased and transferred to a corporation organized for that purpose under the laws of New Jersey under the name of Alpha Chemical Works, Mr. Broeker installed as chemist, the "New York office" opened in the Woolworth Building, which at the same time became the law office of Burdette & Horn.

The New Jersey corporation continued in existence from about December, 1916, to April, 1917, during which time it paid out to Burdette for salary and for "New York office" expenses at the rate of $600 per month. The corporation engaged in an attempt to manufacture phenol at Bound Brook,

but failed to manufacture in proper quality or sufficient quantity. Broeker was blamed for the failure and thereupon left. Burdette then was advised by one Summers, who was a chemist in the employ of the Chemical Engineering and Research Company, owned by one Guile, that he and said Guile's company could make the necessary changes and installations and supervise the manufacturing department so as to make the enterprise successful. Thereupon, in April, 1917, the assets of the New Jersey corporation were transferred to a Delaware corporation organized for that purpose by the same name, additional capital furnished, a new plant installed, and the new corporation under the direction of said Guile of the Chemical Engineering and Research Corporation and one Summers, an employee of said last-mentioned corporation, continued to manufacture phenol until Decoration Day, 1917, when its activities were stopped by a fire at its plant. Up to that point the business of the Delaware corporation had been unsuccessful and conducted at a loss.

Then, upon the advice of said Summers and one Karlin, another chemist, who claimed to be able to manufacture salicylic acid, U. S. P., large sums were again spent for machinery for the manufacture of said salicylic acid (the manufacture of phenol being abandoned), large contracts for the sale of said U. S. P. salicylic acid were procured by the Drug and Dyestuffs Corporation (another corporation owned by Guile), and an attempt made to manufacture U. S. P. salicylic acid. But the corporation was unable to manufacture U. S. P. salicylic acid in sufficient quantities to fill its orders or to make a profit therefrom—it only succeeded in manufacturing technical salicylic acid, and the manufacture of that was at a loss until

about September, 1918, when by the advice of said Karlin the manufacture of salicylic acid was discontinued, and the corporation, after the expenditure of large sums for further changes in the plant and installation of machinuery, proceeded to manufacture paranitroline and paranitroacetanilide. This also proved to be unsuccessful and unprofitable, and with the coming of the Armistice in November, 1918, the market for said para products, even if merchantable, was such that the same could not be manufactured except at a loss.

In January, 1919, the corporation passed into the hands of a New Jersey receiver in chancery, who was succeeded later by a trustee in bankruptcy, who is the complainant in this suit.

During all the time from December, 1916, the law firm of Burdette & Horn continued the practice of law at said "New York office" until about February, 1918, when a new firm composed of said Burdett and one G. M. Study, under the name of Burdette & Study, succeeded said Burdette & Horn, and said law firm continued to practice law at said "New York office" until the appointment of the receiver, when said law firm took over the lease for the "New York office," which had theretofore been in the name of the New Jersey corporation and continued to occupy the same.

The suit contemplated the recovery of other corporate funds expended for rent, stenographer, telephone and other office expenses of the law offices conducted by said law firms in the Woolworth Building, New York City. The greater portion of sums thus sought to be recovered were withdrawn and paid out by the checks of the said corporation upon their corporate bank accounts signed by said L. C. Burdette as president thereof, as follows: Lester C. Burdette, $5,669.94; Burdette & Horn, $725.85; Burdette & Study, $5,929.91; C. M. Study,

$325; Ralph H. Horn, $132.75; Bradette Corporation, $2,500, making a total of $15,282.55 (Exhibit C-3, pp. 344, 345). To which should be added $2,700, being office expenses for nine months at $300 per month (April, 1917, to February, 1918, inclusive), not included in the aggregate of said checks, making the total aggregate of the trustee's claim $17,982.53 besides interest.

Statement of the Facts and Discussion of the Testimony.

Although the trustee in his desire to wind up the bankrupt estate has not prosecuted an appeal from that portion of the decree which did not accord him all the relief sought, he might well have been justified in so doing. It is proper, however, as appellants have done, for us to likewise discuss and present what appellants' counsel has seen fit to call "the full picture." Especially so, because appellants have seen fit to argue that if Burdette was entitled to $300 per month as salary, he was entitled to $500 per month as salary, plus the expenses of the New York office. In fact, appellants argue that Burdette was entitled to much more than he actually received in salary and office expenses, which claim, however, the trustee denies, and insists, on the contrary, that in equity he is entitled to nothing, having rendered no service of value and the failure and losses of the bankrupt being attributable to said Burdette.

Burdette testified that he was admitted to the New York bar in 1908, and from September 27, 1908, until December 31, 1916, he was employed by the law firm of Breed, Abbott & Morgan, and during 1916 he received $200 per month as compensation from that firm, plus an interest in such

business as he brought in. That he had started with nothing and after being in their employ for eight years he was only getting $50 a week (p. 81). That he derived from his profit-sharing arrangement with the firm something, but so small that it was difficult for him to remember it (p. 82, lines 10-20). That he had brought some clients to the firm, but that he did not remember whether any of them followed him into the office of Alpha Chemical Works (p. 82, lines 15-30). That the Alpha Chemical Works was organized in 1916 as a New Jersey corporation, and continued until April, 1917. That his first law partner was Mr. Horn, who was also in the employ of Breed, Abbott & Morgan (p. 82, lines 30-37). At the time of the organization of the New Jersey corporation his sole source of income was the money he was receiving from Breed, Abbott & Morgan, $50 a week (p. 36, lines 31-40). After he left Breed, Abbott & Morgan, his only source of income was what he received from the Alpha Chemical Works (p. 86, lines 41-45); he was not a chemist in December, 1916, and had not graduated in any courses of chemistry (p. 87, lines 10-20).

That the New Jersey corporation never received a certificate of authority to do business in New York, although he knew that all contracts made in New York by the New Jersey corporation would have been non-enforceable in New York (p. 87, lines 20-30); neither did the Delaware corporation receive authority to do business in New York (p. 88, lines 10-20). He knew that under the New York law in 1916 a New Jersey corporation having an office in New York and selling goods in New York without having obtained a certificate of authority to do business in New York would be unable to enforce its contracts in New York (p. 87,

lines 30-40; p. 88, lines 10-20). He denied that the real reason for not procuring such authority was because he was prepared to prove that the corporation was not transacting business in New York (p. 88, lines 20-30).

When the chemical business was started Broecker was the chemist. He received $35 a week manufacturing phenol. Burdette knew nothing about the manufacture of phenol, but relied entirely upon Broecker (p. 88, lines 36-42; p. 89, lines 10-20). New machinery was installed for manufacturing that phenol upon the recommendation of Broecker. $5,000 was spent in this way (p. 89, lines 20-32).

Burdette stated that he prepared a statement of the money invested in the company from memory and from the books of the Willbutt Corporation, its ledger (p. 91, lines 20-33). The Willbutt Corporation was organized by him. He was the treasurer (p. 92, lines 29-32). The money for the New Jersey corporation was raised without any particular effort on his part (p. 93, lines 30-40).

Mr. Brady (Burdette's father-in-law) was the president of the Willbutt Corporation; Mr. Study, his law partner, was secretary (p. 94, lines 20-30). The money that was put into the Willbutt Corporation, and by the Willbutt Corporation put into the Delaware Corporation, came from his father-in-law (p. 94, lines 30-40). At the beginning the salary of $300 was fixed by himself, Mr. Broecker and his brother, who were directors. He was desirous of engaging in the practice of law in New York after he left the employ of Breed, Abbott & Morgan. That was prominent in his mind when the New York offices were rented (p. 96, lines 10-20, 20-30).

> "Q. And of course, if you had gone to Bound Brook and conducted the business of the corporation in Bound Brook you would

not have been able to practice law in New York, would you, at the expense of the corporation? I mean, so far as the offices are concerned? A. I wouldn't have done it at that price.

Q. You wouldn't have done it at that price? A. I would not have given up the chances of law practice to go to Bound Brook for $300 a month.

Q. So that the opportunity to engage in the practice of law in New York, having the Alpha Chemical Works pay the cost of running that office was one which was very attractive to you, is that right? A. It was attractive; yes, sir" (p. 96, lines 29-44).

"Q. Don't you think that you might have had somebody who might have stayed in Bound Brook and done exactly what you did for less money than $300 a month and the cost of running the New York office? A. I certainly do not.

Q. Why do you say that? Why do you say that you could not have? A. Because it was my opinion and the opinion of those associated with me, that we should have a New York office and this was an agreement which I made with them to do these certain things on a certain basis, and if it was a question of hiring somebody else, I would not have been interested at all.

Q. Then you were exercising your judgment in your own favor. You were not thinking of what was best for the company, were you? A. I think the company was paying a very fair and reasonable price for what it was getting.

Q. But your own self-interest weighed very heavily in reaching the decision as to whether the company should hire somebody to do at Bound Brook what you were expected to do at New York; is that right? A. It was never considered.

Q. Well, why didn't you consider it? As director of this corporation, entrusted with

its funds and property, why didn't you consider that, as to whether you could not make a more—a cheaper arrangement than the one you were making in your own favor—why didn't you consider it? A. Because the position was offered to me on a certain basis which I accepted.

Q. It was offered to you by yourself and your brother and your father-in-law, isn't that right? A. No" (p. 97).

"Q. Who else besides? A. I just told you that about three times.

Q. Answer it again. A. By the directors of the Alpha Chemical Works of New Jersey" (p. 98, lines 10-20).

"Q. Was there any suggestion that you should content yourself with less than $300 and the cost of running this office? A. I do not remember" (p. 99, lines 10-22).

At the beginning the lease was taken in the name of the Alpha Chemical Works of New Jersey at the rate of $1,000 per annum, payable monthly (p. 99, lines 20-30). The telephone was taken in the same name, but the listings were so arranged that Burdette and Horne would appear in the telephone book by their firm name (p. 99, lines 2030, 30-40). At the beginning an accountant opened a set of books (p. 103, lines 30-40). There was a book which showed the receipts and disbursements. That was kept by the stenographer (p. 104, lines 10-20). She received $20 or $25 a week from the corporation from the beginning. She performed some services for the law firm (p. 104, lines 20-30).

He complained of the phenol production, could not mention from memory the name of any firm from whom he purchased machinery for the New Jersey corporation, and the first large purchase of machinery left no impression on his mind, al-

though he had nothing else to do in the beginning, and he was unable to state what the largest item of machinery was which was purchased by the New Jersey corporation. That he purchased a sulphinator, but could not remember the name of the company from whom purchased (p. 105, lines 10-20, 20-30, 30-40). That the only persons with whom he consulted regarding the advisability of the purchase of machines for the New Jersey corporation were Mr. Broecker and his brother (p. 106, lines 30-40).

Burdette then denied that the following was a correct description of the operation involved in the purchase of the machinery: That Broecker would tell him of the machines needed, he would then place the order, the machines would come in, Broecker would send him the bill with the recommendation that it be paid, and that Burdette then drew a check (p. 107, lines 10-20).

But we think under all the circumstances that his denial was untruthful and that in the nature of things that was about all that was done by Burdette in connection with the purchase of machinery by the New Jersey corporation or by the Delaware corporation. He has no recollection of ever having disapproved any recommendation for the purchase of any machines (p. 108, lines 30-40).

Under Mr. Broecker's regime there was spent about $20,000 (p. 109, lines 10-20).

During the life of the New Jersey corporation the only thing manufactured was phenol and the New Jersey corporation had one customer—the Waugh Chemical Company (p. 111, lines 20-30), and the Waugh Chemical Company also sold the New Jersey corporation whatever of raw materials the New Jersey corporation needed. There was a contract whereby the Waugh Chemical Company

purchased the New Jersey corporation's product at a price (p. 111, lines 30-44). The substance of the New Jersey corporation's contract with the Waugh Chemical Company also was that the New Jersey company was to buy all the merchandise or raw materials that entered into the manufacture of phenol from Waugh Chemical Company at a price fixed in the contract, so that during the life of the New Jersey corporation the sales and purchases—the sales of the manufactured product by the New Jersey company and the purchases by the New Jersey company of its raw material was confined to one concern (p. 112, lines 10-20, 20-30).

After the formation of the Delaware company the contract with Mr. Guile or his company (Chemical Engineering and Research Company) with the Delaware company was that they were to install a proper plant for the manufacture of phenol and advise with regard to the purchase of the plant and supervise the purchase (p. 112, lines 30-40), and they were to share in the profits of the Delaware company, and the chemist of Mr. Guile's company was to have supervision of the manufacture of phenol (p. 113, lines 10-20), and said chemist did work, so that after the making of this contract with the Chemical Engineering and Research Company the purchase of machinery, the installation and the manufacturing process of phenol was all under the control and direction of said engineering company, and so continued until the fire (p. 113, lines 30-40). The phenol which was produced by the Delaware company before the fire *was sold at a loss* (p. 114, lines 40-45).

The New Jersey corporation made a contract for the sale of its phenol to Wolf (Waugh Chemical Company), and also made a contract to purchase from Wolf the three principal elements which go

to make up phenol: benzol, caustic soda and sulphuric acid. These contracts were all cash against bill of lading both ways (B. T., p. 216, lines 40-44; p. 217, lines 10-20), so that the only customer for the sale of the manufactured product of the New Jersey corporation during the period of its existence was Julius Wolf, who took the entire output, and it was under this contract and the three contracts for buying that the New Jersey corporation worked the factory from the time it was originally incorporated to the time it ceased doing business (B. T., p. 217, lines 10-20, 20-30). Broecker "claimed to be a chemist" (B. T., p. 218, lines 10-20), and he was looked to to turn out the product and he continued in the employ of the New Jersey corporation until the formation of the Delaware corporation (B. T., p. 218, lines 20-30). He was not under any contract with the New Jersey corporation, and at first received $35 a week and then $50 a week. He was not discharged, but he resigned (B. T., p. 218, lines 40-44; p. 219, line 10).

Burdette's story with regard to Broecker's resignation is as follows:

> "When we got into this business with Broecker, he represented that if we would buy the plant and put in $5000 of capital, he could make a ton of phenol with the present plant, I think at a cost of 35¢ a pound. We found that he could not make over three or four thousand pounds a week. I think four thousand was the highest week's production. So far as we could determine the cost was far in excess of 35¢. I asked Broecker or told Broecker that I intended to get some expert chemist to make an examination of the plant and to make recommendations with a view of increasing our

> output and reducing our cost. He said if this was done, he would not work for us. The next day he came into the office in New York. I spent practically the whole day talking along these lines. I insisted that we must have some one to check up the work with a view of making money instead of losing money. He walked out of the office and said 'I am through' " (B. T., p. 219, lines 10-20, 20-33).

Lester C. Burdette received from the New Jersey corporation a salary of $300 a month, and the New Jersey corporation paid the expense of the "New York office" of approximately $300 a month in addition (B. T., p. 219, lines 34-43). This office was in the Woolworth Building. This additional $300 a month was for "office rent, stenographer, telephone and incidentals" (B. T., p. 220, lines 10-24). The New Jersey corporation had a lease for this "New York office" in its own name, the rent being $1,000 a year. The lease ran to April 30, 1922, at $83⅓ per month (B. T., p. 220, lines 20-30, 30-40). The rooms were rooms 1508 and 1510 in the Woolworth Building (B. T., p. 220, lines 40-44), and these rooms were sub-divided into three rooms. The inside offices were occupied by Burdette and Mr. Horn, his law partner. The outside room by his stenographer, who did the stenographic work for the law firm, but was paid by the New Jersey corporation (B. T., p. 221, lines 10-20, 20-30). There was a telephone there which was paid for by the New Jersey corporation and the New Jersey corporation and the law firm were listed in the telephone book (B. T., p. 221, lines 30-40). The law firm of Burdette & Horn contributed nothing toward the expenses of the office, and that law firm continued in existence until the formation of the Delaware

corporation. No one received any salary except Burdette and Broecker (B. T., p. 222, lines 40-43). There was an income tax return made by the New Jersey corporation (B. T., p. 223, lines 10-20), but the income tax return for 1917 showed a loss (see Exhibit C-1, July 1, 1926). Both returns show a loss.

After Broecker left and had shown that he couldn't make this phenol product with a profit, and having spent $15,000, the New Jersey corporation was without further working capital. The New Jersey corporation was without a chemist and a superintendent, and without money, and Burdette then went to Mr. Brady, his father-in-law, and laid before him the situation (B. T., p. 223, lines 20-30, 30-40). Burdette then testified as follows:

> "I then got hold of a man named Franklin P. Sommers, who was a chemist. He claimed that he could make phenol. We went over the situation generally. He said if he had $5000 he would show that he could make phenol at our plant at a cost of about 35¢ and a reasonable good production. I then took it up with Mr. Brady and Mr. Anyon" (B. T., p. 224, lines 20-30).

There were three notes, aggregating $16,000, and the noteholders agreed to put additional money into a new company (Delaware company) and take stock (B. T., p. 224, lines 30-40, 40-45; p. 225, lines 10-30).

When testifying on the trial of this cause Burdette told in substance the same story with regard to the circumstances which led up to the formation of the New Jersey corporation as he told in the bankruptcy proceedings (p. 52, lines 20-30); that it was arranged between himself and the directors

of the corporation that they would allow him and Horn to use the "New York office" as a law firm without expense (p. 52, lines 30-40); he could not remember what the chemical plant of the United States Chemical Company, which had been purchased at the bankruptcy sale, had manufactured prior to the bankruptcy (p. 53, lines 10-20); that the New Jersey corporation took the plant over and rebuilt it and installed machinery for the manufacture of phenol or carbolic acid (p. 53, lines 20-30), and that during the first part of April, after they had been operating for two months, the chemist in charge, Mr. Broecker, failed to make any phenol,

> "and it looked very much to me as though he didn't know the process. I then told him that he hadn't succeeded and that we did not care to put in any further money until we had secured someone who knew about the manufacture of carbolic acid or phenol. He said if that was the case, that if we were to engage someone to advise him or check up his work he would no longer work for us, and after that talk he left and I have never seen him since" (p. 53, lines 30-43).

A new corporation was organized by the same name under the laws of Delaware, which took over the assets and liabilities of the New Jersey corporation, having the same stockholders as the old company with the exception of Broecker and Burdette (p. 54, lines 20-32).

Burdette was never a stockholder of the Delaware corporation (p. 55, lines 10-20, 20-30), the officers of the Delaware corporation being Lester C. Burdette, president; his brother, George Burdette, vice-president; Robert Vom Cleff, secretary

and treasurer (p. 55, lines 30-40). That by the laws of Delaware it was only necessary to be a director to be a president and it was not necessary to be a stockholder to be a director (p. 55, lines 30-42), and that there was no change in the directorate or the officers from the time of the formation of the Delaware corporation, April, 1917, but after the formation of the Delaware corporation he endeavored to find someone who could successfully manufacture phenol.

He talked to Mr. Guile, who was in a similar business. Guile's engineer made an examination of the plant and reported that he could make phenol with certain changes and additions at a cost showing a reasonable profit. He then made a contract with Guile's company, the Chemical Engineering and Research Corporation, by which he agreed to operate the plant (p. 56, lines 10-20, 20-30). Guile sent a man named Summers, who is a chemist, and several other men, who redesigned a new plant and built a new plant for the manufacture of phenol and thirty or forty thousand dollars was invested in that construction, which took about three or four weeks, all during the month of April (p. 56, lines 40-43; p. 57, lines 10-20, 20-24).

The phenol plant ran until Decoration Day of May, 1917, when the fire occurred, burning up "the still room," and made it impossible to continue the manufacture of phenol (p. 57, lines 30-40). He then continued with Mr. Guile to discuss the manufacture of another product, and he advised the manufacture of salicylic acid in a new plant. Machinery was purchased and installed which took several months—five or six months. This new machinery cost between forty and fifty thousand dollars. The plant began operation in October or November of 1917 and continued to manufacture

salicylic acid until June or July, 1918, and $133,000 worth of salicylic acid was sold (p. 58 and p. 59, lines 10-20).

The agreement with Chemical Engineering and Research Company covered not only the manufacture of phenol but anything that the company might thereafter manufacture was to be under the general supervision and direction of the Chemical Engineering and Research Company. The relations with the Chemical Engineering and Research Company continued after the fire, and after the fire they proceeded to assemble and install another plant (p. 116, lines 10-20, 20-30, 30-40). It was six months before that plant was in operation. That plant was for the manufacture of salicylic acid (p. 116, lines 40-44). The Chemical Engineering and Research Company advised that salicylic acid could be made at a greater profit than phenol and phenol was not very much in demand at the time, whereas salicylic acid was very much in demand. That is the reason that the manufacture of salicylic acid was contemplated, rather than phenol, after the fire. A lot of new machinery was purchased and old machinery rebuilt specially for the manufacture of salicylic acid (p. 117, lines 10-20, 20-30). The impression is that $15,000 was spent for the phenol machinery. About $50,000 was spent in the reconstruction of the plant for the manufacture of salicylic acid (p. 118, lines 40-46; p. 119, lines 10-20, 20-30).

Mr. Carlin was in the Delaware company's employ from the beginning of the construction of the salicylic acid plant (p. 120, lines 10-20). Carlin was procured by the Chemical Engineering and Research Company. He was a friend of Mr. Summers, the chemist of the Chemical Engineering and Research Company and was sent there by him (p. 120, lines 20-30).

The salicylic acid sales totaled $146,293.75 (p. 121, lines 30-40). Burdette seemed to be unable to testify as to whether said sales amounting as aforesaid to $146,293.75 were at a profit or a substantial profit (p. 122, lines 10-20, 20-30). He claimed that without reference to the profit and loss statements for each month during the salicylic acid operation he could not tell whether the manufacture of salicylic acid was at a profit or at a loss. The operation covered the period from September, 1917, to September, 1918. Further testifying, he says:

> "Q. You did refer to that at the time and it has left no impression on your mind as to whether this was a successful or unsuccessful operation, the manufacturing of salicylic acid. I mean from the standpoint of getting more or less than cost? A. *My impression is that we did not make any money during that period*" (p. 122, lines 43, 44; p. 123, lines 10-14).

They never succeeded in making U. S. P. salicylic acid, although that was their objective (p. 123, lines 10-20). And if Burdette had known that he could only manufacture technical salicylic acid and not U. S. P. salicylic acid the plant would not have been created for salicylic acid (p. 123, lines 10-30). Other concerns were making U. S. P. salicylic acid at this time to supply druggists (p. 124, lines 10-20).

The Delaware company had four or five contracts for the sale of salicylic acid and he procured these contracts in reliance upon the assurance of the Chemical Engineering and Research Company that this plant under their supervision would produce this product. But he learned soon after the plant

was built that it could not produce products in the quantities needed to supply the contract (p. 124, lines 20-30, 30-40).

The reconstruction of the plant to manufacture para was under the direction of Mr. Carlin, who had been unsuccessful in the production of salicylic acid U. S. P. Notwithstanding such failure, Burdette permitted Carlin to proceed to install a plant for the manufacture of para products (p. 125, lines 30-42).

Burdette did not know whether the statement produced by him showing para products sales amounting to $83,151.62 represents more than the cost of manufactured products, and Burdette seemed to be unable to state whether the sale of said merchandise of said para products was for more than the cost of producing the same (pp. 126-127).

During the time that the company was manufacturing phenol the Delaware company had no salesmen (p. 130, lines 30-40). The Waugh Chemical Company continued to take the phenol under its contract with the New Jersey company and continued to furnish the raw material that entered into the manufacture of phenol up till the time of the fire. So that such phenol as was manufactured by the Delaware company was simply delivered to Waugh Chemical Company under the contract of the New Jersey company, which was simply continued with the Delaware company (p. 130, lines 41-43; p. 131, lines 10-20).

During the time that the Delaware company manufactured salicylic acid they did not have a salesman, until the last month or two (p. 131, lines 20-30). The salicylic acid was sold under the contract with the National Aniline Company (p. 131,

lines 30-40). A very big percentage of the salicylic acid produced was taken by the National Aniline Company (p. 132, lines 10-17).

> "Q. And that customer was procured through a broker, was it not? A. No, I think I got them direct.
>
> Q. You remember that the brokers did get the commission for sales of salicylic acid? A. Very much so" (p. 132, lines 17-25).

> " * * * Q. You paid no brokerage commission to the National Aniline Company? A. No.
>
> Q. Now, the Drug and Dye Stuffs Corporation, were they brokers? A. They were a brokerage concern controlled by Mr. Guile" (p. 132, lines 30-40).

> "Q. Now, your para products, were they sold through brokers? A. The para products were sold, I think, almost entirely to the Edison International Company under a contract which I negotiated with Mr. Emery.
>
> Q. Well, upon this statement, $83,151.62, which is Exhibit C-7, there seems to be a great many names other than the Edison International Corporation as purchasers. Looking at that, would that refresh your recollection as to using any brokers on that? A. Yes, sir. I do not think in any case. I think they were all sales made direct by us, some of whom were brokers who at that time were buying and paying on their own account, but I think no commissions were paid in there" (p. 133, lines 40-44; p. 134, lines 10-20).

This testimony is interesting when considered in connection with the payment of $2,500 to the Bradette Corporation for commissions from the sales of merchandise after July, 1918.

A salesman named Schoedler was employed by the Delaware company. He was getting $50 a week. Burdette did not remember whether he was

in the employ of the company from March 7, 1917 (p. 136, lines 10-20, 20-30), but he was working for the company when it went into the hands of a receiver.

There was difficulty also with para. The orders called for dry or powdered paranitroline, which they never succeeded in producing (p. 136, lines 30-40). He did not know whether the making of these para products was something new. "I heard of many others who were making it, but we heard lots of things at that time which were not true" (p. 137, lines 20-30). There was on the market then para product of the kind the Delaware company was attempting to make; others were making it. The attempt which was made to study the methods by which others were making these para products successfully consisted of Mr. Carlin and Burdette, trying several times to get into plants where they said it was being made; they got into one plant only and learned nothing from their experience (p. 137, lines 30-40). Burdette, testifying further, said:

> "Q. Then, I understand when Mr. Carlin and you engaged in installing a para plant and attempted to mnufacture it, neither he nor you had had any—were embarking on what to both of you was an unexplored and undiscovered region—that is, by way of manufacturing, is that right? A. No. Mr. Carlin had done considerable experimenting and had made a very fine product of paranitroline in lots of about fifty and a hundred pounds.
>
> Q. In the laboratory? A. In a laboratory way and some commercially, and our project at that time was to make it in large quantities in that way" (p. 137, lines 40-44; p. 138, lines 10-20).

The inventory book, which Burdette described at some length, as well as the use to which it was put (p. 139, lines 10-40), Burdette admitted was just the ordinary inventory that any mercantile concern carries to ascertain what stock it has on hand, both raw and manufactured (p. 139, lines 40-43). Burdette could not narrate any instance in which as the result of checking the inventory or watching the production he made any discovery or made any correction (p. 140, lines 20-30, 30-40).

The Alpha had a lease on the office that had yet a number of years to run (five years from January 1, 1917), the company stopped doing business January, 1919, and then the lease was taken over by Burdette (p. 143, lines 21-30, 30-40).

He identified a photograph of the income tax returns made by Alpha Chemical Works, which were received in evidence (p. 144, lines 30-40). They showed that both the New Jersey and Delaware corporations had been run from December, 1916, to December 1, 1917, at a loss (Exhibit C-1, January 5, 1926; Exhibit C-2, January 5, 1926).

Burdette testified in this court that there was kept at the "New York office" a cash book, accounts payable book, accounts receivable book, perpetual inventory book (p. 65, lines 30-40), which books were kept by a stenographer ( ). The books of account were kept under the supervision of an accountant (p. 70, lines 30-40). So the accounting department could not have engaged Burdette's services.

Burdette says that in October, 1918, the "New York office" *was abandoned by the Alpha Chemical Works,* bankrupt, and the expenses were taken over by the Bradette Corporation, and he was paid $500 a month from October to January (p. 72, lines 39-43).

Now, if the "New York office" was abandoned by the Alpha Chemical Works, what further necessity was there for Mr. Burdette's services, but notwithstanding this abandonment Burdette was paid $500 a month from October, 1918, to January, 1919 (p. 72, lines 39-41). He testifies that the Bradette Corporation was organized by him (p. 73, lines 36-37):

> "for the purpose of buying and selling chemicals or doing a brokerage business. This corporation bought and sold for brokers and from brokers and for manufacturers and from manufacturers, chemicals, dyestuffs and so forth, and the Alpha Chemical Works gave to it a contract to sell its products at a commission of five per cent on the sale and to buy its products at one per cent on its purchases" (p. 73, lines 37-45).

The arrangement between the Bradette Corporation and the Alpha Chemical Works, Burdette says, with respect to the New York office expenses, was that the Bradette Corporation assumed the New York office expenses. $2,500 was paid by Alpha to the Bradette Corporation during three months (p. 74, lines 20-30), which was used to pay Burdette's expenses, which were the New York office expenses, and the salary of Dr. Schoedler, who was a salesman employed by it, and that no part of that money was used to pay Burdette individually, the only money he says he received being a check for actual disbursements of the organization of the corporation. But there were moneys paid to the firm of Burdette & Study for New York office expenses. He further testifies as follows:

> "Q. Did the Bradette Corporation in fact sell any products? A. Yes, sir.
>
> Q. Do you know how much? A. I couldn't answer that.

Q. The $2500 which were advanced to it were on account of what? A. Sales they had made and to be made.

Q. The insolvency prevented the carrying out of that contract? A. Yes, sir, at the time of the filing of the petition we could not complete the contract because we had nothing to sell" (p. 75, lines 12-22).

This testimony is somewhat interesting when you compare it with Burdette's testimony on a former occasion, in which he said that the $2,500 paid was a rough estimate of the commissions on sales which had been made by the Alpha Corporation between July, 1918, and the date when the $2,500 was paid.

He also says that during the year 1917 and the greater part of 1919 he received nothing from the law business, that he had no clients (p. 75, lines 23-40).

Lester C. Burdette's testimony with regard to the circumstances under which the Bradette Corporation was formed was as follows:

"Q. Tell us what led up to the formation of the Bradette Corporation. A. The Bradette Corporation was first contemplated in June, 1918. The reason it came up is this: Mr. Brady had advanced, through the Wollbutt Corporation, large sums of money from time to time in the nature of loans. In June we were contemplating the manufacture of paranitranaline. I made several trips to Wilmington, Delaware, and Philadelphia, with a view of raising funds which I required, about twenty to twenty-five thousand dollars. He said: 'If you cannot get it anywheres else, and the proposition looks as though it will pay, I authorize the Wolbutt Corporation, or I will advance the money.' I never asked him again after that

for the money. I then talked with Mr. Von Cleff and my brother, who is a director.

Q. Who is the director? A. My brother, George Burdette.

Q. Director of what? A. Alpha Chemical of Delaware. And they said they didn't think it was fair that Mr. Brady had advanced as much money as he did without getting some quick returns. In other words, they had no idea how much money he advanced from time to time, that is, during the first six months of 1918, and when I showed them the statement showing the moneys advanced by Mr. Brady. They asked if we could not devise some way by which he could get his money out without waiting for dividends. I talked with Dr. Schoedler, and we discussed several times the organization of a brokerage corporation which would buy and sell chemicals, and possibly get into the importing and exporting, the fact being that Dr. Schoedler was on the road each day trying to sell paranitranaline, and received many inquiries for other chemicals, which orders we thought possibly we could fill. It was then agreed that this corporation should be organized and that a commission of five per cent. be paid to Mr. Brady or the company when organized on all goods of the Alpha sold and one per cent. on all goods purchased, Dr. Schoedler to give his time to the selling of chemicals and to receive $50 a week plus one-fifth of the profits of the company" (B. T., p. 254, lines 30-44; p. 260, lines 10-40).

About the 11th of September, 1918, the Alpha Chemical Works received $10,000 from Mr. Venner. That was put in the corporation's bank account (B. T., p. 287, lines 10-20). Between July and September, 1918, because of the drop of prices of salicylic, the company's business was being conducted at a definite loss, but curiously, in July, with

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the company conducting business at a loss, it was claimed a resolution was adopted which had the effect of increasing the income of Burdette and Study from $600 a month to $800 a month and increasing the salary of Carlin, who had only been receiving $75 a week, to $500 a month, which resolution was so dated, that the increases would go into effect in October, 1918, which is just a few days after Mr. Venner advanced $10,000. A reading of Mr. Burdette's testimony with regard to the circumstances under which that increase was brought about (B. T., p. 279, line 10; p. 287, line 12), we think, will demonstrate that the resolution was manufactured at or about the time when Mr. Venner put $10,000 into the treasury of the corporation, in an attempted justification of the withdrawal thereof under the guise of the salaries to Burdette and commissions to the Bradette Corporation and salary to Carlin.

By July, 1918, Burdette was not supposed to do any buying or selling. That was to be done by Brady or the Bradette Corporation, and there was not much left to do for Burdette as president of the company, inasmuch as Carlin was a capable superintendent at the plant (B. T., p. 290, lines 10-21). An analysis of Burdette's work as so-called "executive head," beginning in B. T., p. 290, line 41, to p. 242, line 30, indicates that the extent of his work was merely in supervising the entry by the stenographer in books of information received from the manager at the Bound Brook plant and entering up bills—*mere clerical services.*

From September 10 to October 25, 1918, Mr. Venner paid to the Alpha Chemical Works $25,000 (B. T., p. 293, lines 16-20).

Burdette suggested that some of the things he did as executive head was to inaugurate policies,

but it was impossible for him to indicate any policy that he had inaugurated, except the one of increasing his salary from $300 to $500 per month from and after October 1st (B. T., p. 295, lines 20-30). The $2,500 supposed commissions paid to the Bradette Corporation was a rough estimate of what was bought and what was sold after October 1st to the time of the payment (B. T., p. 295, lines 41-42; p. 296, lines 10-21). This corporation has paid Burdette and Study $600 a month, beginning with February, 1918, down to September, 1918, or seven months at $600 a month, making $4,200 (B. T., p. , lines 10-30).

After July 9th there was being paid to Burdette and Study $150 a week by Alpha. Burdette testified that he could not say how much of that $150 he received from Burdette and Study. He took $100, $150, $200 and $250 when he needed it. There was no understanding between Burdette and Study (B. T., p. , lines) that he should receive any particular part of that. It all went to the firm of Burdette & Study and was divided equally between Burdette and Study, the profits of the business.

After October 1, 1918, the office was practically used the same way as it had been before. The same things that had been done, and for which the company paid $150 a week, were continued in the same way. The only change was the method of payment. The Alpha Company did not transfer the lease to Burdette and Study, but after the appointment of the receiver, the receiver stated that there would be no objection in transferring the lease to Burdette and Study if the landlord would cancel the lease of the Alpha (B. T., p. , lines).

On April 29, 1919, when Burdette was examined before the referee, he testified that the rooms which

he had called the "New York office of the Alpha Chemical Works" *were then being used by him and his partner, and that the cost of running those offices was the same as it was when the Alpha was "using" them* (B. T., p. , lines).

Lester C. Burdette told Mr. Venner on September 10, 1918, that no one was receiving any salary except the persons employed at the plant at Bound Brook, and that he, the said Burdette, was receiving no salary himself, that no salary had been voted and that he expected to make his money in the enterprise out of the common stock of no par value to be subsequently issued. Clarence Venner, Jr., had a conversation with said Burdette in September, 1918, in which said Burdette told him that no one was getting a salary except at the plant and that Dr. Shoedler was getting commissions from his sales—otherwise no salaries were being paid (p. 37, lines 15-23; p. 45, lines 25-30).

The corporation had contracts for the sale of what was known as technical salicylic and U. S. P. salicylic, or refined. The corporation never succeeded in making U. S. P. salicylic acid. When they stopped manufacturing the market price was so low that they could not continue to manufacture it at a profit. The corporation then shifted to the manufacture of paranitroline (p. 59, lines 16-25).

They continued to manufacture these para products until December 30, 1918. The cost of changing the enterprise from the manufacture of salicylic acid to the manufacture of para was about $38,000 (p. 59, lines 25-30; p. 60, lines 25-30).

From October to December about $70,000 worth of para was sold (p. 60, lines 36-38). The price of paranitroline dropped from $1.65 to 18 cents by November, 1918, and then they shut down until

February, 1918, when the receiver came in. Phenol was carbolic acid and is used in making explosives. Salicylic acid is used in making khaki colors for soldiers' uniforms (p. 61, lines 10-30, 32-36, 41-43; p. 62, lines 10-15).

During the course of business of the corporation there were sold chemicals of the value of between $250,000 and $300,000, of which $30,000 was phenol. A statement is received in evidence purporting to show sales from November, 1917, to September, 1918, of salicylic acid amounting to $146,293.75 (p. 62, lines 38-43; Exhibit D-6).

Another statement is received in evidence showing sales of paranitroline and paranitroacetanilide from August, 1918, to January, 1919, amounting to $83,151.62, and another statement for miscellaneous sales amounting to $4,023.94. It should be noted in examining the exhibits relating to the sales of salicylic acid that Burdette in his testimony in the bankruptcy proceedings testified ( ) *that the customers were procured by the Drug and Dyestuffs Corporation, who are brokers in the same office with the Chemical Research and Engineering Corporation* ( ) *and that said brokers received 5 per cent. for their services in getting these customers,* and an examination of said exhibit will show that of the $146,293.75 of salicylic acid sold $120,199.86 was sold to the National Aniline and Chemical Company and we believe that we have already shown that the phenol products were sold to one customer named Wolf.

These facts show that Burdette's claim that he *sold* phenol and salicylic acid is baseless and that for these very sales compensation was paid to brokers, also that his activities in any event were very much limited.

The para products amounted to $83,151.62, appearing upon Exhibit D-7 referred to in the testimony (p. 64, lines 20-23); $21,593.33 thereof was sold to the Edison International Corporation and $46,667.74 to Frank Hemmingway, Inc; $1,320 to the Fuller Company, and $3,431.65 to Wheeler, McGovern.

With only two customers taking nearly all the para products, Burdette must have had a great deal of time on his hands in which to practice law at the "New York office."

With regard to the miscellaneous sales shown in Exhibit D-8 amounting to $4,023.94, it will be found that $3,617.60 thereof represents one sale to Calco Chemical Company. The phenol sold during the first two months of the company's existence, April and May, 1917, Burdette testified amounted to $30,000 (p. 65, lines 14-21).

Two customers, the Edison International Corporation and Frank Hemmingway, Inc., purchased about $69,000 of the $83,000 of para products sold.

With one customer for all the phenol, afterwards two customers for all the salicylic acid and two customers for the para products Burdette from December, 1916, to February, 1919, must have had very little to do, except plenty of time to build up a law practice at the "New York office."

Burdette testified in the bankruptcy proceedings that the manufacture of salicylic acid began about November 1, 1917, and his further testimony on that subject is as follows:

> "Q. Who were your customers for that? A. The National Aniline and Chemical Corporation.
>
> Q. Did you have a contract with that concern? A. Yes, I had a contract with them

for 60,000 pounds of what we call technical salycilic.

Q. And that contemplated the absorption by that concern of your product? A. No, I had two other contracts—one with the Bleecker Export Company for U. S. P., or refined salycilic, and one with Bayer Company for U. S. P. salysilic.

Q. Who has these contracts now? A. I must have them.

Q. Who procured these contracts? A. These contracts were procured by the Drug and Dye Stuff Corporation.

Q. Who were they? A. Brokers" ( ).

"Q. Did you employ them for that purpose? A. Yes.

Q. What were they to receive for that? A. 5 per cent. commission on the selling price.

Q. They procured all these contracts? A. Yes" ( ).

Walter A. Guile, Jr., who was produced as an expert witness by Burdette for the purpose of testifying as to the reasonable value of the services rendered by Burdette to the corporation and who in the name of the Chemical Engineering and Research Company made the contract described by him and Burdette in their testimony for the rendition of services for the Alpha Chemical Works, in his testimony stated that the "Drug and Dyestuff Corporation" was one of his, the said Guile's, corporations (p. 155, lines 25-30). The testimony with regard to that is found in (p. 155, lines 25-33), and is as follows:

"Q. Had you had any business transactions with the Alpha Chemical Corporation before May, 1917? A. I think that one of my corporations purchased some materials for them.

Q. What corporation? A. Drug and Dyestuff Corporation.

Q. That corporation had a contract with the Alpha Chemical Corporation by which it was buying and selling? A. No, sir, he only came into my place but he couldn't sell goods any place else" (p. 155, lines 19-34).

An examination of Exhibit D-6 containing statement of the salicylic acid alleged to have been sold between November, 1917, and September, 1918, amounting to $148,293.75, shows that $120,199.86 of that sum represents sales made to the National Aniline Chemical Company. According to Burdette's testimony in the bankruptcy proceedings, the Drug and Dyestuff Corporation were to receive 5 per cent. upon the selling price and thus undoubtedly received on such sales of salicylic acid amounting to over $120,000, over $6,000 from Burdette.

Not only did said Guile's corporation receive commission upon salicylic acid sold as above indicated, but the same corporation (Drug and Dyestuff Corporation) purchased materials for the Alpha Chemical Works. It is, therefore, reasonable to suppose that said Guile's corporation received commission and compensation for such purchases of material for the Alpha Chemical Works. It is also a fair inference that said Drug and Dyestuff Corporation did not make such purchases without benefited therefrom in a monetary way.

Upon the advice of Guile, there was installed a salicylic acid plant in which large sums were expended. Upon his advice also a similar plant for phenol was installed, costing large sums. Likewise, upon his advice, a plant for the manufacture of para products costing large sums. Did Mr. Guile profit from the expenditure of these large sums of

money? It would appear that he or his corporations and Burdette were the only parties who could have profited from the operations of the Alpha Chemical Works. We do not think, under the circumstances, any weight ought to attach to or be given to his expert opinion as to the value of Burdette's services.

Under his advice, beginning with April, 1917, to January, 1918, large sums were expended in what at all times was an unprofitable and losing venture. Under his advice and direction the company was operating from April, 1917, until at least November, 1918, when the Armistice occurred.

The court will take judicial notice and it has already been suggested in the testimony that the chemicals sought to be produced by this company prior to the Armistice were such as had been imported from Germany before the war and the war made impossible further importation. While other chemical concerns were making large profits prior to the Armistice this company was sustaining losses. Burdette concededly knew nothing about the chemical business and he undoubtedly relied upon Guile. He had a right to lay at Guile's door lack of success of the company, up to the date of the Armistice at least. Under these circumstances, it was but natural, when Burdette was faced with a suit by the trustee to recover the moneys sought to be recovered in this suit that he should expect Guile to come to his assistance, and Guile did come to his assistance as an expert witness.

Not only did he do that, but he also produced another witness (David H. Litter) in an attempt to furnish expert testimony that the moneys sought to be recovered from Burdette represented reasonable value for his services, or were properly expended. Litter testifies that Mr. Guile asked him

to testify as an expert in this case (p. 179, lines 26-29). That he attended court in this cause four times for the purpose of testifying (p. 180, lines 31, 32), and that he is testifying as a matter of friendship for Mr. Guile and does not expect to receive compensation (p. 181, lines 10-12).

The Expert Testimony.

Walter A. Guile said he had been in the chemical business since 1914, and was in that business from 1916 to 1918. Had business relationship with Burdette (p. 147, lines 20-32). That a concern he owned made a contract to do engineering and installing processes for the manufacturing of chemicals for Alpha Chemical Works during 1917. That he worked under the contract. He testified:

> "My men went to the plant and made a survey of the capacities, the layout, suggested different processes that could be installed, suggested various machinery that could be purchased, and submitted a number of processes for the consideration of Mr. Burdette and his company" (p. 147, lines 41 to p. 148, line 13).

He says he was engaged in this work until the Alpha Chemical Works had a fire the following Decoration Day. Further testifying, he said:

> "Mr. Burdette was the executive working head of that company; he was all there was to the company. He was the active man. The other men, while interested in that sort of thing, depended entirely upon Mr. Burdette to produce the result they had hoped for" (p. 148, lines 23-28).

His description of Mr. Burdette, "he was all there was to the company," is somewhat interesting when you take into consideration all the testimony which indicates that Mr. Guile and his men, Summers, and afterwards Mr. Carlin, seemed to constitute the practical end of the company. In so far as the purchase of supplies and the sale of products was concerned, there was first the Waugh Chemical Company and afterwards Mr. Guile's Chemical Engineering and Research Company, and Drug and Dyestuff Corporation. His description of Burdette's activities on page 3 under analysis seems to indicate that it consisted first of making the contract with Guile and afterwards occasionally consulting with Mr. Guile (p. 148, lines 28-42).

The hypothetical question propounded to Mr. Guile to lay a basis for his opinion as to the reasonableness of the value of the services per month or per year of Burdette was, as we have already indicated, addressed to a witness under whose conduct the enterprise was a failure and unsuccessful even before the Armistice. When Guile says that Burdette, in making the contract with Guile, procured services "easily worth from fifteen to twenty thousand dollars per year," he in effect discredits and destroys the weight of his opinion as evidence because the proven facts show that vast sums of money were lost in enterprises which were unsuccessful because the Delaware corporation was unable to manufacture a merchantable product in the quantities necessary to produce a financial success: the phenol enterprise was unsuccessful: Guile and his company supervised that enterprise and were responsible for it. Likewise with the salicylic acid enterprise. That, too, was unsuccessful and resulted in great loss. The para enterprise was under the supervision of Carlin, who had been employed

at the suggestion of Guile and Summers. That also was a failure; all at a time when other war enterprises were making vast sums of money. Guile's description of the reason for the failure, we think, proves that the failure was attributable to him. He lays the failure of the company to the fact that the Armistice intervened, but he apparently had forgotten that this company under his supervision had been operating from April, 1917, to November, 1918, a period of nineteen months. He emphasizes the fact of the great loss which was sustained when the Armistice took place. He loses sight of the fact that there was nineteen months before the Armistice during which profits could have been made if the plant had been able to produce merchantable merchandise in sufficient quantities (p. 152, lines 17-36). His answer to the question as to the reasonable percentage to be paid to a selling corporation which would dispose of the product of the company and also assume the New York expenses—from 5 to 10 per cent., we suppose, has reference to the alleged commissions paid to the Bradette Corporation (p. 153, lines 35-38)—but manifestly the Bradette Corporation was a mere device of Bradette to get money out of the Alpha Chemical Works treasury into his own pocket after the money had been put into the treasury by Mr. Venner in September 1918 ( ). Mr. Guile admits that the Drug and Dyestuff Corporation is one of his corporations, but he is entirely silent with regard to the facts testified to by Burdette in the bankruptcy proceedings (p. 155, lines 25-30).

Mr. Summers, who is mentioned in the contract between the Chemical Engineering and Research Company and Alpha Chemical Works, was the president of the said engineering company and

Guile owned the stock (p. 155, line 39, to p. 156, line 15). He said that salaries of executives in responsible positions were four or five times what they were before the war and probably three times "what they are now" (p. 157, lines 10-33). Undoubtedly the witness had in mind enterprises which were successful, not one which was a failure at all times. It is inconceivable that executives would have received four or five times pre-war, or three times post-war salaries, where the enterprise was experimental, unsuccessful and unprofitable. At least, we have the suggestion that Burdette was receiving from three to five times more than would have ordinarily been paid and in that aspect his testimony throws some light with regard to the inflation of the value of Burdette's services.

When asked whether he knew what arrangement was reported as having been made by Burdette and the Alpha Chemical Works, he stated, "I know that $150 was allowed for Burdette for his organization and sales while that contract was in force." That he got $150—he and the office and the help." "Q. At the rate of $7500? A. Yes, sir" (p. 157, lines 36-44). Testifying further:

> "Q. Do you think he had any idea that you thought he was worth $25,000 a year, then? A. Well, if Mr. Burdette's plant had produced in proportion to other people's plants, such as the Edison plant in Orange and Middlesex Chemical Company in New England, I would say he would have made between $200,000 and $300,000 in profits.
>
> Q. Did you say he or the corporation? A. The Alpha Chemical. And I would not think a man producing an expected profit of business of that sort of thing *$15,000 was too much.*

By the Court.

Q. *You mean, assuming that to be so?* A. *Yes"* (p. 158, lines 10-23).

In other words, the gist of his testimony is that Burdette would have been worth $25,000 a year if the plant had produced in proportion to other people's plants, such as Edison's plant in Orange and Middlesex Chemical Company in New England, $200,000 or $300,000 profits. In other words, Guile in measuring the reasonable value of Burdette's services as being worth $15,000 per annum did so upon the assumption that the plant was producing profits of from $200,000 to $300,000 per annum, and that the court caught the significance of his testimony is found in the question by the court as above italicized:

> "That is to say, assuming that the company made profits."

Guile testified in substance that his contract with Alpha Chemical Works was at an end when the salicylic acid was being manufactured, and in that respect he contradicts Burdette, whose testimony is in substance that the installation of the salicylic acid plant was under the direction of Guile or his company, and that Guile's company procured the contracts for salicylic acid (p. 161, lines 44, 45). That he thought that the plant was originally constructed for the purpose of manufacturing U. S. P. salicylic acid (p. 162, lines 24-27), but he didn't know whether it produced that (p. 162, lines 28-29) and never went into that situation. That he wasn't interested.

He knew that the operations in Bound Brook were being directed by a man named Carlin (p. 164, lines 10-13), that he came with Summers. Carlin

was process head. He makes no clear explanation as to why Carlin at Bound Brook could not have arranged for the purchases and the sales of merchandise (p. 164, lines 23-26). Guile testified that in forming his opinion in testifying as to $15,000 or $20,000 being the reasonable value of Mr. Burdette's services that he took into consideration that Mr. Burdette had given up a law practice (p. 168, lines 40-45).

Although Mr. Guile testified that he did not know Burdette socially and is not related to him, he has business relations with Mr. Brady, who is the father-in-law of Burdette (p. 169, lines 19-24).

Guile admitted that he had financial transactions with Mr. Brady and the companies he is connected with—Westinghouse Electric and Manufacturing Company (p. 169, lines 43-45; p. 170, lines 10-11).

David H. Litter was produced for the purpose of testifying as an expert as to the reasonable value of Burdette's services. His business is that of a chemical sales agent (p. 171, lines 24, 25). His experience is that of buying and selling chemicals (p. 171, lines 28, 29). His testimony indicates that slight weight can be given to it. The court, in referring to it, said, "As far as he has qualified it doesn't amount to much, but I do not feel that I ought to strike it out" (p. 176, lines 17-20). He came as an expert witness at Mr. Guile's request (p. 179, lines 26-29). That Guile was the first person who saw him about testifying as an expert. That he has been in court four times, made no arrangement for compensation, that he is testifying as a matter of friendship for Mr. Guile (p. 180, line 15, to p. 181, lines 10-14). The witness referred to the fact that persons familiar with chemicals during the war period held executive positions, but

his only reference to such executives was in connection with successful enterprises, and particularly the Calco Chemical Works, which is still in business and very successful (p. 182, lines 10-24). He knew of no case in which the president of an unsuccessful chemical manufacturing concern received $15,000 a year (p. 182, lines 28-36).

He also testified that salicylic acid and para products were made during the war and in large quantities (p. 185, lines 28-35). During the war he sold salicylic and para products. That all of these products that were made in this country during the war were prior to the war imported from Germany, and when the war started we had to step in and supply the American demand (p. 186, line 36, to p. 187, lines 10-12). This demonstrates the incompetence of Burdette, Guile, Summers and Carlin, while other chemical concerns during the war were manufacturing and prospering from the disposition of these products "Alpha" was failing.

Although Mr. Horn of the first law firm of Burdette & Horn was produced as a witness to testify that he did not receive any moneys from Alpha and that such moneys as he received were merely reimbursement for expenses of Alpha (p. 192, lines 22-29), Mr. Study of the firm of Burdette & Study was never produced as a witness to testify to the same effect. This further demonstrates that the sums paid by Alpha to Burdette and Burdette & Study were regarded as part of the law practice and divided as profits.

The books of the company and the checks received in evidence show that from February 9, 1917, to November 27, 1918, checks were drawn to the order of *Burdette & Study* amounting to $5,929.97, and an inspection of the checks show that they were deposited in bank accounts in the name of *Burdette & Study* in the Chatham & Phoenix and Irving National Bank.

As to Point I in Defendants-Appellants' Brief.

This point, as stated by defendants-appellants' counsel (on p. 15 of his brief), is as follows:

> "The Court of Chancery of New Jersey should not have sustained the suit which involved the internal affairs of a Delaware Corporation."

Counsel's very "point" seems to contain a misstatement of the nature of this suit, for the suit does not "involve the internal affairs" of a foreign corporation at all, in the sense of seeking to regulate or interfere with the management of the internal affairs of a foreign corporation. On the contrary, the suit is one brought against former directors and officers of a bankrupt corporation of which complainant-respondent is trustee in bankruptcy, and seeks to compel them to account for a misappropriation of assets. As Vice-Chancellor Backes expresses it in his opinion:

> "The trustee in bankruptcy of the Alpha Chemical Works, Inc., a Delaware corporation, sues to recover from directors salary paid to the president and other moneys alleged to have been misappropriated" (see State of Case, p. 11, lines 21-25).

Defendants-appellants' counsel takes the view that because the court in this case was called upon to consider acts done by the defendants-appellants as directors and officers of the corporation, the case "involved the internal affairs" of the corporation. The rule which counsel impliedly alludes to and invokes is found in cases in which a suit is brought for the very purpose of interfering with and regulating the affairs of a foreign corporation. That rule, as stated by the Court of Errors and Appeals

of this State in *Jackson* v. *Hooper,* 76 N. J. Eq. 592 (cited by defendants-appellants' counsel himself), is as follows:

> "Where the act complained of affects the complainant solely in his capacity as a member of the corporation, whether it be as stockholder, director, president or other officer, and is the act of the corporation, whether acting in stockholders' meeting or through its agents, the board of directors, then such action is the management of the internal affairs of the corporation, and in case of a foreign corporation our courts will not take jurisdiction" (see p. 604).

Obviously the rule applies only to a case where a complainant who is either a "stockholder, director, president or other officer" brings a suit complaining of an act of the corporation which "affects" him "solely in his capacity as a member of the corporation" and seeks by "such action" to have the court take charge of "the management of the internal affairs of the corporation." An examination of cases (cited by defendants-appellants' counsel) in which this rule was applied makes this matter clear. In the above-mentioned case of *Jackson* v. *Hooper,* 76 N. J. Eq. 592 (cited by defendants-appellants' counsel), it appears that complainant and defendant H. E. Hooper (the three other defendants being merely nominal parties) purchased all the stock of a business corporation under an agreement that they should be partners, having equal voice and equal control in the management and business of the company; that the corporation should be treated as a mere agency in carrying out the co-partnership agreement; that the directors, other than the two parties, should be mere nominal directors; that corporate forms should be ignored and the business transacted and treated as a part-

nership business. This having been done for a time the parties disagreed. The court said (at p. 593):

> "The bill and injunction in this case rest upon the theory that the complainant, who united with the defendant Horace E. Hooper in acquiring in equal shares all the stock of two foreign corporations, pursuant to an agreement claimed to create a partnership or joint adventure, is entitled to treat the two corporations, organized under foreign laws, as mere agencies or instrumentalities in the conduct of the joint business and to subject not only the stock owned by both parties, but all the corporate property to the control of the court of chancery according to the principles of the law of partnership.
>
> The vice-chancellor held that 'the complainant and the defendant Horace E. Hooper were engaged as principals in a joint undertaking,' that 'the English and Illinois corporations were respectively agencies by which they accomplished their results,' and that, as the rules governing partnerships applied, a preliminary injunction should be granted. From the injunction order the defendants appeal.
>
> We are constrained to differ radically from the learned vice-chancellor in his views of the power and scope of the court of chancery, in dealing with corporate property, and we reach the conclusion that neither the bill nor the injunction can be sustained."

The court's ruling on the point in question was as follows:

> "the court of chancery had no jurisdiction to issue the injunction in question. The court assumed to exercise visitorial powers over two foreign corporations which are not parties to this suit and to regulate the management of their internal affairs" (see p. 604).

* * * * * *

"It is unnecessary to analyze again the terms of the injunction in referring to its extraordinary scope and effect.

In a form, sweeping, mandatory and embodying the ingenious theory of the complainant, the injunction, while purporting not to disturb or interfere with the integrity and autonomy of the foreign corporations, but only to enjoin the individuals from transferring property of an extensive business having its situs in foreign states, does, in fact, substance and effect, regulate and control the internal affairs of corporations chartered by foreign sovereignties and prevents freedom of action on the part of corporations not made parties to the suit, which we have held to be distinct legal entities and controlled by foreign laws. In violation of every obligation of official duty and responsibility imposed by law upon officers and directors, it substitutes the will of the chancellor for deliberate corporate action.

Such assumption of power cannot be approved or tolerated without a complete destruction of equitable doctrine as applied to corporations, and a subversion of the law affecting corporate rights, duties and relations.

As Chancellor Runyon said in Gregory v. New York, &c., Railway Co., 40 N. J. Eq. (13 Stew.) 38:

> 'It is almost too obvious for remark that this court cannot regulate the internal affairs of foreign corporations, nor can it enforce its decree out of this state' " (see p. 605).

The distinctions between that case and the case at bar are obvious. In that case the court was asked to interfere with the management of the internal affairs of an existing foreign corporation at the behest of a "member of the corporation."

In the case at bar the court is asked to compel former officers and directors of a bankrupt foreign corporation to account for misappropriation of certain of its assets at the behest of a trustee in bankruptcy of that corporation, who represents both the corporation (throughout the United States) and all its creditors.

In the case of *Eckrode* v. *Endurance T. & R. Corp. of N. Y.*, 90 N. J. Eq. 129 (cited by defendants-appellants' counsel), a dissenting stockholder of a foreign corporation filed a bill against the corporation and others to set aside a transfer of property of said corporation as *ultra vires* and also to have a receiver appointed for the corporation. The court said (at p. 131):

> "Complainant invokes this court's jurisdiction on the ground that he is a resident of the state and that the property in question is located therein; and defendants contend that the court is without jurisdiction as the controversy is between a stockholder and the corporation and its directors, and relates to the internal affairs of a foreign corporation."

The court applied the rule enunciated in the case of *Jackson* v. *Hooper*, 76 N. J. Eq. 592, quoted above, and said (at p. 132):

> "It appears that the corporate acts complained of affect complainant solely in his capacity as a member-stockholder of one of the corporations, and that individually he has no relation to either of them independent of his relationship as a stockholder in the Endurance Tire and Rubber Company. Applying to this situation the definition of the phrase 'internal affairs of a corporation,' approved in Jackson v. Hooper, supra, and

> the tests quoted from 12 Rul. Cas. L. Sec. 20, &c., by Vice Chancellor Lane in Atwater v. Baskerville, 89 N. J. Eq. 121, it is clear that the mere fact that complainant is a resident of this state, and that the property to which the corporate action relates is situate therein, are not in themselves sufficient to justify this court in assuming jurisdiction.
>
> The allegation of the insolvency of the Endurance Tire and Rubber Company is too general to warrant the appointment of a receiver."

The court significantly says (at p. 132):

> "The bill does not charge the officers or directors of either of the corporations with any fraudulent conduct."

The differences between that case and the one at bar are obvious. In the case at bar the suit is not against the corporation, but against individuals who were formerly officers and directors of the corporation, and it charges them with a misappropriation of corporate assets. It is not brought by a "member of the corporation," but by a trustee in bankruptcy who represents both the corporation and its creditors.

Defendants-appellants' counsel cites in support of his contention the case of *McDermott* v. *Woodhouse,* 87 N. J. Eq. 615. That was a suit by a New Jersey receiver of a foreign corporation against a stockholder "to establish a stockholder's liability for stock issued for property purchased, as is said, at a gross overvaluation. * * * The corporation itself is not made a party. There is nothing to show that a receiver has ever been appointed in New York, the domicile of the corporation. Nothing is averred in the bill which would justify our

courts in appointing a receiver in insolvency of a New York corporation" (see p. 616). The court held it had no jurisdiction of the suit for the following reasons:

> "The bill seeks to do what can only be done by a receiver in case he possesses all the powers of a statutory receiver in insolvency, and shows on its face that the utmost powers he could have would be those of a mere ancillary receiver to gather in the assets in this state.
>
> To enforce a stockholder's liability for unpaid stock issued as full paid, the receiver can act only in the right of creditors. By the contract between the corporation and the stockholders, the latter have no further obligation with respect thereto, but where stock has been issued for property at an overvaluation, the stockholders may, in a proper case, be held for the deficiency. But their obligation is no greater than the obligation of stockholders whose subscriptions were payable in cash—that is, to pay so much of what is unpaid on the stock as will satisfy the claims of corporate creditors and meet the expenses of winding up its affairs."
>
> * * * * * *
>
> "Since this is the limit of the stockholder's obligation, it follows that the amount must be ascertained by a tribunal which has the power to ascertain the total amount of the debts and the total amount of the assets of the corporation. This cannot be done in a forum where only an ancillary receivership is possible. It must be done in the forum of the domicile" (see pp. 616, 617).
>
> * * * * * *
>
> "From the necessity of ascertaining the amount of assets and liabilities it follows that the corporation itself is a necessary party to the suit."
>
> * * * * * *

> "In the present case, the complainant has not even made the corporation a party to the bill. This defect of itself is fatal.
>
> Again, in order to fix a stockholder's liability, he must be bound by the proceedings to determine the amount thereof" (see p. 618).

At page 619:

> "The propriety and amount of the assessment must be determined according to the statutes and jurisprudence of the domicile (Glenn v. Liggett, 135 U. S. 533, 548), and when so determined are binding everywhere. Hancock National Bank v. Farnum, 176 U. S. 640. That the practice has been to bring the action in the courts of the domicile is sufficiently shown by Easton National Bank v. American Brick and Tile Co., 70 N. J. Eq. 722, and the cases therein cited.
>
> These considerations make it clear that the propriety and amount of an assessment to pay creditors are internal affairs of the corporation with which the courts of another jurisdiction will not intermeddle."

It is unnecessary to point out the difference between that case and the one at bar.

Defendants-appellants' counsel also relies on *Goff* v. *Goff Electro Pneumatic Brake Co.,* 89 N. J. Eq. 258. The court said (at p. 258):

> "The bill herein is filed by complainants as stockholders and creditors of the Goff Electro Pneumatic Brake Company, a corporation of the State of Delaware, and prays for an injunction restraining that corporation and its officers and agents from exercising any of its privileges or franchises or transacting its business, and for the appointment of a receiver of that corporation."
>
> * * * * * *

"The bill does not allege that defendant company is insolvent."

* * * * * *

"In the adjudication of applications for the appointment of receivers of corporations, the court of chancery of this state is required to observe certain well-defined limitations upon the exercise of that power.

The statutory power found in our Corporation act has reference only to corporations which are actually or potentially insolvent. Section 96 of that act subjects foreign corporations doing business in this state to the provisions of the act, so far as they can be applied to foreign corporations; accordingly in the appointment of receivers of foreign corporations that section can only be understood to contemplate insolvent foreign corporations. And, as is pointed out in Minchin v. Second National Bank, 36 N. J. Eq. 436, there are provisions of the act relating to insolvent corporations which obviously cannot be applied to insolvent corporations, since the court of chancery of this state cannot prevent a foreign corporation from exercising its franchises in another state."

* * * * * *

"It is clear that the measure of relief here sought cannot be properly awarded, * * * Not only is this court unable to enforce a decree of that nature out of this state, but such decree, could it be enforced, would clearly be operative to regulate the management of the internal affairs of a foreign corporation, since it would wholly deny to that corporation the exercise of its corporate functions" (see pp. 616, 617).

That suit being one brought against a foreign corporation and seeking the appointment of a receiver for it, obviously cannot be an authority in a case

where a trustee in bankruptcy of the corporation itself sues its former officers.

Defendants-appellants' counsel is in error when he argues that complainant-respondent seeks by this suit to enforce a right of a minority stockholder and not the rights of creditors of the corporation (see his brief, pp. 16, 17). On the contrary, the complainant-respondent as trustee in bankruptcy seeks here to enforce the rights of creditors, a right fully recognized in the cases of *Mills* v. *Hendershot,* 70 N. J. Eq. 258; *Mitchell* v. *United Box Board and Paper Co.,* 72 N. J. Eq. 580, and *Lillard* v. *Oil, Paint and Drug Co.,* 70 N. J. Eq. 197. In the first-mentioned case of *Mills* v. *Hendershot,* 70 N. J. Eq. 258, the court said (at pp. 264, 265):

> "Stockholders are liable to the receiver for dividends paid out of the capital, so far as necessary for the payment of debts—Williams v. Boice, 38 N. J. Eq. (11 Stew.) 364 (Chancellor Runyon, 1884)—and for the same purpose officers are liable to refund excessive salaries, as being misappropriation of the assets."

In the case of *Mitchell* v. *United Box Board and Paper Co.,* 72 N. J. Eq. 580, the court said (at p. 585):

> "Contracts for the services of a director, to be performed in the management of its ordinary business, are valid, but subject to judicial review so far as the amount of compensation is concerned, and this either on behalf of stockholders of a going corporation or the creditors of an insolvent corporation. I examined all the decisions of our courts on this point in Lillard v. Oil, &c., Co., 70 N. J. Eq. (4 Robb.) 197."

In the above-mentioned case of *Lillard* v. *Oil, Paint and Drug Co.*, 70 N. J. Eq. 197, the court said (at p. 205):

> "In David v. Thomas & Davis Co., 63 N. J. Eq. (18 Dick.) 572 (Vice-Chancellor Reed, 1902), repayment of excessive salary was directed on a bill by a receiver representing only the creditors of an insolvent corporation, and on the ground that it was a misappropriation of the assets."

As to Point II of Defendants-Appellants' Brief.

The second point argued by counsel for defendants-appellants in his brief (at p. 18) is as follows:

> "The Court erred in its conclusion that the increase in October, 1918, of the salary of Lester C. Burdette, from $300 to $500 was unwarranted and that Lester C. Burdette should pay to the trustee $600 with interest from January 1, 1919, being the excess paid by the bankrupt corporation for the months of November and December, 1918, and the month of January, 1919, over the sum of $300 a month."

The grounds of this contention presented by defendants-appellants' counsel appear to be that there was no evidence to show that the $300 per month previously paid to Mr. Burdette was adequate compensation, or that the increased salary of $500 was "unreasonable," and that the burden of proof as to the unreasonableness thereof was upon complainant-respondent.

As to the first mentioned ground, it is sufficient answer to point out that the fact that Mr. Burdette

had been receiving a salary of $300 per month from April, 1917, to October, 1918, for the identical services for which he subsequently, for three months, from November, 1918, to January, 1919, received $500 per month without any "change in circumstance" (of the corporation) to warrant the increase, is in itself some evidence (and, we contend, strong evidence) that $300 was adequate compensation and that the increased salary of $500 was an overpayment. An authority directly in point is the case of *Davis* v. *Thomas & Davis Co.*, 63 N. J. Eq. 572. In that case the court said (at pp. 573, 574):

> "The purpose of this suit is to compel three directors and officers of the defendant corporation to return to the receiver of the Thomas & Davis Company all or a portion of the salaries which these three directors voted to themselves."
>
> * * * * * *
>
> "At the annual meeting of the stockholders, held July 27th, 1899, Mr. Remein, Mr. Podrasnick and Mr. Thomas were elected directors. Immediately afterwards they held a directors' meeting, at which Mr. Podrasnick was elected president, and Mr. Thomas vice-president, and Mr. Remein secretary and treasurer. At this meeting it was resolved to pay each of these officers a salary of $5,000 a year. At this meeting it also seemed to have been resolved or understood that Mr. Thomas was to have, as manager, the sum of $96 a week. This was exclusive of the sum voted to him as salary."
>
> * * * * * *
>
> "Directors cannot fix the value of their own services to the corporation. Whenever they attempt to do so, and their action is challenged by a stockholder, or other interested persons, the burden is upon them to

show what they have done to merit payment,"

* * * * * *

"First, then, in respect to the merits of Mr. Thomas. He was the manager of the works. He says that previous to his engaging in the present enterprise he had received $100 a week as manager."

* * * * * *

"The remuneration voted to him as manager, of $96 a week, he is entitled to retain."

It is perfectly clear in that case that the court based its ruling as to Mr. Thomas' salary largely upon the amount ($96 per week) which he had previously received for the same services for which he subsequently was paid the additional $5,000.

Similarly in the case of *Lillard* v. *Oil, Paint and Drug Co.*, 70 N. J. Eq. 197, the court "tested" the reasonableness of increased salaries paid to a director by the amount previously paid to him for rendering the same services. In that case the court said (at pp. 212, 213):

"As to the amount of salaries, my conclusion upon the whole evidence is that the compensation of $18,000 is excessive, by at least $5,000."

* * * * * *

"Defendant's claim that the salary of $18,000 is reasonable and fair, although the same services had been previously rendered to the company for about half that sum, is based mainly on the contention that the defendant, at the time of assuming the management, was making as much or more in other business, and the conclusiveness of the previous smaller salary paid is answered, or attempted to be answered, by the contention

that the profits received by Lillard, through the receipts of which he paid for his stock, should be taken as really salary paid to him."

* * * * * *

"I conclude that the amount of salary must depend primarily upon the value of the services of a competent manager, and tested either by the previous salaries of the companies, the salaries generally prevailing in the trades, or the actual results of a number of years under defendant's management, as compared with the previous management under Lillard."

* * * * * *

"In my judgment, $13,000 per year would be full and ample compensation to be allowed for the defendant's entire services to all three companies—$10,000 for services as manager and publisher and $3,000 for the official salaries—$1,000 for each company. Defendant must account for all received over that amount of $13,000 during the two years, July 1st, 1900, to July 1st, 1902, being $10,000 of the whole salaries which have been received" (p. 214).

There was also the fact that up to January, 1917, Mr. Burdette's entire income was a salary of $200 per month, which he got from a law firm by whom he was until then employed, besides a share of the fees on business that he might bring to said firm. This latter amount he testified was so small that he could not remember it (State of Case, p. 81, lines 30-38; p. 82, lines 10-15). Mr. Burdette then (December, 1916) entered the employ of the Alpha Chemical Works (New Jersey corporation), the predecessor of the bankrupt corporation (State of Case, p. 82, lines 30-31; p. 86, lines 32-45). With reference to the fixing of his salary at $300 per

month when he went with the Alpha Chemical Works, he says:

> "Well, why didn't you consider it? As director of this corporation, entrusted with its funds and property, why didn't you consider that, as to whether you could not make a more—a cheaper arrangement than the one you were making in your own favor—why didn't you consider it? A. Because the position was offered to me on a certain basis which I accepted" (State of Case, p. 97, lines 33-39).

As to the second ground of defendants-appellants' counsel's contention, viz., that there was evidence which tended to show that the increased salary of $500 per month was reasonable, it is sufficient to say that the learned Vice-Chancellor who saw the witnesses apparently either gave little weight to their testimony on this score or considered that it was unequal in weight and persuasiveness to the paramount fact that Mr. Burdette's salary for the same services had previously been fixed at $300 per week and had continued at that rate for a year and a half, and was increased to $500 for no apparent good reason only three or four months before the corporation went into the hands of a receiver appointed by the Court of Chancery of New Jersey (February 10, 1919).

Defendants-appellants' counsel's real complaint is, not that the court decided that the $500 salary was excessive, but that the court passed upon this matter at all. He says (at p. 19 of his brief):

> "The matter is not one of law, but of business. If, in the conduct of the business, business men conceived it to be reasonable to pay the salaries which were paid in this

> case, the Court may not substitute its judgment. The question is one of fact to be determined by business practice."

This, however, disregards the authority and duty of the court as recognized in the very cases cited (on the same page of his brief, p. 19) by defendants-appellants' counsel.

Defendants-appellants' counsel finally (under Point II) contends that the burden of proof as to the unreasonableness of the increased salary of Mr. Burdette was upon complainant-respondent. The law in this State, however, is to the contrary. In the case of *Davis* v. *Thomas & Davis Co.*, 63 N. J. Eq. 572, the court said (at p. 574):

> "Directors cannot fix the value of their own services to the corporation. Whenever they attempt to do so, and their action is challenged by a stockholder, or other interested persons, the burden is upon them to show what they have done to merit payment."

In the case of *Lillard* v. *Oil, Paint and Drug Co.*, 70 N. J. Eq. 197, the court said (at p. 204):

> "The mere employment of a director to perform the services is not reviewable to any greater extent than any other act of the board in managing the business of the corporation under the statute, but the agreement for employment is in such cases considered as distinct and separable from the agreement for compensation, and the compensation, when properly called in question, is determined by the court, at its fair value, and the burden of establishing the value of their services is upon the directors."

All of the cases cited *contra* by defendants-appellants' counsel are cases in other jurisdictions and hence must give way to the opposing New Jersey authorities.

All of the proofs in the cause below, the important parts of which are set forth in the foregoing part of this brief, we think, demonstrates that the payment of even $300 per month prior to October, 1918, was not proper, and that the court below is manifestly mistaken in finding that the payment thereof was proper and in suggesting that "the salary (of $300 per month) is not open to adverse criticism" (see State of Case, p. 13, lines 30-40).

The purport of appellants' argument under said point, as we see it, is in substance that, because the court found in favor of Burdette upon the trustee's contention that the salary of $300 per month was not improper, that the burden was upon the trustee to show that Burdette was not entitled to $500 per month. Aside from the demonstration of incompetence and the worthlessness of Burdette's services found in the record, the only testimony offered by Burdette in an attempt to support the reasonable value of his services was that of Walter A. Guile, Jr. (pp. 147-154) and that of David H. Litter (pp. 171-184).

We believe that we have already shown in the foregoing part of this brief that the testimony of said witnesses was valueless on the question as to the reasonable value of Burdette's services.

The financial record and history of the bankrupt corporation under Burdette's management, we respectfully submit, together with Burdette's own testimony, is inherent proof that there was no justification in increasing his salary from $300 to $500 per month. One of the reasons besides Burdette's mismanagement of the affairs of the company for

the company's failure, was the bankrupt's inability to produce merchantable material and this while other chemical concerns were producing merchantable material and reaping large profits. A reading of both Litter's testimony and Guile's testimony shows that they knew of no instances in which an executive received salary where the concern was unsuccessful and working at a great loss. The income tax returns of the bankrupt showed that no profit accrued and that, on the contrary, it sustained losses (see Exhibit C-1 on p. 372 and Exhibit C-2 on p. 372).

While it may be true that there are cases in which lawyers who are heads of *successful* manufacturing concerns receive salaries as such, it is undoubtedly because such lawyers have shown marked executive ability resulting in the concerns managed by them running at a profit. ~~Where a lawyer after eight years of employment in a large law firm earns only $50 a week, as did Burdette, he must have demonstrated~~ that he was not worth more than $50 per week as a lawyer. ~~Is it not~~ reasonable to suppose that, in view of the way in which he managed the affairs of the bankrupt and the losses which accrued to the bankrupt, that he lacked the ability and qualifications necessary and requisite to manage the bankrupt corporation?

The proofs show that the services which he did render to the company were of a very meager character. The manufacturing department at Bound Brook was in charge of a superintendent; the selling end of the business was conducted by brokers who received commissions; the bookkeeping was done by employees employed for that purpose; all other work was done by persons employed for that purpose, and there was no substantial evidence of

any executive work of the kind or character for which Burdette would have been employed by any chemical manufacturing concern such as the bankrupt.

As to Point III in Defendants-Appellants' Brief.

The argument contained under this point seems to be that appellants claim that Burdette's services were worth more than $300 per month and that, therefore, he was underpaid, although the court below found that he was not entitled to more than $300 per month for his services. We think we have already shown in the foregoing part of this brief and under Point II why the increase from $300 to $500 was not justified and that the court was justified in so holding. Therefore, the argument contained under Point III as to the payment of said $300 per month under the guise of office expense is not well founded. The court could well have found that the use of the New York office was not justified; that the same was merely a device or scheme to get the corporation to pay the cost of running Burdette's law office in New York. The mere fact that Guile, under whose advice the corporation suffered large losses, testified in the court below that Burdette was worth a greater salary is not persuasive. As a matter of fact, as we think we have already shown, Guile was not a disinterested witness. Under his management and advice the corporation lost large sums and never produced a merchantable product. There is no proof that what was done in the New York office could not have been just as well done at Bound Brook, and we are quite certain that if it had not been for the fact

that Burdette desired to practice law in the Woolworth Building at the company's expense and be supported by the bankrupt its business would have been conducted from Bound Brook. There is no proof that there was anything so peculiar about this company that it required a New York office. Burdette frankly states, in his testimony, that if the company had desired to maintain its office at Bound Brook that he would not have been interested. In other words, that it was a fact that if he could not maintain a law office in the Woolworth Building in New York and receive a salary from the bankrupt he would not have been interested in accepting employment from the bankrupt. The appellant now asserts that the payment of his salary of $300 per month and $300 for New York office expense was one single contract. The trustee did challenge the *bona fides* of Burdette in establishing the New York office. The proofs in the court below show that the trustee contended that the maintenance of the New York office and the payment of its expenses was not necessary for the business of the bankrupt and a mere device to enable Lester C. Burdette to conduct a law office at the expense of the bankrupt. That when the court below said "saddling the entire cost on the company for only a share of the benefit was an imposition," we respectfully submit that it only went a part of the way. We respectfully submit that the facts show that saddling the entire cost on the company was an imposition and their venture at the bar was at the entire expense of the bankrupt.

Mr. Guile's opinion that Burdette's services were of the value of $15,000 to $20,000 a year (pp. 152-153), in view of the proofs, we think is so extravagant as to make his testimony valueless. The mere fact that, on May 1, 1917, a contract was made

between the bankrupt corporation and the Chemical Engineering and Research Corporation (Exhibit D-5, p. 360, p. 56), contemplated the payment of $150 per week for New York office expense or $600 a month (p. 361), which included the salary of Burdette, and the New York office expense is no proof that such payments were justified or reasonable. The contract gave Guile 25 per cent. of the gross profits derived from the business for "acting in an advisory capacity in connection with said chemical plant" (p. 360, lines 20-30, 30-40), and the contract in substance, provided that the term "gross profits" shall be the sum remaining after deducting certain costs therein set forth, but that included in the amount so deducted nothing shall be included for administrative purposes, amortization, insurance, interest or individual charges, deductions or plant for construction account or for any other purpose except what is hereinbefore stated excepting an allowance of $150 per week shall be made for New York office charges and $100 per week for depreciation. It is to be noted that the term "New York office charges" was used. It would have been easy to set forth, if that had been contemplated, $300 per month for office expense and $300 per month for Burdette's salary. It is significant that this language was not used. It is sought to seize upon the provision of $150 per week above mentioned as a provision that Burdette was receiving $300 per month and that he was also receiving $300 per month to pay for the New York office expense. That Burdette was willing that Guile shall receive 25 per cent. of the gross profits for advising is a plain confession of his inability to manage the affairs of this corporation and, in view of this large proportion of the "gross profits" and not net profits which Mr. Guile was contract-

ing for on behalf of his company, it is quite probable that he was not likely to eliminate Mr. Burdette's New York office and the maintenance thereof and Mr. Burdette's consent to such a contract by objecting thereto and thus depriving himself of the chance of the profits to be derived under his 25 per cent. "gross profits" contract. Inasmuch as said contract provided that Franklin P. Summers as general manager of the Chemical Engineering and Research Company shall act as chemical director and the company had a superintendent and sold its goods through brokers and sold the bulk of its merchandise to but few customers, it is difficult to perceive that Burdette had anything left to do on behalf of the bankrupt and that he was in a position to devote himself exclusively to the practice of the law, which is exactly what he intended from the beginning.

As to Point IV of Defendants-Appellants' Brief.

Point IV of defendants-appellants' brief is as follows:

> "The Court below erred in requiring Lester C. Burdette and George F. Burdette to account for the payments of $2,500.00 made to Burdette Corporation."

The best answer to this contention is the statement made by Vice-Chancellor Backes with regard to this particular matter in his opinion, as follows:

> "In 1918 the Bradette Company was formed ostensibly as a selling company and, it is said, took over the office and assumed the expenses from October first" (State of Case, p. 12, lines 23-26).

* * * * * *

"Twenty-five hundred dollars was advanced to the Bradette Company for commissions earned and to be earned on sales of the Alpha Company's wares" (State of case, same page, lines 28-31).

* * * * * *

"The accounting will include the $2,500 advanced to the Bradette Company. Paying to that company a commission on purchases and sales was a scheme of the directors to set aside a percentage of the income of the Delaware company for Burdette's father-in-law, Brady, who had advanced a large amount, $60,000, of its capital, to give him an immediate profit on his investment instead of waiting for a stock dividend. It was no doubt done with good intentions, in appreciation of Brady's financial assistance, but the additional burden on the Delaware company cannot be justified. That company, in fact, continued to pay the office expenses and its officers carried on as before. Crediting the Bradette Company with earned or unearned commissions was mere bookkeeping. The advancement of it to enable it to pay office expenses was artifice" (State of case, p. 14, lines 23-40).

As an example of the evidence which abundantly justified the foregoing findings by the learned Vice-Chancellor, the following excerpts are notable:

"Q. Tell us what led up to the formation of the Bradette Corporation. A. The Bradette Corporation was first contemplated in June, 1918. The reason it came up is this: Mr. Brady had advanced through the Wilbutt Corporation large sums of money from time to time in the nature of loans. In June we were contemplating the manufacture of paranitranaline. I made several trips to Wilmington, Delaware, and Phila-

delphia, with a view of raising funds which I required, about twenty to twenty-five thousand dollars. He said: 'If you cannot get it anywhere else, and the proposition looks as though it will pay, I authorize the Wilbutt Corporation, or I will advance the money.' I never asked him again after that for the money. I then talked with Mr. Vom Cleff and my brother, who is a director.

Q. Who is the director? A. My brother, George Burdette.

Q. Director of what? A. Alpha Chemical of Delaware. And they said they didn't think it was fair that Mr. Brady had advanced as much money as he did without getting some quick returns. In other words, they had no idea how much money he advanced from time to time, that is, during the first six months of 1918, and when I showed them the statement showing the moneys advanced by Mr. Brady. They asked if we could not devise some way by which he could get his money out without waiting for dividends. I talked with Dr. Schoedler, and we discussed several times the organization of a brokerage corporation which would buy and sell chemicals, and possibly get into the importing and exporting, the fact being that Dr. Schoedler was on the road each day trying to sell paranitranline, and received many inquiries for other chemicals, which orders we thought possibly we could fill. It was then agreed that this corporation should be organized and that a commission of 5 per cent. be paid to Mr. Brady or the company when organized on all goods of the Alpha sold and 1 per cent. on all goods purchased, Dr. Schoedler to give his time to the selling of chemicals and to receive $50 a week plus one-fifth of the profits of the company" (State of Case, p. 259, line 31 to p. 260, line 40).

"Q. What results had the Bradette Corporation made upon which it was entitled

commissions? A. I cannot answer that without going into the thing in detail.

Q. Where would you get information from? A. I don't know. From the correspondence.

Q. Correspondence that you have in your office? A. I am not strictly right there. Let me say this: The contract providing for the payment of 5 per cent. to Mr. Brady or a corporation to be organized by him was on all goods sold by the Alpha Chemical Works and a commission of 1 per cent. on all goods purchased by the Alpha Chemical Works during that period.

Q. What period? A. I think from July 9th to date.

Q. July 9th? A. 1918.

Q. How did you fix July 9th, 1918? A. That, as I remember, is the date of the meeting of the directors of the Alpha Chemical Works at which the authorization for the making of the contract was passed.

Q. When was the Bradette Corporation organized? A. I think in October, 1918, the first deposit to its credit having been made in the United States Mortgage & Trust Company on November 4th, 1918.

Q. Was there a contract made between the Alpha Corporation and the Bradette Corporation? A. No, the contract was made between the Alpha Chemical Works and Mr. Brady and assigned by him to the Bradette Corporation.

Q. Was that in writing? A. Yes.

Q. Have you it here? A. I think so. I think it is here.

Q. I would like to have that contract. A. One of the contracts isn't here, which is the Alpha's contract. It is, I think, probably with Mr. Wall, but I have the other original which Mr. Brady has.

Q. Will you produce that? A. Yes.

Q. I want to clearly understand the arrangement. Mr. Brady had advanced, as

you say, through the medium of the Wolbutt Corporation, which was practically his dummy, a large sum of money, the sum you already mentioned? A. I think—you should not call the Wolbutt Corporation a dummy. Mr. Brady authorized me as treasurer to make these advances by the Wolbutt Corporation to the Alpha Chemical Works.

Q. Mr. Brady, you say, owns all the stock of this corporation? A. Yes.

Q. And he owned all the stock from the start, hasn't he? A. I refuse to answer.

Q. And you refuse to answer that on what ground? A. On the ground that I do not think the answer would be pertinent to the Alpha Chemical Works.

Q. Now, there has been advanced a large sum of money through the Wolbutt Corporation by Mr. Brady? A. Upon Mr. Brady's authorization.

Q. Upon Mr. Brady's authorization, and there was no prospect of his receiving any repayment of those sums? A. No. Mr. Brady would never receive any payment of the money advanced by the Wolbutt Corporation.

Q. Was the Wolbutt Corporation expecting any payment at the time that you met on July 9th, we will say, 1918? A. Yes; I should say they would be very hopeful. The Alpha Chemical Works was very hopeful to repay these moneys with a profit.

Q. But there was no immediate prospect for getting repayments? A. No.

Q. And you had gone around to various places for the purpose of endeavoring to raise money with which to continue the operations of the Alpha Chemical Works, the alleged bankrupt? A. Yes.

Q. And you were contemplating getting further advances from the Wolbutt Corporation or Mr. Brady? A. I felt if it was necessary we could have gotten further advances by the Wolbutt Corporation.

Q. And was that your idea in forming this Bradette Corporation, the idea of getting further advances? A. No. The reason for the organization—the reason for the giving of the contract and the payment of a commission to Mr. Brady and later to the Wolbutt Corporation was, as I said, as in acknowledgment of the fact that he had authorized the Wolbutt Corporation to advance large sums of money to the Alpha Chemical Works.

Q. Then the real purpose of this agreement was that Mr. Brady, and later the Bradette Corporation was to compensate him for the advances he had made? A. No, not to compensate him for the advances he had made, but to provide a way which we thought was proper to enable him to receive moneys from the Alpha Chemical Works other than by the payment of dividends" (State of Case, p. 265, line 10 to p. 267, line 40).

The statement by defendants-appellants' counsel that "Before there could be a recovery against Lester C. Burdette and George F. Burdette, I submit there must be proof to the effect that the making of the contract with the Bradette Corporation was a deliberate fraud" (see pp. 33, 34 of his brief) is unfounded in law. The payment and transaction here in question was described by the learned Vice-Chancellor as a "scheme of the directors to set aside a percentage of the income of the Delaware company for Burdette's father-in-law, Brady, who had advanced a large amount, $60,000 of its capital, to give him an immediate profit on his investment instead of waiting for a stock dividend" (State of Case, p. 14, lines 26-31). It was in effect a misappropriation of corporate assets for which, of course, defendants-appellants are liable to account even though they received no personal benefit whatever from such action and did not intend a wrong.

Cooper v. *Sill,* 94 Fed. 582 (Circuit Court of Appeals, 8th Circuit).

It was also in the nature of an unlawful payment of dividends, for which, of course, directors are liable.

As to Point V of Defendants-Appellants' Brief.

This point as stated by defendants-appellants' counsel is as follows:

> "The Court erred in not permitting Lester C. Burdette to offset against any amount which might be found due from him to the bankrupt corporation, the amount paid by him on obligations of the bankrupt corporation upon which he was endorser."

Authorities conclusively settle this point adversely to defendants-appellants. The rule as stated in *Collier on Bankruptcy,* Volume 2, page 1608, is as follows:

> "a creditor of a corporation cannot set-off his liability for unpaid subscriptions for its stock; *nor may the liability of a director of a corporation be set-off against a claim by said director as a creditor.*"

In the case of *La Jola Lumber & Mill Co.,* 243 Fed. 1004 (District Court, S. D. California, S. D.), the court held that where the creditor of a bankrupt corporation was liable as director, under Civ. Code Cal., Sec. 309, such liability was a trust fund for the benefit of all creditors ratably, and could not be set off against the creditor's claim. The said provision of law provided that the directors of corporations must not create debts beyond the subscribed capital stock, and that for a violation thereof the

directors under whose administration it may have happened are in their individual capacity jointly and severally liable to the corporation and its creditors to the full amount of the debt contracted.

In the case of *Putnam* v. *Handy,* reported in 5 Am. B. R., New Series, 842 (Massachusetts Supreme Judicial Court), the court held that in an action brought by trustee in bankruptcy of a corporation against its president for damages for fraudulent acts as director and president he may not set off claim or indebtedness due him from corporation. The entire decision in that case was as follows:

> "The defendant—after the decision in Putnam v. Handy, 247 Mass. 406, 142 N. E. 77, where it was held that he must pay to the plaintiff, the trustee in bankruptcy of the United States Leatheroid Rubber Company, damages which the corporation suffered through his fraudulent acts as director and president of the corporation—was given leave to file a cross-bill to have set off certain indebtedness, due to him from the company, which was more than sufficient to cover the damages. The trial court having dismissed the cross-bill we are asked to reverse the decree. The law is plain: 'In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.' Act Cong. 1898, c. 541, Sec. 68a (U. S. Comp. St. Sec. 9652.) See section 1(11), being U. S. Comp. St. Sec. 9585; Morgan v. Wordell, 6 Am. B. R. 167, 178 Mass. 350, 353, 59 N. E. 1037, 55 L. R. A. 33. The claim of the trustee established under the original bill rested on Handy's violation of a fiduciary duty. It was not a debt, nor in the

> nature of a debt, claim or demand springing from the obligation of an express or implied contract or arising from implication of law. Gray v. Bennett, 3 Metc. 522, 526; Morris v. Windsor Trust Co., 33 Am. B. R. 283, 213 N. Y. 27, 106 N. E. 753, Ann. Cas. 1916C, 972. The terms 'mutual debts' and 'mutual credits' are correlative, element of mutuality of obligation between and to authorize a set-off on the record the debtor and creditor in same right is necessary. It is absent, and the decree is affirmed with costs. Libby v. Hopkins, 104 U. S. 303, 26 L. ed. 769; Carr v. Hamilton, 129 U. S. 252, 9 S. Ct. 295, 32 L. Ed. 669; Western Tie & Timber Co. v. Brown, 196 U. S. 502, 13 Am. B. R. 447, 25 S. Ct. 339, 49 L. Ed. 571. See G. L. c. 232, Sec. 1. Ordered accordingly."

The same principle which should determine defendants-appellants' alleged right to set-off is illustrated by the cases dealing with the question of whether or not a stockholder, when sued by a receiver on a stock subscription or stock liability, may set-off a debt due him from the corporation. The rule in such a case is enunciated in the case of *Williams* v. *Traphagen,* 38 N. J. Eq. 57. In that case the court said:

> "The bill is filed by the receiver for the creditors and stockholders of the City Bank of Jersey City, to compel payment by stockholders of unpaid subscriptions due in respect to the stock held by them. James A. Wells, by his answer, admits his liability, but claims a right to set off against the money due from him the amount due to him from the bank as one of its depositors, and the question is whether he is entitled to the set-off. The debts are not substantially the same. They are not in the same right. The capital stock of the bank is a trust fund for the security and payment of

> the creditors, and it is the duty and legal obligation of the stockholders to pay it in according to their agreement, in order that it may be applied to the payment of the debts. A stockholder is not relieved from that duty and obligation by the fact that he is a creditor. To permit him to set off the debt due him would, where the corporation is insolvent, manifestly give him a preference as a creditor. To this he is not entitled. It is the right of the other creditors to have him pay in the money due from him for stock as part of the fund for the payment of the debts. The principle has frequently been enunciated and is established. Stockton v. Mech. & Lab. Sav. Bank, 5 Stew. Eq. 163; Vanatta v. N. J. Mut. L. Ins. Co., 4 Stew. Eq. 15; Sawyer v. Hoag, 17 Wall, 610; Lawrence, Recr., v. Nelson, 21 N. Y. 158; Wood v. Dummer, 3 Mason 308; Hillier v. Allegheny Ins. Co., 3 Pa. St. 470; Grissell's Case, L. R. (1 Ch. App.) 528; Black & Co.'s Case, L. R. (8 Ch. App.) 254. Wells is not entitled to the set-off."

In the case at bar the court below adjudicated a liability on the part of the defendants to account to the complainant (trustee in bankruptcy) for misappropriation of assets of the corporation. These assets or the trustee's right to recover them from defendants constitute a part of the bankrupt corporation's assets. The duty of defendants-appellants to restore these misappropriated assets to the trustee for the benefit of creditors is no different essentially from the liability or duty of a stockholder to pay the unpaid balance of a stock subscription for the benefit of the corporation's creditors. Also in this case, as in the case of a stockholder, the allowance of a set-off would give him a preference over the other creditors.

As to Point VI of Defendants-Appellants' Brief.

This point as stated by defendants-appellants' counsel is as follows:

> "The Court below erred in charging defendants with interest, costs and counsel fee."

With reference to the matter of interest, defendants-appellants' counsel claims that the allowance of interest by the court was erroneous on the ground that defendants-appellants' liability was "unliquidated," and on the ground that it was inequitable to allow interest against the defendants-appellants. In connection with the first ground, defendants-appellants cite a number of authorities involving actions at law for breach of contract or tort. Those cases, of course, are not authoritative in a suit in equity for an accounting like the case at bar. In connection with the second ground, defendants-appellants' counsel cites two equity cases in this state, viz., *Agnew Co.* v. *Board of Education, City of Paterson,* 83 N. J. Eq. 49, and *Backus* v. *Crane,* 87 N. J. Eq. 229. The first cited case of *Agnew Co.* v. *Board of Education,* 83 N. J. Eq. 49, was a mechanic's lien suit and, therefore, obviously inapplicable. The other cited case of *Backus* v. *Crane,* 87 N. J. Eq. 229, is actual authority against the contention of defendants-appellants' counsel. In that case the court held that where a trustee knew that he could obtain a dividend for his trust fund and neglected to do it, he was guilty of neglect and chargeable with the amount he neglected to collect. The court held that he is also chargeable with interest, the rate being subject to the

equities of each particular case, and in this case the rate is fixed at 4 per cent. in conformity with the English rule. The court there said (at p. 231):

> "Although as a general rule it may fairly be stated that where the trustee is guilty of gross neglect of fraud, or mingles the money with his own, he should be charged with interest at the legal rate, with annual rests, and, if he is guity of mere neglect, with simple interest only, this rule is subject to exceptions, and the real question is what the equities of the particular case demand."

It is significant that in that case the court held that:

> "There was no actual fraud in the present case. The trustee, undoubtedly, thought that he had the right to do what he did do."

Actual authority in point against the validity of the contention of defendants-appellants as to the allowance of interest is furnished by the case of *Cooper* v. *Hill,* 94 Fed. 582 (Circuit Court of Appeals, 8th Circuit). In that case the officers and directors of a national bank without authority of law used its funds in prospecting and attempting to develop mining property which had been acquired by the bank. Their action was not fraudulent, but was taken in good faith for the benefit of the bank, but resulted in the loss of the funds so diverted. They subsequently sold their interests in the bank, and retired from its management, leaving it solvent and prosperous. Under the new management, it subsequently became insolvent, and its receiver brought a suit in equity against the former directors to recover the amount so diverted by them. With reference to the matter of interest, the court held that the directors and officers of the bank, having misappropriated its funds, they are liable

for interest on the amount from the date of the misappropriation, as damages; and that no statute is necessary to authorize the allowance of such interest by a court of equity.

The authorities in this state hold that trustees called to account for misappropriation of trust funds are chargeable with interest. In *Frey* v. *Administrators of Frey,* 17 N. J. Eq. 71, the court held that the rule is that if an executor, administrator, or trustee, negligently suffer the trust moneys in his hands to lie idle, or mingle them with his own funds, or employ them in his business, he is chargeable with interest (see *Perry on Trusts,* Vol. 1, Sec. 468).

A director of a corporation is a trustee of a corporation's assets and there is no essential difference between his liability for violation or breach of his trust and that of a trustee.

With reference to the allowance of costs and counsel fee by the court below, it is well-settled in this state that those matters are within the discretion of that court. see second paragraph on page 7 of this page for further comment under this point.

CONCLUSION.

It is respectfully submitted that the decree below should be affirmed.

Respectfully submitted,

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