

NEW JERSEY
Court of Errors and Appeals.

THE AMERICAN SAW COMPANY OF NEW YORK,	} In Error.
Plaintiff in Error,	
v.	
THE FIRST NATIONAL BANK OF TRENTON,	} Defendant in Error.
Defendant in Error.	

THE AMERICAN SAW COMPANY OF NEW JERSEY,	} In Error.
Plaintiff in Error,	
v.	
THE FIRST NATIONAL BANK OF TRENTON,	} Defendant in Error.
Defendant in Error.	

Brief of W. M. Lanning, of Counsel with the
Defendant in Error in the two causes
above mentioned.

These two causes, by agreement between counsel, were tried together at the Mercer Circuit. The American Saw Company of New York was a New York corporation that continued in business in Trenton until January 31st, 1893, when it was succeeded by the American Saw Company of New Jersey, a New Jersey corporation which acquired all the assets and business of the New York corporation 10

and continued that business with the same officers and the same books.

The declaration and bill of particulars annexed thereto, in the case of the New York company, relate to checks and drafts given to the New York company prior to January 31st, 1893. That declaration and bill of particulars will be found in the larger printed case on pages 1 to 21. The declaration and bill of particulars, in the case of the New Jersey corporation, which relate to checks and drafts
10 given to that corporation after January 31st, 1893, have been printed in the smaller printed case on pages 1 to 21. And the specifications of defense in the two cases have been printed in the smaller of the printed cases on pages 22, 23 and 24.

The heading to the bill of particulars in each of the cases is as follows: "The following is a bill of particulars of the plaintiff's demand, and a copy of the checks and drafts collected by the defendant *on a forged and unauthorized endorsement of the name of plaintiff*, the payment of
20 the proceeds of which plaintiff demands as money received for its use."

The defendant furnished to the plaintiff, on demand, the following defenses (*inter alia*) intended to be made under its plea of the general issue. (See the smaller printed case, pages 23 and 24):

"Fourth. That the endorsements upon the checks and drafts in the plaintiff's bill of particulars set out *were not forged*."

"Fifth. That the said endorsements *were not unauthorized*."
30

The New York company sues to recover the amounts of forty different checks and drafts alleged to have been collected by the First National Bank of Trenton on *forged and unauthorized endorsements of the name of the plaintiff by Isaac F. Bissell, the plaintiff's secretary*.

The New Jersey company sues to recover the amounts of forty-nine different checks and drafts alleged to have been collected by the bank upon similarly *forged and unauthorized endorsements of the plaintiff's name*. It is
40 necessary that these facts should be stated before referring

to the second assignment of error, found on page 182 of the larger printed book, line 6, which assignment I shall consider first, and then take up the other assignments in the order in which I think they should be presented.

Second Assignment of Error.

The second assignment of error (page 182, line 6,) is that the trial judge "overruled as evidence offered to him on behalf of the said plaintiff, The American Saw Company of New York, as in the bill of exceptions is mentioned, a report on file in said cause, wherein said The 10 American Saw Company of New York, is plaintiff, and said The First National Bank of Trenton, is defendant, dated November first, eighteen hundred and ninety-four, made by Garret D. W. Vroom, as referee, in the record aforesaid mentioned in pursuance of an order made by the court therein, bearing date May tenth, eighteen hundred and ninety-four, whereby it was ordered that the matters at issue therein be referred to said referee to state and report an account between the parties, the said Justice holding and affirming that the same was unlawful 20 and inadmissible, whereas, by the law of the land, the said Justice ought to have admitted the said evidence in this action, because the same was lawful and admissible." The exception on which this assignment is based is on page 105.

The question raised by this assignment of error was raised in the Supreme Court upon an application for a new trial, and an opinion rendered therein by the Chief Justice. The opinion will be found in the *Atlantic Reporter for April 1st, 1896, Volume 34, page 1.* 30

In his opinion, the Chief Justice holds that these cases were not referable under our statute, where, as here, the parties had entered their dissent; *first*, because neither of them is an action "in which matters of account are in controversy," and, *second*, because in cases like these, where the question at issue is really one of forgery, the parties cannot be constitutionally deprived of their right

to a trial by jury. The authorities clearly support both of these conclusions.

In the old action of account there never was a right of trial by jury. There were two judgments. The first was that the defendant do account, after which auditors were assigned to take and state the account. The second or final judgment followed the report of the auditors. This old common law form of action is still authorized in this State. Its application was enlarged, by statute, in 1794, 10 to include actions by or against executors, &c., which it did not include at common law. (See Judge Paterson's "Act concerning the action of account," *Gen. Stat.*, p. 5.) The action, however, fell into disuse after the revision of the Practice act in 1855, when section 81 of that act (being section 177 of our present Practice act) first became a part of our statutory law. Section 82 of the act of 1855, which was intended to improve the practice in the old action of account, and which has now been added as section 6 to Judge Paterson's act (see *Gen. Stat.*, p. 6,) 20 did not result in popularizing the old action of account. It has been quite superseded by the practice established by section 81 of the act of 1855, now section 177 of our present Practice act. The purpose of section 81 was to introduce into *all* forms of action in which "matters of account are in controversy," and where the old action of account might be brought, a practice which, as in the action of account, would relieve the court and jury of the burden of examining long and intricate accounts, by reference to auditors or referees. Keeping the purpose 30 of the section in view, its construction must be that which the Chief Justice has given it. There can be no reference, without consent of the parties, under the section in question, of any matter not the proper subject of the old action of account, since such a course would deprive them of the right to a trial by jury.

The old action of account could not be maintained for the recovery of a sum certain, as for example for ten pounds delivered to defendant to trade with, though for the recovery of the *profits* of the ten pounds, that being 40 uncertain and unliquidated, it could be maintained, nor

does it lie for rent reserved on a lease. See the following authorities:

Bacon's Abridgement, Title "Accompt," Sections (C.), (D.) and (F.)

Also, 3 Black, Com. 164.

In *Chitty's Practice* it is said (see *3d English Ed.*, page 22,) that "By the ancient law a plaintiff in all matters of account could in many cases compel in effect a reference, by bringing an action of account, when the amount at least would be decided by two auditors, without the intervention of twelve jurors."

Sixth Assignment of Error.

This assignment, on page 183, line 6, is that the trial judge charged the jury, "That the jury must look at all the evidence to determine whether apparent authority existed."

The exception on which this assignment is based is on page 171, line 10, where it appears that an exception was made "To so much of said charge of his honor, the said judge, as charged and instructed the jury that the jury must look at all the evidence to determine whether apparent authority existed." The charge of the judge will be found on pages 165 to 170. On page 167, the judge said that it was not pretended by the defense that the by-laws of the American Saw Company expressly authorized Bissell, the secretary or manager of the saw company, to endorse checks and drafts made payable to the order of the saw company and collect the money on them, but that the defendant insisted that it was not necessary that there should be express authority given by the by-laws to Bissell to sign and endorse checks in order to discharge the bank from liability, and that the defendant also insisted that authority was established by proof of a course of business between the bank and the saw company, and by the usages and practice which the saw company permitted to grow up in the conduct of its business with the bank. The judge then stated (page 167) that the defendant claimed to have produced facts

which would authorize the jury in concluding that the saw company had, by its course of business, recognized the right of Bissell to endorse *generally* its commercial paper. He then referred, particularly, to the endorsement by Bissell of twenty-one promissory notes belonging to the company and presented to the bank for discount, and, on page 168, to the effect of what is called the Loomis resolution, and, on the top of page 169, to the statement alleged to have been made by Mr Putnam, treasurer of the saw company and one of its directors, to Mr. Whitehead and Mr. Middleton, cashier and paying teller in the bank. Then, on page 169, line 26, the judge told the jury that it was for them to determine, from the way in which the company transacted its business, from the facts to which the judge had referred, and from the other evidence in the case, whether Bissell had apparent authority from the saw company to endorse *generally* the signature of the saw company upon the checks sued on and to collect the money on them; and, on page 170, line 11, he further said that the jury must, of course, look at all the evidence to determine whether such apparent authority existed, and that if, from the whole evidence, they should conclude that it did exist, then their verdict should be for the defendant. It is submitted that this charge was correct.

I beg to refer, as briefly as the importance of the question will permit, to the evidence on the question of Bissell's apparent authority to endorse generally the checks and drafts sued on, and to obtain the cash for them over the counter of The First National Bank.

The president of the saw company, Mr. Ely, resided, had his office and did his own personal business, in the city of New York. (Pages 154, 155.) Mr. Putnam, vice president, treasurer and a director of the company, resided in Elizabeth, and came to Trenton only once or twice a week. (Pages 31, 45, 46.) Bissell was appointed secretary August 14th, 1883. (Page 41.) A by-law of the New York Company authorized *the treasurer only*, and not the secretary, to sign and endorse checks and drafts. It reads as follows: "The *treasurer* shall be

authorized at all times to make, sign, draw and endorse all checks, drafts or orders for the payment of money, for deposit in bank to the credit of the company, which may be required in the ordinary course of business, and he shall pay all book accounts, book debts and demands (other than written obligations), after they shall have been approved by the board or executive committee; and shall pay all notes, drafts and other written obligations issued by the direction of the board, as they shall mature." (See page 203, line 37.) Bissell, however, endorsed checks, according to Mr. Putnam's testimony, *without the authority of any by-law, with Putnam's full knowledge, from 1883* See Putnam's testimony on cross-examination, on page 43, line 21, &c., which is as follows:

"Q. Now, notwithstanding that fact that an effort was made to amend the by-laws of the New York corporation on June 11th, 1889, and notwithstanding the fact that the amendment was not made, yet it is a fact that Mr. Bissell, as secretary, was in the habit of endorsing 20 paper of the American Saw Company, which was subsequently deposited in the National bank; that is correct, is it?

"A. That is the fact; yes; while the——

"Q. Now, that is all; you know that?

"A. I knew that; yes.

"Q. You knew it during the whole of the time that he was so acting?

"A. I say I knew it; I never recalled that until the time—— 30

"Q. No; you knew that Mr. Bissell was so acting?

"A. Yes; or either he or somebody else in the office; Mr. Eccles endorsed them frequently.

"Q. Well, you knew that he himself, Mr. Bissell, was so acting did you?

"A. I did; yes.

"Q. And you knew he was so acting from 1883, when he was first made secretary?

"A. Yes."

Bissell also signed drafts without any express authority. 40

(Bottom of page 90 and first half of page 91.) The printed by-law above referred to limited the right to sign drafts to the treasurer, but Bissell, the secretary, without any express authority whatever, was permitted by the officers of the saw company to sign drafts, blank forms of which had been specially printed for the American Saw Company, and to *scratch out from the drafts the printed word "Treasurer" and substitute the written word "Secretary" therefor.* (See Exhibits D5, D6, D7, D8 and D9, which
 10 have not been printed, but which will be shown to the court on the oral argument.) These drafts, thus altered, were deposited in the First National Bank and collected through that bank. Putnam, the saw company's treasurer, knew that Bissell had exercised this authority for probably as long a time as Bissell had been secretary. His testimony, on cross-examination, on page 44, line 20, is as follows:

"Q. Well, from the time that you inaugurated the practice of making drafts on debtors did Mr. Bissell sign
 20 these drafts?

"A. I think so; yes.

"Q. He signed them as secretary of the American Saw Company?

"A. Yes.

"Q. Where did he get his authority from; any resolution of the Board of Directors that you recall?

"A. I don't recall any resolution; there may have been, but I don't recall it.

"Q. The by-laws of 1880 gave no such authority?

30 "A. No.

"Q. Now, this by-law proposed to be amended in 1889 provided 'the secretary or treasurer, or either of them, shall sign any drafts or orders for the payment of money due to the company by any debtor in the ordinary course of business, and perform such other duties as the board or executive committee may require;' do you recall whether prior to that date Mr. Bissell signed drafts on debtors as secretary of the American Saw Company?

"A. I don't know; I don't know when that custom
 40 was——

"Q. Then, as a fact, Mr. Bissell, as secretary of the American Saw Company, did sign drafts on debtors without any authority under any by-law; that is right, is it?

"A. Yes; he did.

"Q. He did do that with your knowledge?

"A. He did."

Bissell also endorsed checks and drafts for deposit. (See page 51, line 28; page 52, line 30, &c.) He was allowed also to endorse promissory notes of the saw company. (Page 53, line 10.) He endorsed at one time ¹⁰ twenty-one promissory notes, which were presented to The First Fational Bank and discounted on January 27th, 1893, four days before the organization of the New Jersey corporation, which endorsements were not "for discount," but were *general*. (Pages 54 to 65, page 81, page 93, line 30 to line 25 on page 94.) He drew payroll checks in cash. (Pages 61, 62.) He handled the saw company's moneys, and deposited them in the bank, and signed for post-office money orders. (Page 50.) He received moneys coming by express. (Pages 62 and 63.) ²⁰ Mr. Ely, the president, and Mr. Putnam seldom being in Trenton, Bissell had control of the office. (Pages 48, 49, 103.) According to Mr. Eccles, the saw company's book-keeper, Bissell began to endorse checks and drafts June 11th, 1889, when an unsuccessful attempt to amend the by-laws of the New York corporation was made by which it was proposed to give to the treasurer and secretary, "*or either of them,*" the power to make or endorse checks and drafts for deposit. (Pages 73 and 74.) Prior to that time Mr. Eccles says that checks and drafts endorsed for deposit ³⁰ were endorsed with the name of Samuel W. Putnam as treasurer, *but that he, Mr. Eccles, and not Mr. Putnam made the endorsements*, though the by-laws, as we have seen, gave to Putnam alone the authority to endorse. Eccles testifies as follows, on page 71, line 18:

"Q. When did that course of business, the endorsement of the checks in this manner by Mr. Bissell writing his name, begin?

"A. As near as I can recollect, it was in the early part of the year 1890.

"Q. Prior to that time, whose name had been used in making deposits of checks in the bank?

"A. Samuel W. Putnam, as treasurer.

"Q. Using this same rubber stamp?

"A. Yes, sir.

"Q. Who put the name on?

"A. *I did.*"

After this unsuccessful attempt to amend the by-laws had been made, Bissell informed Eccles that he, Bissell, 10 would thereafter endorse checks and drafts for deposit. (Bottom of page 71.) About this time, probably, Mr. Putnam took Bissell to the bank and told Mr. Whitehead, cashier, that thereafter Bissell would have charge of the Trenton office of the saw company, the management of its business *and of its financial affairs, and would attend to the banking business*, and to such duties as Mr. Putnam had been attending to previously. (Pages 108, 109, and bottom of page 115). At the same time Messrs. Putnam and Bissell stopped at the paying-teller's window and 20 told Mr. Middleton, the teller, that Mr. Putnam was going to leave the city for awhile, and that Mr. Bissell *would take charge of and attend to the financial part of the business of The American Saw Company.* (Bottom of page 124.) From that time, June 11th, 1889, if not, as Mr. Putnam says, from 1883, when Bissell was made secretary, it was a common practice for Bissell to draw pay-roll checks and to endorse checks and drafts payable to the order of the saw company both for deposit *and generally.* *He used two* 30 *kinds of rubber stamps for endorsements, one being a blue stamp which read "For deposit to the credit of the American Saw Company," at the end of which stamp was a blank in which the secretary wrote his name, as follows: "Isaac F. Bissell, Sec'y."* The other stamp was a red one, and read "American Saw Company," after which was a blank which was filled up "Isaac F. Bissell, Sec'y." The former, of course, was a restricted endorsement; but *the latter was a general endorsement, making checks and drafts so endorsed payable to bearer and giving to any person or bank who cashed a check or draft so endorsed a valid title,* 40 *provided it was cashed under circumstances that did not*

put the person making the payment on inquiry as to Bissell's actual authority. (For the testimony as to the two kinds of stamps, see Middleton's testimony, page 122 and testimony of Arthur H. Wood, clerk in the bank, pages 135, 136, 137.) Checks and drafts *deposited in the bank to the credit of the saw company* were sometimes endorsed with the one stamp, and sometimes with the other. There was no uniform rule adopted in endorsing checks and drafts that *were deposited to the credit of the saw company*. The practice of depositing checks and 10 drafts to the credit of the saw company *endorsed generally*, and not restrictively "for deposit," is clearly proven by Mr. Middleton's testimony, page 123, line 14, and Mr. Wood's testimony, pages 135-137. *It was upon the same general endorsement, by the use of the same red rubber stamp, that Bissell had the checks and drafts sued on in this case cashed by the First National Bank.* The officers of the saw company had actual notice, before any one of the checks or drafts sued on by the New Jersey company was given, that Bissell had exercised authority to endorse twenty-20 one promissory notes, not "for discount," and not in any restrictive way, but *generally*, and, while they had remonstrated with Bissell for his conduct, *they never informed any bank officer or clerk of his alleged unwarranted assumption of power.*

The discovery that Bissell had so endorsed these twenty-one notes was made by Mr. Ely, Mr. Putnam and Mr. Eccles in the office of the saw company. Mr. Putnam admits it (see bottom of page 54, &c.), and Mr. Eccles also admits it. (See page 94, line 16.) Mr. 30 Eccles further knew, if his testimony is to be credited, as early as December 12th, 1890, *nearly three months before the date of the first check sued on in these two cases*, that Bissell had exceeded his authority by drawing the proceeds of a pay-roll check three or four days before its maturity, and had remonstrated with Bissell about the matter for an hour and a half, until Bissell, with tears in his eyes, besought Eccles to say nothing about it. (See Eccles' testimony, pages 145 to 161.)

From this brief review of the testimony it appears 40

that evidence was produced before the court and jury that before any of the checks and drafts described in the bills of particulars in these two cases had been given, Bissell was introduced by the saw company's treasurer to the cashier and paying teller of the bank as the man who was to manage the financial affairs of the saw company and to attend to its banking affairs; that this introduction was followed, with the knowledge of the officers of the saw company, by Bissell's endorsing 10 checks and drafts *generally* as well as "for deposit;" by his endorsing promissory notes *generally*, and not "for discount;" by his signing drafts on the saw company's debtors, scratching out the printed word "Treasurer" and substituting therefor the written word "Secretary;" by his endorsing paper deposited to the credited of the saw company either *generally* or "for deposit" without any fixed rule or custom, thus giving evidence to the bank officers of large discretionary powers in him; by his handling large sums of money for the saw company, 20 sometimes drawing it from the bank on pay-roll checks, and sometimes depositing it as the proceeds of post-office money orders, express packages, and cash from debtors; and it further appears that the checks and drafts sued on have endorsements exactly similar to endorsements on other commercial paper which the officers of the saw company admit to have been authorized and valid.

Upon such evidence the trial judge submitted to the jury the question as to whether Bissell had apparent authority to endorse *generally* checks and drafts payable 30 to the order of the saw company and to obtain the cash for the same. It is submitted that the evidence on this question could not have been withheld from the jury, and the question of apparent authority was a matter of fact to go to the jury, and not a matter of law to be determined by the judge.

Fourth Assignment of Error.

In this assignment, on page 183, line 11, error is alleged, because the judge charged the jury "That no

doubt the American Saw Company of New York ratified the endorsement of the twenty-one promissory notes which were discounted in January, eighteen hundred and ninety-three." The exception upon which this assignment is based, is on page 170, line 18. What the judge said in his charge will be found on page 167, line 15, to line 10, on page 168. The testimony concerning the ratification has been already referred to in considering the question of apparent authority. It may be well, however, to refer to it again. It will be found on pages 10 54 and 55 and 94, where it appears that Mr. Ely, president, Mr. Putnam, treasurer, and Mr. Eccles, bookkeeper of the saw company, learning that Bissell had endorsed these notes, and obtained their discount at the First National Bank on his endorsement, said to him that he had no authority to do so, and directed him never to do it again, *but accepted the proceeds of the notes discounted on these endorsements, and withheld from the bank's officers all knowledge of Bissell's alleged unauthorized act.*

The judge, therefore, was correct when he said, on the 20 bottom of page 167, "There is no doubt, gentlemen, but that the saw company did ratify that endorsement, because they knew that Bissell had endorsed these notes; they remonstrated with him for having done it, and told him that he hadn't any business to do it, but they told the bank, by their conduct, that he did have business to do it, because they used the proceeds of the discount of the notes; they allowed that to be put to their credit, and they used the money raised on that general endorsement without ever notifying the bank that it was an improper 30 act on the part of Bissell." It will be observed, however, that, in this very connection, the judge said, on the top of page 168, that these notes were discounted sometime after Bissell's speculations had begun, and that his act in endorsing these notes could not have had any influence upon the bank in the payment of the checks and drafts that had been cashed prior to that time. The endorsement of these notes was, however, allowed to go to the jury because it was a proper fact for them to consider in connection with the checks and drafts that were cashed 40

after the endorsement, that is to say, in connection with all of the checks and drafts sued on by the New Jersey company.

Thirteenth Assignment of Error.

In this assignment, on page 185, line 17, error is alleged because the judge refused to charge the jury "That the indorsement for discount in the bank by said Bissell of said twenty-one notes in January, eighteen hundred and ninety-three, in the record aforesaid mentioned, whether
10 authorized or not, could not imply power in said Bissell to draw cash on any endorsement for the reason that the proceeds of the discount went to the credit of the company and could only be drawn by the treasurer." The exception upon which this resignation is based is on page 176.

It appears there that the counsel for the plaintiff had asked the judge to charge the jury not only what is objected to in the assignment of error, *but also that* "The prior cashing of checks and drafts by the bank shows that
20 they did not rely on this endorsement." This addition to what appears in the assignment of error is a material one, and, being erroneous and connected with what is referred to in the assignment of error in the form of a single request to charge, the entire request thereby became objectionable. Whether the prior cashing of checks and drafts by the bank showed that the bank did not, to any extent whatever rely on the endorsement of the twenty-one promissory notes in cashing checks and drafts after the endorsement of the notes, was a question for the
30 jury; for it appears in evidence that the endorsement of the twenty-one promissory notes was a *general* endorsement, and that these notes were endorsed with the same kind of rubber stamp that many of the checks and drafts deposited to the credit of the saw company had been endorsed with, and also the same that the checks and drafts which had been cashed by the bank and are sued on in these cases were endorsed with. The saw company had permitted Bissell to endorse checks and drafts

generally and not restrictively, and to deposit them to the credit of the company. It had also allowed him to endorse promissory notes (whether intended by the company for discount or collection is immaterial) *generally*, and not restrictively "for discount" or "for collection," or in any other restrictive way.

It is a familiar rule of commercial law that paper endorsed *generally* is payable to bearer, and that any one who takes it in good faith for value, so endorsed, obtains a good title thereto. This is one of the most important¹⁰ and beneficial rules of law concerning the transfer of commercial paper.

I submit that, if a bank is justified in concluding that an agent has authority to endorse *checks* generally in the name of his principal, then it is justified in concluding that that agent has the right to receive the cash for such checks, and that it is further justified in inferring that he has similar authority to endorse and collect *drafts* made payable to the order of his principal, and, further, that it is justified in inferring that he has similar author-²⁰ ity to endorse *generally promissory notes* and to obtain the cash for them, for the rule that a general endorsement makes commercial paper payable to bearer is applicable to *all sorts* of commercial paper.

It would be imposing an unreasonable burden upon bank officers and clerks to require them to make distinction between an agent's authority to endorse generally *the different species* of commercial paper. If a bank is justified in inferring that an agent has authority to endorse *generally* the name of his principal upon promissory³⁰ notes, it may safely assume that he also has authority to endorse *generally* his principal's name on checks, drafts and all other forms of commercial paper, and the authority to make such an endorsement is, in the absence of any notice to the contrary, an authority to collect.

Fifth Assignment of Error.

In this assignment, on page 183, line 19, error is alleged because the judge charged the jury "That, in view of the

fact that, continuously after the Loomis resolution, in the aforesaid record mentioned, was passed in eighteen hundred and eighty-seven, whenever any money of the American Saw Company was drawn out of its deposit in the bank, it continued to be drawn out exactly as it had been before that resolution was passed, that is, by the signature of Mr. Putnam, the treasurer, countersigned by some member of the executive committee or the secretary, it would be for the jury to say whether this Loomis
10 resolution could be considered to have gone as far as it was claimed to have done by the bank in the matter of authorizing Bissell to deal with the finances of the company."

The exception on which this assignment is based is on the bottom of page 170. What the judge charged is on page 168, line 11, &c. The judge there stated the claim that had been made concerning this resolution by the counsel for the bank, and then adverted to the fact that, after the passage of the resolution in eighteen hundred
20 and eighty-seven, whenever any money of the American Saw Company was drawn out of its deposit in the bank it was drawn upon checks bearing the two signatures of Mr. Putnam, treasurer, and Mr. Bissell, secretary, or some other member of the executive committee. Having stated the claim of the bank's counsel, and adverted to this fact, he left the question to the jury to say what the effect of the Loomis resolution was. This, I submit, was right. The resolution itself will be found on page 49, and is as follows: "Whereas, that inasmuch as circum-
30 stances prevent the continuous attendance at the works of the company of Mr. Samuel W. Putnam, vice president, who has hitherto acted as manager; Resolved, that Isaac F. Bissell be appointed manager of the business of the works, *with full power to act in all matters in the absence of Mr. Putnam.*" The effect of these words "*to act in all matters in the absence of Mr. Putnam,*" together with the course of conduct in transacting the company's banking business, was by the judge properly referred to the jury as a question of fact. I refer, also, to Mr. Beasley's brief
40 on this point as expressive of my views.

Ninth Assignment of Error.

In this assignment, to be found on page 184, line 19, error is alleged because the judge refused to charge the jury "That the said Loomis resolution passed February eighth, eighteen hundred and eighty-seven, appointing said Bissell manager, (1) must be read in harmony with the by-laws, and (2) must be interpreted in view of the fact that the treasurer continued to sign every check, and (3) that this Loomis resolution gave said Bissell no power to dispose of the checks and drafts of the company 10 for cash paid to himself."

The exception on which this assignment is based is on page 174, line 10. It will be observed that the request which the judge refused to charge contained three propositions. If any one of them was objectionable, it vitiated the entire request. It is submitted that they were all objectionable, for the reason that the Loomis resolution was entitled to go before the jury as an independent fact in the case, along with each of the other facts in the case, for the purpose of showing whether or 20 not Bissell had authority to endorse and collect the checks and drafts in question. The first proposition in the request was plainly wrong, as it would be equivalent to saying that no authority, either actual or apparent, could have been given to Bissell by any resolution of the directors, or act of the officers, or course of conduct permitted by the officers, which was not in harmony with the by-laws. And the request, in its entirety, is antagonistic to the existence of any evidence showing, or tending to show, apparent authority. 30

Tenth Assignment of Error.

In this assignment, on page 184, line 30, error is alleged, because the judge refused to charge the jury "That the bank cannot rely on the said Loomis resolution as giving said Bissell power to cash the drafts and checks in question in the absence of proof that said Putnam ever did

so, and in the absence of proof that the bank ever knew of the Loomis resolution."

- The exception on which this assignment is based is on page 174, line 30. Had the judge charged what was here requested by the saw company's counsel, it would have been equivalent to charging that the Loomis resolution was not possessed of any evidential force on the question of apparent authority or on the question of actual authority. That resolution declared (see page 49)
- 10 "That Isaac F. Bissell be appointed manager of the business of the works *with full power to act in all matters in the absence of Mr. Putnam.*" This language is unlimited. It does not restrict his power to such things as Mr. Putnam has been in the habit of doing. It is not ambiguous, nor is it obscure. As to the scope of powers conferred upon Mr. Bissell, its language was clear. It did, according to the plain meaning of its language, give to Mr. Bissell the power to obtain cash for the checks and drafts of the saw company whether Mr. Putnam had ever done so or not.
- 20 If the saw company did not mean to confer upon Bissell powers as broad as the language of the resolution plainly sets forth, yet, even in the absence of proof that the bank ever knew of the resolution, it was proper to submit it to the jury that they might determine, in the light of the subsequent acts and conduct of the saw company's officers, whether this resolution did not, to some extent, induce those officers to relax their watchfulness over Bissell and thereby permit him to assume powers they did not intend to confer, and suffer him to acquire, at least, apparent
- 30 authority to do the acts now alleged to have been unauthorized.

Twelfth Assignment of Error.

In this assignment, found on page 185, line 7, error is alleged because the judge refused to charge the jury "That the statement of the said Putnam to the cashier that said Bissell would look after the financial affairs of the company in said Putnam's place, if such a statement was made, would not authorize the bank to cash the

checks and drafts in suit for said Bissell, as the said company and said Putnam had never so cashed checks or drafts."

The exception on which this assignment is based is on the bottom of page 175. The judge would have erred had he made such a charge, for the request of the counsel for the saw company did not correctly quote or report the testimony bearing on the point. There is no evidence of a statement by Putnam to the cashier that Bissell would look after the financial affairs of the company "*in Putnam's place.*" Mr. Whitehead said in his testimony that Mr. Putnam declared to him that Bissell would have charge of the Trenton office, the management of the business of the concern *and of the financial affairs of the company*, and would attend to the banking business *and* such duties as Mr. Putnam had been attending to previously. (See page 109.) And, on cross-examination, bottom of page 115, Mr. Whitehead repeated that Mr. Putnam had said to him that Bissell would attend to the duties of the Trenton office, and would have charge and management of the office *and of its financial affairs*, and perform such duties as he had been performing while at the Trenton office, as he, Putnam, would not be able to come to the Trenton office so often. It will be observed here that Mr. Whitehead stated, both on direct examination and on cross-examination, that Mr. Putnam, in his conversation with him, declared that Bissell was to have charge of the financial affairs of the company, and was to attend to its banking business. There was no limitation upon Mr. Bissell's authority in these matters. *Besides* these things, he was to perform "such duties as Mr. Putnam had been attending to previously." Mr. Bissell's authority over the financial affairs of the company and its banking business was not modified, so far as Mr. Whitehead's testimony shows, by anything that Mr. Putnam had previously done, or by the powers that had been previously conferred upon Mr. Putnam.

This language of Mr. Whitehead's is entirely consistent with that of Mr. Middleton, the paying teller, to

whom Mr. Putnam, on the same day that he informed Mr. Whitehead as to the new powers conferred upon Mr. Bissell, said that "Mr. Bissell would take charge and attend to the financial affairs of the business of the American Saw Company." (See bottom of page 124.) With such wide powers conferred upon Mr. Bissell, according to the statement of Mr. Putnam, it would have been error for the judge to have charged the jury as requested in the twelfth assignment.

10

Eleventh Assignment of Error.

In this assignment, to be found on page 184, line 39, error is alleged because the judge refused to charge the jury "That authority of an agent or officer of a company to sign checks on the deposit of a company in a bank does not imply authority to dispose of the checks and drafts payable to the order of the company to that bank for cash over the counter."

The exception on which this assignment is based is found on page 175, line 12. The language of this request
20 is not clear and, for that reason, might have been rejected by the judge. There is nothing in the evidence that proves that Bissell, on any occasion, ever *signed* a saw company check in any other way than as secretary of the company, and such signature was always by way of *countersigning*. His signature was never the primary or original signature to any check of the saw company. Such checks were always *signed* by the treasurer, and then *countersigned* by Bissell. There is a distinction between "*signing*" and "*countersigning*." Inasmuch as
30 Bissell never, as agent or officer of the company, "*signed*" any checks at all (which is distinctly declared in the sixteenth assignment of error, page 186, line 6) the request was objectionable. If the word "*sign*," as used in the request, is to be understood as equivalent to "*endorse*," then the request was properly overruled, as the judge had charged what the counsel for the saw company had requested in that respect, as will be seen on the bottom of page 171 and the top of page 172.

Seventh Assignment of Error.

In this assignment, to be found on page 184, line 3 error is alleged because the judge refused to charge the jury "That the evidence established that said Bissell was not authorized by the company to draw cash on drafts or checks payable to the company."

The exception on which this assignment is based on page 173, line 10. Of course the judge could make no such charge if he were right in submitting to the jury the question of apparent authority, which has above 10 been considered.

Fourteenth Assignment of Error.

In this assignment, to be found on page 185, line 28, error is alleged because the judge refused to charge the jury "That the fact that all the checks on the bank, covering many years, were signed by the treasurer was notice to the bank that his signature was essential."

The exception on which this assignment is based is on page 176, last line. This request was objectionable because it excluded other elements appearing upon the 20 question of apparent authority.

Fifteenth Assignment of Error.

In this assignment, to be found on page 185, line 35, error is alleged because the judge refused to charge the jury "That the fact that all the checks on the bank for a long course of years bore the signature of two officers was evidence to warn the bank that a draft should not be paid on one signature."

The exception on which this assignment is based is on page 177, line 16. The judge commented on the fact that 30 two signatures were required by the by-laws upon any check drawn upon the deposit of the saw company in bank. (See judge's charge, page 167, line 10, and page 169, line 8, &c.) With these comments the judge left the matter, together with the other facts in the case, to the

jury to consider the question of apparent authority, which I submit was right.

Sixteenth Assignment of Error.

In this assignment, to be found on page 186, line 3, error is alleged because the judge refused to charge the jury "That the fact that no checks on account of the saw companies were ever signed by said Bissell was notice to the bank that he was not the proper officer to endorse and cash checks over the counter."

- 10 This assignment is founded on the exception on page 177, line 30. The question as to whether Bissell had the power to sign checks as well as to endorse them is not involved in this case. If it were, there is evidence sufficient to have allowed the matter to go to the jury. There is ample evidence, however, upon the question as to his power to endorse generally the name of the saw company and thus to make the commercial paper of the saw company transferrable by delivery. It is submitted that that fact is ignored in the request upon which the six-
20teenth assignment is based, and that the request was properly and necessarily overruled.

Besides, if the word "sign" is to be considered the equivalent of "countersign," the request was wrong, inasmuch as Bissell did, as a matter of general practice, countersign checks drawn on the saw company's funds in bank.

Third Assignment of Error.

- In this assignment, page 182, line 34, error is alleged because the court did not admit in evidence the bank's
30signature book. The exception will be found on page 106 of the larger printed case, and the colloquy between the saw company's counsel and the court concerning its admission on pages 25 and 26 of the smaller printed case. The colloquy will also be found on page 9 of Mr. Beasley's brief. I have nothing to add to what Mr.

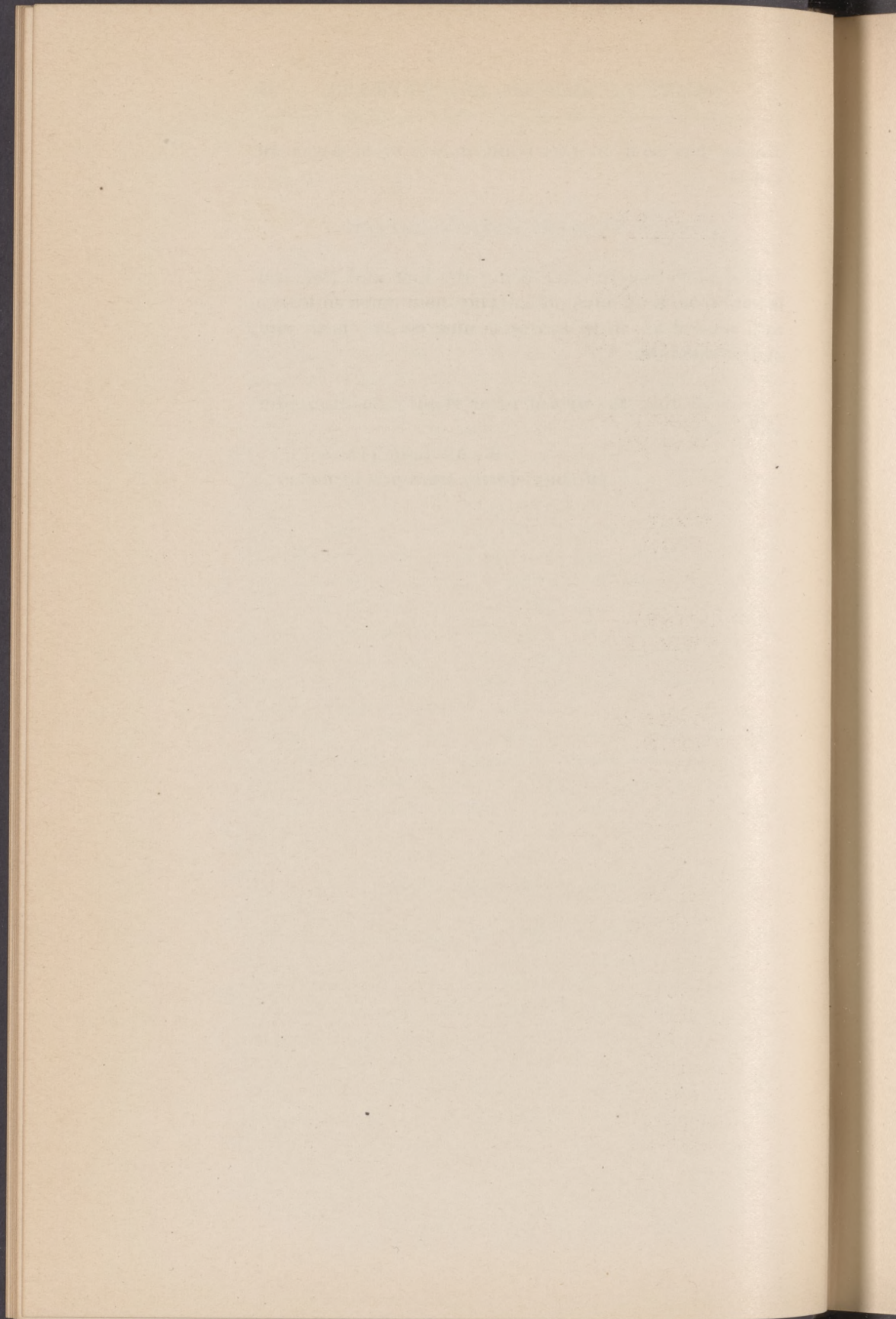
Beasley has said on this point in his brief, pages 10 and 11.

First and Seventeenth Assignments of Error.

These two assignments, being the first and last, and the only two that have not already been referred to, are both general in their character and do not need any specific mention.

I submit that the writ of error should be dismissed, with costs.

W. M. LANNING, 10
Of Counsel with Defendant in Error.



Court of Errors and Appeals.
New Jersey, Supreme Court

THE AMERICAN SAW COMPANY OF
NEW YORK,
Plaintiff in Error,
vs.
THE FIRST NATIONAL BANK OF
TRENTON,
Defendant in Error.

In Error.

THE AMERICAN SAW COMPANY OF
NEW JERSEY,
Plaintiff in Error,
vs.
THE FIRST NATIONAL BANK OF
TRENTON,
Defendant in Error.

In Error.

Brief of Chauncy H. Beasley, of Counsel
with Defendants in Error.

FACTS.

The American Saw Company of New York was organized in 1866.

The factory of the company was in Trenton. The company conducted its business, which was that of making saws, until 1893.

The American Saw Company of New Jersey seems at this latter date to have been formed and the business of the American Saw Company of New York conducted by it; in other words, the American Saw Company of New Jersey seems to have succeeded to the business of the New York company from January 1st, 1893, and thereafter carried it on.

The same people who had conducted the business of the New York company seem to have been employed by the New Jersey company.

A Mr. Putnam was the treasurer of both companies. Mr. Eccles was the bookkeeper of the old and new companies. One Isaac Bissell was the secretary and general manager of the old company and of the new.

The First National Bank of Trenton was the banking-house where the banking business of the Saw Company of New York was conducted. At first money was deposited in and drawn from the bank by checks which were endorsed by the treasurer, Mr. Putnam.

Shortly after the saw company of New Jersey was formed Mr. Putnam introduced Bissell to the cashier of the bank as the *general manager* and *financial agent*; that Putnam told the cashier of the bank, Mr. Whitehead (see printed book, page 105), that Bissell was the man who would take charge of the business of the Trenton office, as he was going away, and that as Putnam was about leaving the Trenton office he, Putnam, said that Bissell would take his, Putnam's, place in transacting the financial affairs of the company, in the same way that Mr. Putnam had previously done; that is, he would take his place in the management of the business and financial affairs of the company.

Bissell then took charge of the financial part of the business.

Whitehead says that Bissell was the only person that he saw in connection with the business of the company. He had charge of the bank-book, made deposits at the bank to the credit of the company, endorsed its commercial paper, drew drafts for collection of its accounts, and transacted, in fact, all the business that was done between the company and the bank.

That he would bring the commercial paper to the bank for discount for the benefit of the company; that he would endorse such paper for the company; that the proceeds of the notes so discounted would be placed to the credit of the company.

It appears that Bissell would receive and open the mail of the company.

It was part of his duty to take the checks and deposit them to the credit of the company.

Before the forgery (of which I am about to speak) took place Bissell was in the habit of endorsing upon commercial paper with a rubber stamp the name of the American Saw Company.

Upon this rubber stamp also were the words "for deposit."

A check being stamped in this manner would be countersigned by Bissell and placed to the credit of the saw company at the bank.

Another rubber stamp was also used by the company for various purposes, among them for receipting bills.

Upon this latter stamp were the words "American Saw Company," and it was about the same character of stamp as the other, with the exception that the words "for deposit" were omitted.

Bissell then began to forge the name of the American Saw Company.

He would take the rubber stamp with the name "American Saw Company," but with the words "for deposit" omitted, stamp the name of the American Saw Company upon the back of a check, countersign it with his own name as secretary and take it to the bank and they would cash it; in other words, instead of placing a purchaser's check to the credit of the American Saw Company he forged the name of the saw company and drew the money thereon.

This continued for a long while, and by a series of deceitful actions he was enabled to draw a large sum of money, and it was not until after this had been going on a long while that the fraud was discovered.

Suit is now brought upon a series of checks, all of which were made by purchasers of the saw company, endorsed by

Bissell with the name of the saw company, countersigned by himself as secretary, and paid by the bank to Bissell.

After these cases were at issue and had been moved the minutes of the court show that the defendant's counsel moved for a reference; that Mr. Justice Abbett, who was then presiding, ordered a reference, and that both parties then dissented.

The case was referred to G. D. W. Vroom. He found that Bissell was a forger and that the bank was liable to the saw company for the full amount claimed.

A motion was then made to strike out the report of the referee on the ground that the case not being one of account, that it should not have been referred; that the order of reference made by Mr. Justice Abbett was therefore illegal and should be stricken out.

These motions were denied by Mr. Justice Reed.

The case was then tried and a verdict rendered for the plaintiffs.

These verdicts were set aside, the opinion in the case being found in *34 Atlantic Reporter*, page 1.

FIRST EXCEPTION.

The decision of the Supreme Court, which decided that the order of reference in this case was illegal, is sustained by the authorities.

It was not within the authority conferred by the provision of sections 176-180 of the Practice Act.

That as the dissent of the parties appears upon the record, the order of reference was not within any authority conferred by the common law or the provisions of section 3 of the act for regulating references and determining controversies by arbitration.

It was urged at the trial that, as the defendant's counsel moved for a reference, and that there was only a formal dissent upon the record, it was too late to object to the report of the referee. But this is not good law.

The judge had no authority to refer this case; therefore, the consent of the parties would not give the court jurisdiction.

The mere fact of defendant's counsel asking for a reference, whether the dissent appeared upon the record or not, did not give the judge the power to refer this case.

Consent could not give the court jurisdiction.

A common law reference in a matter *in pais* arises only out of the consent of the parties.

The only power of the court at common law to refer cases was by the submission and consent of the parties.

In second Seldon's Practice we find that "References made after action brought and before the trial, or at the trial, may be made by a judge sitting at *nisi prius* by a rule of the court with the consent of the parties."

2d Tidd's Pr. 743.

Paulison v. Halsey, 9 Vroom 288.

The rule of reference shows that both parties entered their dissent; which was formerly entered in the minutes, which dissent was in pursuance of their common law right.

The reference in this case was made under the 177th section of the Practice Act.

About the middle of this section the statute distinctly declares that either party may, at the time the order is made, enter in the minutes of the court his dissent therefrom.

Therefore the defendants exercised their rights under the statute to enter their dissent.

The order of the court was illegal for the reason that it appears from the referee's report that matters of account were not in controversy.

The intent of the statute leaves no room for doubt.

Where matters of account, which involve a prolonged investigation of numerous books of account, the Legislature, in order to save the time of the court from this investigation, passed this law which provides that the Judge, with the consent of the parties, might refer matters of account to a referee.

Bouvier uses the following language: "An account is the statement of two merchants, or others who have dealt together, showing the debits and credits between them."

In the first place I ask the Court what matter of account is there in controversy in this case.

The referee's report shows that one Isaac F. Bissell, the secretary of the company, forged the name of the company to a certain check and received the money thereon; that he had no authority to endorse these checks and that the banking company paid them at their peril, and are now liable to the saw company, in whose favor the checks were drawn, for the amounts.

A schedule is annexed to the report showing the checks and the amounts due.

From an examination of the report of the referee I have been unable to find any account whatever.

The checks which the referee says were cashed by Bissell were produced before the referee and he reports that a certain sum is due thereon.

If this be a case for reference, then every suit upon a series of promissory notes could be referred to a referee.

The allegation is this: Bissell, the agent of the saw company, presents checks at the bank which are endorsed by him for the company.

The referee holds that Bissell had no authority to cash the checks, and that the bank is liable to the saw company who was the principal of Bissell, for such act

Is this a matter of account?

It is not for the referee sitting as a jury to determine the question of fact.

What accounts were to be investigated? What books were to be gone over? What mutual dealing had existed between these parties? None. It was clearly a question of fact which should have been decided by a jury.

To support this motion we cite the case of *Tunison v. Snover*, reported in 27 Vr., page 41.

The syllabus is as follows:

"In an action on the case for damages for breach of a warranty in a sale of peach trees, brought in the Circuit Court, an order of reference was made, and upon the referee's report that there was such a contract of warranty and that it had been broken, and determining the damages of plaintiff, judgment in his favor was entered. Upon error, held—(1) that the cause was not one in which matters of account were in controversy, and the order of reference was not within

the authority conferred by the provisions of sections 176-180 of the Practice Act; (2) that, as the consent of parties did not appear, the order of reference was not within any authority conferred by the common law or the provisions of section 3 of the 'Act for regulating references and determining controversies by arbitration' (*Rev.*, p. 34); and (3) that the judgment on the referee's report could not be sustained."

It will be seen from an examination of the opinion, that the Court holds that the case before the Court was not of the class mentioned or specified in the 176-180 sections of the Practice Act (*Rev.*, p. 875), and also holds that it was not within the province of the act entitled "An act for regulating references and determining controversies by arbitration," approved April 14th, 1876 (*Rev.*, p. 34).

In the case of *Tunison v. Snover* both parties dissented from the report of the referee.

It was therefore held that the order of reference was wholly without authority and the judgment entered on the report of the unauthorized referee is erroneous and must be reversed.

Our first point therefore is sustained by this opinion, and that is, that the order of reference was wholly without authority.

It may be that counsel at the time of the application for the order believed that the case was one for a reference, but it has been held that the authority to refer is limited to the class of causes specifically described.

In cases in which "matters of account are in controversy," the power to refer exists, whatever may be the issue on the record, and the test is the character of the claim.

See *Gopsill v. Hervey*, 5 Vr. 435.

Let us apply this test to the case now before us. What is the character of the claim?

It is a suit to recover certain moneys which were paid by the bank to an unauthorized agent of the plaintiff company.

If the Court, however, should hold that the order of reference was proper, yet the referee's report should be set aside.

In the case of *Tunison v. Snover*, *supra*, the judgment on the referee's report was set aside on the ground that the case

was not one in which matters of account were in controversy, and that the order was not within the authority conferred by the sections of the Practice Act.

The referee not only fails to disclose any matters of account, but adjudicates upon certain questions of fact.

I can see the difficult position in which Mr. Vroom was placed when this reference was made to him.

He knew that there were no matters of account in controversy, yet, having had the cause referred, it was his duty to examine into the question and ascertain the matters referred to him. Finding that there were no matters of account he reports the actual facts, which was proper.

He could not have done otherwise. He was bound to obey the judge's order. He has obeyed and now reports that *in his opinion* Bissell had no authority to endorse these notes and receive the money thereon, but that he had been guilty of forgery.

Therefore, we have this state of facts, that where there are no matters of account in controversy a cause can be referred to a lawyer, and he, upon the facts submitted to him, can give his opinion with regard to certain controverted facts produced before him in the evidence.

The Court can see the position in which we are placed in this case.

The report went to the jury, who were no doubt influenced to a great degree by the opinion of Mr. Vroom.

Should the defendant have been prejudiced by his report?

I submit that the referee has gone beyond the authority given him by the order of reference; that there could be nothing investigated by him excepting matters of account; that the idea of his declaring that he believes from the testimony that Bissell had no authority to endorse the notes and draw the moneys thereon, and that by so doing he was a forger, seems to me to be illegal.

I therefore submit that the order of reference and the report of the referee should have been set aside and vacated, and that the decision of the Supreme Court should be affirmed.

SECOND EXCEPTION.

The testimony relating to this exception is as follows:

"Mr. Corbin—I call Mr. Charles Whitehead; I want to ask him to produce the signature books; that book contains only the name of the American Saw Company with Samuel W. Putnam as treasurer. We want to show that. If that will be admitted, it will not be necessary to call him.

"Mr. Lanning—You want to show that the signature book contains this signature as I understand, American Saw Company, Samuel W. Putnam, treasurer.

"Mr. Corbin—That it contains the signature of the American Saw Company, Samuel W. Putnam, treasurer, written by Mr. Putnam, and contains no other signature for the American Saw Company.

"The Court—What relevancy has that in this case?

"Mr. Corbin—To show what signature they have a right to pay money on.

"The Court—Do you mean to say that the bank had the right to pay money on the signature of Mr. Putnam, and nobody else?

"Mr. Corbin—That was the essential signature.

"Mr. Lanning—You have offered a by-law that declares it is the treasurer and secretary.

"The Court—It does not seem to be material unless you take the position that it proves that they are authorized to pay on that signature only.

"Mr. Corbin—The purpose is to show that that signature is essential to pay. We make the offer. (Objected to.)

"The Court—I overrule it for the purpose for which you offer it.

"Mr. Corbin—We offer it for any purpose for which it may be material.

"The Court—No, I want to know what your offer is. It may be relevant, but I do not know what the purpose is.

"Mr. Corbin—We offer it for the purpose of showing that that was evidence to the bank, that that signature was necessary to the validity of a draft on the fund.

"The Court—If I admit it it would be on the theory that that was the only signature; that the saw company had

given them that signature and that they would be justified in paying on that signature alone; I understand you deny that that is so.

"Mr. Corbin—I offer it for the purpose I have stated?

"The Court—It does not seem to me as material; I overrule it.

"Mr. Corbin—Your Honor will grant me an exception?

"The Court—Certainly."

It will be seen that the offer is to prove the signature-book of the bank to show that the book contained the name of the American Saw Company, with Samuel W. Putnam as treasurer; that it was offered for the purpose of showing that that was evidence to the bank that that signature was necessary to the validity of the draft on the fund.

The Court said: "If I admit it, it would be on the theory that that was the only signature; that the Saw Company had given them that signature, and that they would be justified in paying on that signature alone."

What would the book have shown had it been admitted in evidence? Merely that the name of Samuel W. Putnam was signed therein. For what purpose was it placed in the signature-book? To enable the bank officers to ascertain whether a check which was presented was the genuine signature of Mr. Putnam.

Everybody knows what a signature-book is. It is perfectly apparent that it is used by the bank for only one purpose. It is utterly absurd for any one to argue that it would have shown anything more than the fact of the signature being therein. How would the fact that Putnam had signed his name in the book some years before the stealing by Bissell began affect the question of Bissell's authority to endorse checks? Would the fact of Mr. Putnam's name being in the book show to the bank that the signature was necessary to the validity of a draft on the fund? Why, as a matter of fact, the by-laws prescribe that the draft on the fund had no validity unless signed by the treasurer and countersigned by the secretary. The bank knew nothing about this fact. If the signature of Mr. Putnam had been known to the bank there would have been no necessity for having his name signed in the signature-book. It may be

that this is the reason why the bank did not ask to have Mr. Bissell write his name in the book, because the bank officers perhaps knew his signature.

I submit that the mere writing of the name in the signature-book could not have shown that the person so writing was the only person who had the authority, according to the rules and regulations of the company, to sign checks. It would tell the bank nothing except that the signature upon the check or draft was genuine. It was a safeguard to prevent a forgery, but the idea of saying that it was evidence to the bank that the signature was necessary to the draft on the fund, seems to me to be absurd.

It is an admitted fact in the case that the by-laws prescribe that the checks should be signed by the treasurer and countersigned by the secretary. It is an admitted fact that at the time when Putnam signed his name in the signature-book, that he was the financial officer of the company; but it is insisted that long afterwards, Mr. Putnam, being incapacitated to continue in charge of the financial affairs of the company, introduced Mr. Bissell to the bank as the financial agent. Therefore, suppose the testimony of the book had been admitted at the trial, what effect could it have had upon the minds of the jury?

I submit, therefore, that there was no error shown in the second exception.

Third exception. This is to the charge of the Court.

The Court uses the following language: "They say that in the transaction in January, 1893, of the endorsement of the twenty-one promissory notes by Bissell and the acceptance of that act by the Saw Company, was one such circumstance. There is no doubt, gentlemen, but the Saw Company did ratify that endorsement because they knew that Bissell had endorsed these notes. They remonstrated with him for having done it, and told him that he hadn't any business to do it, but they told the bank by their conduct that he did have business to do it, because they used the proceeds of the discount of the notes. They allowed that to be put to their credit, and they used the money raised on that general endorsement without ever notifying the bank that it was an improper act on the part of Bissell."

The testimony of Samuel W. Putnam, on page 54 of the printed book, is as follows :

On line 28—

“ Q. Now you say you endorsed them ? (meaning promissory notes.)

“ A. I endorsed them except in one case.

“ Q. What is that ?

“ A. Well, I came over and asked him (meaning Bissell) to bring me those notes to endorse. He says, ‘ Why, I carried them to the bank, and they are credited to our account.’ Said I, ‘ What do you mean ? That you endorsed them ?’ He said, ‘ Yes.’ I said, ‘ You have no authority to do that; never do that again.’

“ Q. Can you tell me when that was ?

“ A. I can’t; but it was within two or three years.”

On page 55 the question is asked—

“ Q. Anybody else present besides yourself and Mr. Bissell ?

“ A. The president was present.

“ Q. The president, Mr. Ely ?

“ A. Yes.

“ Q. He heard that, did he ?

“ A. He heard it.”

On line 21 we find :

“ Q. Did you tell any of the officers of the First National Bank of Trenton, the defendant in this case, that Mr. Bissell had no right to make that endorsement ?

“ A. No, I did not; I did not think it was necessary.”

On the bottom of page 29 the question is asked—

“ Q. The question is, if you can tell how many of those notes there were ?

“ A. Only by looking here.

“ Q. Well, if you can tell by that, please look and tell us ?

“ A. Twenty-one notes discounted by the bank.

“ Q. As I understand you, then, in the month of January, 1893, the American Saw Company had the First National Bank of Trenton discount for the benefit of the Saw Company twenty-one promissory notes, made payable to the order of the Saw Company, and each of them endorsed by Mr. Bissell; am I right ?

"A. I think so.

"Q. Now, will you give the amounts of those notes, so that they may go on the record?

"A. Do you want them in detail?

"Q. No; just the amounts.

"A. About \$5,600 altogether."

Was not the Court right when it told the jury that the bank, by its acts, ratified the endorsements; that they told the bank, by their conduct, that Bissell had the right to endorse checks and receive the money thereon?

It must be remembered that every check made payable to the "American Saw Company of New Jersey" was cashed by the bank after this ratification. What else could the bank have understood by the silence of the officials, after having allowed Bissell to endorse the name of the company upon the notes and have them discounted?

I submit, therefore, there was no error by the Court in this respect.

FOURTH EXCEPTION.

On this point the judge charged the jury, using the following language:

"It is hardly necessary for me to call your attention to all the different facts in the case which, the defendants claim, warranted them in treating this man Bissell as the general agent of this company, having power to deal with its funds as he did in this case. They claim that what has been called the 'Loomis resolution' authorized that. That resolution, as you will remember, from having heard it read a number of times, after reciting that Mr. Putnam, the treasurer of the company, was compelled to cease the active management of the company, provided that Bissell should take his place as manager of the business of the works, with full power in all matters in the absence of Mr. Putnam; and it is claimed that that meant that he should have full charge of the finances as well as of the business of the works when Mr. Putnam was absent.

"That resolution was passed in 1887, and you will remember that continuously after that time, whenever any

money of the American Saw Company was drawn out of their deposit in the bank, it continued to be drawn out exactly as it had been before that resolution was passed; that is, by the signature of Mr. Putnam, the treasurer, countersigned by some member of the executive committee or the secretary. So it will be for you to say whether, in view of that fact, this Loomis resolution could be considered to have gone as far as it is claimed to have done by the bank, in the matter of authorizing Bissell to deal with the finances of the company."

The Loomis resolution is found on page 49 of this book, and reads as follows: "Mr. Loomis offered the following resolution: 'Whereas, That inasmuch as circumstances prevent the continuous attendance at the works of the company of Mr. Samuel W. Putnam, vice-president, who has hitherto acted as manager, *Resolved*, That Isaac F. Bissell be appointed manager of the business of the works, with full power to act in all matters in the absence of Mr. Putnam,' which was duly carried."

The meeting was held February 8th, 1887.

It was claimed on the part of the bank that the jury had a right to take into consideration the language used in this resolution.

Mark how broad it is: "with full power to act in all matters in the absence of Mr. Putnam."

Can it not therefore be said that the Loomis resolution gave authority to Bissell to endorse checks and receive the money thereon for the company?

It is true that the by-laws for both companies prescribe that the checks shall be signed by the treasurer and countersigned by the secretary.

Putnam, beyond question, was the financial agent of the company. Circumstances prevented him from being at Trenton, and Bissell was appointed manager of the business, with full power to act in *all* matters in the absence of Mr. Putnam. The bank knew that Putnam was the treasurer and the general financial agent of the company. He had come to the bank, signed his name in the book, and was known to be the treasurer of the concern. Not only that, but he was the vice-president of the corporation, and seems

to have been the manager and general financial agent of the concern. Bissell takes his place.

But we go beyond this, for nowhere do we find in any by-law, resolution or anywhere else, that Mr. Putnam was given such a general power as Bissell was given by reason of the Loomis resolution. Bissell was to act for Putnam, who was vice-president, treasurer, director, general manager and general financial officer; added to that, Bissell was the secretary; added to that, the company had spread upon its minute-books a resolution that he should have full power to act in *all* matters in the absence of Mr. Putnam.

Now, the counsel for the plaintiff in error would have the Court decide that as a matter of law the judge should have directed that the Loomis resolution only meant that Bissell, in the absence of Putnam, should only have the power to sign checks. If Putnam was not here he could not sign the checks; therefore, Bissell would have to sign them for him. Putnam, having such extraordinary power, being virtually the corporation itself, had the power to endorse checks, can any one doubt that Bissell had the power, as the general financial officer of the concern, to endorse the name of the company upon the back of checks and receive the money thereon?

I therefore submit that the judge properly left it to the jury to say what effect the Loomis resolution had upon authorizing Bissell to deal with the finances of the company. Can the Court say, as a matter of law, that this is not one of the circumstances which the defendants claim warranted the jury in treating Bissell as the general agent of the company, having power to deal with the funds as he did in this case? Is the Loomis resolution to be passed by without comment? Have we not a right to argue that such resolution gave Mr. Bissell a general power much wider in scope than that conferred upon Mr. Putnam?

The contention on the part of the counsel for the plaintiff in error is that because after the passage of the Loomis resolution, whenever money was drawn out, it continued to be drawn out exactly as it had been before the resolution was passed, by the signature of Putnam, the treasurer, countersigned by some member of the executive committee or the

secretary; therefore it would not be for the jury to say whether the resolution could be considered, using the language of the Court, to "have gone as far as it was claimed to have done by the bank in the matter of authorizing Bissell to deal with the finances of the company."

It is true that for a long time after the passage of the Loomis resolution, checks were signed and countersigned as contended for by counsel; but the question is, even though that be so, whether the Loomis resolution did not mean that Bissell, when the time came, had the express power to go further than the treasurer had gone before, and, in his absence, endorse various kinds of commercial paper.

It will be remembered that there were two questions left to the jury. First, Did Bissell have express power by reason of the Loomis resolution to endorse the checks in suit? Second, Did he have apparent authority by reason of the acts of the officers of the corporation to subscribe his name to commercial paper and by such endorsement bind the company.

The question for the Court is, Was the charge on this point, taken as a whole, a legal one?

It has been held that if the Court charge the jury in a legal manner, applying the law legally to the facts, that ~~it~~ is not compelled afterwards to charge separately certain propositions suggested by counsel, provided he has covered the same ground in his charge. So the question here is, taking the whole charge together, where he has left it fairly to the jury to pass upon the facts in the case, and has charged them properly and legally with regard to the law, because he refuses to charge a few disjointed requests, this would not be error.

So here, with the exception which I have been discussing, to wit, the Loomis resolution, we submit that the charge of the judge was a proper one, and that it being proper, it is not the province of the Court to charge, separately, that which in substance he has already charged.

How can the plaintiff in error object? The Court (bottom of page 168), says: "It will be for you to say whether in view of that fact (which was that after the passage of the Loomis resolution, the money of the company

continued to be drawn out exactly as it was done before the passage of the resolution, that is by the signature of Mr. Putnam the treasurer and countersigned by some member of the executive committee, or the secretary), this Loomis resolution could have gone as far as it is claimed to have done by the bank in the authorizing Bissell to deal with the finances of the company."

Is not this true? Should not the jury take the Loomis resolution for what it is worth? Yet, after leaving the question of the express authority of Bissell to the jury, he is now criticised.

The sixth exception I pass by as being unworthy of attention.

The remaining exceptions are efforts on the part of the *Counsel to compel* *the* Court to rule upon abstract questions, which questions have been broadly charged by the Court; in other words, after the Court has charged the jury upon the whole case, the counsel now proceed to take up certain matters, and have him re-charge the jury upon the same subject and arrive at the same conclusion, but in different language.

Thus taking the ninth exception, which was "that the Loomis resolution, appointing Bissell manager, must be read in harmony with the by-laws, and must be interpreted in view of the fact that the treasurer continued to sign every check, and that this Loomis resolution gave Bissell no power to dispose of the checks and drafts of the company for cash paid to himself."

The judge has charged the jury with reference to the Loomis resolution, with reference to the by-laws, has told the jury that they must look at the whole case to see whether there was any express or implied authority, yet the counsel has an idea that they now can ask the Court to charge the jury in the language used by counsel.

So in the tenth exception, where the Court is asked to charge the jury that the bank cannot rely on the Loomis resolution as giving said Bissell power to cash the drafts and checks in question in the absence of proof that said Putnam ever did so, and in the absence of proof that the bank ever knew of the Loomis resolution.

The Court has left the question, as I have said before, of apparent and implied authority to the jury.

So the eleventh exception, with regard to the authority of an agent or officer of a company to sign checks on the deposit of a company not implying authority to dispose of the checks.

This was left also to the jury under the circumstances of the case.

So the twelfth, thirteenth, fourteenth and fifteenth exceptions are in the same strain, and that is, that the counsel, after the judge has charged the jury correctly in accordance with the rules of law, they now ask him to further charge the jury upon the same subject in disjointed language which they have composed.

To show that this is irregular and improper, I refer the Court to the case of the *Consolidated Traction Company v. Chenoweth*, 34 At. Rep. 817. There the Chief Justice, writing the opinion for the Court, says:

"But the complaint is that the judge refused to particularize as to what the plaintiff was bound to do under the admitted conditions of the case. As exceptions of this character are becoming quite common, it will not be time mispent to state, with some fullness, the circumstances of the case, in order to show the ground on which the instructions asked for were denied by the Court."

Further on in the opinion, the following language is used: "The result is that it rests entirely in the discretion of the judge to state the legal rule, as he did, succinctly but clearly, or to further elaborate it by applying it to any possible phases of the testimony."

These exceptions cannot be sustained.

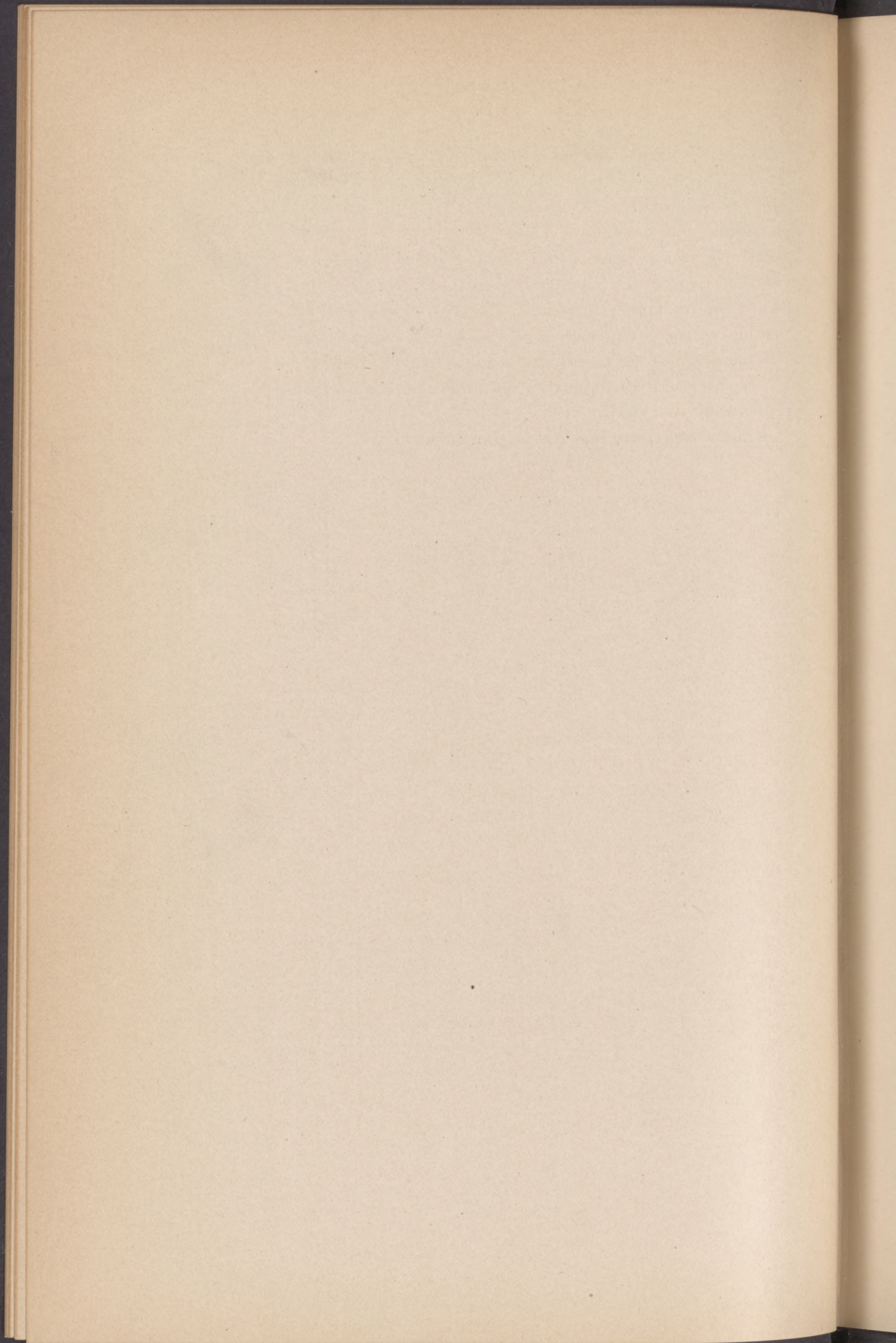
So in the case of *Fath el ux. v. Thompson*, 33 At. Rep. 391, it was held that "the court, in the trial of an issue, is not required to rule upon abstract questions, not dispositive of the rights of the parties. If the real issue be pointed out to the jury, the judgment will not be disturbed because of the judicial refusal to adopt some particular mode of presenting the issue, or to give conclusive effect to otherwise faultless legal formula applicable to a group of facts isolated from the rest of the cause."

All the last exceptions, to which I have referred, are general and merely require the Court to charge certain propositions which he has already charged.

I submit that there is no error.

The whole case was tried upon the theory that Bissell either had express or apparent authority to cash the checks and receive the money thereon. This the Court left, after pointing out the circumstances of the case, to the jury fairly and squarely. If the Court will read the charge carefully ~~it~~ will see that the plaintiff got all the benefit of the testimony produced on ^{the} ~~their~~ part.

I submit, therefore, that the verdict should stand.



NEW JERSEY
Court of Errors and Appeals.

THE AMERICAN SAW COM- PANY OF NEW YORK, Plaintiff in Error, v.	}	In Error.
THE FIRST NATIONAL BANK OF TRENTON, Defendant in Error		

THE AMERICAN SAW COM- PANY OF NEW JERSEY, Plaintiff in Error, v.	}	In Error.
THE FIRST NATIONAL BANK OF TRENTON, Defendant in Error.		

Additional Matters in Printed Record.

DECLARATION AND BILL OF PARTICULARS IN
NEW JERSEY SUIT.

New Jersey Supreme Court, as yet of the term of February, in the year of our Lord one thousand eight hundred and ninety-four.

Mercer County, ss.—The First National Bank of Tren.

ton, New Jersey, a body corporate, the defendant in this suit, was summoned to answer unto the American Saw Company, a corporation of the State of New Jersey, the plaintiff therein in an action upon contract; and thereupon the said plaintiff, by Collins & Corbin, its attorneys, complains for that whereas the said defendant, the First National Bank, on the first day of November, eighteen hundred and ninety-three, at Trenton aforesaid, in the county aforesaid, was indebted to the said plaintiff in the
10 sum of seventeen thousand dollars for money received by said defendant for the use of the said plaintiff; and in the like sum of money for interest due from the said defendant to the said plaintiff for the said plaintiff's having forborne moneys due from the said defendant to the said plaintiff, at the defendant's request, for a long time then elapsed, and being so indebted the said defendant afterwards, to wit, on the day and year last aforesaid, in the county aforesaid, in consideration of the premises, respec-
20 tively promised to pay the said several last mentioned moneys respectively to the said plaintiff on request; yet the defendant disregarded its promises, and hath not paid any of the said moneys, or any part thereof, to the plaintiff's damage seventeen thousand dollars, and thereupon it brings its suit, &c.

COLLINS & CORBIN,
Attorneys for Plaintiff.

The following is a bill of particulars of plaintiff's demand and a copy of the checks and drafts collected by
30 defendant on a forged and unauthorized endorsement of the name of plaintiff, the payment of the proceeds of which plaintiff demands as money received for its use:

"\$104.88. Wyeth Hardware & Manufacturing Co.
St. Joseph, Mo., Feb. 14, 1893.

Pay to the order of American Saw Co. One hundred
& four $\frac{88}{100}$ Dollars.

To Chatham National Bank, New York City.
No. 47825.

WYETH HARDWARE AND
MANUFACTURING CO.

H. H. Hutchings, Pres."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
E. First Nat'l Bank, N. Y., Feb. 25, 1893.
Paid.)

“Portland Lumber Company. No. 2236
To American Saw Co., Dr.

Address, Trenton, N. J.

This voucher is payable in current funds at the St. Mary's Bank, St. Mary's, Elk Co., Penna., when receipted 10
in accordance with the directions below printed in red ink.

1893.

Jan. 10th. Mdse. as per Bill rend. \$78.60

I certify that the above has been examined by me, found correct, and is hereby approved for payment, when countersigned by W. H. Hyde or J. K. P. Hall.

E. G. BECK,
Chief Bookkeeper.

Countersigned,

J. K. P. HALL.

Received, February 17th, 1893, of the Treasurer of the Portland Lumber Company, Seventy-eight $\frac{60}{100}$ in full of the above account.

\$78.60.

AMERICAN SAW CO.,

I. F. Bissell, Sec't'y.

Read this—The above receipt must be dated and signed by the party in whose favor this voucher is made out, or, when signed by another party, the authority of so doing must in all cases accompany it; and this re-30
ceipt must not be cut off from the body of the voucher.”

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

For collection for acc't of First National Bank, Philadelphia.

For collection and remittance First National Bank, Lock Haven, Pa., Moore Fredericks, Cashier.)

"Piedmont, W. Va., Feby. 28, 1893. No. 41.

The First National Bank of Piedmont.

Pay to the order of American Saw Co. \$24.20, Twenty-four $\frac{20}{100}$ Dollars.

BUFFALO LUMBER CO.,

Wm. Whitman, Treasurer."

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.

Credit account First National Bank, Trenton,

N. J., C. Whitehead, Cashier.

10 For collection for acc't of Keystone Bank, of
Pittsburgh, J. H. Hayes, Cashier.

For collection for acc't for First National
Bank, Philadelphia.

Credit First National Bank, Grafton, W. Va.,
L. Mallonee, Cashier.

For collection and credit of Exchange Bank,
of Mannington, W. Va., C. E. Jolliffe,
Cashier.)

"\$152.00. Wyeth Hardware & Manufacturing Co.

20 St. Joseph, Mo., Mar. 3, 1893.

Pay to the order of American Saw Co. One hundred &
fifty-two Dollars.

To Chatham National Bank, New York City.

No. 44025. WYETH HARDWARE AND

MANUFACTURING CO.

H. E. Hutchings."

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.

Credit account First National Bank, Trenton,

30 N. J., C. Whitehead, Cashier.

E. First Nat'l Bank, N. Y., March 9, 1893.
Paid.)

"\$54.72. Wyeth Hardware & Manufacturing Co.

St. Joseph, Mo., Mar. 7, 1893.

Pay to the order of American Saw Co. Fifty-four &
 $\frac{72}{100}$ Dollars.

To Chatham National Bank, New York City.

No. 44063. WYETH HARDWARE AND

MANUFACTURING CO.

H. E. Hutchings, Pres."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
E. First Nat'l Bank, N. Y., Mar. 13, 1893.
Paid.)

“Berlin, Somerset Co., Pa., Mch. 23, 1893. No. 16936.
S. Philson & Co., Bankers.

Pay to the order American Saw Co. \$98.25, Ninety-
eight & $\frac{25}{100}$ Dollars.

To Chase National Bank, New York. 10
S. PHILSON & CO.”

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
E. First Nat'l Bank, N. Y., Mar. 27, 1893.
Paid.)

“Chicago, Mar. 28th, 1893. No. 2234.

Tradesmen's National Bank of Philadelphia.

Pay to the order of the American Saw Co. \$316.80,
Three hundred & sixteen & $\frac{80}{100}$ Dollars. 20

A. T. GOETZ,
Treasurer.”

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
Received payment through the Clearing
House. 20.)

“Piedmont, W. Va., Mar. 28, 1893. No. 58.

The First National Bank of Piedmont.

Pay to the order of American Saw Co. \$25.60, Twenty-30
five $\frac{60}{100}$ Dollars.

BUFFALO LUMBER CO.,
Wm. Whitman, Treasurer.”

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

For collection and credit of Exchange Bank
of Mannington, W. Va., C. E. Jolliffe,
Cashier.

For collection and credit account of First
Nat'l Bank, Grafton, W. Va., L. Mallonee,
Cashier.

For collection for acc't of First National Bank,
Philadelphia.

10 For collection for acc't of Keystone Bank of
Pittsburgh, J. H. Hayes, Cashier.)

"\$138.24. Hibbard, Spencer, Bartlett & Co.,
Incorporated. March 29, 1893.
Chicago.

Pay to the order of American Saw Co. One hundred
thirty-eight & 24-100 Dollars.

To the National Bank of

North America, New York.

No. 113023.

W. G. CLARK,
Cashier."

20 (Endorsed—American Saw Co., I. F. Bissell, Sec'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
E. First Nat'l Bank N. Y., Apr. 1, 1893. Paid.)

"No. 101783. The First National Bank
of Bay City, Mich., Apr. 4, 1893.
National Bank of Commerce
in New York.

Original.

Pay to the order of Wm. Ward, Two hundred Dollars.

30 In Current funds.

\$200.00.

F. P. BROWNE, Cashier.

Countersigned, J. M. Lewis, A. Cashier."

(Endorsed—Pay to American Saw Co., Trenton, N.
J., Wm. Ward.

American Saw Co., I. F. Bissell, Sec'y.

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

E. First Nat'l Bank, N. Y., Apr. 10, 1893.
Paid.)

“Scott Hardware Co. No. 4109.
Paducah, Ky., Apr. 24, 1893. \$33.00.
Pay to the order of American Saw Co. Thirty-three &
 $\frac{00}{100}$ Dollars.
To American German National Bank,
Paducah, Ky.
SCOTT HARDWARE CO.,
By F. L. Scott, Treas.” 10
(Endorsed—American Saw Co., I. F. Bissell, Sec’y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
For collection acct. of First National Bank,
Philadelphia.
For collection for account 4th Nat'l Bank,
Louisville, Ky.. Charles Warren, Cashier.
American German Nat'l Bank. Paid May
5, 1893, Paducah, Ky.)

“Brunswick, Ga., Apl. 25, 1893. No. 1299. 20
The First National Bank, of Brunswick.
Pay to the order of American Saw Co. \$79.50, Seventy-
nine $\frac{50}{100}$ Dollars.

MALLETT BROS.”
(Endorsed—American Saw Co., I. F. Bissell, Sec’y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
For collection account of The Citizens Bank
of Savannah, Savannah, Ga., Geo. C. Free-
man, Cashier. 30
For collection for acc’t of First National Bank,
Philadelphia.
Merchants and Traders Bank, Brunswick, Ga.
Paid.)

“\$86.40. Hibbard, Spencer, Bartlett & Co.
Incorporated.
Chicago, Apr. 27, 1893.

Pay to the order of American Saw Co. Eighty-six &
 $\frac{40}{100}$ Dollars.

To the National Bank of

North America, New York.

E. G. CLARK,

No. 113643.

Casher."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,

N. J., C. Whitehead, Cashier.

10 E. First Nat'l Bank, N. Y., May 21, 1893.

Paid.

First Nat'l Bank, N. Y., May 2, 1893. Paid.)

"\$51.30. John Simmons Company.

New York, April 28, 1893.

Pay to the order of American Saw Co. Fifty-one $\frac{30}{100}$
 Dollars.

To The Peoples Bank, New York, N. Y.

JOHN SIMMONS COMPANY,

Chas. H. Simmons,

20 No. 4152.

Treasurer."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,

N. J., C. Whitehead, Cashier.

E. First Nat'l Bank, N. Y., May 21, 1893.

Paid.)

"No. 102307. The First National Bank

of Bay City, Mich. May 3, 1893.

The National Bank of Commerce in New York.

Original.

30 Pay to the order of Wm. Ward, Two hundred Dollars.

In current funds.

\$200.00

F. P. BROWNE,

Cashier."

(Endorsed—Pay to American Saw Co., Trenton,

N. J., Wm. Ward.

American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,

N. J., C. Whitehead, Cashier.

E. First Nat'l Bank, N. Y., May 6, 1893. Paid.)

"Chicago, May 8, 1893. No. 2336.

Trademen's National Bank of Philadelphia.

Pay to the order of American Saw Co. \$275.04, Two hundred and seventy-five & $\frac{4}{100}$ Dollars.

A. T. GOETZ,
Treasurer."

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier. 10
Received payment through the Clearing
House. 20.)

"The Elk County Bank, No. 3160.
of Ridgway, Pa., May 24, 1893.

Pay to the order of American Saw Co. \$100.00, One hundred and no-100 Dollars.

DELOS S. DOLLIVER."

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier. 20
Pay Elk County Bank, Ridgway, Pa., or order
for collection and credit to account of St.
Mary's Bank, of Hyde, Hall & Co., St.
Mary's, Pa.
For collection for acc't of First National Bank,
Philadelphia.
For collection and remittance to First National
Bank, Lock Haven, Pa., Moore Fredericks,
Cashier.)

"Eldred, Pa., May 25, 1893. No. 646. 30
The Eldred Bank.

Pay to the order of American Saw Co., \$202.95, Two hundred two & $\frac{95}{100}$ Dollars.

DUNBAR AND CHARLES."

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

For collection for acc't of First National Bank,
Philadelphia.

For collection and remittance, N. Holmes &
Sons, Pittsburgh, Pa.)

"The First National Bank, No. 59357.
of Seattle, Wash., May 26, 1893.

Original

Duplicate.

Unpaid. Pay to the order of J. E. Fox, \$500.00, Five
10 hundred Dollars.

To National Park Bank, New York.

L. TURNER, Cashier."

(Endorsed—J. E. Fox, per Peliter, endorsement
guaranteed.

American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

"\$186.24.

Simmons Hardware Co.

St. Louis, Jun. 3, 1893.

20 Original duplicate unpaid.

Pay to the order of American Saw Company, One
hundred & eighty-six $\frac{24}{100}$ Dollars.

Value received and charge account of

SIMMONS HARDWARE CO.,

To American Exchange

John E. Pilcher,

National Bank, New York. 2d Vice President."

No. 138295.

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,

30

N. J., C. Whitehead, Cashier.

E. First Nat'l Bank, N. Y., Jun. 7, 1893.

Paid.)

"Erie, Pa., June 14th, 1893.

Second National Bank.

Pay to the order of American Saw Co. Eighty-seven &
 $\frac{50}{100}$ Dollars.

No. 100. STEARNS MANUFACTURING CO.,

\$87.50

John T. Boyd, General Manager."

(Endorsed—Settlement acct. to 6, 1, 1893.

American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

Keystone Bank of Pittsburgh, J. H. Hayes,
Cashier.

For collection for acc't of First National Bank,
Philadelphia.

For collection and credit account of Jun. 30,
1893, Niagara Bank, of Buffalo, John A. 10
Kennedy, Cashier.)

"Brockwayville, Pa., June 15, 1893.

To the Brockwayville Bank. No. 1305.

Pay to the order of American Saw Company \$349.00,
Three hundred forty-nine and no-100 Dollars.

B. T. CHAPIN,
Cashier."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier. 20

For collection for acc't of First National Bank,
Philadelphia.

For collection for acc't of Burwensville Bank,
A. E. Patton, Cashier.

For collection and remittance to German
National Bank, Pittsburg, Pa., O. C. Burg-
dorf, Cash.)

"\$86.40.

Hibbard, Spencer, Bartlett & Co.
Incorporated. 30

Chicago, Jun. 22, 1893.

Pay to the order of Am. Saw Co. Eighty-six & $\frac{40}{100}$
Dollars.

To the National Bank of

North America, New York.

W. G. CLARK,

No. 114847.

Cashier."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
E. First Nat'l Bank, N. Y., Jun. 28, 1893.
Paid).

"Akron, Ohio, June 26, 1893. \$17.28.

The National Park Bank, of New York.

Pay to the order of the American Saw Co. Seventeen

$\frac{28}{100}$ Dollars.

10 Check No. B101.

To pay voucher No. M10. J. E. ALDEN, Treas."
Countersigned, W. H. Wright, Auditor.

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

Pay First Nat'l Bank, N. Y., or order for
credit of First Nat'l Bank, Philad'a.

First Nat'l Bank, N. Y., Aug. 1, 1893. Paid.)

"The Commercial National Bank, No. 6024.
of Seattle, Wash., July 5, 1893.

20

Pay to the order of American Saw Co. \$353.75, Three
hundred fifty-three $\frac{75}{100}$ Dollars.

To American Exchange Nat'l Bank, Chicago, Ill.

A. O. GARRICK, Cashier."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

Paid through Chicago Clearing House, July
15, 1893, to First National Bank.

30

For collection for acc't of First National Bank,
Philadelphia, July 13, 1893.)

"Akron, Ohio, July 13, 1893. \$516.21.

The National La Fayette Bank, of Cincinnati, Ohio.

Pay to the order of American Saw Co. Five hundred
sixteen and $\frac{21}{100}$ Dollars.

Check No. F29.

To pay voucher No. K109. J. E. ALDEN, Treas."

Countersigned, W. H. Wright, Auditor.

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

For collection for acc't of Keystone Bank, of
Pittsburgh, J. H. Hayes, Cashier.

For collection for acc't of First National Bank,
Philadelphia.

For collection for account of Central National
Bank, Cleveland, Ohio, J. J. Sullivan, 10
Cashier.

For collection and credit account of July 20,
1893, Niagara Bank of Buffalo, John A.
Kennedy, Cashier.

Market National Bank, Cincinnati, Ohio.
Paid Jul. 22, 1893. 36.)

“Chicago, July 17, 1893. No. 2540.

Tradesmen's National Bank of Philadelphia.

Pay to the order of American Saw Co. \$526.68,
Five hundred twenty-six & $\frac{68}{100}$ Dollars. 20

A. T. GOETZ,
Treasurer.”

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

Received payment through the Clearing
House. 20.)

“Wyeth Hardware & Manufacturing Co.

St. Joseph, Mo., July 18, 1893.

Pay to the order of American Saw Co. One hundred 30
and thirty and $\frac{72}{100}$ Dollars.

To Chatham National Bank, New York City.

WYETH HARDWARE AND
MANUFACTURING CO.,
W. M. Wyeth, Pres.”

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

E. First Nat'l Bank, N. Y., Jul. 31, 1893.
Paid.)

"The Whitman & Barnes Manufacturing Co.
Akron, Ohio, July 19, 1893. \$25.92.

The International Trust Co. of Boston, Mass.

Pay to the order of The American Saw Co. Twenty-five & $\frac{92}{100}$ Dollars.

Check No. A107.

C. E. SHELDON,

10 To pay Voucher N. F18. Gen'l Manager."

Countersigned, W. H. Wright, Auditor.

(Endorsed—American Saw Co., I. F. Bissell, Sec'y.

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

For collection for acc't of First National
Bank, Philadelphia.

Endorsement guaranteed. Pay only through
Clearing House to First National Bank,
Boston, C. H. Draper, Cashier.)

20 "The Whitman & Barnes Manufacturing Co.
Akron, Ohio, July 20, 1893. \$243.88.

The Metropolitan National Bank of Chicago, Ills.

Pay to the order of American Saw Co. Two hundred
forty-three & $\frac{88}{100}$ Dollars.

Check No. K234.

To pay voucher No. F138.

Countersigned, W. H. Wright, Auditor.

C. E. SHELDON,

Genl. Manager."

(Endorsed—American Saw Co., I. F. Bissell, Sec'y.

30 Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

For collection for acc't of First National Bank,
Philadelphia.

Pay through Chicago Clearing House only.
Paid Aug. 3, 1893, H., to First Nat'l Bank.)

"Crane Company, established 1855.

Incorporated 1865.

Chicago, July 27, 1893. No. 33227.

Continental National Bank.

Pay to the order of American Saw Co. \$339.21, Three hundred thirty-nine & $\frac{21}{100}$ Dollars.

A. T. GOETZ,
Treasurer."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton, 10

N. J., C. Whitehead, Cashier.

For collection for acc't First National Bank,
Philadelphia.

Paid through Chicago Clearing House only.

Paid Aug. 9, 1893, to First Nat'l Bank.)

"Office of Robinson Bros. & Co. No. 8496.

Wholesale Hardware.

Louisville, Ky., Aug. 8, 1893.

Pay to the order of American Saw Co. \$169.30, One hundred sixty-nine & $\frac{30}{100}$ Dollars. 20

To First National Bank, Louisville, Ky.

ROBINSON BROS. & CO."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,

N. J., C. Whitehead, Cashier.

For collection for account of The Franklin
Bank of Cincinnati, O., H. B. Olmstead,
Cashier.

For collection for acc't of First National Bank,
Philadelphia. 30

Paid through Louisville Clearing House Bank,
of Kentucky, Aug. 15, 1893. No. 1.)

"The Whitman and Barnes Mfg. Co.

Cincinnati, O., Aug. 14, 1893. No.....

The Fifth National Bank.

Pay to the order of American Saw Co. \$60.59, Sixty and $\frac{59}{100}$ Dollars.

Countersigned, W. H. Wright, Auditor.

J. E. ALDEN, Treasurer,"

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
For collection for acc't of First National Bank,
Philadelphia.
First National Bank, Cincinnati, O. Paid
Aug. 21, 1893. 1.)

"\$169.92. Hibbard, Spencer, Bartlett & Co.
Incorporated.

10 Chicago, Aug. 15, 1893.
Pay to the order of American Saw Co. One hundred
sixty-nine & $\frac{92}{100}$ Dollars.

To the National Bank of North America, New York.
No. 115826. E. G. CLARK,
Cashier."

(Endorsed—American Saw Co. I. F. Bissell, Sec'ty.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
E. First Nat'l Bank, N. Y., Aug. 19, 1893.
20 Paid.

"No. 4987. New York, Aug. 21st, 1893.
The Importers' & Traders' National Bank, of New York.
Through the New York Clearing House Association.
Pay to the American Saw Co., or order, One hundred
and fifty-eight & $\frac{75}{100}$ Dollars.
\$158.75. J. G. CURTIS."

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.
Credit account First National Bank, Trenton,
Trenton, N. J., C. Whitehead, Cashier.
30 First Nat'l Bank, N. Y., Aug. 25, 1893. Paid.)

"Chicago, Aug. 22, 1893. No. 2657.
Tradesmen's National Bank, of Philadelphia.
Pay to the order of American Saw Co. \$138.38, One
hundred thirty-eight & $\frac{38}{100}$ Dollars.
A. T. GOETZ,
Treasurer."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
Received payment through the Clearing
House. 20.)

“Manning, Maxwell & Moore.
Railway & Machinist's Tools & Supplies.
New York, Aug. 24, 1893. No. 5579.

Liberty National Bank,
Central Building Liberty street. 10

Pay to the order of American Saw Co. \$520.60, Five
hundred and twenty $\frac{60}{100}$ Dollars.

Payable through the New York Clearing House.

MANNING, MAXWELL & MOORE.”

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
Paid First National Bank, New York.)

No. 3047.

“The Metropolitan National Bank, of Chicago. 20

Chicago, Aug. 24, 1893. \$86.40.

Pay to the order of Hibbard, Spencer & Bartlett & Co.
Eighty-six $\frac{40}{100}$ Dollars.

To Central National Bank, Philadelphia, Pa.

Payable through Clearing House.

Countersigned, Wagner, Teller.

E. G. KIRTH, Prest.”

(Endorsed—Pay American Saw Co. or order. Hib-
bard, Spencer, Bartlett & Co., per E. G.
Clark, Cashier. 30

American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

Received payment through the Clearing
House. 20.)

"No. 104833. The First National Bank,
of Bay City, Mich., Sept. 14, 1893.

The National Bank of Commerce, in New York.

Original.

Pay to the order of Wm. Ward, Three hundred
dollars in current funds.

\$300.00. J. M. LEWIS, Ass't Cashier."

Countersigned, J. F. Asman, Teller.

(Endorsed—Pay to American Saw Co., Trenton,
10 N. J., Wm. Ward.
American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
E. First Nat'l Bank, N. Y., Sept. 19, 1893.
Paid.)

"Simmons Hardware Co., \$36.00.
St. Louis.

Original.

Sept. 21, 1893.

Duplicate unpaid.

20 Pay to the order of American Saw Co. Thirty-six
Dollars.

Value received and charge account of

SIMMONS HARDWARE CO.,
A. E. Harm, Treas."

To American Exchange National Bank, New York.

No. 142206.

Payable through the New York Clearing House.

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,
30 N. J., C. Whitehead, Cashier.
E. First Nat'l Bank, N. Y., Sept. 26, 1893.
Paid.)

"Office of Prouty & Miller. No. 5235.

Newport, Vt., Sep. 22, 1893.

National Bank of Newport.

Pay to the order of the American Saw Co. \$125.40, One
hundred and twenty-five & $\frac{40}{100}$ Dollars.

PROUTY & MILLER."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

Endorsement guaranteed for collection on
acc't of First Nat'l Bank, of Boston, C. H.
Draper, Cashier.

Pay First Nat'l Bank, Boston, Mass., or order
for collection for acc't of First Nat'l Bank,
N. Y., E. Scofield, Cashier.

Pay to the order of any National Bank for¹⁰
collection for account of, Sept. 29, 1893,
Howard National Bank, Burlington, Ver-
mont, F. M. Burgess, Cashier.

For deposit in National Bank, of Newport, Vt.,
to the credit of Orleans Trust Company, P.
J. Farrell, Treasurer).

"Piedmont, W. Va., Sept. 29, 1893. No. 53.

The First National Bank, of Piedmont.

Pay to the order of American Saw Co. \$10.65, Ten $\frac{65}{100}$
Dollars. 20

BUFFALO LUMBER CO.,

Wm. Whitman,
Treasurer."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y,

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

For collection for acc't of First National Bank,
Philadelphia.

Pay N. B. McCauldlish, Cashier, or order for
account of First National Bank, of Parkers-30
burg, W. Va., M. M. Moss, Cashier.

Credit account Buckhannon Bank, Buck-
hannon, W. Va., A. I. Boreman, Jr., Cashier.
Davis National Bank, Piedmont, W. Va.)

"No. 59525.

Philadelphia, Oct. 7th, 1893.

Continental National Bank, of New York.

Pay to the order of Amer. Saw Co. Two hundred &
one $\frac{41}{100}$ Dollars.

\$201.41.

Payable only through The Clearing House Exchanges.
 Charge, The First National Bank, Philadelphia,
 MARTIN MILLIARD, JR.,
 Cashier."

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.
 Credit account First National Bank, Trenton,
 N. J., C. Whitehead, Cashier.
 E. First Nat'l Bank, N. Y., Oct. 11, 1893.
 Paid.)

10

"The Elk County Bank. No. 62587.
 Ridgway, Pa., Oct. 9, 1893.

Pay to the order of American Saw Company \$157.55,
 One hundred fifty-seven $\frac{55}{100}$ Dollars.
 To the Chase National Bank, New York City.

M. S. CLINE."

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.
 Credit account First National Bank, Trenton,
 N. J., C. Whitehead, Cashier.
 E. First Nat'l Bank, N. Y., Oct. 11, 1893.
 Paid).

20

"Corning, N. Y., Oct. 11th, 1893. No. 1765.
 First National Bank, Corning, N. Y.

Pay to order of American Saw Co. \$36.00, Thirty-six
 Dollars.

DRAKE, CUMMINGS & CO."

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.
 Credit account First National Bank, Trenton,
 N. J., C. Whitehead, Cashier.

30

Pay First Nat'l Bank, Corning, N. Y., or order
 for collection, for acct. of First Nat'l Bank,
 N. Y., E. Scofield, Cashier.)

"Delos S. Dolliver,
 Manufacturer of Hardwood and Hemlock Lumber,
 Glen Hazel, Pa. No. 2049.
 Brockwayville, Pa., Oct. 12, 1893.

Pay to the order of American Saw Co. \$91.90, Ninety-one and $\frac{90}{100}$ Dollars.

To the Brockwayville Bank, Brockwayville, Pa.

Brockwayville Bank, Paid Oct. 20, 1893, Brockwayville, Pa.

DELOS S. DOLLIVER."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,

N. J., C. Whitehead, Cashier.

For collection for acc't of First National Bank, 10 Philadelphia.

For collection and remittance, N. Holmes & Sons, Pittsburgh, Pa.)

"\$72.00. Hibbard, Speneer, Bartlett & Co.
Incorporated.

Chicago, Oct. 20, 1893.

Pay to the order of American Saw Co. Seventy-two & 00 Dollars.

No. 117089.

To the National Bank of North America, New York. 20

Payable through New York Clearing House.

E. G. CLARK, Cashier."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,

N. J., C. Whitehead, Cashier.

E. First Nat'l Bank, N. Y., Oct. 25, 1893.

Paid).

"Crane Company

Established 1855. Incorporated 1865.

Chicago, Oct. 20, 1893. No. 2829. 30

Trademen's National Bank of Philadelphia.

Pay to the order of American Saw Co. \$100.80, One hundred & $\frac{80}{100}$ Dollars.

A. T. GOETZ,
Treasurer."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,

N. J., C. Whitehead, Cashier.

Received payment through the Clearing House. 20.)

"Piedmont, W. Va., Oct. 30, 1893. No. 70.

The First National Bank of Piedmont.

Pay to the order of American Saw Co. \$15.00, Fifteen Dollars.

BUFFALO LUMBER CO.,

Wm. Whitmen,
Treasurer."

- 10 (Endorsed—American Saw Co., I. F. Bissell, Sec'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead Cashier.
For collection for acc't of First National Bank,
Philadelphia.
Credit account Buckhannon Bank, Buckhan-
non, W. Va., A. I. Boreman, Jr., Cashier.
For collection for the Second National Bank,
of Parkersburg, W. Va., W. H. Wolf,
Cashier.)

20

COLLINS & CORBIN,
Plf's Att'ys.

SPECIFICATIONS OF DEFENSES IN TWO SUITS.

SPECIFICATION OF DEFENSES (SUIT BY NEW YORK COMPANY).

To Collins & Corbin, attorneys of the plaintiff in the above stated cause:

The defendant does hereby furnish a specification of defenses intended to be made under its plea of the general issue in the case above stated.

- 30 First. That the defendant was not indebted to the plaintiff for moneys received by the defendant for the use of the plaintiff, as is alleged in the plaintiff's declaration.
Second. That the moneys in the plaintiff's declar-

ation named were not due from the defendant to the plaintiff for interest, as alleged in the plaintiff's declaration.

Third. That the defendant never promised to pay said moneys in the plaintiff's declaration set forth, or any of them, to the plaintiff, as alleged in the said declaration.

Fourth. That the endorsements upon the checks and drafts in the plaintiff's bill of particulars set forth were not forged.

Fifth. That the said endorsements were not unauthorized. 10

Sixth. That the proceeds of said checks and drafts were paid to the said plaintiff.

Seventh. That the proceeds were paid to the agent of the said plaintiff.

Eighth. That such payments were made to the plaintiff's agent because of his actual authority to receive the same.

Ninth. That the said agent had apparent authority to receive the same.

Tenth.—That by the plaintiff's course of dealing with 20 the defendant and others, the agent and officer of the company, to whom the proceeds of the said drafts and checks were paid, were clothed with apparent, if not actual, authority to receive said moneys.

Eleventh. That by the negligent action of the plaintiff, through its officers, the defendant was induced to pay said moneys to the plaintiff's secretary.

Twelfth. That by the acts of the said plaintiff in its dealings with the said defendant, and with others, it is estopped from denying the right of the said agent to receive the proceeds of the said checks and drafts. 30

Dated, Trenton, N. J., May 1st, 1894.

W. D. HOLT,
Attorney of Defendant.

SPECIFICATION OF DEFENSES (SUIT BY NEW JERSEY
COMPANY.)

To Collins & Corbin, attorneys of the plaintiff in the above stated cause:

The defendant does hereby furnish a specification of

defenses intended to be made under its plea of the general issue in the case above stated.

First. That the defendant was not indebted to the plaintiff for money received by the defendant for the use of the plaintiff, as alleged in the plaintiff's declaration.

Second. That the moneys in the plaintiff's declaration named were not due from the defendant to the plaintiff for interest, as alleged in the plaintiff's declaration.

Third. That the defendant never promised to pay said 10 moneys in the plaintiff's declaration set forth, or any of them, to the plaintiff, as alleged in the said declaration.

Fourth. That the endorsements upon the checks and drafts in the plaintiff's bill of particulars set out were not forged.

Fifth. That the said endorsements were not unauthorized.

Sixth. That the proceeds of such checks and drafts were paid to the said plaintiff.

Seventh. That the proceeds were paid to the agent of 20 the said plaintiff.

Eighth. That such payments were made to the plaintiff's agent because of his actual authority to receive the same.

Ninth. That the said agent had apparent authority to receive the same.

Tenth. That by the plaintiff's course of dealing with the defendant and others, the agent and officer of the company, to whom the proceeds of the said drafts and checks were paid, was clothed with apparent, if not actual, 30 authority to receive said moneys.

Eleventh. That by the negligent action of the plaintiff, through its officers, the defendant was induced to pay said moneys to the plaintiff's secretary.

Twelfth. That by the acts of the said plaintiff in its dealings with the said defendant, and with others, it is estopped from denying the right of the said agent to receive the proceeds of the said checks and drafts.

Dated, Trenton, N. J., May 1st, 1894.

W. D. HOLT,
Attorney of Defendant.

COLLOQUY ON OFFER OF SIGNATURE BOOK
TO BE INSERTED IN RECORD, PAGE 106.

Mr. Corbin—I call Mr. Charles Whitehead; I want to ask him to produce the signature books; that book contains only the name of the American Saw Company with Samuel W. Putnam as treasurer. We want to show that. If that will be admitted, it will not be necessary to call him.

Mr. Lanning—You want to show that the signature book contains this signature, as I understand, American 10 Saw Company, Samuel W. Putnam, Treasurer.

Mr. Corbin—That it contains the signature of the American Saw Company, Samuel W. Putnam, Treasurer, written by Mr. Putnam, and contains no other signature for the American Saw Company.

The Court—What relevancy has that in this case?

Mr. Corbin—To show what signature they have a right to pay money on.

The Court—Do you mean to say that the bank had the right to pay money on the signature of Mr. Putnam and 20 nobody else?

Mr. Corbin—That was the essential signature.

Mr. Lanning—You have offered a by-law that declares it is the treasurer and secretary.

The Court—It does not seem to be material, unless you take the position that it proves that they are authorized to pay on that signature only.

Mr. Corbin—The purpose is to show that that signature is essential to pay. We make the offer.

[Objected to.]

30

The Court—I overrule it for the purpose for which you offer it.

Mr. Corbin—We offer it for any purpose for which it may be material.

The Court—No; I want to know what your offer is. It may be relevant, but I do not know what the purpose is.

Mr. Corbin—We offer it for the purpose of showing that that was evidence to the bank that that signature
10 was necessary to the validity of a draft on the fund.

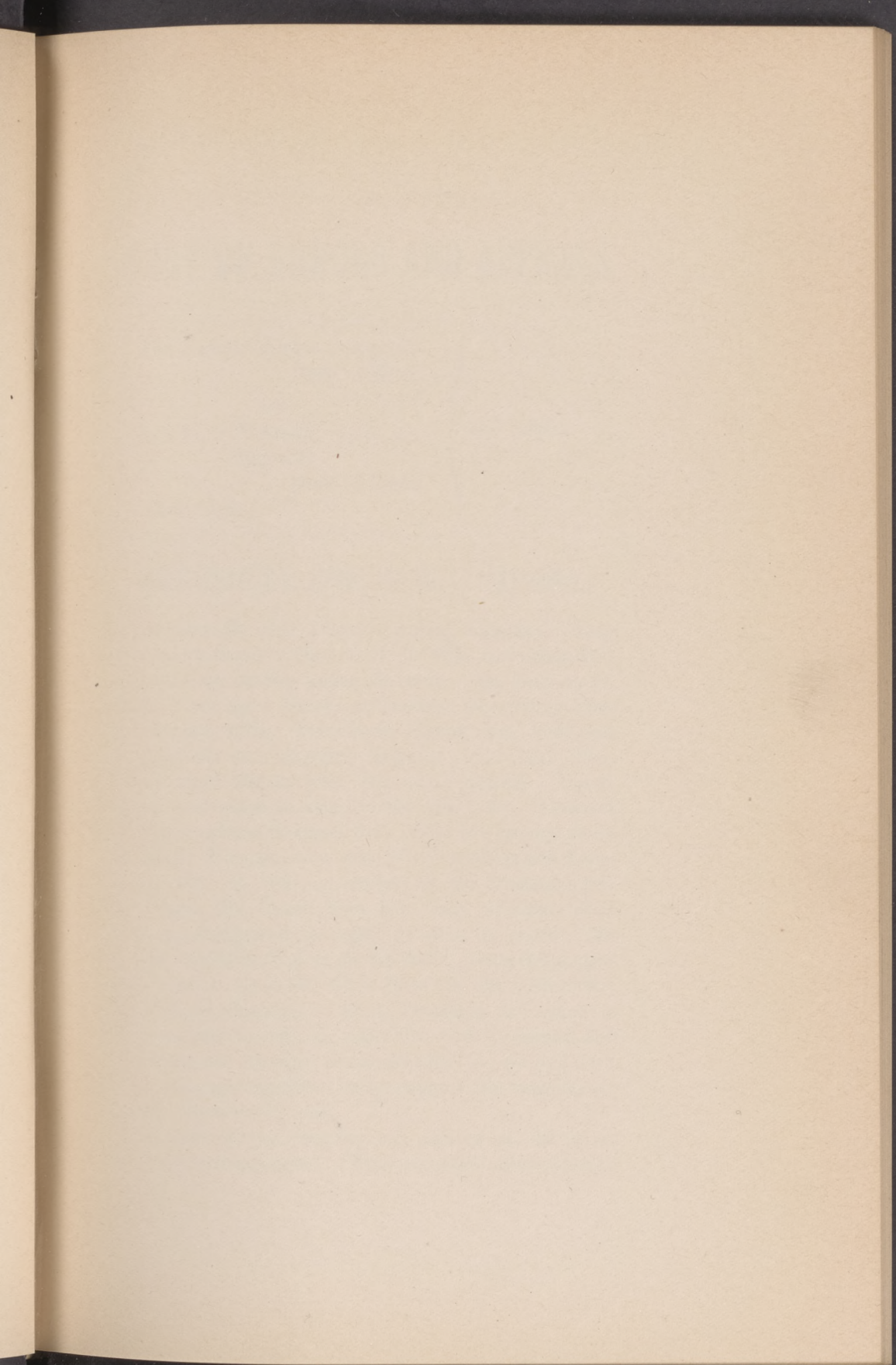
The Court—If I admit it it would be on the theory that that was the only signature; that the saw company had given them that signature, and that they would be justified in paying on that signature alone; I understand you deny that that is so.

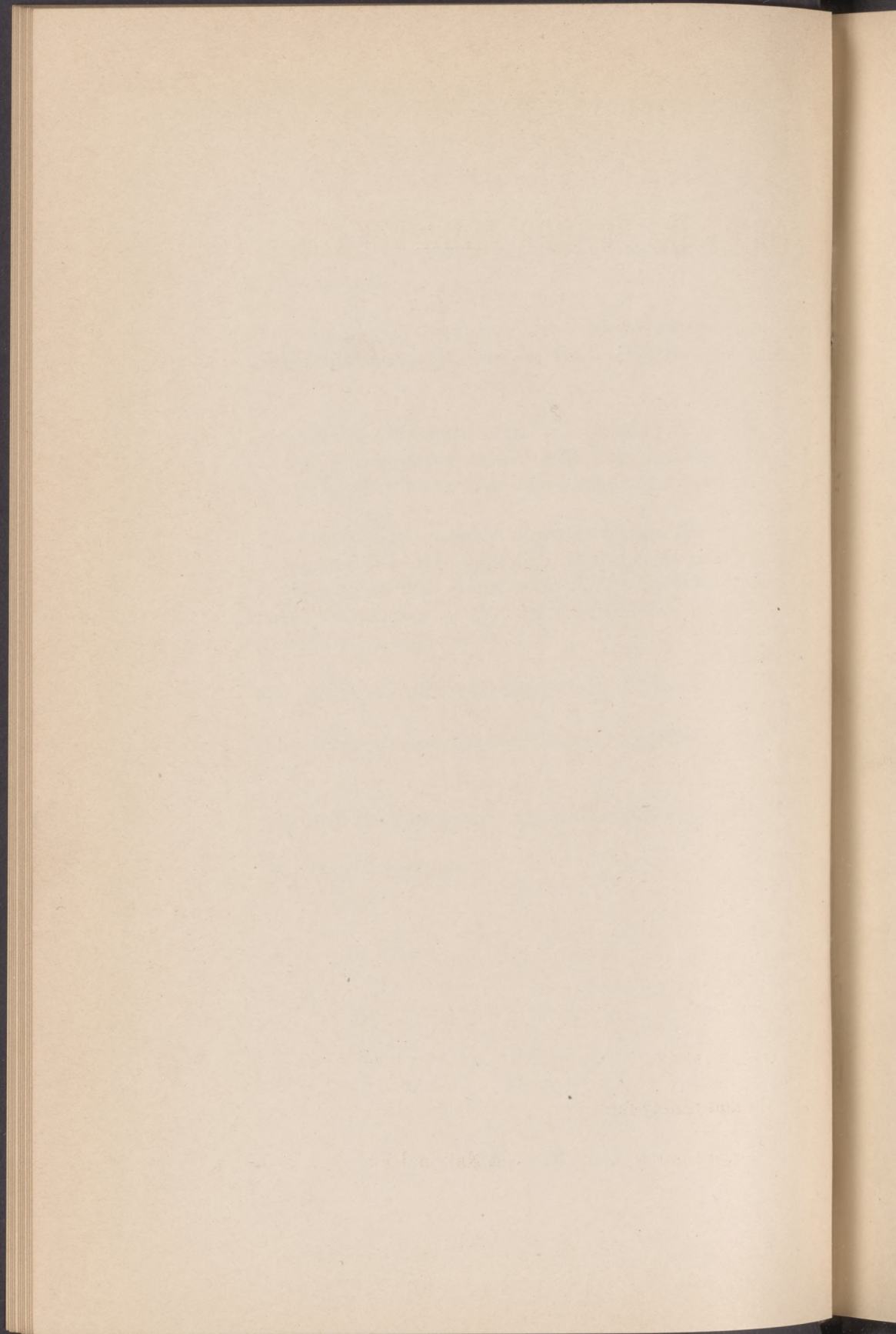
Mr. Corbin—I offer it for the purpose I have stated.

The Court—It does not seem to me as material; I overrule it.

Mr. Corbin—Your Honor will grant me an exception?

20 The Court—Certainly.





COURT OF ERRORS AND APPEALS.

THE AMERICAN SAW COMPANY,
Plffs. in Error,

vs.

THE FIRST NATIONAL BANK OF
TRENTON,
Deft. in Error.

(Two cases.)

ON ERROR.

ARGUMENT FOR SAW COMPANY.

The plaintiffs were a manufacturing company. They were incorporated in New York in 1866, and changed to a New Jersey charter under the same name, January 31, 1893. They had a factory at Trenton, where they made saws for saw mills. Their bank account was kept with defendant for over 25 years (Case, p. 108, l. 10). They had the usual officers with the usual powers. The directors met once in two months (34, l. 20). Down to 1887 the works at Trenton were under the general direction of Mr. Putnam, who was Vice-President and Treasurer (p. 39). In 1887, on account of Mr. Putnam's failing health, Mr. Bissell, who had been Secretary since 1883, was designated manager by what is called "the Loomis resolution," with certain duties, hereafter considered (Case, p. 49, l. 18; 47, l. 30 to 40; 93, l. 12 to 30). Mr. Putnam continued to act as Treasurer, and came to Trenton once a week to supervise books, accounts and collections, and to sign all checks (46, l. 6; 48, l. 3; 61, l. 18). A superintendent had charge of the manufacturing department (47, l. 20).

The trade of the company was carried on almost entirely by correspondence. They received orders by mail

for saws and delivered them by express or freight to all parts of the country, from Maine to the State of Washington (32, l. 1 to 25). They sent out bills and statements monthly and received checks and drafts by mail (32, l. 25 to 40). Bissell, as Secretary, conducted the correspondence and opened letters and received the checks sent in by the customers of the company and gave them to Mr. Eccles, the bookkeeper, to credit to the customer's account and to deposit (33; 94, l. 26 to 30). The disposition of these checks is the important point in these two suits.

The duties and powers of the officers of the company with reference to these checks are clearly set forth in the by-laws. Those of the New York Company were passed in 1880, and those of the New Jersey Company in 1893. (Case, p. 203, Sec. 5; 207, V.) In the by-laws of both companies the policy of the company was established that every check and draft payable to the company should be deposited in bank to the credit of the company, and should be indorsed for deposit only. The defendant was their Bank from the beginning. No officer of the company, not even the treasurer, nor the president nor both combined, had any authority to indorse checks generally for payment over the bank's counter or to cash them. The money must first pass to the company's credit on the books of the bank. It could then be drawn out only by checks of the Saw Company, upon the Saw Company's own bank, the defendant, which checks must bear the signature of two officers, namely, must be signed by the treasurer and countersigned by the secretary or by a member of the executive committee. Under these regulations the funds of the company could not be diverted without the concurrence of two officers of the company, namely, the treasurer and secretary. The regulations thus established were invariably observed down to the time of the defalcations of Bissell, which gave rise to this suit (Case, p. 116, l. 1 to 17; 117, l. 22 to 33; 127, l. 1 to 17; 127, l. 35; 128, l. 1; 85, l. 4 to 10). These defalcations began March 2, 1891, when the paying teller of the bank, with-

out the knowledge of the cashier, permitted Bissell on his sole indorsement as secretary, to cash checks drawn to the order of the company by some of its customers over the counter of the bank. These checks were cashed and the money of the company thus paid to Bissell at irregular intervals, several checks each month being taken out of many hundreds of checks received; and these irregular transactions went on until October, 1893, when they were discovered and Bissell absconded. It was then found that every time that the paying teller had thus paid a check drawn to the order of the company over the counter on Bissell's sole indorsement, Bissell had embezzled the money thus placed in his hands. (Case, p. 77, l. 10 to 40; 83, l. 10 to 40). Bissell was shrewd enough to take only checks from customers of good credit, who would naturally be indulged, and he suppressed the statements made out against these customers, and was ready to give plausible explanations for accounts in arrear (Case, p. 91, l. 22 to 40). The number of accounts involved was only about twenty out of a total number on the books of over twenty-two hundred (84, l. 1 to 10). In time the arrearage of one of these accounts aroused suspicion and led to detection.

No explanation is made by the paying teller how he came to cash these checks, and there is convincing evidence that he had notice of and connived at the improper use of the money of the company by Bissell for his private purposes. It was the custom of the Treasurer when in Trenton to sign the next weekly pay-roll check, dating it ahead to the pay-day. On a number of occasions the paying teller secretly advanced money to Bissell on this check before it came due and afterwards received back Bissell's personal check to make good the pay-roll money (p. 141, l. 11 to 40; p. 142; p. 143; p. 144; p. 145, l. 23 to 40; p. 146; p. 147; p. 148; p. 149; p. 156 to 158). The teller does not explain these advances, but takes refuge in a failure of memory. (Case, p. 165, l. 1 to 12).

The invariable practice of the company from 1880 down to 1891, to deposit every customer's check and to

draw from the bank only on two signatures, emphasized the legal obligation already resting upon the bank to assure itself of the authority of the indorser to receive the money before paying a check over the counter. The fact that the secretary of the company, whose office did not import authority to receive the company's money, was collecting checks, on their face the property of his employer, was highly suspicious in itself, and should have led the bank to instant inquiry. Every check drawn by the company against its deposit in the bank bore the signature of the treasurer as well as the countersign of the secretary. The bookkeeper of the company, Mr. Eccles, was making deposits of checks in the familiar and authorized manner, and was weekly drawing the cash for the pay-roll on a check, carefully signed in due time by the painstaking old treasurer in New York, and countersigned by the secretary (61, l. 18 to 32); yet no hint was given by the Bank to Mr. Eccles that his superior in the office of the factory had found a mode, with the aid of the Bank, of turning all this caution and formality into a mockery and a farce.

It was shown by plaintiffs that the checks and drafts in question were collected by the Bank and were not credited to the account of plaintiffs. This established the case of plaintiffs and it became incumbent on defendants to account for the money received by them. In defense they showed that they had bought them for cash paid over the counter on a general indorsement of the name of the Company by Isaac F. Bissell, Secretary, and they claimed that they had the right to rely on his indorsement for the purpose of such payments, and did rely on it. Did they present evidence enough to go to the jury to establish this defense? We contend that they did not, but the Court ruled to the contrary.

The questions in the case arise under the law of agency.

I.

Officers of a Corporation are Special Agents.

The stockholders take all the powers granted by statute to a manufacturing corporation, and they can delegate as little as they please to their officers and reserve the rest. What they do not confer they retain and need never exercise. Spelling on Corps., Secs. 175 to 177.

A fallacy in the discussion of this subject by our adversary is that every corporation must have one or more officers empowered to make general indorsements. But no such power is necessary to carry on the business of a corporation. In *Peruvian Rys. Co. L. R. 2, Chan. Ap. 617, 623*, it was held that a corporation incorporated under a general act, did not necessarily have power to issue bills of exchange or indorse notes at all, but might either take or omit to take the power by its articles of association. This is in harmony with the N. J. Corporation Act which provides (Sec. 11), that "The certificate may contain any limitation upon the powers of the corporation, the directors and the stockholders, that the parties signing the same desire."

The power to make by-laws is given in New Jersey "to appoint such subordinate officers and agents as the business of the company may require," and for "the management of its property, the regulation and government of its affairs" (Corp. Act, Sec. I, V and VI.) The New York Act which was offered in evidence is similar. (Case p. 24, l. 30.) The by-laws must determine what powers of the company the stockholders have seen fit to delegate. The statute also requires that the business shall be managed by directors and the company shall have a secretary whose statutory duty is merely to record the votes of the company and directors, and a treasurer whose duties are not defined by statute, but are left to be fixed in the by-laws. In New Jersey the restricted power of officers as special agents is firmly held. In

Titus v. Cairo & Fulton R. R., 3 Vr. 98, 102, it was held that the president could not authorize a director to sell bonds; such authority must come from the directors. In *Fifth Ward Savings Bank v. First National*, 18 Vr., 357, one man was secretary and treasurer and also general agent of the Savings Bank in its ordinary business, and obtained a loan on city bonds held by the Savings Bank, and it was held that he had not by virtue of his offices authority to do so, but authority must be shown. Affirmed on error, 19 Vr., 513, where Depue, J. said that the corporation itself had power to indorse negotiable paper, yet the officers were special agents, and the secretary and treasurer could not by virtue of his offices bind the bank or transfer its notes by his indorsement.

There are no officers of an ordinary business corporation whose offices import a general agency except the Board of Directors. All who deal with such corporations must take notice of this just as if dealing with the agent of an individual. Power to indorse for deposit in bank to the credit of the company may be easily inferred, but power to dispose of the company's negotiable paper requires decisive evidence. Even the treasurer is held under statutes like those in question to have no authority from his office to bind the company by his signature or indorsement without special authority from the by-laws or directors.

Chem. Bank v. Wagner, 93 Ky. 925.

Davis Sewing Mach. Co. v. Best., 105 N. Y. 59, 65.

Atkinson v. St. Croix Manfg. Co., 24 Me. 171.

The view of the Court was that while not a single one of the separate powers conferred upon Mr. Bissell either included or implied the power to cash the checks, yet the jury might infer the latter power from the former taken altogether. In other words, that if I authorize my agent to do one or two special things for me the Court will not imply any further power, but if I authorize him to do five or six special things for me the Court

may imply a new and broader power which I never gave him at all, but which on the contrary I took care to reserve by express written provision. That we have not misrepresented the charge in this regard, see Case p. 172, l. 25 to 40; p. 173, l. 1 and 2. The Court thus overlooks the settled doctrine that the officers of a corporation are special and not general agents. The Bank itself was one of the special agents of the plaintiff, and is as much liable for breach of duty as Bissell himself.

To hold the company bound by the indorsements and payments in question the Bank must establish one of the following grounds:

1st. Express authority; that is, actual authority proved by the by-laws, resolutions of directors or the like.

2nd. Implied authority; that is, actual authority proved by the course of dealing sanctioned by the directors.

3rd. Apparent authority; being a false appearance of authority on which the Bank had the right to rely, and did rely, and which the company is estopped by some misconduct from disputing.

4th. Ratification of the indorsements and payments in question.

It is important to note that in the charge the Court uses the term *apparent* authority, when what is meant is *implied* authority. The distinction, though often overlooked, is important. Implied authority is *actual* authority conferred by the directors through acquiescence in a course of dealing made known to them; while apparent authority is a false appearance of authority which was not actually conferred but which the company by its fault is estopped from denying. The test of actual authority is this: If the Bank had known the whole truth as to the authority, would they have had the right to infer the power to indorse and draw the money? If so, it is not material whether they relied on any appearance or were themselves in the exercise of due care; while to show apparent authority they must show reliance on the appearance while in the exercise of due care, and also fraud or gross negligence by the company creating the

false appearance, sufficient to estop them from proving the truth.

The Court told the jury that it was admitted that there was no express authority given Bissell to indorse (167, l. 1 to 20; 169, l. 36), but left them to determine whether there was *implied* authority from the course of business (167, l. 15 to 30; 169, l. 25 to 30) and whether there was *apparent* authority (169, l. 30 to 35); and also left them to find authority from the "Loomis Resolution."

II.

Bissell had not express authority to dispose of checks payable to the order of the company or to indorse for that purpose.

By Laws—

The by-laws not only do not give the secretary power to indorse or cash checks; they deny that power to all officers including the treasurer and the Board of Directors themselves. They require every check and draft to be deposited in the bank, and the only way in which the officers of the company could obtain money was by check signed by the treasurer and countersigned by the secretary. This is too clear for controversy and the Court so charged (Case, 167, l. 5 to 15).

Loomis Resolution—

The only other claim of express authority is based on the "Loomis Resolution" passed by the directors of the New York Company February 8th, 1887, reciting the occasional absence of Mr. Putnam, the vice-president, who had acted as manager, and continuing: "Resolved, that Isaac F. Bissell be appointed manager of the business of the works, with full power to act in all matters in the

absence of Mr. Putnam." (Case, p. 49, l. 18.) It is not claimed that the Bank ever knew of or acted on this resolution, so that the only question is whether it did in fact confer authority to indorse and collect checks payable to the company. Clearly it did not. Putnam had never had any such power, and besides, his duties as treasurer were continued precisely as before, and he continued to sign all checks. The duties of manager were of a very restricted character (47, l. 20 to 40); but even if they had included a general control of the business they would have been subject to the by-laws. The Bank can not pick out a part of the regulations of the company and reject the rest when they did not act on any of them. The office of manager does not import any authority to indorse and cash checks. Thompson says as to the office of manager: "The law had no presumption on the subject of his powers, and ascribes no particular power to him; but whatever powers are claimed as residing in him must in general be proved as facts. 4 Thompson Com. on Corps., Sec. 4851.

N. Y. Iron Mine v. Negaunee Bank, 39 Mich. 644, 651, quoted in this Brief under point IV. *post*.

Nothing in the Loomis resolution in itself or in the action taken under it conferred upon Bissell the slightest authority to cash the checks of the company, and he never pretended to have any such power under it. He never pretended to indorse or cash checks as manager, but always as secretary, and his first act of that sort as secretary was nearly four years later, when he began these frauds. The facts were wholly undisputed.

The Court charged the jury that it was for them to say whether the Loomis resolution gave the power over the finances contended for by the Bank, (Case, p. 168, l. 33), and refused to charge that the resolution gave Bissell no power to dispose of the checks and drafts of the company for cash paid to himself (174, l. 10 to 40).

In this the Court erred. The question was not for the jury, but for the Court.

Gulick v. Grover, 4 Vr. 463, 473, (Ct. Er. & Ap.) Mayor &c. Company v. Bank of England, 21 Q. B. Div. 160, 170, both quoted *post* Points IV. and VI.

On the first trial Mr. Justice Reed charged on this point as follows: "His appointment as manager by its terms carries with it no power to deal with the commercial paper of the concern, and that fact is accentuated by the fact that Mr Putnam still remained treasurer of the Company." * * * * "Under that resolution I can perceive no express power in Bissell to deposit these checks and drafts for cash."

It may with much force be argued that as the by-laws, passed by the paramount authority of the stockholders, prohibit such indorsements as those relied on by plaintiff, no authority can be implied from any action, ratification or course of dealing sanctioned by the directors, and that the only ground remaining open to the Bank is to show an apparent authority based on estoppel. We do not deem it necessary to go so far, because the defense have failed to show implied authority as well as estoppel.

III.

Bissell had no implied authority conferred by the course of dealing.

Implied authority of one person to indorse the name of another on a check and cash it, requires very strict proof. It is an unnecessary power to give to any officer of a corporation. This corporation carried on business over twenty-five years and never had a customer's check indorsed except for deposit. The same is true of most corporations; it is a very unusual thing for any corporation having a bank account to indorse its customer's checks except for deposit.

To imply authority the course of dealing must be known to and sanctioned by the directors. Of course no authority could be implied from the repetition of the concealed frauds in question. "It would seem to be the

general rule that no acts of an agent can be resorted to, to establish a power not included within the terms of his commission, except those which are brought to the knowledge of his principals, and are approved or acquiesced in by them." Ruger Ch. J. in *Bickford v. Menier*, 107 N. Y. 490, 493; *Natl. Bank of the Republic v. Navassa Phosphate Co.* 56 Hun. 36.

In *Jackson v. Bank*, 92 Tenn. 154, it was held that "A commercial traveller employed to sell goods, collect accounts and receive money and to receive checks payable to the order of his principal is not by implication authorized to indorse the name of the principal on such checks." In the discussion the Court said: "In order that the authority to make or draw, accept and indorse commercial paper as the agent of another may be implied from some other expressed authority, it must be shown to be strictly necessary to the complete execution of the express power. The rule is strictly enforced that the authority to execute and indorse bills and notes as agent, will not be implied from an express authority to transact some other business, unless it is *absolutely* necessary." 4 Tiedeman on Com. Paper, Sec. 77, Sec. 312.

"An authority to receive checks in lieu of cash in payment of bills placed in the hands of the agent for collection, does not authorize the agent to indorse and collect the checks." *Graham v. U. S. Savings Inst.* 46 Mo. 186; 1 Daniels on Neg. Inst. Sec. 294; 1 Wait's Act and Def. p. 284.

In *Robinson v. Chem. Nat. Bank*, 86 N. Y. 404, 407, the Court approves the rule expressed by Parsons: "An agent's acts in making or transferring negotiable paper (*especially if by indorsement*) are much restrained. It seems that they can be authorized only by express and direct authority, or by some express power which necessarily implies those acts, because the power cannot be executed without them."

Authority to an employee to indorse checks for deposit to his employer's credit does not confer any title to indorse generally, or to draw the money. *Johnson v. Bank*, 6 Hun. 124, *aff'd* 68 N. Y. 616; *Schmitt v. Garfield*

Bank, 64 Hun. 298, aff'd 138 N. Y. 631; Ry. Equip. Co. v. Lincoln Bank, 63 N. Y. State Rep. 338; 82 Hun. 8.

The Bank is bound at its peril to ascertain the correctness of the indorsement. Good faith is no protection to the Bank.

Welsh v. German Am. Bank, 73 N. Y. 424.

Arnold v. Cheque Bank, L. R. 1 C. P. Div. 578, 584.

Graves v. Am. Exch. Bank, 17 N. Y. 205.

The general nature of banking customs need not be proved; the Court takes judicial notice of them. Morawetz on Corps., Sec. 382; Pattison v. Syracuse Bank, 80 N. Y. 82, 94.

By-laws are admissible in favor of a corporation to show the powers of its officers.

Ry. Equip. Co. v. Lincoln Bank, 63 N. Y. State Rep. 338; 82 Hun. 8, 11.

We submit that no course of business short of the actual cashing of the company's checks over the counter by Bissell on his indorsement with the knowledge of the directors, could imply authority so to do.

The Court told the jury that it was for them to say whether apparent authority did exist in Bissell (171, l. 9 to 15), but did not clearly state what facts could be considered by them as tending to prove such authority.

From the refusals to charge we infer that the Court considered those facts to be, in addition to the Loomis resolution already considered, the following:

(a) That Bissell was secretary and was empowered as such to receive checks and indorse them for deposit (173, l. 29); that the signature of Bissell as secretary was one of the two signatures required to be found on all checks drawn by the company on its deposit in the Bank (175, l. 10 to 20); (b) the alleged fact that Mr. Putnam, the treasurer at one time not fixed, but "probably eight or ten years ago," told the cashier that Mr. Bissell would thereafter assume some of Putnam's previous duties. (108, l. 38; 109, l. 18 to 23; 115, l. 32 to 40; 175, l. 30

to 40); (c) that in January, 1893, the company procured the discount of a batch of notes by the Bank on Bissell's indorsement of the name of the company, which indorsements the company ratified by using the money which on the discount went to their credit (167, l. 30 to 40; 170, l. 18 to 27; 176, l. 10 to 20); (d) that Bissell as secretary sent out drafts in the name of the company on delinquent debtors (172, l. 34 to 40; 173, l. 1 and 2).

And the Court refused to charge that the fact that all checks on the Bank were signed by the treasurer and bore two signatures, was evidence to warn the Bank that checks should not be paid on the signature of the secretary alone (176, l. 35 to 178, l. 2).

An examination of these so called defences will show that not one raised any question of fact for the jury; not one tended to prove that Bissell had authority to indorse or receive cash on the checks payable to the company, or to do any act which placed the proceeds of the checks of customers in his control.

Let us consider these points in order.

(A) The office of secretary does not import authority to cash the company's checks, and the Court erred in refusing so to charge (173, l. 29). The power to indorse specially for deposit did not imply power to indorse generally. Any person may indorse the name of another for deposit to the other's credit. A mere stamp with no written signature at all is common. The only purpose of such indorsement is to inform the Bank to whose account to credit the money. Permitting an employee to indorse the name of the payee for deposit does not tend to show any authority of the employee to indorse and collect over the counter. *Schmitt v. Garfield Bank*, 64 Hun. 298, affirmed 138 N. Y. 616 (a close precedent covering nearly all the points raised in this case).

(B) It is said that Mr. Putnam, the treasurer, now deceased, at one time "probably eight or ten years ago" told the cashier that thereafter Mr. Bissell would look after the "financial affairs of the company, and would attend to the banking business and such duties as Mr. Putnam had been attending to previously;" or as stated

later, that Mr. Putnam stated that on account of impaired health he was about to be relieved of some of the duties of the office, &c. (108, l. 38; 109, l. 18 to 23; 115, l. 32 to 40; 175, l. 30 to 40). But it was years after this conversation when Bissell began to cash checks, and during these years Mr. Putnam continued to be treasurer and to sign every check, and the Bank knew it. Besides, Mr. Putnam could not himself cash the company's checks over the counter, much less empower Bissell to do so. These statements of Mr. Putnam, if made, would not authorize the Bank to cash the checks and drafts in suit for Bissell, and the Court erred in refusing so to charge (175, l. 30). An agent can not ratify acts of another agent which he could not do himself; he can not even delegate his own official powers, where they involve a trust.

Ironwood Store Co. v. Harrison, 75 Mich. 197, 203.

Titus v. Railroad Co., 17 Vr. 393, 418.

(C) Next it is shown that on one occasion in January, 1893, the directors ordered a lot of twenty-one notes which they had received from customers to be discounted, and that Bissell without any order to do so indorsed the company's name on these notes, which the Bank thereupon discounted. This was after the close of the transactions of the N. Y. Co. plaintiff, and could not affect that suit. The money never came under Bissell's control, but went to the credit of the company as the by-laws require; so that if the directors had all known of the indorsement it would not sanction the payment to Bissell of cash on the company's paper. In fact, the only ones of the nine directors who knew of it were Mr. Putnam, the treasurer, who found himself anticipated in indorsing the notes by the act of Bissell and rebuked it, and Mr. Ely, the president (Case, p. 54, l. 30, to 55, l. 3).

The Court charged that this indorsement was ratified by the company because they used the proceeds of the notes) 167, l. 30 to 40; 168, l. 1 to 10; 170, l. 20). Now Putnam and the president were the only officers who

learned of this indorsement and they could not ratify it alone, and the Court erred in holding their knowledge to be a ratification of the company. The credit of the proceeds of the discount did not inform the company that Bissell had indorsed.

In *Murray v. Nelson Lumber Co.*, 143 Mass. 250, Morton C. J. said: "It is well-settled that a ratification by a principal of the unauthorized acts of an agent, in order to be effectual, must be made with a knowledge of all the material facts. And the burden is upon the party who relies upon a ratification to prove that the principal, having such knowledge, acquiesced in and adopted the acts of the agent. It is not enough for him to show that the principal might have known the facts by the use of diligence." "In the case at bar, therefore, it was incumbent upon the plaintiff to show that the directors, or at least a majority of them, knew of the contract and its terms, and that with such knowledge they acquiesced in and adopted it." And it was held error to charge that "the directors were presumed to know what they were able to know."

Further it should be observed that a special single transaction like this on January 27th, 1893, can not be expanded into a course of dealing, conferring actual authority to indorse all paper generally. (Case, p. 64, l. 5 to 25.) *Holden v. Upton*, 134 Mass. 177.

As there is no evidence that the Bank took any action in cashing checks on the faith of this discount, the question of apparent authority can not arise.

(D) When customers did not respond to bills, it was common for Bissell as secretary to send out drafts in the name of the company on the debtor, to some bank in his vicinity. These drafts differed from ordinary requests to pay only by making the bank agent to collect. When a collection was made the draft was given up to the debtor and the bank sent on its own draft to the order of the Saw Co., which Bissell could only indorse for deposit like other drafts. (Case, p. 69).

There is one decisive answer to all these defences of implied agency, which was so well stated by Justice Reed on the first trial that we adopt his words.

"What was the difference between the acts Bissell

was permitted to do and the acts he did? Why you perceive that early in the history of these corporations they draw a sharp line between the power to draw money out of the bank and the power to place the fruits of the paper which came to the Saw Company in payment for their manufactured goods in the bank. You see it in the by-laws. You see it through their practice. Bissell was authorized to place all this paper in the bank; it there became impounded, and by the policy of the by-laws, and by the practice for years and years it could only be drawn out of the bank to be used for the purposes of the Saw Company upon the check of another person, on whom the Saw Company had reposed that particular confidence, and that person was the treasurer, or, under the by-laws of the new company, also the president. That had gone on for years. From 1883 to 1891 thousands and thousands of dollars, the value of those checks and drafts, has been presented by Bissell to the bank indorsed 'The American Saw Company for deposit,' and 'The American Saw Company,' and placed to the credit of the American Saw Company on the books of the bank, and placed in the pass book. That went on for some 8 years. All at once Bissell comes there and presents paper and says I want the money on this. What conversation took place does not appear in this case. It only appears in the report of the referee that they were cashed. What he said to the paying teller or receiving teller does not appear. The reason stated why it should not be placed to the credit of the company, and drawn upon, does not appear. If it had been so placed and Bissell had drawn the check, would there be any doubt that he had exceeded his authority? But it was paid over the counter of the Bank directly to Bissell. Was that a transaction that should have arrested the attention of the Bank after these years of practice, and warned them that it was a departure from the former custom, and a departure that stripped the treasurer of the power conferred upon him and placed it in some other person? If it was, then this act was an entire departure from the line of employment, and under the rule, as I stated to you, did not justify the bank in making the payment."

IV.

There was no apparent authority on which the Bank could rely in the absence of actual authority of Bissell.

When actual authority, either express or implied, does not exist, the company may be bound because they have held out the false appearance of authority to indorse and cash checks on which the Bank had the right to rely and by which they were misled. When it is thus sought to hold the company for an act which they never authorized they can be held only on the ground of estoppel. Only one who has been misled by and has acted on the false appearance created by the fault of the company can set up such estoppel.

And the fault of the company which estops must be in or immediately connected with the transaction. In *Arnold v. Cheque Bank*, 1 C. P. Div., 578, 589 (a case of fraud similar to this), the distinction is clearly pointed out between the negligence which invites the fraud and that which merely affords the opportunity.

This subject is also carefully considered in *Mayor & Company of Merchants v. Bank of England*, 21 Q. B. Div. 160. The plaintiffs were a corporation and held government consols, and their clerk kept their books, had the custody of their seal and drew the dividends under an authorized power of attorney. Without authority the clerk sealed another power of attorney with the company's seal and thereon sold the consols, and embezzled the proceeds. It was contended that the company had been grossly negligent in leaving their clerk to do all the work of the company. On appeal Esher, M. R., said (p. 173): "Assume that there was negligence by the plaintiffs calculated to deceive the Bank and that by that negligence the Bank was deceived. Still, according to the ruling of the House of Lords, there was no case to go to the jury

upon the question whether there was negligence which would excuse the defendants, because that negligence, if it existed, was not the proximate cause of that which the Bank did, namely, transferring the stock." Bowen, L. J., said (p. 174): "In order that the Bank of England should be excused in the present action, it must be shown not merely that the plaintiff corporation were careless, but that the carelessness of the corporation directly and proximately led to the loss of the property which the banker was called upon to make good."

In *N. Y. Iron Mine v. Negaunee Bank*, 39 Mich. 644, 651, it appeared that Samuel J. Tilden and Wm. L. Wetmore were incorporators and directors of a mining company with only nominal associates, Mr. Tilden being president and treasurer in New York and Mr. Wetmore being general agent to carry on the mining and sale of ore in Michigan. Wetmore had for fourteen years procured money to pay wages and expenses by drafts on Tilden, in all some \$3,000,000. When notes of customers came to his hands he indorsed them with the name of the company as manager, and Mr. Tilden sanctioned this course, and the company were held bound on such indorsements for that reason.

But Mr. Wetmore then began to raise money at the bank on notes signed by him as agent of the company. These Mr. Tilden and the company repudiated as soon as they learned of them, and the Bank sued the company. The Court would not admit that one authority could be implied from the other. The opinion of Cooley, J. illustrates the strictness of proof required of agency to raise money by signing the name of a company. "It was not disputed that the corporation as such had power to make the notes in suit. The question was whether it had in any manner delegated that power to Wetmore. We cannot agree that the mere appointment of a general agent confers any such power." "The issuing of promissory notes is not a power necessarily incident to the business of mining, and is so susceptible of abuse to the utter destruction of a corporation that it is wisely left by law to be conferred or not as the prudence of the

directors may determine." The Court continues that the plaintiff is right in the argument that the corporation must answer for the appearances held out "whereby the plaintiff has been deceived to its prejudice," but before this maxim can be applied it must appear not only that fault is imputable to defendant, but also that the plaintiff is free from negligence. "In law the officers of the bank must be held to have known that Mr. Wetmore had no right to make such paper without *express authority*, and we look in vain for any evidence that they demanded proof of such authority, or extended their inquiries beyond the agent himself."

The only ground of estoppel urged is that the accounts on which the stolen checks were sent ran behind, these checks not being credited on them, and that this ought to have aroused suspicion sooner.

The company owed no duty to the Bank to collect diligently for their saws, and the Court so charged (173, l. 3 to 9). The negligence of the payee in order to constitute a defence must be the proximate cause of the fraud.

Arnold v. Cheque Bank, L. R. 1 C. P. Div.
578, 588.

The payee owes no duty to the Bank to find out that they have been collecting his drafts and paying the money to another without his knowledge or authority.

Schmitt v. Garfield Bank, 64 Hun. 298, 306,
quoting 75 N. Y. 561.

It may be observed that Bissell was shrewd enough to appropriate checks of customers of good credit who would be indulged, and he suppressed the statements that would apprise customers that their checks had not been credited (91, l. 22 to 40).

The Court charged our request that it is no part of the contract between a bank and its depositor that the bank will cash over its counter checks on other banks to the

order of the depositor, but added, that it is an every day thing to be done (Case, p. 173, l. 1 to 20). But as cashing such checks is a gratuitous accommodation to the person presenting it, the bank acts at its peril, and no *care* ~~case~~ can give the bank title against the payee unless the indorsement is authorized. It is erroneous to say that it is an every day thing to be done in the case of checks payable to a corporation. Where the indorsement purports to have been made by an agent, no well managed bank volunteers to cash such checks without a power of attorney or other decisive evidence of the agent's authority to sign the name of the payee. Corporations like this, having a bank account, almost invariably deposit checks payable to their order, and it is very unusual for a check to be cashed on their indorsement. In this case, too, the Bank had notice that Bissell was using the pay-roll checks to raise money for his own use. The Bank was not in the exercise of due care.

It is clear that none of the facts proven establish the estoppel which is essential to show apparent authority where no actual authority either express or implied exists, and the Court erred in leaving the question to the jury whether apparent authority existed (169, l. 23 to 40; 171, l. 9.

V.

There was no Ratification.

In O'Reilly v. Keim, 34 Atl. Rep. 1073, 1075 (Ct. Er. & Ap.) the Court said: "Knowledge of the act which has been done without authority is an essential element of the ratification of the act," and it was there held that the principal's knowledge that the agent had made a sale of land as authorized did not ratify the agent's signing of the contract. See a full statement of the principle of ratification by a corporation in Murray v. Nelson Lumber Co., 143 Mass. 250, quoted above under point III (c), in

which case also the Court held it error to charge that "the directors were presumed to know what they were able to know," for the purpose of holding them to have ratified it.

Western Nat. B. and C. v. Armstrong 152 U.S. 352 VI.

It was the duty of the Court to direct the Jury upon the sufficiency of these various defences.

"Where the facts are undisputed, the question whether an agent has the requisite authority to bind his principal is a question of law for the Court, whether such authority is sought to be sustained by a previous authorization or a subsequent ratification."

Depue J. in *Gulick v. Grover*, 4 Vr. 463, 473 (Ct. Er. & Ap).

In *Mayor &c. v. Bank of England*, 21 Q. B. Div. 160, 173, above quoted under Point IV, the Court refused to let the jury consider the very gross carelessness of the company because it was not the proximate cause of the loss, and did not justify the Bank in their payment without due inquiry.

VII.

It was the duty of the Court to direct a verdict for Plaintiff.

From the foregoing discussion it will appear that what the Court submitted to the jury as evidence to show apparent authority was not such. There was not shown on the part of the company any misconduct or negligence which estops them from proving the truth as to authority, nor was there shown any action by the Bank on the faith of any misrepresentation or misconduct by

the company which enables the Bank to estop the company from proving the truth as to authority, nor yet is there any evidence that the Bank cashed these notes on inquiry or in the exercise of that due care which qualifies the Bank to plead any estoppel; indeed, there is a total absence of any explanation on the part of the Bank, how they came to start on this line of cashing over the counter after many years of invariable depositing of the company's checks.

The Court evidently meant by the words *apparent* authority to signify *actual* authority evidenced by course of dealing, and the question is whether there was any evidence from which the jury had the right to infer that such authority was in fact conferred on Bissell by the directors. If it was, then it is not material whether the Bank used care or not, but it is material to show that the directors of the company knew of some course of business in order that their acquiescence therein may confer that power. We have already pointed out the insufficiency of the circumstances relied on to that end. Hardly any course of business could show authority to indorse the checks and cash them except the doing that very thing. Even if Bissell had been expressly empowered to sign checks alone on the deposits of the company and draw out the money at his sole pleasure, even such power would not imply power to intercept the checks payable to the company. Checks on the deposit of the company supply evidence on the account with the Bank and in the returned vouchers for the detection of fraud; but the power to intercept checks payable to the company without depositing them in Bank at all was much more dangerous, for it left the company without any evidence of the fraud. Checks drawn by Bissell on his sole signature would have been detected by the bookkeeper on the first balance returned. But Bissell had no power to draw the company's money out of the Bank, much less power to intercept their checks and cash them.

It is highly suspicious when an employee of an employer having a large bank account cashes part of the checks from the employer's customers over the counter;

every banker knows that, and it calls at once for inquiry. Such a course of dealing, by its very nature, concealed from the company this new course of business which it was essential that the directors should know before they could possibly authorize it. Not one of the trivial defences relied upon, carried the slightest suggestion to the directors that Bissell claimed such authority, or showed the least design on their part to confer it. The Court ought therefore to have directed a verdict for plaintiff under the authorities last cited.

VIII.

The Court erred in over-ruling the offer to prove the signature in the Bank's signature book.

Plaintiff offered to prove that the only name written on the part of the Saw Co. in the signature book of the Bank was that of Samuel W. Putnam, Treas. The Court takes notice of banking customs. This signature on the opening of an account amounts to an agreement between the depositor and the Bank that this signature is required to pay on. Such signature is none the less requisite to warrant payment because a counter-signing is also required by the by-laws.

Had the Bank paid checks signed or indorsed with the name of the treasurer alone, the signature book might have been some evidence to justify it; it is certainly some evidence that the treasurer's name is essential.

IX.

The Court erred in refusing to charge that the signatures required by the custom of the Company on its checks on this Bank were evidence as to authority.

The invariable custom of the company during more than twenty years' dealing with this Bank was to draw money on two signatures only, one of which was that of the treasurer, Mr. Putnam, who held that office over twenty years (Case, 36, l. 29; 107, l. 30 to 108, l. 15). Such a course of dealing is a representation that the persons signing are the agents of the company for that purpose. If such acts were offered to prove such an agency against the company no one would question their meaning; they are equally significant when offered in favor of the company.

This course of business, manifested for twenty years by thousands of checks each year, was notice to the Bank that the custody of the funds of the company was safeguarded by requiring these signatures, and they knew that to cash the checks coming in daily to the company on the signature of one was to deprive the treasurer of the power to protect the company by his signature.

The Court should have charged as requested (Case, p. 176, l. 35; p. 177, l. 15; 177, l. 23). A clear statement of this point was made by Mr. Justice Reed in the passage above quoted from his charge on the former trial, to which we again refer. See *ante* Point III.

X.

**The Court erred in rejecting the Report
of the Referee.**

These two causes were on the list for trial at Mercer Circuit when Justice Abbett ordered a reference in both by rule entered May 10, 1894, "It appearing to the Court that matters of account are in controversy" (Case, p. 187, l. 15). The plaintiffs opposed the reference, presenting the ground that matters of account were not in controversy (187, l. 18), but defendants made no such objection. Both parties reserved dissents (187, l. 30), but this is not an objection to the reference, but a mere reservation of a right to a jury trial, and is consistent with a consent to the making of the reference. *Paulison v. Halsey*, 8 Vr., 205, 207. The objection now taken by defendant to the jurisdiction to refer was therefore not taken by them at the time.

On the contrary they appeared before the referee and entered into a stipulation extending their time to take testimony before him, and therein stipulated "that exceptions, if any, shall be filed on or before October 23rd, A. D. 1894, and the two cases on exceptions be tried without further notice at as early a day thereafter as the Court will fix" (188, l. 12). Here was an express agreement of both parties to try the case on exceptions, which implied the offer of the report. The report being in favor of plaintiffs, the defendant filed exceptions and the Court fixed a day for trial thereon, and no objection was then made to the jurisdiction to refer (189, l. 13).

The trial on the exceptions before the jury resulted in favor of plaintiff, whereupon a new trial was sought in Supreme Court on rule to show cause, and the verdict was set aside and a new trial ordered on the ground that the causes were not referable, and that the Reports of the Referee had been improperly admitted in evidence before the jury. Under this ruling of course the Justice

on the second trial over-ruled the offer in evidence of the Reports of the Referee, and our assignments of error on this ground therefore do in effect bring up for review the decision of the Supreme Court which will be found reported in 34 Atl. Rep. pg. 1.

The grounds of that decision are that the cause must be such as would sustain a common law action for an account or a bill in equity for an accounting, that the question has been settled by the decision of *Tunison v. Snover*, 27 Vr. 43, and that a statute conferring a broader power of reference than that described by the Court would violate the constitutional right of trial by jury.

(a.)

Matters of account were in controversy.

The question whether matters of account are in controversy so that the cause may be referred, always arises before trial and is determined by the character of plaintiff's claim. This may be ascertained not only from the declaration and particulars, but also by affidavits or statements of counsel on motion to refer. The reference will not be made invalid if the actual contest proves that the chief dispute is not on the account, or even if the plea raises an issue which may make an account needless.

The Supreme Court argues that the case could not be referred because the chief issue tried was whether the agent of the plaintiff committed a forgery. This is not accurate. Plaintiffs showed that defendant, who was their banker, had collected a number of their checks with which it had not credited plaintiff's account, and defendant set up in defence payment to an agent whose authority plaintiff denied. The issue of authority arose on the defence. Whatever the issue actually tried, the question of jurisdiction to refer cannot be tested by the method adopted by the Supreme Court. The rule is cor-

rectly stated in *Gopsill v. Hervey*, 5 Vr. 436, as follows : "It is the character of the plaintiff's claim, and not the issue made upon it, that constitutes the test. If the finding of such issue in favor of plaintiff will involve the necessity of settling matters of account, the case is within the terms of the act."

To the same effect see *Welsh v. Darragh*, 52 N. Y. 590; *Untermeyer v. Beinbauer*, 105 N. Y. 521, 524.

The doctrine of the Supreme Court that only such actions can be referred as may warrant an action of account at law or a bill to settle accounts in equity, is untenable. The action at law is a remedy only against guardians, bailiffs, receivers, mercantile co-partners and joint tenants and tenants in common, *Burrill's Prac.* 22. No one would put so narrow a bound to the matters of account in controversy intend by the Statute. The equitable jurisdiction applies only to those accounts too complicated for a Court of law or involving some equitable right.

Our Statute surely covers more cases than these. It does not confine the power to refer to actions of account or to actions on contract, or to causes cognizable in equity. As remarked in *Gopsill v. Hervey*, it is comprehensive, giving power to refer "all actions in which matters of account are in controversy." (*Practice Act*, Sec. 177.) In *Whitwell v. Willard*, 1 Metc. 216, 219, Shaw, C. J., declined to refer items of unliquidated damages, but said that the authority to refer might extend to a case of tort. In Massachusetts, as in New Jersey, the referee's report is *prima facie* evidence before the jury. If matters of account are in controversy the existence of other issues does not invalidate the reference.

Place v. Chesebrough, 63 N. Y., 315.

The claim of plaintiffs required proof that the bank with which they kept their account received from the secretary of the company, whose duty it was to deposit them in that bank, and collected on different dates eighty-nine checks and drafts in the two suits, which

collection it was lawful for the bank to make. The liability of the bank arose from the fact that no credit was given by the bank to plaintiff for the money so collected, although credit was given for thousands of other checks deposited by the same officer. Suppose plaintiffs had included in their list of checks sued on a number of those for which they had received credit, the defence must have been made by showing such credit and payment out of the account on plaintiff's order. Probably no one in such a suit would doubt that a matter of account was in controversy; how is the case altered where defendants set up in defence payments in cash on the order of one officer of the company, signified by his indorsement, instead of payment on the order of two officers of the company, signified by their checks?

The suits are each for a large number of items of money had and received for the use of plaintiff. It is apparent from an inspection of the schedule annexed to the declaration that the calculation of the amounts claimed by plaintiff is the work of hours or days (See pp. 4 to 21), and of course each item required independent proof. The schedule annexed to the referee's report shows the account involved in one of these cases and the other in similar (Case pp. 193 to 201).

Such a list of liquidated items is an account. "An account is no more than a list or catalogue of items, whether of debits or credits." *Reuss v. Reid*, 5 Cowen, 587, 593. It is true that a mere list of particulars does not always make an account within the meaning of the Practice Act. It must be a list of *liquidated* claims. This is the distinction between a list of claims which is referable as an account and one not so referable.

Thus a claim for a number of insurance losses has been held not referable because the items are unliquidated, and the same is true of items of damages claimed for breach of warranty or breach of a building contract; *Untermeyer v. Beinhauer*, 105 N. Y. 521, 524. *Tunison v. Snover*, which the Supreme Court relies upon, was decided on this very ground; the Court said "It was an action for breach of warranty and sought to recover un-

liquidated damages," 27 Vr. 43. The fact that there is an issue of fraud or conversion involved in passing upon the items of the accounts in no wise invalidates the reference, matters of account being in controversy.

Thus in *Vilmar vs. Scholl*, 61 N. Y. 564, 568, the complaint was for damages because defendant refused to deliver up securities which plaintiff had deposited with defendant. Held to be an action on contract involving an account, and referable as such.

In *Harrington v. Bruer*, 84 N. Y. 103, the complaint was for rents and personal property fraudulently appropriated by defendant, and the suit was held referable. *Van Oss v. Synon*, 85 Wis. 661.

These New York cases are of special value because in that State the reference is final, and the ancient right of trial by jury is as carefully protected by the New York constitution as by ours.

(b)

Right of trial by Jury.

The Supreme Court reinforces its narrow construction of the terms of our statute by applying the constitutional limitation relating to the right of trial by jury. If the statute made the trial before the referee final, as does that of New York, the argument would have more force, though as we have seen even then this case would be referable. But our Statute preserves the jury trial. Like that of Massachusetts, our act calls in the referee to state the account, which becomes merely *prima facie* evidence before the jury.

The issue tried before the jury is that made by the pleadings in the cause, and the exceptions taken to the report of the referee, like any other pleadings, merely define and narrow the issue. *Paulison v. Halsey*, 9 Vr., 494. The Supreme Court says that a statute which merely provides that the report of the referee shall be

prima facie evidence of the facts found, is an interference with the right of trial by jury. The proposition is that legislation which admits evidence changing the presumption or burden of proof before a jury is invalid. It is a sweeping doctrine. Formerly the regularity of the proceedings on which any official deed or tax title was founded must be established by proof before the jury in ejectment; now by statutes passed since the Constitution such deeds are not only made *prima facie* proof of the recitals, but are made conclusive before the jury and can only be questioned on certiorari (Gen. St. 2982, Sec. 14 and 15).

Are these statutes invalid? The doctrine contended for would seem to prohibit any statutory change of the rules of evidence. Any pertinent evidence creates a presumption until rebutted. When a plaintiff was admitted as a witness to prove his own case, the defendant found a presumption raised against him by evidence which could not have been admitted when the Constitution was accepted. Changes in the statutes as to pleading have the same effect to change presumptions and shift the burden.

The decision under review tends to further narrow the powers of the Courts of Law. The uncertainties of jury trial have irresistibly driven the most important litigation into the Courts of Equity. A liberal interpretation of the powers of the Judges is called for by the highest considerations of public policy. As under our Statute the report is not conclusive, there is no reason why the Court should not interpret the reference act with all the liberality which convenience in the dispatch of the work at Circuit calls for.

Holmes v Hunt 122 Mass. 505

(c)

**Objections to the jurisdiction to refer
were waived.**

As a party may consent to a reference in any case in which the report will be conclusive, so he may, *a fortiori*, consent to one which will be only *prima facie* evidence of the facts found. And as he can give jurisdiction by consenting to refer, so he can waive objections by his conduct, or by delay or by stipulation.

In this case the defendant entered the statutory dissent to the reference, in order to secure the right to a trial before a jury, but did not object to the jurisdiction to refer at the time the reference was made, although his adversary expressly reserved that very objection (Case 187, l. 15 to 20). A mere dissent to the reference is not an objection to the jurisdiction to refer.

Paulson v. Halsey, 8. Vr., 205, 207.

Participation in a trial before a referee, without objection to the jurisdiction, is a waiver of objection to the power to make the order of reference.

Baird v. Mayor, 74 N. Y., 383, 385.

Elliott v. Lewis, 16 Hun., 581.

In Baird v. Mayor the Court considered the constitutional question, which was substantial, because in New York the report is final, and said: "A party may waive a constitutional right designed for his benefit, as he may a right acquired in any other way. This has been frequently adjudicated."

It was also held in Kimball v. Church, 2 Gray, 517, that a party cannot defer until the trial an objection to the auditor's report, on the ground that the reference was not within the statute. "If they intended to rely on any such objection, it should have been raised before the Court when the motion was made to send the case to an auditor; or, if not made then, it should, at the

“latest, have been raised before the auditor himself before he proceeded to hear the case. It was in its nature a preliminary objection, and should have been stated in the outset. By omitting to take the objection seasonably, it must be considered as waived. Otherwise, it would be in the power of a party to lie by, and take his chances for a favorable result of a hearing before an auditor, and, if it happened to be adverse to him, then to defeat the whole proceeding, delay the trial of the case, and, after large expenses had been uselessly incurred, to turn a party back to the same point from which he started. Such a course of practice would be entirely inconsistent with the regular course of business in courts of justice, and with good faith on the part of counsel and parties in the conduct of cases.”

In *Perkins v. Scott*, 57 N. H., 55, 77, Cushing, C. J., said of objections to the jurisdiction to order a reference: “I think it clear that the objection must be taken, if at all, at the time of the reference. The party cannot be permitted to lie by and take his chance of getting a favorable report, and then, if he is not satisfied with it, cause it to be rejected.”

In this case the defendant took no objection to the jurisdiction to make the order of reference at the time it was made, though his adversary did (Case 187, l. 15 to 20); appeared before the referee, procured extension of time, filed exceptions, demanded a trial by jury according to the statute, and stipulated with plaintiffs, with the concurrence of the Court, “that exceptions, if any, shall be filed on or before the 23d day of October, 1894, and the cases on exceptions be tried, without further notice, at as early a day thereafter as the Court will fix.” (Case, p. 188.)

The judgment of the Supreme Court should be reversed, and a new trial awarded, in both cases.

COLLINS & CORBIN,
Counsel for Plff. in Error.

Supplement

Since the foregoing brief was printed we have examined the important decisions of Massachusetts and New Hampshire which are found in the Digests under the head of "Auditors," and we find strong support there for the views we have presented as to the power to refer.

Liberal interpretation of reference power.

The Mass. Auditors Act of 1817 (quoted in *Locke v. Bennett*, 7 Cush., 445) resembles our New Jersey reference law as found in the Practice Act, Sec. 177. It authorizes a reference "whenever a cause is at issue, and it shall appear that the trial will require an investigation of accounts or an examination of vouchers by the jury," and the report made shall be evidence before the jury, but "may be impeached and disproved by other evidence."

In *Whitwell v. Willard*, 1 Met., 216, the question was whether a reference could be ordered in an action for unliquidated damages for negligence in the care of a number of chattels, and Shaw, C. J., held that it could not, but that such reference might be made even in tort where accounts were involved; Putnam, J., dissented, contending that the power to refer applied where many particulars required examination though unliquidated. This dissenting view seems to be preferred in *Locke v. Bennett*, 7 Cush., 445, 449, where the Court also held that the auditor must decide the facts involved in stating the accounts; and the particular fact in view there (as in our *Saw Co.* case) was the extent of the powers of an agent. (See discussion of both of above cases in *Holmes v. Turners Falls*, 150 Mass., 535.)

The power to refer was enlarged in 1857, when it was expressly extended to actions of tort and to other matters than those of account (Pub. Stat. Mass. 1882, p. 914, Sec. 31). Decisions have been numerous under both acts.

In *Fogg v. Farr*, 16 Gray, 396, the reference was in a case of conversion, and the point decided was that a party who offered a report might dispute such findings as were adverse to him.

In *Clark v. Fletcher*, 1 Allen, 53, 55, the Court said that the Court might require the report read though both parties objected to it, the power to refer being given to facilitate the administration of justice.

In *Fair v. Manhattan Ins. Co.*, 112 Mass., 320, 328, Gray, C. J., gave a history of the legislation and stated the effect of the report.

In *Corbet v. Greenlaw*, 117 Mass., 167, 174, Endicott, J., shows that the auditor must decide all questions necessary to state the accounts.

For further illustrations see *Cohn v. Ropes*, 125 Mass., 577; *Briggs v. Gilman*, 127 Mass., 530; *Phillips v. Cornell*, 133 Mass., 546, 548.

In *Holmes v. Turners Falls*, 150 Mass., 55, 539, the reference was to an auditor to estimate rents and profits and pass on other issues in ejectment, and it was held valid after a review of cases.

Right of Trial by Jury.

It will be seen that if the application of our reference act to a case like the present would be a violation of the right of trial by jury, then the objection would lie with much greater force against the jurisdiction exercised under the Auditors Act of Mass.

In *Holmes v. Hunt*, 122 Mass., 505, the validity of the Auditors Act was directly assailed, and was sustained in an exhaustive opinion by Ch. J. Gray (p. 512). He cites Ch. J. Shaw in *Allen v. Hawks*, 11 Pick., 359, that a report of auditors introduces a new species of competent evidence to facilitate, not supersede, jury trials. Ch. J. Gray illustrates by profuse citations the power of the legislature to establish new rules of evidence (516 to 519) and criticises or explains adverse opinions. He cites as statutes making *prima facie* evidence, the recording acts, tax-sale deeds, notary's certificates of protest, certain

criminal statutes, the acts qualifying parties to testify, the acts for perpetuating testimony, and many others.

In New Hampshire the constitutional power to refer was much controverted at one time, with a final outcome in favor of a liberal use of the power.

In *King v. Hopkins*, 57 N. H., 334, a reference was ordered to ascertain certain facts in an action for damages for flowing lands, under an act which made the report of the referee *prima facie* evidence in any action, whether an account was involved or not. The right of trial by jury was asserted, and two judges held that part of the act making the report evidence to be void; but the dissenting opinion of Cushing, C. J. (57 N. H., 357), it would seem must now be taken as the law of that State, as is explained by Gray, C. J., in *Holmes v. Hunt*, 122 Mass., 520, 521; and we find this very Mass. case cited and followed in *Blodgett v. Cummins*, 60 N. H., 115.

In *Perkins v. Scott*, 57 N. H., 55, the Auditors Act was held valid by the same Court differently constituted, and it would seem that this decision was later than *King v. Hopkins*, though filed earlier, for Cushing, C. J., cites his opinion (p. 77) given in the last-named case. This dissenting opinion of Cushing, C. J., in *King v. Hopkins*, 57 N. H., 357, stands therefore as an authority of weight, and is backed up by the Massachusetts Supreme Court, and is a very able vindication of such a reference act as ours against the charge that it violates the right of trial by jury. A few quotations will be useful.

"It is, I think, precisely in the sense of a presumption of fact that our statute makes the report evidence subject to be impeached. It establishes the facts found in it, not as evidence which the jury can weigh, but as a state of facts to be taken to exist until the contrary is proved, but in regard to which the report cannot be weighed either for or against the conclusion. In other words, it simply has the effect of a pleading in determining the burden of proof." * * * *

"Historically speaking, we are entitled to ask when it has been known in the history of jury trials that this whole matter of determining the order of the trial, the

rules of pleading and the forms of issues, and the admissibility and effect of evidence, has not been within the control of the law-making power" (57 N. H., 60.)

In the same opinion (at p. 363) the Ch. J. rejects the suggestion that the power to refer under the Auditors Act was limited to actions of account at law and accountings cognizable in equity. See the summing up of conclusions, 57 N. H., 372.

We repeat that high considerations of public policy call for a continuance of the liberal interpretation heretofore given by this Court to our reference act. If the Supreme Court mutilates its own powers in order to magnify the jury system, it will increase the tendency of important business to move into the courts of equity in order to avoid the jury, and to escape the tribunals which ask not whether the decision was right, but only whether the jury received sound advice from the judge before they made it. The judgment of the Supreme Court undertakes to deprive both the Supreme Court and the Legislature of a power of vast and growing importance in the administration of justice, and it should be reversed.

Law of Agency to Indorse.

We add a few more citations bearing upon the merits of the defences which the Court left to the jury :

One who deals with the officers of a corporation is bound to know their powers and the extent of their authority ; and the burden is upon him when he seeks to charge the corporation to prove the authority of the officer or agent with whom he dealt.

Alexander v. Cauldwell, 83 N. Y., 480.

Wilson v. Kings Co. R. R., 114 N. Y., 487,
491, 492.

That the bank paying a check takes the whole risk of lack of authority to indorse is manifested by the cases

where the bank is held liable to its depositor for paying a check when indorsed or made payable to a fictitious person, the depositor having been led by the fraud of his own agent into signing or indorsing to the order of the fictitious person.

Shipman v. Bank, 126 N. Y., 318, 326, 327.

Armstrong v. Bank, 46 Ohio, 512.

Chism v. Bank, 32 Lawyers' Rep. Ann., 778, 780.

Vagliano v. Bank of England, 22 Q. B. Div., 103; 23 Q. B. Div., 243.

~~Chism v. Bank, 32 Lawyers' Rep. Ann., 778.~~

The last-cited case on appeal is also pertinent on another point of this case, holding (23 Q. B. Div., 263) that while the plaintiff in that case had been negligent in leaving too much to a subordinate clerk without supervision, yet this could not avail as a defence, because it was not the proximate cause of the loss, and holding further that the bank itself was not in the exercise of due care, and this fact would prevent them from relying on the defence of negligence by plaintiff. This is the same doctrine stated by Judge Cooley in the Tilden case, quoted under Point IV., on page 19 of the foregoing brief.

COLLINS & CORBIN,
Counsel for Plff. in Error.

...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...

...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...

...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...

...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...

...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...

INDEX.

	Page.
Writ of Error.....	1
Judgment.....	2
Bill of Exceptions.....	23-181
Assignment of Error and Prayer for Certiorari.....	181
Joinder in Error.....	186
Writ of Certiorari.....	187
Order of Reference.....	187
Stipulation under Reference.....	188
Testimony for Plaintiffs—	
Samuel W. Putnam.	
Direct.....	25
Cross.....	34
Redirect.....	63
Alfred L. Eccles.	
Direct.....	66
Cross.....	85
Redirect.....	102
Charles Whitehead..	106
Testimony for Defendant—	
Charles Whitehead.	
Direct.....	107
Cross.....	111
Redirect.....	118
Recross.....	119
William S. Middleton.	
Direct.....	121
Cross.....	125, 140
Redirect.....	142
Arthur H. Wood.	
Direct.....	134
Cross.....	136
Rebuttal—	
Samuel W. Putnam.	
Direct.....	138
Cross.....	139
Alfred L. Eccles.	
Direct.....	145
Cross.....	151
Redirect.....	161
Sur-rebuttal—	
William K. Kirkbride.....	162
William S. Middleton.....	163
Charge to Jury.....	165

DOCUMENTARY EVIDENCE AND EXHIBITS FOR PLAINTIFFS.

Description of Document.	Dates.	Ex.	Page.
Charter of the American Saw Company of New York.....	Jan. 18, 1866.	P1.	24
Articles of Association incorporating the American Saw Company of New Jersey.....	Jan. 31, 1893.	P2.	24
Pamphlet Laws of New York for year 1848, under which New York Company incorporated			24
Pamphlet Laws of New York for 1853, containing supplement to act under which New York Company incorporated			25
By-Laws of American Saw Company of New York adopted	Mar. 27, 1880.	C1.	27, 28, 202
Resolution proposing amendment to By-Laws American Saw Company of New York, presented	June 11, 1889.		73
By-Laws of American Saw Company of New Jersey adopted ..	Jan. 31, 1893.	C3.	29, 205
Checks in favor of plaintiffs, endorsed "For deposit to the credit of The American Saw Company, I. F. Bissell, Secretary," words "I. F. Bissell, Secretary," in manuscript and residue printed with rubber stamp.....		P4.	71
Statement taken from Collection Books of First National Bank showing dates when defendant collected checks and drafts embraced in two suits.....		P 5.	79
Checks and drafts, 40 in number, comprised in suit brought by American Saw Company of New York (copies annexed to declaration), first one being for \$189.20, dated Feb. 27,			

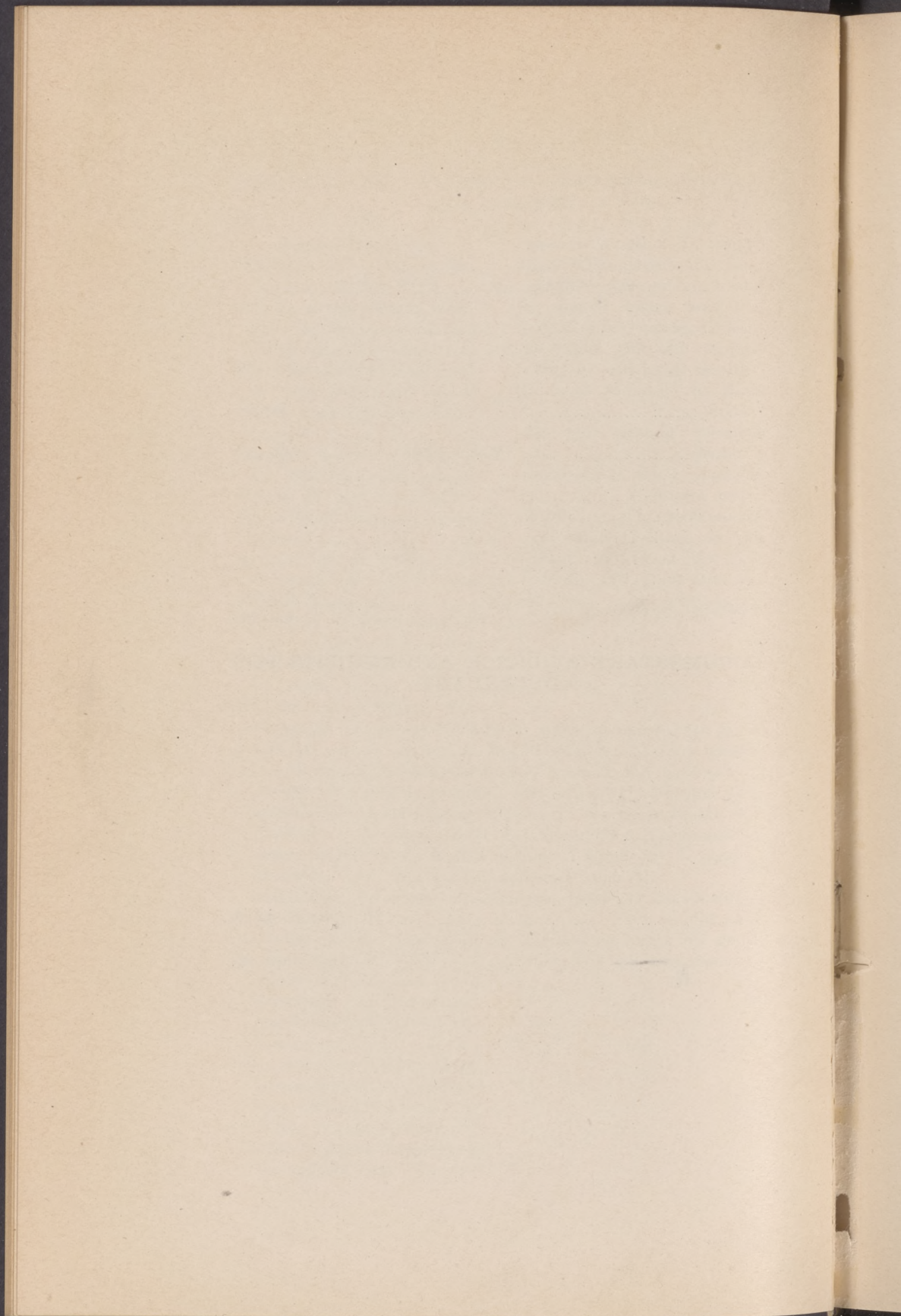
ampt

Description of Document.	Dates.	Ex.	Pages.
1891, and cashed by defendant Mar. 2, 1891.....		P6.	80
Checks and drafts, 49 in number, comprised in suit brought by American Saw Company of New Jersey (copies of which are annexed to declaration) the first being for \$104.88, dated Feb. 14, 1893..		P7.	80
Draft on customer, form of blank.....		P8.	84, 210
Referee's Reports (not admitted).....	Nov. 1, 1894.		105, 189
Signature Book of defendant (not admitted).....			106
Minute Books of both plaintiffs			106
Pay roll checks (1) dated Dec. 12, 1890, for \$1,100; (2) May 6, 1892, for \$1,000; (3) Mar. 24, 1893, for \$950.....		P9-P13. {	129, 133, 141-144

DOCUMENTARY EVIDENCE AND EXHIBITS FOR DEFENDANT.

accepted

Notes (4) payable to order of Plaintiff (1), dated June 16, 1892, for \$870.64, endorsed, "Pay First Nat. Bank of Trenton, or order, for collection American Saw Company, I. F. Bissell, secretary;" remainder endorsed "American Saw Company, I. F. Bissell, secretary;" (2) dated December 4, 1892, for (3) dated December 5, 1892, for \$104.47, and (4) dated December 26, 1892, for \$46.....	D1, D4.	55-59
Drafts (5) drawn by plaintiffs on their customers, <i>accepted</i> and paid.....	D5, D9.	91, 138



NEW JERSEY
Court of Errors and Appeals.

THE AMERICAN SAW COMPANY OF NEW YORK, Plaintiff in Error, v. THE FIRST NATIONAL BANK OF TRENTON, Defendant in Error.	}	In Error.
--	---	-----------

THE AMERICAN SAW COMPANY OF NEW JERSEY, Plaintiff in Error, v. THE FIRST NATIONAL BANK OF TRENTON, Defendant in Error.	}	In Error.
--	---	-----------

WRIT OF ERROR.

* [Filed October 28, 1896.]

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE AMERICAN SAW COMPANY OF NEW YORK, Plaintiff in Error, v. THE FIRST NATIONAL BANK OF TRENTON, Defendant in Error.	}
---	---

New Jersey, to wit, the State of New Jersey to our
Justices of our Supreme Court, greeting:
[L. s.] Because in the record and proceedings,
and also in the giving of judgment in a cer-10
tain plaint, which was in our said Supreme Court of

Judicature, before you, between The American Saw Company, a corporation of the State of New York, plaintiff, and The First National Bank of Trenton, New Jersey, defendant, in an action upon contract, manifest error hath intervened, to the great damage of the said The American Saw Company, as it is said; we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you
 10 that if judgment be thereupon given and affirmed, then you distinctly and openly send under your seal the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the thirtieth day of June instant, together with this writ, that the record and proceedings aforesaid, being inspected, we may cause to be further done upon, for correcting that error, what of right and according to the law and custom of the State of New Jersey ought to be
 20 done.

Witness our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the eleventh day of June, in the year of our Lord one thousand eight hundred and ninety-six.

HENRY C KELSEY,
Clerk.

COLLINS & CORBIN,
Attorneys.

The answer of the Justices of the Supreme Court of the
 30 State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of the State of New Jersey, in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY, C. J. [L. s.]

COPY OF JUDGMENT.

NEW JERSEY SUPREME COURT.

THE FIRST NATIONAL BANK OF	} On Contract. On Postea, &c. Woodbury D.Holt, Attorney.
TRENTON, NEW JERSEY,	
ads.	
THE AMERICAN SAW COMPANY OF	
NEW YORK.	}

As yet of the term of February, A. D. one thousand eight hundred and ninety-four.

Witness, Mercer Beasley, Esquire, Chief Justice. 10

BENJ. F. LEE,

Clerk.

Mercer county, ss.—The First National Bank of Trenton, New Jersey, a body corporate, the defendant in this suit, was summoned to answer unto The American Saw Company, a corporation of the State of New York, the plaintiff therein, in an action upon contract; and thereupon the said plaintiff, by Collins & Corbin, its attorneys, complains for that whereas the said defendant, the First National Bank, on the thirtieth day of January, 20 eighteen hundred and ninety-three, at Trenton aforesaid, in the county aforesaid, was indebted to the said plaintiff in the sum of sixteen thousand dollars for money received by said defendant for the use of the said plaintiff; and in the like sum of money for interest due from the said defendant to the said plaintiff for the said plaintiff's having forborne moneys due from the said defendant to the said plaintiff at the defendant's request, for a long time then elapsed, and being so indebted the said defendant afterwards, to wit, on the day and year last 30 aforesaid, in the county aforesaid, in consideration of the premises, respectively promised to pay the said several last mentioned moneys respectively to the said plaintiff on request; yet the defendant disregarded its promises, and hath not paid any of the said moneys or any part

thereof; to the plaintiff's damage sixteen thousand dollars, and thereupon it brings its suit, &c.

The following is a bill of particulars of plaintiff's demand, and a copy of the checks and drafts collected by defendant on a forged and unauthorized indorsement of the name of plaintiff, the payment of the proceeds of which plaintiff demands as money received for its use.

" Allen C. Middleton. Walter D. Griscom.

Shriver, Bartlett & Co.
10 Mercantile Collections.
Philadelphia, Pa.

No. 2157. Philadelphia, Feb'y 27, 1891.

The Commonwealth Title Insurance and Trust Co.,
No. 813 Chestnut St.

Pay to the order of Amer. Saw Co. one hundred
eighty-nine $\frac{20}{100}$ dollars.

Div. a575-3 x Full a575-6.

\$189 $\frac{20}{100}$. SHRIVER, BARTLETT & CO."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
20 Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
Received payment by First Nat'l Bank,
Philadelphia, Pa.)

" Allen C. Middleton. Walter D. Griscom.

Shriver, Bartlett & Co.
Mercantile Collections.
Philadelphia, Pa.

Philadelphia, Mar. 26, 1891.

The Commonwealth Title Insurance and Trust Co.
30 No. 813 Chestnut st.

Pay to the order of American Saw Co. twenty-six $\frac{82}{100}$
dollars.

Div. a575-3 less costs a575-3.

\$26.82. SHRIVER, BARTLETT & CO."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
Received payment, by First Nat'l Bank,
Philadelphia.)

"Collins & Kreitler,
Dealers in General Merchandise,
Nebraska, Forest Co., Pa.

Brookville, Pa., May 12th, 1891. No. 417.
The National Bank of Brookville.

Pay to the order of American Saw Co. \$239.25, two
hundred thirty-nine and $\frac{25}{100}$ dollars.

COLLINS & KREITLER."

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.
Credit account First National Bank, Trenton, 10
N. J., C. Whitehead, Cashier.
For collection for acct. of First National Bank,
Philadelphia.
For collection for account of Curwensville
Bank, A. E. Patton, Cashier.
For collection and remittance to The German
National Bank, Pittsburgh, Pa., O. C. Burg-
dorf, Cashier.
American Saw Co., Trenton, N. J., May 5,
1890. 20
Paid May 21, 1891, Jefferson County Nat'l
Bank, Brookville, Pa.)

"\$139.37. The Citizens Savings Bank.

Detroit, Mich., May 21st, 1891.

Pay to the order of Am. Saw Co., one hundred thirty-
nine $\frac{37}{100}$ dollars.

To the Chase National Bank, New York City.

EDWIN F. MACK,
Tellston, Cashier."

(Endorsed—American Saw Co., Isaac F. Bissell, Sect. 30
American Saw Co., Trenton, N. J., May 23,
1890.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
E. First Nat'l Bank, N. Y., May 25, 1891.
Paid.)

"No. 154.

Philadelphia, 9-16, 1891.
Central National Bank.

Pay to the order of American Saw Co., fifty $\frac{10}{100}$ dollars.
\$50.10.

BUFFALO LUMBER CO.,
Wm. Whitman, Treasurer."

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
Received payment through the Clearing
House. 20.)

10 "No. 2507. Bank of Montreal. Chicago, Ill.
Established 1818.
Paid-up capital, \$12,000,000.
\$109.75. Surplus fund, \$6,000,000.

Sept. 28th, 1891.

Pay to the order of American Saw Co., one hundred
and nine $\frac{75}{100}$ dollars.

To the Bank of New York,
National Banking Association,
New York.

20

M. MUND, Manager.

Henry B. Black, Accountant."

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.
Credit account, First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
E. First Nat'l Bank, N. Y., Oct. 1, 1891. Paid.

"J. M. Schram,
Hardware and Mill Supplies.
Ridgway, Pa., Oct. 19th, 1891. No. ———
The Ridgway Bank.

30 Pay to the order of American Saw Co. \$500 $\frac{00}{100}$, five
hundred and no-100 dollars.

J. M. SCHRAM."

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.
For collection and remittance to First Na-
tional Bank, Lock Haven, Pa., Moore
Fredericks, Cashier.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

For collection for acct. of First National
Bank, Philadelphia.

Ridgway Bank, Ridgway, Pa. Paid Oct. 28,
1891.)

"Number 264727.

The First National Bank of Detroit, State of Michigan.

Duplicate unpaid. No. 2707. Detroit, Oct. 29, 1891.

\$186.39.

Pay to the order of American Saw Co. one hundred
eighty-six & $\frac{39}{100}$ dollars. 10

In current funds.

National Bank of Commerce, in New York.

L. E. CLARK,

Cashier."

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.

Credit account First National Bank, Trenton,

N. J., C. Whitehead, Cashier.

E. First Nat'l Bank, N. Y., Nov. 12, 1891.

Paid.)

"Stearns Manufacturing Co., 20

\$173.40. Erie, Pa., Novem. 14th, 1891.

First National Bank

of Erie.

Pay to the order of American Saw Co. one hundred &
seventy-three & $\frac{40}{100}$ Dollars.

No. 2909.

\$173 $\frac{40}{100}$. STEARNS MANUFACTURING CO.,
John T. Boyd, General Manager."

(Endorsed—American Saw Co., Isaac F. Bissell, Sect.

Credit account, First National Bank, Trenton, 30

N. J., C. Whitehead, Cashier.

For collection and remittance to Second

National Bank, of Pittsburgh, Pa., Thos.

W. Welsh, Jr., Cashier.

For collection for acc't of First National Bank,

Philadelphia.

First Nat'l Bank, Erie, Pa. Paid Nov. 21,

1891.

"\$167 $\frac{50}{100}$.

Bank of Leipsic,
W. W. Edwards & Co.,

Leipsic, O., Nov. 24, 1891.

Pay to the order of Isaac F. Bissell, Sec., one hundred
sixty-seven $\frac{50}{100}$ dollars.

To Chase National Bank,

New York.

No. 23428.

W. W. EDWARDS, Cashier."

(Endorsed American Saw Co., Isaac F. Bissell, Sect.
10 Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
E. First Nat'l Bank, N. Y., Nov. 28, 1891.
Paid.)

"Seattle, Wash., Dec. 3, 1891. No. 26169.

The Puget Sound National Bank of Seattle.

Pay to the order of American Saw Co. \$1,000.00 one
thousand no-100 dollars.

To the National Bank of Republic, New York.

R. V. AUCKENY, Cashier."

20 (Endorsed—American Saw Co., Isaac F. Bissell, Sect.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
E. First Nat'l Bank, N. Y., Dec. 12, 1891.
Paid.)

"No. 157.

Piedmont, W. Va., 1, 20, 1892.

The First National Bank of Piedmont.

Pay to the order of American Saw Co. two hundred
and sixteen $\frac{69}{100}$ dollars.

\$216.69.

BUFFALO LUMBER CO.,

30

Wm. Whitman, Treasurer."

(Endorsed—American Saw Co., Isaac F. Bissell, Sect.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

For collection for account Citizens' National
Bank, Parkersburg, W. Va., C. H. Shattuck,
Cashier.

For collection for account National Exchange
Bank, Baltimore, Md., J. Scott, Cashier.

For collection for acc't of First National Bank,
Philadelphia.

For collection for acc't of Keystone Bank of
Pittsburgh, J. H. Hayes, Cashier.)

"Ridgway, Pa., April 18th, 1892. No. —
The Elk County Bank.

Pay to the order of American Saw Co. \$500⁰⁰/₁₀₀ five
hundred & no-100 dollars.

J. M. SCHRAM."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y. 10

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

Pay Elk County Bank, Ridgway, Pa., or order,
for collection and credit to account of St.
Mary's Bank, of Hyde, Hall & Co., St.
Mary's, Pa.

For collection and remittance to First Na-
tional Bank, Lock Haven, Pa., Moore Fred-
ericks, Cashier.

For collection for acc't of First National Bank, 20
Philadelphia.

"A. L. Brooks & Co.

Lowell, Mass., April 22, 1892. No. 1740.

The Old Lowell National Bank.

Pay to the order of American Saw Co. \$93.08 ninety-
three and ⁰⁸/₁₀₀ dollars.

\$93.08.

A. L. BROOKS & CO."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier. 30

Pay only through Lowell Clearing House to
Merchants Nat'l Bank, W. W. Johnson,
Cashier.

Pay First Nat'l Bank, Boston, Mass.

Credit for collection for acct. of First Nat'l
Bank, N. Y., — Field, Cashier.

Endorsement guaranteed for collection on
acct. of First Nat'l Bank of Boston, C. H.
Draper, Cashier.)

"272. Philadelphia, Pa., 4-30, 1892.
Central National Bank.

Pay to the order of American Saw Co. \$272.95, two
hundred and seventy-two $\frac{95}{100}$ dollars.

No. 42. BUFFALO LUMBER CO.,
Wm. Whitman,
Treasurer."

10 (Endorsed—American Saw Co., I. F. Bissell, Sec'ty.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
Paid through the Clearing House. 20.)

Original "The First National Bank, No. 54231
Duplicate of Seattle, Wash., May 20, 1892.
Unpaid.

Pay to the order of J. E. Fox, \$1,000.00, one thousand
dollars.

20 To National Park Bank,
New York.

H. L. McMANIS,
Pres't."

(Endorsed—Pay to the order of the American Saw
Co., J. E. Fox.

American Saw Co., I. F. Bissell, Sec'ty.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

E. First Nat'l Bank, N. Y., May 28, 1893.
Paid.)

30

"Duncan Mackenzie,
Iron Founder & Machinist,
Trenton, N. J., June 29th, 1892.

No. 720. Trenton Banking Company.

Pay to the order of American Saw Co., one hundred
eighty-one & $\frac{23}{100}$ dollars.

\$181.23.

DUNCAN MACKENZIE."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J.)

"No. 95486. The First National Bank.
Bay City, Mich, July 5, 1892.

The National Bank of Commerce, in New York.
Original.
Pay to the order of Wm. Ward three hundred dollars
(\$300.00) in current funds. Countersigned, F. P. Thorne.
F. P. THORNE, Cashier." 10

Teller.
(Endorsed—Pay to American Saw Co., Trenton, N.
J., Wm. Ward.
American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier. E. First
Nat'l Bank, N. Y., July 9, 1893. Paid.)

"\$34. Philadelphia, Pa., 7-8, 1892.
Central National Bank.
Pay to the order of American Saw Co. \$34.50, thirty-20
four $\frac{50}{100}$ dollars.
No. 99.

BUFFALO LUMBER CO.,
Wm. Whitman,
Treasurer."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
Received payment through the Clearing
House. 20.)

"Kane, Pa., Aug. 2, 1892. No. 40731. 30
The Kane Bank,
McDade, Davis & Co.

Pay to the order of American Saw Co. \$234.75, two
hundred thirty-four & $\frac{75}{100}$ dollars.

To Importers and Traders National Bank, New York.
W. P. WESTON, Cashier."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
E. First Nat'l Bank, N. Y., Aug. 18, 1892!
Paid.)

\$144.00.

The Whitman and Barnes Manufacturing Company.
Kansas City, Mo., 8-8, 1892.

Pay to the order of American Saw Co. one hundred
10 forty-four no-100 dollars.

No. 9052.

To the Missouri National Bank,
Kansas City, Mo.

J. Y. STONE, Manager."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

For collection for acc't of First National
Bank, Philadelphia.

20

American National Bank, Kansas City, Mo.
Clearing House, paid Aug. 16, 1892.

" 80.00.

Orwell, Vt., Aug. 10, 1892.

First National Bank.

Pay to the order of The American Saw Co. eighty
dollars.

No. 366.

THAD. M. CHAPMAN."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

30

Pay First Nat'l Bank, Boston, Mass., or order
for collection for acct. of First Nat'l Bank,
N. Y., E. Scofield, Cashier.

Endorsement guaranteed for collection on
account of First National Bank of Boston,
C. H. Draper, Cashier.

Pay to the order of any National Bank for
collection for account of Aug. 17, 1892.

Howard National Bank, Burlington, Vermont,
F. E. Burgess, Cashier.

"Portland Lumber Company. No. 1662.
To American Saw Co., Dr.
Address, Trenton, N. J.

This voucher is payable in current funds at the St. Mary's Bank, St. Mary's, Elk county, Penna., when receipted in accordance with the directions printed in red ink.

1892.

10

July 11. Mdse. as per bill rend. \$29.00.

I hereby certify that the above has been examined by me, found correct, and is hereby approved for payment, when countersigned by W. H. Hyde or J. K. P. Hall.

E. G. BECK,
Chief Bookkeeper.

Countersigned,
J. K. P. HALL.

Received, August 12th, 1892, of the Treasurer of the Portland Lumber Company, twenty-nine dollars in full 20 of the above account.

\$29.00.

AMERICAN SAW CO.,
I. F. Bissell, Sec'ty.

Read this—The above receipt must be dated, and signed by the party in whose favor this voucher is made out; or when signed by another party, the authority for so doing must in all cases accompany it; and this receipt must not be cut off from the body of the voucher."

Endorsed—American Saw Co., I. F. Bissell, Sec'ty.
Credit account First National Bank, Trenton, 30
N. J., C. Whitehead, Cashier.

For collection and remittance to First National Bank, Lock Haven, Pa., Moore Fredericks, Cashier.

For collection for acc't of First National Bank, Philadelphia.

"J. M. Schram,
Hardware & Mill Supplies. No. 107.
Ridgway, Pa., Aug. 16th, 1892.
Pay to the order of American Saw Co. \$250.00, two
hundred and & fifty & no-100 dollars.
To the Elk County Bank,
Ridgway, Pa.
J. M. SCHRAM."

10 (Endorsed—American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
For collection for acc't of First National Bank,
Philadelphia.
Pay Elk County Bank, Ridgway, Pa., or order,
for collection and credit to account of St.
Mary's Bank, of Hyde, Hall & Co., St.
Mary's, Pa.
For collection and remittance to First Na-
tional Bank, Lock Haven, Pa., Moore Fred-
ericks, Cashier.)
20

"No. 96885. \$400. The First National Bank.
Bay City, Mich., Aug. 29, 1892,
The National Bank of Commerce, in New York.
Original.
Pay to the order of Wm. Ward, four hundred dollars.
\$400.00. In current funds.
Countersigned, J. M. Lewis.

F. P. BROWNE,
Cashier."
30 (Endorsed—Pay American Saw Co., Trenton, N. J.,
Wm. Ward.
American Saw Co., I. F. Bissell, Sec't'y.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
E. First National Bank, N. Y., Sept. 1, 1892.
Paid.)

"No. 452. Philadelphia, Aug. 22d, 1892.
Market Street National Bank,

Pay to the order of American Saw Co. one hundred & two $\frac{95}{100}$ dollars.

\$102.95.

HENRY BAYARD & CO."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

Received payment through the Clearing
House. 20.)

"\$128.48.

Erie, Pa., Sept. 2, 1892.

First National Bank of Erie.

10

Pay to the order of American Saw Co. one hundred twenty-eight & $\frac{48}{100}$ dollars.

No. 4057.

\$128.48. STEARNS MANUFACTURING CO.,

John T. Boyd, General Manager."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

Marine National Bank, Paid, Erie, Penna.

For collection for acc't of First National Bank, 20
Philadelphia.

For collection for acc't of Keystone Bank of
Pittsburgh, J. H. Hayes, Cashier.

"No. 172.

Philadelphia, Septem. 14, 1892.

The Bank of North America.

Pay to the order of American Saw Company, two hundred eighty-two and $\frac{68}{100}$ dollars.

\$282.68. CAMBRIA LUMBER COMPANY,

H. N. Leonard, Treasurer."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y. 30

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

Received payment through the Clearing
House. 20.)

"No. 225.

Piedmont, W. Va., 10-5, 1892.

The First National Bank of Piedmont.

Pay to the order of American Saw Co. one hundred and thirty-three $\frac{6}{100}$ dollars.
\$133.06.

BUFFALO LUMBER CO.,

Wm. Whetman, Treasurer."

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.

Credit account First National Bank, Trenton,

N. J., C. Whitehead, Cashier.

For collection for account Citizens National

Bank, Parkersburg, W. Va., H. Shattuck,

Cashier.

For collection for acc't of First National Bank,

Philadelphia.

For collection for acc't of Keystone Bank,

Pittsburgh, J. H. Hayes, Cashier.

10

"\$100.32. Wyeth Hardware & Manufacturing Co.

St. Joseph, Mo., Oct. 17, 1892.

Pay to the order of American Saw Co. one hundred & $\frac{32}{100}$ dollars.

To Chatham National Bank, New York City.

20 WYETH HARDWARE AND MANUFACTURING CO.,

No. 46422.

W. M. Wyeth, Prest."

(Endorsed—American Saw Co., I. F. Bissell, Sec'ty.

Credit account First National Bank, Trenton,

N. J., C. Whitehead, Cashier.

E. First Nat'l Bank, N. Y., Oct. 25, 1892. Paid.)

"Portland Lumber Company. No. 1879.

To American Saw Co., Dr.

Address, Trenton, N. J.

This voucher is payable in current funds at the St.
30 Mary's Bank, St. Mary's, Elk Co., Penna., when receipted
in accordance with the directions below in red ink.

1892.

Aug. 26. Mdse. as per bill rend.

\$12 70

Sept. 14. " " " " "

4 50

\$17 20

I certify that the above has been examined by me,

found correct, and is hereby approved for payment, when countersigned by W. H. Hyde or J. K. P. Hall.

E. G. BECK,
Chief Bookkeeper.

Countersigned:

J. K. P. HALL.

Received Oct. 19, 1892, of the Treasurer of the Portland Lumber Company, seventeen $\frac{20}{100}$ dollars in full of the above account.

\$17.20.

10

AMERICAN SAW CO.,

I. F. Bissell, Sec'y.

Read this.—The above receipt must be dated, and signed by the party in whose favor this voucher is made out, or, when signed by another party the authority for so doing must in all cases accompany it; and this receipt must not be cut off from the body of the voucher."

(Endorsed—American Saw Co., I. F. Bissell, Sec'y.

Credit account First National Bank, Trenton,

N. J., C. Whitehead, Cashier.

20

For collection for acc't of First National Bank, Philadelphia.

For collection and remittance to First National Bank, Lock Haven, Pa., Moore Fredericks, Cashier.)

"\$86.64.

Wyeth Hardware & Manufacturing Co.

St. Joseph, Mo., Oct. 25, 1892.

Pay to the order of American Saw Co. eighty-six $\frac{64}{100}$ dollars.

30

To Chatham National Bank, New York city.

WEYTH HARDWARE & MANUFACTURING CO.

W. M. Wyeth, Pres."

No. 46514.

(Endorsed—American Saw Co., I. F. Bissell, Sec'y.

Credit account First National Bank, Trenton,

N. J., C. Whitehead, Cashier.

E. First Nat'l Bank, N. Y., Nov. 2, 1892.

Paid.)

"No. 255. Piedmont, W. Va., 10-31, 1892.

The First National Bank of Piedmont.

Pay to the order of American Saw Co. one hundred and sixty-two dollars.

\$162.00.

BUFFALO LUMBER CO.,

Wm. Whitman, Treasurer."

(Endorsed—American Saw Co., I. F. Bissell, Sec'y.

Credit account First National Bank, Trenton,

N. J., C. Whitehead, Cashier.

10

For collection for ac't of Keystone Bank of Pittsburgh, J. H. Hayes, Cashier.

Davis National Bank, Piedmont, W. Va.

For collection for acc't of First National Bank, Philadelphia.

For collection for account Citizens National Bank, Parkersburg, W. Va., C. H. Shattuck, Cashier.)

"Portland Lumber Company.

No. 1983.

To American Saw Co., Dr.

20

Address, Trenton, N. J.

This voucher is payable in current funds at the St. Mary's Bank, St. Mary's, Elk Co., Penna., when receipted in accordance with the directions below in red ink.

1892.

Oct. 5. Mdse as per bill rend.	\$35 87
less two saws	6 00

————— \$29 87

Oct. 14. Mdse as per bill rend.	64 90
---------------------------------	-------

Oct. 24. " " " "	2 50
------------------	------

30

————— \$97 27

I certify that the above has been examined by me, found correct, and is hereby approved for payment, when countersigned by W. H. Hyde or J. K. P. Hall.

E. G. BECK,
Chief Bookkeeper.

Countersigned:

J. K. P. HALL.

Received Nov. 21st, 1892, of the Treasurer of the Port-

land Lumber Company, ninety-seven $\frac{27}{100}$ in full of the above account.

\$97.27.

AMERICAN SAW CO.,

I. F. Bissell, Sec't'y.

Read this.—The above receipt must be dated and signed by the party in whose favor this voucher is made out, or, when signed by another party the authority for so doing must in all cases accompany it; and this receipt must not be cut off from the body of the voucher."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y. 10

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

For collection for account of First National
Bank, Philadelphia.

For collection and remittance to the First
National Bank, Lock Haven, Pa., Moore
Fredericks, Cashier.)

"J. M. Schram,

Hardware & Mill Supplies, No. 210.

Ridgway, Pa., Nov. 26th, 1892. 20

Pay to the order of American Saw Co. \$250.00, two
hundred and fifty & no-100 dollars.

To the Elk County Bank,
Ridgway, Pa.

J. M. SCHRAM."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.

Pay Elk County Bank, Ridgway, Pa., or
order, for collection and credit to account 30
of St. Mary's Bank of Hyde, Hall & Co.,
St. Mary's, Pa.

For collection and remittance to First National
Bank, Lock Haven, Pa., Moore Fredericks,
Cashier.

For collection for acc't of First National Bank,
Philadelphia.)

"Somerset County National Bank. No. 58250.
Somerset, Pa., 21 Dec., 1892.

Pay to the order of The American Saw Co., Trenton,
\$129.80, one hundred twenty-nine $\frac{80}{100}$ dollars.

To the National Bank of the Republic,
Philadelphia, Pa.
MILTON J. PRITTS,
Cashier."

10 (Endorsed—American Saw Co., I. F. Bissell, Sec'ty.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
Received payment through the Clearing
House. 20.)

"\$124. Philadelphia, Pa., 12, 29, 1892.
Central National Bank.

Pay to the order of American Saw Co. \$124.58, one
hundred and twenty-four $\frac{58}{100}$ dollars.

No. 270. BUFFALO LUMBER CO.,
Wm. Whitman,
Treasurer."

20 (Endorsed—American Saw Co., I. F. Bissell, Sec'ty.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
Received payment through the Clearing
House. 20.)

"The Citizens Savings Bank. No. 28236.
Detroit, Mich., Dec. 30th, 1892.

Pay to the order of R. B. Ridgley \$77.50, seventy-
seven $\frac{50}{100}$ dollars.

30 To the Chase National Bank, New York.
FRANK F. TILLDSON,
Asst. Cashier."

(Endorsed—Pay American Saw Co., Trenton, N. J.,
or order, R. B. Ridgley.
American Saw Co., I. F. Bissell, Sec'ty.
Credit account First National Bank, Trenton,
N. J., C. Whitehead, Cashier.
E. First Nat'l Bank, N. Y., Jan. 14, 1893.
Paid.)

"No. 6348.

Goldsboro, N. C., Jan'y. 2, 1893.

Bank of Wayne.

Pay to the order of American Saw Co. fifty three &
 $\frac{70}{100}$ dollars.

Goldsboro Lumber Co. \$53.70. (Bal. of acc't)

GOLDSBORO LUMBER CO.,

per L. Y. Street, V. P."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,

N. J., C. Whitehead, Cashier.

10

For collection for First National Bank, Wins-
ton, N. C. J. W. Alspa.

For collection for acc't for First National
Bank, Philadelphia.)

"The First National Bank of Seattle, Wash., No. 57477.

Jan. 9, 1893.

Original.

Duplicate

Unpaid.

Pay to the order of American Saw Co. \$500.00, five 20
hundred dollars.

To National Park Bank, New York.

G. R. FISHER,

Teller, Cashier."

(Endorsed—American Saw Co., I. F. Bissell, Sec't'y.

Credit account First National Bank, Trenton,

N. J., C. Whitehead, Cashier.

I. First Nat'l Bank, N. Y., Jan. 21, 1893.

Paid.)

And the said defendant by W. D. Holt, its attorney, 30
comes and defends the wrong and injury when, &c., and
says that it did not undertake and promise in manner
and form as the said plaintiff hath above thereof com-
plained against it, and of this it puts itself upon the
country, and the said plaintiff doth the like. Therefore
let a jury thereupon come before the Chief Justice or
some other Justice of the Supreme Court of the State of
New Jersey at a Circuit Court, to be holden at Trenton,

in and for the county of Mercer on the second Tuesday of May, A. D. eighteen hundred and ninety-six, by whom, &c. And the same day is given to the parties aforesaid there, &c.

And now at this day, to wit, the second day of June, A. D. eighteen hundred and ninety-six, before our said Supreme Court, at Trenton, come the parties aforesaid by their attorneys aforesaid, and the Justice before whom, &c., having sent hither his record had before him in
10 these words, to wit:

“Afterwards, to wit, at a Circuit Court holden at Trenton in and for the county of Mercer, before William S. Gummere, Esq., one of the Justices of the Supreme Court, on the thirteenth day of May, A. D. eighteen hundred and ninety-six, according to the form of the statute in such case made and provided, comes as well the said plaintiff as the said defendant by their respective attorneys within mentioned, and the jurors of the jury between the parties aforesaid in the plea aforesaid being
20 a jury struck by the order of the said Justice trying the cause on the application of defendant according to the form of the statute in such case made and provided, being also summoned, come, who, to speak the truth of the matters within contained being chosen, tried and sworn, say upon their oath, that the said The First National Bank of Trenton did not undertake or promise in manner and form as the said The American Saw Company of New York hath within complained against the said bank.”

30 Therefore, it is considered that the said The American Saw Company of New York take nothing by its said writ, and that the said The First National Bank of Trenton do go thereof without day, &c. And it is further considered by the court here that the said The First National Bank of Trenton do recover against the said The American Saw Company of New York the sum of for
its costs and charges by it about its defence in this behalf laid out and expended, by the court here adjudged to the said The First National Bank of Trenton, and with its
40 assent according to the form of the statute in such case

made and provided, and that the said The First National Bank of Trenton have execution thereof, &c.

Judgment signed this second day of June, A. D. one thousand eight hundred and ninety-six.

M. BEASLEY, *C. J.*

I, Benjamin F. Lee, Clerk of the Supreme Court of the State of New Jersey, hereby certify that the foregoing is a true copy of the judgment entered in above stated cause as the same remains of record in my office.

In testimony whereof, I have hereto set my hand and 10
the seal of said court, at Trenton, this twenty-
[L. s.] eighth day of October, A. D. one thousand
eight hundred and ninety-six.

BENJ. F. LEE, *Clerk.*

BILL OF EXCEPTIONS.

[Filed October 22, 1896.]

NEW JERSEY SUPREME COURT.

THE AMERICAN SAW COMPANY	}	On Contract. Bill of Exceptions. 20
OF NEW YORK		
vs.		
THE FIRST NATIONAL BANK OF	}	
TRENTON.		

Collins & Corbin, James Buchanan and Francis C. Lowthrop, attorneys for plaintiff.

Woodbury D. Holt, William M. Lanning and Chauncey H. Beasley, attorneys of defendant.

Be it remembered, that on the thirteenth day of May in the year eighteen hundred and ninety-six, at a circuit court holden at Trenton, in and for the county of Mercer, before his honor, William S. Gummere, Esquire, 50

- one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and judge of said circuit court, the issue joined in the above stated cause, between the said parties (*pro ut* the pleadings), came on to be tried by a jury for that purpose duly empanelled. And thereupon it was agreed by counsel that this cause, and also another cause pending in the New Jersey Supreme Court, wherein The American Saw Company of New Jersey is plaintiff, and the First National Bank of Trenton is
- 10 defendant, be tried together; and thereupon the attorneys of the said plaintiffs, to maintain said issues on their part, offered in evidence a certified copy of the certificate of incorporation of the plaintiff, The American Saw Company of New York, dated January eighteenth, eighteen hundred and sixty-six, certified May eleventh, eighteen hundred and ninety-six, by John Palmer, Secretary of State of the State of New York, under the Great Seal of the State of New York (*pro ut* the same), which was received in evidence and marked *Exhibit P1*.
- 20 And said attorneys of said plaintiffs also offered in evidence on behalf of the plaintiffs, a certified copy of the certificate of incorporation of the plaintiff, The American Saw Company of New Jersey, dated January thirty-first, eighteen hundred and ninety-three, certified May twelfth, eighteen hundred and ninety-six, by Henry C. Kelsey, Secretary of State of the State of New Jersey, under the Great Seal of the State of New Jersey (*pro ut* the same), which was received in evidence and marked *Exhibit P2*.
- 30 And said attorneys of said plaintiffs also offered in evidence on behalf of the plaintiffs, the printed statute book and pamphlet session laws of the State of New York for the year eighteen hundred and forty-eight, containing the laws of the State of New York under which the said plaintiffs were incorporated, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed on February seventeenth, in the year eighteen hundred and forty-eight, and found on page 54, &c., of

said book (*pro ut* the same), which was received in evidence.

And said attorneys of said plaintiffs also offer in evidence on behalf of the plaintiffs, the printed statute book and pamphlet session laws of the State of New York for the year eighteen hundred and fifty-three, containing a supplement to said statute entitled "An act to amend an act entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes,'" which supplement was passed June 10¹⁰ seventh, in the year eighteen hundred and fifty-three, and is found on pages 705, &c., of the said last mention book (*pro ut* the same), which was received in evidence.

By agreement of counsel it was admitted that there was a former trial of these suits; that at such former trial one Samuel W. Putnam was sworn as a witness and gave testimony on behalf of the said plaintiffs; that the said Samuel W. Putnam has since died; that at such former trial the issues were the same as at this, that the parties 20 at such former trial were the same as at this; that the matters in controversy at such former trial were the same as at this; that the printed book used upon the argument of the rules to show cause, heretofore taken therein, contains a correct statement of the testimony of said Samuel W. Putnam given by him on such former trial; and that said printed book may be used at this trial, so far as relates to his testimony, without proving his said testimony by any person.

Thereupon the counsel on the part of said plaintiffs 30 read such testimony of said Samuel W. Putnam from said printed book as follows:

Samuel W. Putnam sworn for the plaintiffs.

Direct-examination by Mr. Corbin—

Q. Where do you reside?

A. In Elizabeth.

Q. Were you connected with the American Saw Company of New York?

A. I was.

Q. Were you connected with them during the year 1880?

A. I was.

Q. And from that time down to what date?

A. To the time the company dissolved.

Q. That was January 31st, 1893?

10 A. Yes.

Q. And then you become connected with the American Saw Company of New Jersey?

A. I did.

Q. And with that company you have been connected how long?

A. Until the present time.

Q. What office have you held in either of those companies?

A. Treasurer.

20 Q. Were you a director also?

A. I was.

Q. In both companies?

A. In both companies.

Q. And you held the office of treasurer?

A. Yes.

Q. In the American Saw Company of New York did you ever hold any other office than that of president?

A. I was part of the time vice-president at the same time I was treasurer; I was secretary at one time, several 30 years ago.

Q. Will you please refer to the minutes of the American Saw Company of New York under date of March 27th, 1880; were you secretary at that time?

A. I was.

Q. (Showing witness a book)—What is the book shown you?

A. These are the minutes of the American Saw Company of New York.

Q. Kept by you as secretary at that date?

40 A. At that date; yes,

Q. Have you a copy of the by-laws there?

A. I have.

Q. They are the by-laws themselves; the original by-laws?

A. The by-laws themselves.

Q. And the resolution adopting them?

A. There is the resolution adopting them.

Q. And were these the by-laws under which the transactions of the American Saw Company of New York were carried on?

10

A. Yes.

The Court—It is not necessary to read anything but the testimony of the witness, and if at any point there is testimony which counsel think is objectionable, they have a right to object to it, and the ruling of the court as to its competency, and an exception, but that is all you need to read.

Mr. Corbin—We offer in evidence the by-laws of the American Saw Company of New York, with the resolution adopting them, under date of March 27th, 1880, 20 which reads as follows: "By-laws submitted to the board at the previous meeting were then considered and finally adopted unanimously. On motion of Mr. J. B. Edward's ordered to take the place of those previously in use." They are in words and figures as follows: "I now offer the by-laws," which by-laws were received in evidence.

Q. Is this a printed copy of the by-laws?

A. Yes.

Q. Was that the pamphlet which you used in your business for convenience?

30

A. Yes.

Q. Supposed to be an exact copy of this?

A. Yes.

Q. I noticed one word in section 5, which in the by-laws is printed "or deposit;" in the original it is "for deposit;" it is a slight printer's error in an immaterial point?

A. Yes.

Mr. Corbin—If there is no objection the printed copy will be marked for use in place of the original copy.

Mr. Lanning—There is no objection to its being marked in evidence.

The Court—I understand there is no objection that the printed copy may be used so far as the original would be relevant.

The original by-laws and resolution were marked
10 *Exhibit C1*, and the printed copy of the by-laws were marked *Exhibit C2*.

Q. Were you one of the incorporators of the American Saw Company of New Jersey?

A. I was.

Q. Who was the secretary of that company at the time of its first meeting and incorporation?

A. Isaac F. Bissell.

Q. You know his handwriting?

A. I do.

20 Q. I call your attention to the book of minutes of the American Saw Company of New Jersey to the document purporting to be the by-laws of that corporation, and to a resolution adopting the same; in whose writing is the signature of the secretary to the minutes of that meeting?

A. Isaac F. Bissell, secretary.

Q. You were present at that meeting, were you?

A. I was.

Q. Your name is mentioned as one of the corporators there present?

30 A. It is.

Q. Were those by-laws adopted in your presence?

A. They were.

Q. And did you have those printed for convenience?

A. I did.

Q. Were these by-laws those in use by the company since its incorporation?

A. They were.

Q. And is this the printed copy which was used for convenience?

A. This is the printed copy.

Mr. Corbin—We offer in evidence the resolution adopting these by-laws, January 31st, 1893, which reads as follows: Mr. Kellog presented a draft by-laws for the corporation which were read and unanimously adopted and 10 ordered to be entered in the minutes, and they are as follows: By-laws of the American Saw Company. And I also offer the by-laws themselves.

The original by-laws and resolution were received in evidence and marked *Exhibit C3*, and the printed copy was received in evidence for convenience and marked *Exhibit C4*.

Q. During the years 1891, 1892 and 1893 who was secretary of the American Saw Company?

Q. Isaac F. Bissell.

20

By the Court—

Q. Both the old and new companies?

A. Of both companies.

Further direct—

Q. Down to what date, or about what time?

A. When he resigned or when he——

Q. When he ceased to act?

A. Yes; in the fall of 1893.

Q. Where is the place of business of the American Saw Company of New Jersey?

30

A. At the factory here in Trenton.

Q. Does it have its office here?

A. It does.

Q. And where was the office and manufactory of the American Saw Company of New York?

A. In Trenton here.

Q. That is the place where your factory was?

A. Yes.

Q. You must have had an office, too, in New York?

A. We had an office in New York.

Q. But here is where your business was?

A. Here is where the business was.

Q. What were your duties as treasurer in connection with the business of either company during the years I
10 have mentioned?

Mr. Lanning—We object to that question upon the ground that the duties of the treasurer are described, it is presumed, by the by-laws, which they have already offered in evidence.

The Court—I do not think that is necessarily so.

Mr. Corbin—The object is to get at the course of the business.

Q. What was your custom in regard to looking after the business at Trenton during the years I have men-
20 tioned?

Mr. Lanning—The question is objected to as being entirely too general and may lead to matters that are utterly irrelevant.

The Court—Well, I think it may be competent to show what he did; I suppose that is the purport of the question—what he actually did in the supervision of the business during these years; that is what you want, Mr. Corbin?

Mr. Corbin—Yes, sir.

30 Q. What active part did you take in the business?

Mr. Lanning—During what time?

Q. During the years 1891, 1892 and 1893?

A. I came to Trenton from Elizabeth or from New York, wherever I happened to be, once a week, or oftener, frequently twice or three times a week, and looked into the matters of the factory—of the working of the factory; I signed the checks on the bank that were presented to me after comparing them with the bills.

Q. Where did the company keep its bank account?

A. In the First National Bank of Trenton.

Q. Did you have any other account? 10

A. At that time there was a small account in New York, but inactive.

Q. Was there any particular day when you were accustomed to come to Trenton?

A. At one time on Tuesday of the week and later on Thursdays.

Q. Who received and opened letters first; to what post office were letters addressed to the company usually sent?

A. Substantially all the letters came to the Trenton 20 post office.

Q. Who received and opened the letters of the company?

Mr. Lanning—One moment; show his knowledge, please, before asking that question.

Q. Did you have any knowledge who did open the letters?

A. Yes, I noticed; I saw that the letters were opened by Isaac F. Bissell when I was there.

Q. He was the proper man to open them, was he not? 30

A. He was the proper man to open them.

Q. And who conducted the correspondence with the customers?

A. Bissell, the secretary.

Q. Who kept the books of the company; did you have a bookkeeper?

A. Yes, a bookkeeper; Alfred L. Eccles.

Q. Now, what is the business of the company?

A. Manufacturing circular saws and saws of various kinds and tools of a similar character.

Q. What class of customers do you apply; is it small saws or large?

A. Large saws; saws used in mills.

Q. Carried on here in Trenton?

A. Carried on in Trenton.

Q. Where are the customers of the company principally; are they in New York or are they scattered
10 about?

A. No; they are mostly in the West and in States out of this neighborhood; some in New York, some in Minnesota and Wisconsin, and some in Southern States.

Q. Any on the Pacific coast?

A. And a good many on the Pacific coast.

Q. Now what is your method of making sales?

A. Principally by letter——

Q. (Question read.)

A. Our customers wrote to us in Trenton, ordering
20 saws or other articles that they purchased from us, and if the order was accept we shipped the goods and sent them a bill for them, requesting them to remit in most cases.

Q. Then your orders came by mail to Trenton?

A. Almost entirely.

Q. Now, in what manner were you paid?

A. Paid by checks or drafts on banks in this neighborhood, sent through the mail to our order, The American Saw Company.

30 Q. What do you mean by checks on banks in this neighborhood; were not checks sometime drawn on banks——

A. They were frequently drawn on local banks where people lived who sent them, but a great many were sent by drafts on this neighborhood.

Q. New York and Philadelphia you mean?

A. Yes.

Q. Now, when these checks came—first, who sent out bills?

Mr. Lanning—Well does he know?

The Court—Ask him if he knows.

Q. Do you know who sent out bills.

A. I know what the ordinary custom was; I know of certain bills that were sent out in that way; and that is the custom of it.

Q. Well, just state the custom?

A. The bills were made out in the office by the clerks especially appointed for that purpose; they were handed to the secretary, and whether he by his own hand en-10 closed them in an envelope, I can't say certainly, but they went under his direction; they were sent to the person to be paid.

Q. Now, when these checks or drafts in payment of these bills were received at the office, what was, if you know, the course of business with regard to the collection of these drafts?

A. Those letters which carried the drafts, and all letters, were handed to Mr. Bissell; either handed to him at the office, or he took them out of the post office. 20

Q. And then what was done with the checks and drafts?

A. When he opened the letters and took the checks that were enclosed, he handed them in the regular course of business to the bookkeeper, Mr. Eccles, to enter on the books.

Q. Credit the customer?

A. Credit the customer on the books.

Q. And then what was done with them?

A. A slip was made out; if they were checks, as they 30 were principally, or paper, if it wasn't money—a slip was made out and the checks taken to the bank and deposited—the First National Bank.

Q. And deposited there?

A. Deposited there to the credit of the American Saw Company.

Q. Of course the bookkeeper entered at the same time the detail of the checks on the check book?

By Mr. Lanning—

Q. On whose check book?

A. On the check book that we held there from which we checked on the First National Bank.

Further direct—

Q. You mean in the margin?

A. In the margin of the check book.

Q. That is, all deposits were entered in the margin of the check book?

10 A. The deposits were entered in the margin of the check book.

Q. As a credit against the amount of checks given by you?

A. Yes.

Q. Now then, did the Board of Directors hold meetings at Trenton?

A. They held meetings at Trenton for the incorporation of New Jersey; for the corporation in New York they held meetings in New York.

20 Q. How frequently did you hold those meetings in your city?

A. For several years past they were held once in two months.

Q. What presentation of the current business of the concern was made to the directors at that time?

A. Well, the statement of the condition of the company, the trial balance, with all the amounts that were due to the company, were presented there, having been brought there by the secretary.

30 Mr. Lanning then read as follows:

Cross-examination by Mr. Lanning—

Q. Mr. Putnam, as I understand you, the New York corporation has practically gone out of business?

A. It has.

Q. And the New Jersey corporation is now in existence and really the successor of the New York corporation?

A. That is so.

Q. The New York corporation ceased to do business on January 31st, 1893?

A. That is the understanding.

Q. And the New Jersey corporation commenced to do business on that date?

A. That is so.

Q. You have said that of the New York corporation you were at one time secretary?

A. I was.

Q. You never were secretary of the New Jersey corporation?

A. No; never was.

Q. Do you know when you ceased to be secretary of the New York corporation?

A. It was at the time that Mr. Bissell was elected their secretary.

Q. Then Mr. Bissell was your immediate successor?

A. He was; that is my present impression; I am almost positive of that.

Mr. Lanning—Will you hand me the minutes, please, 20 of the New York corporation? (Same handed to counsel.)

Q. At the time that Mr. Bissell succeeded you as secretary, do you recall whether he was appointed by the Board of Directors or not as secretary?

A. I can only say what the custom was in regard to secretaries.

Q. No; I don't want the custom, I want to know what your recollection is as to the appointment of Mr. Bissell when he succeeded you? 30

A. Well, I don't recollect everything that was done at the time.

Q. Do you remember whether he was elected secretary at an annual meeting or not?

A. No; but it is not the usual course to elect them at the annual meeting, if you mean the annual stockholders' meeting.

Q. No; I don't mean that; do you recollect whether

Mr. Bissell was first elected secretary at a first meeting of the Board of Directors after the annual meeting of the stockholders?

A. I don't recollect any particular time.

Q. Was it not your custom after the annual meeting of the stockholders for the election of directors to hold a meeting of the directors for organization?

A. It was.

Q. And at that organization meeting did not the
10 Board of Directors elect a president and vice president—a president and secretary?

A. They did.

Q. Do you recall whether Mr. Bissell was first elected as secretary at such a meeting?

A. I can only say that I suppose he was; I don't recall the particular time.

Q. Do you recall whether you ever resigned the office as secretary?

A. I don't recall it.

20 Q. Do you recall when you were first made vice president in relation to the time when you ceased to be secretary?

A. I don't recall that; I only know that I was elected vice president at the time I ceased to be secretary.

Q. That is what I asked for?

A. Yes.

Q. Can you tell me when you were elected to the office of treasurer?

A. I have been elected to the office of treasurer every
30 year for twenty years.

Q. You can't tell then whether Bissell was elected secretary as your successor at an organization meeting of the Board of Directors, or at some other meeting of the year.

A. I can't tell.

Q. And you can't tell whether you resigned as secretary, and he was appointed to fill the vacancy, or whether he was elected by the Board of Directors at the beginning of the year for the full term?

40 A. That I don't know.

Q. Can you tell whether you were elected first—the first time you were elected vice president you were elected for the full term, or appointed to fill a vacancy?

A. I don't recollect that.

Q. Who was your immediate predecessor as vice president?

A. That I don't recollect; I have paid but little attention to who held the office of vice president at that time.

Q. Now, can you give us any idea as to the year in which you ceased to be secretary? 10

A. Only by looking at the minutes.

Q. I show you the minutes of the New York corporation and call your attention to page 194, at what purports to be a record of a meeting of August 14th, 1883; is this record in your handwriting?

A. It is.

Q. Was that a meeting an organization meeting of the Board of Directors, or a meeting held at some time within the year instead of at the beginning of it?

A. It was not held at the beginning; it was held in 20 August I see.

Q. Can you tell whether, from inspecting that record, you resigned as secretary or not?

A. I did resign.

Q. When?

A. At that meeting in August, 1883.

Q. And who was appointed secretary, anyone, at that meeting?

A. Isaac F. Bissell was appointed secretary—let me see—yes; Isaac F. Bissell. 30

Q. Then Isaac F. Bissell was appointed the first time as secretary to fill a vacancy created by your resignation?

A. Yes.

Q. Your memory is not refreshed, is it, after consulting the minutes?

A. Yes.

Q. Was anyone elected to the office of vice president at that time?

A. I was elected at that time.

Q. Who was your immediate predecessor? 40

A. You wish me to refer to the——

Q. In the office of vice president?

A. Do you wish me to refer to the minutes?

Q. You have already said you couldn't tell, now you can refresh your recollection from the minutes?

A. R. H. Johnson.

Q. Did R. H. Johnson resign as vice president at the meeting?

A. To take effect the first of September.

10 Q. And did your resignation also take effect the first of September?

A. Yes, sir.

Q. And the meeting was held August 14th, 1883?

A. Yes.

Q. Did R. H. Johnson occupy any other position in the American Saw Company than that of vice president; I don't mean officially, but in the conduct of its works?

A. He was in charge of the factory at that time.

Q. Was he known as superintendent?

20 A. No, he was not.

Q. What designation was given to him?

A. I don't know but what he was called the manager; that I can't be positive about.

Q. Now, then, after his resignation as vice president, did he cease to be manager or to have control of the department he had had up to that time?

A. He ceased then I see by these minutes.

Q. And who succeeded to the position of manager?

30 A. I don't know as anybody did; it is possible that there was an understanding that Mr. Bissell was manager at the factory?

Q. Were you not known one time as the manager?

A. I was.

Q. Were you not known at this time, after you had succeeded Johnson, as manager?

A. That I can't say.

Q. You can't?

A. No.

Q. Why?

A. Because I don't know exactly how matters were at that time, this is in 1883.

Q. Don't you recall what your functions were?

A. I was treasurer at that time, and vice president.

Q. Now, then, as treasurer you had charge of the funds, hadn't you, of the company?

A. I had.

Q. As vice president you acted as presiding officer when the president was not at the board meeting, didn't you? 10

A. I did.

Q. Now, then, do you mean to say you can't recall whether you did anything else in your connection with this company than to take charge of its funds and to preside at the board meetings when the president was not there?

A. Oh, yes; because I came frequently at that time; I came almost every day to Trenton.

Q. And didn't you look after the affairs of the company there? 20

A. I did, but not known as manager that I know of.

Q. Do you know that you were not known as manager?

A. No, I don't.

Q. Didn't you receive a salary?

A. I did.

Q. What did you receive that salary for?

A. As treasurer and vice president.

Q. Are you sure as to that?

A. I am.

Q. Didn't you receive a salary of \$100 a month for 30 your duties in connection with the work of management?

A. I don't think so.

Q. Well, didn't you receive that salary?

A. I don't recollect what my salary was then.

Q. Your attention, Mr. Putnam, has been called to the by-laws adopted on March 27th, 1880; at that time you were secretary, weren't you?

A. I was.

Q. Do you know whether those laws were a revision of former by-laws?

A. They were a revision of former by-laws.

Q. Do you know whether they were at any subsequent time altered or modified?

A. That I don't recollect; if so, it is no general alteration.

Q. What I mean is this—do you recall whether any section of the by-laws was altered in any respect or
10 amended?

A. I don't recall.

Q. On January 31st, 1893, when the by-laws of the New Jersey corporation was adopted, do you recollect whether the old by-laws or the by-laws of the old corporation were used—readopted.

A. The old by-laws were referred to, and the new by-laws were made substantially to conform to those.

Q. Do you remember whether the by-law No. 5 of the New Jersey corporation was taken from a similar by-law
20 in the New York corporation; it is the by-law relating to the powers of the president and the treasurer and the secretary?

A. I think they were taken from the old by-laws.

Q. Do you recall now whether the by-law on this subject, adopted March 27th, 1880, was subsequently modified by the New York corporation?

A. That I don't recollect.

Q. Do you recollect whether prior to the formation of the New Jersey corporation Mr. Bissell ever endorsed
30 any checks or drafts for the New York corporation, and had them deposited in the bank?

A. I take it for granted that he did; I don't know for a certainty.

Q. Don't you know that he did?

A. I have no doubt that he did, because that is the regular course of business.

Q. Now, under the by-laws adopted in 1880, the secretary had no such power, had he?

A. To endorse checks?

40 Q. Yes?

A. I always supposed he had—the secretary?

Q. Yes?

A. You mean to endorse checks for deposit?

Q. Yes; now, let us understand this; Mr. Putnam I understand you to say that it was a custom for Mr. Bissell, the secretary of the New York corporation, to endorse checks for the company and have them deposited in the First National Bank?

A. Yes; endorsed them for deposit.

Q. Yes; that was done for how long a time? 10

A. Oh, I think it was done continuously.

Q. After his appointment as secretary?

A. I think so; yes.

Q. Now, he was appointed secretary in August, 1883, wasn't he?

The Court—August 14th, 1883.

Q. Now, at that time, under the provisions of the by-laws, did the secretary have the power so to endorse?

A. I think so; doesn't the by-law show?

Q. The by-law reads thus; here is the printed copy; 20
I read from section five of the New York corporation:
"The treasurer shall have charge of all funds of the corporation under the direction of the executive committee. He shall deposit all moneys received from any source on account of, or for the use of the company, in such bank or banking house, to the credit of the company, as shall be selected by the trustees or executive committee. All checks or drafts upon any such funds exceeding two hundred dollars in amount shall be drawn by the treasurer and countersigned by the president or one other 30
member of the executive committee. The treasurer shall be authorized at all times to make, sign, draw and endorse all checks, drafts or orders for the payment of money for deposit in bank to the credit of the company which may be required in the ordinary course of business." I ask you now whether that by-law was not after March 27th, 1880, amended so as to permit either the treasurer or the secretary to endorse?

A. That I don't recollect; it is possible that there is another; there is a by-law adopted later.

Q. Well, now, turning to the New Jersey by-laws, the fifth by-law of the New Jersey corporation, adopted January 31st, 1893, with respect to the matter in hand, read as follows: "The treasurer shall have charge of all funds under the direction of the board or executive committee. The treasurer and secretary, or either of them, shall be authorized at all times to make or endorse
10 all checks, drafts or orders for the payment of money for deposit in bank, banking house or trust company, which may be required in the ordinary course of business." Now you observe that the phraseology is very similar to the phraseology of the by-law of the New York corporation, isn't it?

A. Yes.

Q. But you observe that a change has been made by saying that the treasurer and secretary, or either of them, may make these checks and endorsements?

20 A. Yes.

Q. So that there was a modification made at some time; now I ask you whether that modification was not made before the organization of the New Jersey Company, January 31st, 1893?

A. I recall that there was an attempt to alter it.

Q. Do you recall that there was an alteration?

A. There was an attempt to alter in that respect that the secretary should be authorized to endorse for deposit checks.

30 Q. Now I ask whether that attempt resulted in completed effort in that direction?

A. My recollection is that we found that the minutes—those altered minutes—the alteration of the by-laws was detailed on the minutes of the old book, but they were not adopted as they should have been at the succeeding meeting.

Q. When did you discover that?

A. When we formed this—in drawing up the minutes for the new company.

40 Q. And when had that fact come to your mind?

A. Only at that time.

Q. And when since then?

A. Well, I haven't thought anything about it since then, except in making up the minutes for this; it appears there.

Q. Let me call your attention to page 255 of the minutes of the New York corporation, appearing to be the record of a meeting of June 11th, 1889, and ask you if that record is in the handwriting of Mr. Bissell?

A. It is.

10

Q. And do you discover there that Mr. Loomis gave notice that he would apply to have the by-laws amended so that they should read as follows; setting out the proposed by-law?

A. Yes, I recollect that; I didn't recollect that until this time; I did recall it at the time we made up the new minutes, made up the by-laws for the new company.

Q. Now, then, do you say that the proposed amendment was not adopted so far as minutes show?

A. I don't think they were; I didn't find any.

20

Q. Now, notwithstanding that fact that an effort was made to amend the by-laws of the New York corporation on June 11th, 1889, and notwithstanding the fact that the amendment was not made, yet it is a fact that Mr. Bissell, as secretary, was in the habit of endorsing paper of the American Saw Company, which was subsequently deposited in the national bank; that is correct, is it?

A. That is the fact; yes; while the——

Q. Now, that is all; you knew that?

30

A. I knew that; yes.

Q. You knew it during the whole of the time that he was so acting?

A. I say I knew it; I never recalled that until the time——

Q. No; you knew that Mr. Bissell was so acting?

A. Yes; or either he or somebody else in the office. Mr. Eccles endorsed them frequently.

Q. Well, you know that he himself, Mr. Bissell, was so acting, did you?

40

A. I did; yes.

Q. And you knew he was so acting from 1883, when he was first made secretary?

A. Yes.

Q. In the course of your business did you ever draw on your customers for debts due from them to you?

A. I did.

Q. Who, on behalf of the American Saw Company, signed those drafts?

10 A. I. F. Bissell signed those drafts.

Q. From the time he was made secretary?

A. I don't know when that habit was adopted of making drafts on our customers.

Q. Did you not originally—did you not from the first start of your business draw drafts?

A. No; I think not.

Q. That was a practice that was instituted later in the history of your existence?

A. I think so; yes.

20 Q. Well, from the time that you inaugurated the practice of making drafts on debtors did Mr. Bissell sign these drafts?

A. I think so; yes.

Q. He signed them as secretary of the American Saw Company?

A. Yes.

Q. Where did he get his authority from; any resolution of the Board of Directors that you recall?

A. I don't recall any resolution; there may have been,
30 but I don't recall it.

Q. The by-laws of 1880 gave no such authority?

A. No.

Q. Now, this by-law, proposed to be amended in 1889, provided "the secretary or treasurer, or either of them, shall sign any drafts or orders for the payment of money due to the company by any debtor in the ordinary course of business, and perform such other duties as the board or executive committee may require." Do you recall whether prior to that date Mr. Bissell signed drafts on
40 debtors as secretary of the American Saw Company?

A. I don't know; I don't know when that custom was——

Q. Then, as a fact, Mr. Bissell, as secretary of the American Saw Company, did sign drafts on debtors without any authority under any by-law; that is right, is it?

A. Yes; he did.

Q. He did do that with your knowledge?

A. He did.

Q. Do you know whether he did it with the knowledge of the president?

A. That I don't know.

Q. Do you know whether he did it with the knowledge of the other directors?

A. That I don't know.

Q. You were the treasurer having control of those matters, were you?

A. Yes.

Q. And he did it with your knowledge?

A. He did; my recollection was they were drawn 20 in——

Q. Well, you have answered the question, Mr. Putnam; while you were secretary of the New York corporation, that is, up to August 14th, 1883, how often did you come to Trenton?

A. Up to 1883?

Q. Yes?

A. Oh, two or three times a week.

Q. You reside—I don't know whether that appears—where do you reside?

30

A. In Elizabeth.

Q. And have all these years?

A. Yes; there was a season when I came here every day, but that—I can't tell when that was.

Q. In 1883 was there any special reason for your resigning as secretary; I mean on the score of health or anything of that sort, because you were unable to come oftener than once or twice a week?

A. That I don't know; it might have been so

Q. After 1883, after you resigned as secretary, and 40

were made vice president; how often did you come to Trenton?

A. Oh, several times a week.

Q. Several times a week?

A. Yes; I can't say——

Q. During the years 1891, 1892 and 1893 how often did you come to Trenton?

A. I came as much as once a week, and frequently twice.

10 Q. And I think you said on your direct examination that formerly on Tuesday's?

A. Yes.

Q. And latterly on Thursday's of each week?

A. Yes.

Q. During the year do you remember whether Mr. Bissell, after his election as secretary on August 14th, 1883, had his power on behalf of the American Saw Company in any wise enlarged by any action of the Board of Directors?

20 A. I have an impression that he was made manager of the affairs of the company.

Q. You have an impression that he was made manager?

A. Yes.

Q. Can you tell when?

A. I can't.

Q. How long do you think it was after his appointment as secretary?

A. That I can't recall.

Q. Whom did he succeed as manager?

30 A. I am under the impression that R. H. Johnson was manager at that time.

Q. But R. H. Johnson resigned in 1883 at the same time that you resigned as secretary?

A. Yes.

Q. Did R. H. Johnson continue manager after his resignation as vice president?

A. No.

Q. Didn't he drop out of the thing entirely and completely at that time.

40 A. He did; he left the concern.

Q. He left the concern August, 1883, didn't he?

A. He did.

Q. Now, that was the same time that Bissell was made secretary?

A. Yes.

Q. Now was Bissell made manager at the same time he was made secretary?

A. I don't think he was; I don't know when it was.

Q. Then you think that Bissell was made manager sometime after he had been made secretary; now I ask you again, whom did he succeed as manager?

A. Oh, I don't think there was any continuous office as manager of the company.

Q. Well, wasn't there somebody who was known as manager?

A. Not always.

Q. Not always?

A. No; not outside of the officers; the president and——

Q. Wasn't there someone who was known sometimes as 20 superintendent?

A. Oh, yes; the superintendent.

Q. Was Mr. Bissell ever known as superintendent?

A. Never.

Q. Was he ever known as manager.

A. That I don't recollect, positively; I have only an impression about that.

Q. Well, didn't Mr. Bissell do anything except perform the duties of secretary?

A. Oh, he had general charge of the office at the factory.

Q. Well, what did he do?

A. Well, he took care of the office, received letters, directed the bookkeeper and the clerks in the office—in that way he was a sort of manager.

Q. Then the bookkeeper and clerks in the office were under his direction and control?

A. They were.

Q. In that respect, at least, he was manager, was he?

A. So far; yes.

Q. What else did he do?

A. I don't think he had anything else to do.

Q. Now what did you do as treasurer?

A. I came to the office, as I said before, frequently, and looked into the accounts; looked over the sales books; saw what had been done, as well as what collections had been made in a general way, and the bills were put before me for payment; checks were put before me, also, and I compared them and signed them.

10 Q. Well, did you do any bank business?

A. Nothing except that.

Q. Did you make any deposits?

A. Oh, no.

Q. Who made the deposits?

A. Generally by a clerk in the——

Q. Do you know anything about it personally?

A. No; I don't.

Q. Well——

A. I know that that was the custom, but I don't know
20 any special time who went there; I think a clerk was sent up.

Q. You were not there but one day a week?

A. That is all.

Q. You would suppose it is the custom of the company to make deposits in the bank very frequently; more frequently than once a week?

A. Daily.

Q. So that deposits must have been made in the bank when you were not here?

30 A. Oh, yes.

Q. And that matter must have been looked after by someone else than yourself?

A. Yes.

Q. The clerks in the office were under the superintendency and control and management of Mr. Bissell, were they?

A. They were.

Q. So that the man who had charge of the business must have been Mr. Bissell?

40 A. He was.

Q. Then Mr. Bissell, as I understand, had control of the affairs of the office generally, and the matters relating to the deposits and bank business from day to day?

A. Yes; practically that was done by the——

Q. Just wait a moment; I want to show you page 233 of the minutes and ask you if you recognize that page as in the handwriting of Mr. Bissell?

A. I do.

Q. The secretary of the company, purporting to be elected at a meeting of February 8th, 1887, is it? 10

A. Yes.

Q. Do you recall—you observe that you are recorded as being present at the meeting?

A. I do.

Mr. Buchanan—These entries that are shown to the witness it seems to me should be offered in evidence.

Mr. Lanning—Oh, they will be, of course.

Q. I call your attention to this record: "Mr. Loomis offered the following resolution: Whereas, that inasmuch as circumstances prevent the continuous attendance at 20 the works of the company of Mr. Samuel W. Putnam, vice president, who has hitherto acted as manager, Resolved, that Isaac F. Bissell be appointed manager of the business of the works, with full power to act in all matters in the absence of Mr. Putnam; which was duly carried." Do you remember that transaction?

A. Well, I recall that; I have no doubt——

Q. That is what you referred to a while ago, when you said you thought Mr. Bissell had been made manager; is that it? 30

A. Yes.

Q. Now, then, he was given the general power, was he, at that time, to act in all matters in your absence?

A. As manager.

Q. When remittances were made by the customers of the American Saw Company, through the mail, you have already said they came to Mr. Bissell's hands?

A. Yes.

Q. He had the power to open letters, had he, and take the checks from them, and drafts, and so on?

A. Yes.

Q. Do you know whether remittances were ever made by post-office order?

A. I think they were.

Q. Who collected on those post office orders; did you, as treasurer?

10 A. I don't know how that was done.

Q. Do you recollect ever having gone to the post office to collect any post office orders at all?

A. No; I don't.

Q. As a fact, do you not know that you did not?

A. I don't think I did.

Q. Who did?

A. My impression is that Mr. Eccles did; I don't mean that he signed them, but he collected them.

Q. Who did sign them?

20 A. That I don't know.

Q. What was the usual custom in your office as to who should sign for the saw company in order that collections might be made on post-office orders?

A. I don't know; I don't know what the custom was.

Q. If money was paid to the company through the post office, according to the custom of conducting your business, who got the money?

A. I think that—well, it was either paid to Mr. Eccles or Mr. Bissell; I can't tell you.

30 Q. You have already said that Mr. Bissell, as a matter of fact, in the usual conduct of the business, in your absence, attended to those various affairs; do you know what his custom was, from personal knowledge, as to the endorsements of commercial paper made payable to the order of the saw company?

A. I know that the habit was——

Q. From your personal knowledge you are speaking?

A. Yes.

Q. Go on.

40 A. The habit was for the treasurer, myself, to endorse

the paper; you mean where we got a discount at the bank; something of that kind?

Q. I am speaking of commercial paper generally?

A. You don't mean to speak of notes?

Q. Yes; I am including notes now in the frame of my question.

Mr. Corbin—Are not you including too much?

The Court—I understand that Mr. Lanning includes not only drafts and checks that were received in payment of goods, but all paper that was made by the corporation. 10

Q. I have spoken of the remittances to the saw company through the mail of drafts and checks; didn't the saw company sometimes receive from its customers notes?

A. It did.

Q. Now, I ask from your personal knowledge, can you tell what the custom was of Mr. Bissell with respect to the endorsement of these checks, drafts and notes that were made payable to the order of the saw company?

A. The notes were a small part of our account. 20

Q. That is not an answer; can you tell?

A. I am trying to recall.

Q. Simply answer yes or no?

A. I am trying to think about that.

Q. I want you to think?

A. Just give me that question again, please.

Q. (Question read).

A. You mean of the checks, drafts and notes; if they were to be deposited in the bank he had the power to endorse them for deposit. 30

Q. What was the custom, not what was his power?

A. That was the custom.

Q. Did you ever see the checks, those endorsed by him?

A. That I am not certain, but I think I did; I frequently saw checks endorsed by Mr. Eccles, the book-keeper, in my name.

Q. We are not speaking of Mr. Eccles, we are speaking of Mr. Bissell.

A. I don't recollect about the endorsements by him; I only know what the custom was in the office about those things.

Q. Well, do you recall whether you ever saw any of the bank officers of the First National Bank with respect to Mr. Bissell's connection with the financial affairs of the company?

10 A. I don't recollect anything of the kind, except at the times these matters came out, where he had defaulted in this money.

Q. Do you know Mr. Charles Whitehead, cashier of the First National Bank?

A. I do.

Q. You have known him some years?

A. Yes, sir.

Q. Do you recall ever having a conversation with him respecting the powers of Mr. Bissell, respecting the bank
20 operations of the company?

A. No; I do not.

Q. Now, you say that Mr. Bissell had the power, although you went beyond the frame of my question to give the answer, to endorse for deposit?

A. Yes.

Q. What did he have the power, according to your understanding, to endorse for deposit?

A. I suppose he had the power, as Mr. Eccles, or any other clerk——

30 Q. What did he have the power to deposit; what kind of paper?

A. Checks for deposit in the bank.

Q. Anything else?

A. No.

Q. Only checks?

A. Only checks.

Q. You mean to include drafts, of course, don't you now?

A. When you say drafts, do you mean these drafts
40 that appear that he signed?

Q. I mean drafts sent to the saw company through the mail made payable to the saw company?

A. Oh, yes.

Q. According to your understanding then Mr. Bissell had the power and authority to endorse for deposit these checks and drafts?

A. He did.

Q. Well, what was his power and authority with respect to the notes that came through the same channel to the saw company and made payable to the order of the 10 saw company?

A. To use them in the same way; to deposit them in the bank for collection for the American Saw Company.

Q. How would he endorse them; endorse for deposit under such circumstances?

A. No.

Q. How would he endorse?

A. I really don't know how that would be done; I know that he had the power to put them in the bank for collection. 20

Q. Well where did he get the power?

A. In a general way.

Q. Generally allowed to him, was it, by the company in the prosecution of its business?

A. I can't say that.

Q. There wasn't any by-law that authorized it, was there?

A. No; there was no by-law.

Q. Well, then, you permitted him to do it?

A. To deposit in the bank for collection. 30

Q. Very well now; you permitted him to make these notes and leave them with the bank, did you?

A. Yes.

Q. You don't know he endorsed them, eh?

A. I don't.

Q. You never gave him any instructions as to how he should endorse them, eh?

A. Well, you ask me that question; I can't tell you about notes that were offered for discount at the bank, if you want to know about that. 40

Q. Well, let us hear about it after answering the first question I gave you; you never gave him any instruction as to how he should endorse; is that so?

A. I don't think I did.

Q. Now then——

Mr. Corbin—You interrupted his answer, I think.

Q. Now, then, let us hear about notes offered for discount; what about that?

A. Those I endorsed myself.

10 Q. When were notes offered for discount that you endorsed; can you tell?

A. No; I can't.

Q. For what purpose were they discounted; can you tell that?

A. I knew that we needed money at the beginning of the year to pay our dividend at one time.

Q. Do you know what year?

A. I don't.

Q. Well, the beginning of the year, January?

20 A. Probably the early part of January.

Q. Well, were they discounted?

A. They were.

Q. What other time, any other time?

A. I don't recollect any other.

Q. You can't give the year?

A. No; we had very little discount.

Q. Now, you say you endorsed them?

A. I endorsed them except in one case.

Q. What is that?

30 A. Well, I came over and asked him to bring me those notes to endorse; he says, "Why I have carried them up to the bank, and they are credited to our account;" said I, "What do you mean, that you endorsed them?" He said, "Yes;" I said, "You have no authority to do that, never do that again."

Q. Can you tell me when that was?

A. I can't; but it is within two or three years.

Q. That conversation took place where?

- A. At our office in Trenton, at the factory.
- Q. Anybody present besides yourself and Mr. Bissell?
- A. The president was present.
- Q. The president, Mr. Ely?
- A. Yes.
- Q. He heard that, did he?
- A. He heard it.
- Q. Anybody else.
- A. I don't recollect anybody else; I called the——
- Q. Now wait; did the matter drop there? 10
- A. I don't know whether there was another discount made afterwards or not; I think there was, and I think they were brought to me.
- A. Did you tell Mr. Whitehead of that fact?
- A. I did not.
- Q. Did you tell any of the bank officers that Mr. Bissell had no authority to make that endorsement?
- A. I told the president of the company.
- Q. The president of the company, Mr. Ely?
- A. The president of the company, Mr. Ely; yes, sir. 20
- Q. Did you tell any of the officers of the First National Bank of Trenton, the defendant in these cases, that Mr. Bissell had no right to make that endorsement?
- A. No, I did not; I did not think it was necessary.
- Q. You did not think it was necessary?
- A. No.
- Q. I show you what purports to be a promissory note, dated December 4th, 1892, payable to the order of the American Saw Company, and endorsed American Saw Company, I. F. Bissell, secretary; is that one of the notes 30 you refer to?
- A. I can't say certain about that.
- Q. Then, if it is not one of the notes, it is another, is it?
- A. I don't know; I don't know whether it is or not.
- Q. Is that I. F. Bissell's signature?
- A. It is.
- Q. Do you know what the proceeds of that note were used for?
- A. I don't.

Q. According to the mark upon it, it was in the First National Bank of Trenton, wasn't it?

A. Apparently; yes.

Q. And according to its appearance was discounted, was it not?

A. I don't know what should be; I think it probably was discounted, but I can't say of my own knowledge that it was; I think it was.

Q. I show you another note, purported to be dated 10 December 26th, 1892, for \$46.00 payable to the order of the American Saw Company, and endorsed American Saw Company, I. F. Bissell, secretary?

A. Yes; it seems to be of the same.

Q. I show you another dated December 5th, 1892, for \$104.47, payable to the order of the American Saw Company, and endorsed American Saw Company, I. F. Bissell, secretary?

A. Yes.

Q. That is the same thing, is it?

20 A. I think so; yes.

Q. Now, do you know whether these three notes that I have shown you are a part and parcel of the notes that you referred to awhile ago, which you said were the subject matter of a conversation between Mr. Bissell, Mr. Ely and yourself?

A. I think they were, although I can't say positive.

Q. I show you another note dated June 16th, 1892, for \$870.64, payable to the order of the American Saw Company and endorsed, "Pay First National Bank of Trenton or order, for collection. American Saw Company, I. F. Bissell, secretary."

A. I see.

Q. Do you understand that endorsement to have been authorized?

A. I don't know whether it could come within the scope of the authorization——

Q. I don't speak of that; do you understand——

Mr. Corbin—That is what you are asking him; you are asking him to construe the authority.

Mr. Lanning—I asked him whether he understood it.

Mr. Corbin—He is properly answering the question, I think.

The Witness—You want to know whether it comes within the scope of that authorization or not?

Q. That is not what I asked you at all; I ask you what you understand about it?

A. Well, what is your question.

Q. My question is this, Mr. Putnam, do you feel that as you conducted your business Mr. Bissell had authority 10 to make that endorsement; would that have passed with you?

A. That I can't say; I don't know that I knew of any such endorsement as that.

Q. Well, he had authority, you said awhile ago, to endorse for collection, didn't you, to endorse notes for collection?

A. Well, I don't know whether they come within the scope of that authorization—

Q. No, no; we were not speaking of that, but I understood you to say awhile ago that Mr. Bissell had power to endorse checks and drafts for deposit, and that he had the power to endorse promissory notes for collection; am I right?

A. I don't know that he had the power to do that.

Q. Well, did he have any power at all with respect to notes?

A. I don't know what he assumed to do; it might possibly have been that that would be accepted as being 30 by us.

Q. Do you know whether that note come to the saw company from any creditor of the company; it comes from the Beaver Creek Lumber Company; isn't that company a customer of yours?

A. I think it is.

Q. And wasn't that note given on account by that company?

A. I think it was; but that is a matter I don't recollect; the name Beaver Creek Lumber Co.

Q. You don't?

A. No; there are others that could answer that question better than I could.

Q. As a matter of fact, Mr. Putnam, don't you know that Mr. Bissell very frequently took notes, promissory notes, as well as checks and drafts, to the bank and endorsed them for the saw company?

10 A. No, I don't; unless he endorsed them for deposit; if a note came due it is possible he might have deposited it at the same time as his other money.

Q. Do you know whether—I think you have said that you don't know whether these notes constitute a part of the notes that were discounted or not?

A. I don't.

Q. But you think they do?

A. I think they do.

Q. Now, I ask you whether it appears upon the books
20 of your company that your company received the proceeds of these three notes, the one of December 5th, for \$104.47, or the one of December 26th, for \$46, and the one of Elisha K. Kane, for \$167.79?

A. It does.

The Court—Well, does that book show it was put to the account of the company on the books of the bank?

Mr. Buchanan—Yes, sir; as proceeds received from the bank—avails of those notes.

The Witness—Let me look at the book again. (The
30 book handed the witness.)

The Court—Where are those notes payable?

Mr. Lanning—They are made payable at different places.

The Court—None of them made payable at the First National Bank?

Mr. Lanning—Oh, no.

The Witness—They were discounted by the First National Bank?

The Court—They were forwarded by the bank for collection?

The Witness—Yes, sir.

Mr. Lanning—I ask that those notes be marked for identification.

[The said notes are marked in the order of their dates respectively, *D1*, *D2*, and *D3* for identification. 10

Q. I ask you now, Mr. Putnam, whether you can tell whether the American Saw Company received the note that I referred to awhile ago for \$870.64, and whether that was credited on the books of the company in the account of the Beaver Creek Lumber Company?

A. It was apparently so.

[Said note marked *D4* for identification.]

The Witness—I did identify it on the books; it is the same amount and about the same time.

Q. Can you tell about how many notes constitute the 20 series that was discounted for the purpose of paying dividends and which were endorsed by Mr. Bissell?

A. Only by seeing them in the book here.

Q. Can you tell by those books?

A. I only judge by that that you offer; some of those he did endorse, and I judge those are the notes.

Q. The question is, if you can tell how many of those notes there were?

A. Only by looking here.

Q. Well, if you can tell by that, please look and tell 30 us?

A. Twenty-one notes discounted by the bank.

Q. As I understand you then, in the month of January, 1893, the American Saw Company had the First National Bank of Trenton discount, for the benefit of the saw company, 21 promissory notes, made payable to the order of the American Saw Company, and each of them endorsed by Mr. Bissell; am I right?

A. I think so.

Q. Now, will you give the amounts of those notes, so that they may go on the record?

10 A. Do you want them in detail?

Q. No; just the amounts?

A. \$150, \$250, \$300, \$422.63, \$295.23, \$84.25, \$193.69, \$179.56, \$457.61, \$104.47, \$500, \$756.31, \$46, \$167.79, \$65.35, \$122.93, \$151.25, \$151.25, \$105.14, \$105.14, \$1,008.33; about \$5,600 altogether.

Q. The account that was kept in the First National Bank, was that kept in the name of the American Saw Company, or in the name of Samuel W. Putnam, treasurer?

20 A. In the name of the American Saw Company.

Q. Did the bank furnish the saw company with what is ordinary called a pass book?

A. I think so; we had one; I suppose it came from there; yes; I am pretty sure it must have been that.

Q. The bank book was balanced, was it, occasionally?

A. Yes.

Q. What was done with the checks, cancelled checks and vouchers, when the book was balanced; did they come back to the saw company?

30 A. Came back to the saw company.

Q. Now, sometimes, deposits were made by Mr. Bissell, as you understand, in the ordinary custom of the business?

A. I undersand it was done by some clerk in the office; I don't know whether Mr. Bissell personally did it or not; I don't think so.

Q. Well, in your business, under his direction, whatever he might direct in the matter?

A. Yes.

40 Q. That is as I understand it?

A. Yes.

Q. So, if he could direct any clerk to do it, of course he could do it himself?

A. Yes.

Q. When these vouchers came back with the balance, it was his duty to examine them, or if he did not, the duty of some clerk whom he might direct to do so, and see if the balance was right; that is correct, isn't it?

A. Well, practically, only one person examined it.

Q. Mr. Bissell, you mean? 10

A. No; Mr. Eccles.

Q. But it was under Mr. Bissell's control, as I understand you?

A. Yes.

Q. That is right, is it?

A. Yes.

By the Court—

Q. Mr. Putnam, how were the current debts of the corporation paid; the wages of the men?

A. For the wages of the men a check was drawn; I 20 signed it when I was there.

Q. And you were the—did you sign the checks at your weekly visit for all debts that might mature or had matured the preceding week?

A. Yes.

By Mr. Corbin—

Q. Did anybody else sign beside yourself or counter-sign?

A. Countersigned by Mr. Bissell.

Q. Then you had two signatures to draw out money 30 from the bank?

A. Yes.

Further cross-examined—

Q. Mr. Bissell, as I understand, was in the weekly habit of drawing the money from the bank necessary for paying wages, the pay roll, was he not?

A. The check for the pay roll was signed by me—

Q. No; I didn't ask that; did Mr. Bissell draw the money?

A. That I don't know; I only want to tell you my knowledge of it; the check was made out to the order of Mr. Bissell and signed by me, and I suppose that he—I don't think he went himself; at any rate, he got the funds for the pay roll.

Q. The check being made payable to his order?

A. Yes.

10 Q. As secretary of the company?

A. As secretary of the company.

Q. Not made payable to his personal order?

A. No; as secretary of the company.

Q. So it was, of course, in his power to endorse and draw the money or else send somebody to do it?

A. Yes.

Q. And it was his duty to do it?

A. Yes; he had to endorse as secretary of the company.

20 Q. And it was his duty to get the money; or send somebody else to get it?

A. Yes.

Q. Did not customers sometimes send remittances to the saw company in cash by express?

A. They did; yes.

Q. Who collected; who got the money?

A. I think that went into Mr. Eccles' hands.

Q. Do you know?

A. Only that I have seen him open and credit.

30 Q. You have seen him open express packages?

A. Yes.

Q. And have you seen Mr. Bissell opening express packages there, too?

A. I don't recollect about that.

Q. Mr. Bissell having charge of the office would open those packages unless somebody else opened them under his direction?

A. Yes; I don't know as he actually directed them at the time to do it.

40 Q. But he would have the power to do it?

A. Yes.

Q. In your business he was the superior of any of the other clerks there?

A. He was.

Q. In all matters that were transacted in the office?

A. Yes.

Redirect—

Q. Mr. Putnam, you have been questioned by counsel in regard to the drawing of drafts by the company through its secretary upon its debtors? 10

A. Yes.

Q. (Showing witness a paper)—Is that a sample of the drafts that you draw?

A. Yes.

Q. What is done with those drafts?

A. They are sent—well, in this case——

Q. Take the ordinary case?

A. This is drawn—I think if it is on a bank in town it is deposited in our First National Bank for collection; frequently they were sent to banks in the neighborhood 20 of the customers.

Q. Then it is simply a draft on the customer presented through some bank?

A. Yes, sir.

Q. Suppose the customer does not accept it; what is done with it?

A. The paper was returned to the office.

Q. Then it is simply a dun for the bill, is it?

A. Yes.

Q. And when the customer accepts it, what does the 30 bank send back to you—their draft?

A. Yes; they make their own drafts.

Q. They keep this paper and send you their draft?

A. Yes.

Q. And when that draft comes it goes through the regular course?

A. Yes; I notice that draft is not signed by Mr. Bissell.

Q. No; this is simply the form; this is one that Mr. Eccles sent out and came back again.

Mr. Corbin—I will offer that as a sample.

[Said draft was received in evidence and marked *Exhibit C5.*]

Q. You have referred to one case where Mr. Bissell endorsed notes payable to the company for discount at the First National Bank; was there any other cases when such endorsement was made by him to your knowledge?

10 A. I don't know of any.

Q. Can you fix the date when that batch of notes was discounted; first, were they all discounted as one lot on the same date?

A. They were; yes.

Q. Can you fix that date?

A. The date is the twenty-seventh of January, and over the page it is the twenty-eighth, but they were due the same time.

Q. January 27th, 1893?

20 A. Yes.

Q. On that occasion was the money credited to the account of the American Saw Company by the First National Bank?

A. It was.

Q. It went to your credit then?

A. Yes.

The Court—When were those notes dated—1892 or 1893?

Mr. Buchanan—Some of them in 1892; they are the 30 same notes that were referred to on cross-examination.

The Court—Does that include the four notes or only three?

The Witness—There are twenty-one.

Mr. Buchanan—They include the four referred to on cross-examination.

Q. Up to the fall of 1893, did it come to your knowledge that any money had ever been paid by the bank to Mr. Bissell on checks or notes or drafts payable to the order of the company?

A. It did not; I never knew it.

Q. You have been questioned in regard to the receipt of money by express; were there any large amounts of money received in that manner? 10

A. No; small matters.

Q. And as to money orders through the post office; any large sums that way?

A. No; those were small.

Q. And in the course of business were any large cash payments made at the office of the company for goods?

A. No; no large cash payments; they were all small.

Q. Then the important part of your collections came to you by checks or drafts or notes?

A. They did. 20

By Mr. Buchanan—

Q. You spoke of some checks coming back, or rather, in the cross-examination you stated that certain checks and vouchers came back to the saw company that had been drawn by the saw company on the First National Bank?

A. Not on the First National Bank.

Q. What checks did you refer to as coming back?

A. I referred to such checks as these Mr. Corbin showed me just now, drafts on our customers, unaccepted 30 drafts.

Q. I think you were also led up to the matter of the contents of the pass books which your company kept with the bank, and entries in the pass books?

A. Yes.

Q. And something was said in connection with the pass books about the return of vouchers; what did you refer to?

A. The checks we had made; the vouchers returned cancelled or checks on the bank returned cancelled.

Q. They came back?

A. They came back.

Q. Those are what you referred to?

A. That is what I understood the question to refer to.

Q. And there was no money appeared to be drawn out of the bank by those pass books improperly?

A. There was no appearance of that.

10 And the plaintiff further called as a witness on its part, *Alfred L. Eccles*, who, being duly sworn, testified as follows:

Direct examination by Mr. Corbin—

I reside in Trenton, New Jersey, and at present I am secretary of the American Saw Company; I have been in the employ of the American Saw Company for over eighteen years; my employment there began February 25th, 1878; I was first employed as entry clerk and time keeper and shipping clerk.; I was appointed bookkeeper 20 in March, 1889, and held that position until the beginning of 1896

Q. When were you elected secretary?

A. I was elected secretary in November, 1893.

Q. That was after Mr. Bissell left the office of the company?

A. Yes, sir.

Q. He left at what time?

A. Mr. Bissell was discharged from the company the latter part of October or the early part of November; I 30 disremember just exactly the month.

Q. He had left the premises before that time?

A. Oh, yes, sir.

Q. Then, during the period covered by the checks and drafts annexed to the declaration, you were the book-keeper?

A. Yes, sir.

Q. That is, in the years 1891, 1892 and 1893?

A. Yes, sir.

Q. Up to November?

A. Yes, sir.

Q. Now, where was your work carried on; at what place?

A. Trenton.

Q. And in what office?

A. In the regular office of the company.

Q. And that consists of how many rooms?

A. There are four rooms in the office proper.

Q. And you had your books there in one of those 10 rooms?

A. Yes, sir.

Q. Where was Mr. Bissell's place in the factory?

A. He was in the room adjoining mine.

Q. Are these offices at the factory of the company?

A. Yes, sir.

Q. The factory is close by?

A. Yes, sir.

Q. Now, will you please state the custom of the company in regard to making out bills who made out bills; 20 for the goods shipped by the company?

A. The clerk appointed for that purpose, the regular clerk appointed for the purpose of making out bills.

Q. Did you have anything to do with that as book-keeper?

A. Not with making out the bills, I would check the bills and see that they were correct.

Q. They were made out, of course, from the books?

A. Yes, sir; from the shipping books.

Q. Then what was done with the bills? 30

A. A press copy of a bill was taken in an impression sales book, that was then passed over to me, and I would extend the amount of the bill out in the money column, add the sales book and post the charges to the regular account.

Q. To whom was that bill given, who sent that to the customer; this is the first bill?

A. That would be mailed directly from our own office; that is the clerk who made it out would send the bill.

Q. Suppose that bill was not promptly paid, what further steps for the collection would be taken?

A. I would make out a statement at the first of the next month showing the date of the purchase and the amount.

Q. Would you not give out a new bill of items?

A. No, sir.

Q. Simply an account stated or memorandum?

A. Yes, sir.

10 Q. What would become of that statement?

A. That would be handed to Mr. Bissell.

Q. The secretary?

A. Yes, sir.

Q. For what purpose?

A. There would be a great number of statements made out at the first of the month; statements that were over thirty days overdue he would write about, asking payment; others he would draw drafts for; some would go out without any remarks whatever.

20 Q. Then it was left to him to send out these statements?

A. Yes, sir.

Q. Now, you speak of sending out drafts, that was done by the secretary.

A. He would designate what statements were to have drafts drawn; they would be stamped with the information on the bottom of the statements; that a draft would be drawn at a certain date through a certain bank and then mailed to the customer; they would be handed to

30 me—

Q. Who would mail them to the customer?

A. He would, after they were returned to him.

Q. Directly?

A. Yes, sir; I would make a list of those drafts that he proposed to draw for, and at the proper day make out drafts and hand them to him for his signature.

Q. Then what would be done with those drafts; he would draw on the customer for the amount of his indebtedness?

40 A. Yes, sir.

Q. What would be done with the drafts after Mr. Bissell's signature would be attached?

A. We have notices, printed forms, that we fill out to the various banks on which the drafts are drawn, stating they will find enclosed draft against such person for such an amount, which they will kindly collect and remit the proceeds to us.

Q. These were your drafts on your debtors?

A. Yes, sir.

Q. Then these were sent to some bank? 10

A. Yes, sir; in the near vicinity of these people, so that they could be collected.

Q. Suppose that draft was accepted and was paid; in what way did you get the money?

A. The bank on whom the draft was drawn would send us their drafts either on a New York or Philadelphia bank, which would come to us through the regular course of mail.

Q. To the American Saw Company?

A. Yes, sir. 20

Q. What would you do with that draft?

A. It would be credited to the amount of the customer and deposited into the bank.

Q. Did that draft bring any cash into the hands of Mr. Bissell or any other officer of the company?

A. No, sir.

Q. Then there was no cash advanced on these drafts by anybody?

A. No, sir.

Q. You didn't deposit them in the First National Bank 30 and get the cash on them in that way?

A. No, sir; deposited them to the credit of the company.

Q. But I mean the first draft that you draw?

A. No, sir.

Q. Suppose they were not accepted.

A. Then that draft would come back to us, that one that we sent would be returned.

Q. But if it was accepted it would not come back to you, it would go to the man who accepted it? 40

A. No, sir; that was the receipt that the bank would give him that he had paid it.

Q. Then the only way in which you could realize anything on those drafts was by receiving another draft from some other bank, and that is the only way in which you could get money?

A. Yes, sir; that is the only way in which we got money.

Q. They didn't bring any cash into the hands of the
10 secretary?

A. No, sir.

Q. You have stated that after the first bill was sent out that the sending out of statements to delinquent debtors was left to the secretary?

A. Yes, sir.

Q. Do you know whether he did in all cases send out the statements that were given to him for that purpose?

A. I discovered later that he did not send them out.

Q. How?

20 A. After the defalcation we had occasion to examine his desk very carefully, and upon opening a private drawer we found a number secreted there.

Q. That was some of these accounts, with reference to which the defalcation had taken place?

A. Yes, sir.

Q. Now, then, when checks were received in the due course of business or drafts, who would receive them from the mail?

A. Mr. Bissell.

30 Q. Did they come by mail usually?

A. Yes, sir.

Q. What, in the regular course of business, was done with these checks and drafts?

A. After opening the mail he would bring them to me and I would examine the account of the customer to see if they paid the full amount or whatever part it was supposed they should pay, entered on the cash book; then at noon, when the proper time came to make up the deposit, they would be stamped with the deposit
40 stamp, a slip made out, and the checks entered upon the

stub of the check book, the checks, if Mr. Bissell was in the office, would then be taken to him for his signature.

Q. Have you some of those checks stamped with the deposit stamp?

A. Yes, sir.

Q. Produce them.

A. That is the deposit stamp.

Q. You produce one of those stamps as a sample of the way in which that was done?

A. Yes, sir.

10

[Counsel for plaintiff offered in evidence checks made out to The American Saw Company and endorsed "For deposit to the credit of The American Saw Company, I F. Bissell, secretary." The words I. F. Bissell, secretary, being in writing and the rest the print of the rubber stamp, which was received in evidence and marked *Exhibit P4.*]

Q. When did that course of business, the endorsement of these checks in this manner by Mr. Bissell writing his name, begin?

20

A. As near as I can recollect, it was in the early part of the year 1890.

Q. Prior to that time, whose name had been used in making deposits of checks in the bank?

A. Samuel W. Putnam, as treasurer.

Q. Using this same rubber stamp?

A. Yes, sir.

Q. Who put the name on?

A. I did.

Q. What was the occasion of making the change in 30 the name?

A. One day Mr. Bissell came to my desk—he came to my desk one morning—having in his hand a copy of a resolution which had been passed, presumably, by the board of directors, and read it to me, that he was empowered to endorse checks for deposit, and stated that hereafter, when he was in the office, that I would bring the checks to him to be endorsed.

Q. What was it he read to you?

A. The resolution; that it was an amendment to the 40

by-laws passed by the board of directors at a meeting in New York some time previous.

Q. A proposed amendment to the by-laws?

A. Yes, sir.

Q. Can you refer to the books to see when it was? (Showing witness the by-laws of the New York company, pages 255 and 256.) Is that what you refer to?

A. Yes, sir.

Q. That was presented when?

10 A. That was presented June 11th, 1889.

Mr. Corbin—We prove these minutes by the testimony of Mr. Putnam; I do not recall whether they were offered. I will, for convenience, have the witness read that proposed amendment and get it on the record in that way.

Mr. Lanning—Is this a proposition to amend the by-laws?

Mr. Corbin—Yes.

Mr. Lanning—It appears it was never done.

20 Mr. Corbin—There are two ways of proving by-laws, one by the form of adoption, and another by the usage of the company in following them. It is not an uncommon thing to have the record of the by-laws imperfect; if it is shown that the company acted under them, they may be proved in that way. We propose to prove that after this date they acted under it.

● The Court—You may prove the authority of Mr. Bissell to do what he did do.

Mr. Corbin—That is of course the gist of it.

30 The Court—You may read the minutes.

Mr. Lanning—The offer is to prove a by-law.

Mr. Corbin—No, the offer is to prove the action with reference to this particular matter.

Mr. Lanning—He admits that there was no form of adoption of it, and he proposes to prove it by subsequent action.

The Court—I admit it for the reason that it was by the authority, or pretended authority, conferred upon Mr. Bissell by this resolution, so-called, that he assumed the right to sign the saw company's name as an endorsement on checks and drafts which came into his possession as secretary, and I understand they propose to follow it up by showing that they recognized Bissell's right to do that by the course of practice from 1890; it seems to me it is material or certainly competent in that view. Whether that did in fact confer authority is another question; it does not seem to me material whether it did or not if the bank accepted this act as their act, and he acted under that.

Mr. Lanning—My chief purpose was to make it clear that it is not to be admitted as a by-law. 20

The Court—Not at all; read the resolution.

A. "Amendment as follows to by-laws regarding duties treasurer and secretary, offered and order to lay over one month under the rule: The treasurer shall have charge of all funds of the corporation under the direction of the board or the executive committee; all moneys received from any sources on account of or for the use of this company, shall be deposited in such bank, banking-house or trust company as shall be selected by the trustees or executive committee. The treasurer and secretary, or either of them, shall be authorized at all time to make or endorse all checks, drafts or orders for the payment of money for deposit in any bank, banking-house or trust company which may be required in the ordinary course of business. All checks or drafts upon any such

bank, banking-house or trust company shall be drawn by the treasurer or president and countersigned by the secretary, or by a member of the executive committee. The treasurer shall pay all book accounts, book debts and demands (other than written obligations), after they have been approved by the board or executive committee, and he shall pay all notes, drafts and other written obligations issued by the direction of the board as they shall mature. The books and accounts of the treasurer shall be examined and audited at least once in six months by the executive or special committee appointed by the board. The secretary shall notify trustees and stockholders of all meetings to be held, and keep correct minutes of the same, also in proper books the account of the business of the company. The secretary or treasurer, or either of them, shall sign any drafts or orders for the payment of money due the company by any debtor in the ordinary course of business, and perform such other duties as the executive committee may require. He shall have general charge of the common seal, and shall attend to the publication of the several statements as required by law. His book shall at all times be open to the inspection of the trustees."

Q. Subsequent to the time of this conversation, or shortly afterwards, did the secretary act under these proposed amendments?

A. He did.

The Court—What did he do?

Q. What did he do with reference to making the draft for money due to the company?

A. He signed his name as secretary to the draft.

Q. Such as you have described here?

A. Yes, sir.

Q. What did he do with reference to endorsing the checks and drafts for deposit?

Mr. Beasley—You mean during the time of giving these checks?

Mr. Corbin—After the time of that conversation, which he had about the first of 1890.

Mr. Beasley—I mean up to the time of the first check in this suit.

Mr. Corbin—I am going a little back of that.

Mr. Beasley—You don't include that.

Mr. Corbin—Yes.

Mr. Beasley—Here are by-laws passed in 1893, before the first checks sued upon was given.

Mr. Buchanan—Oh, no; 1891 was the date. 10

Mr. Beasley—Then they ought to be separated, because the by-laws certainly bind after that.

Q. What was done after this notice which you said he gave you in the early part of 1890, about this endorsement of checks for deposit and drafts?

A. After they were prepared for deposit they would be taken to his desk, or he would come to my desk and sign on the blank line, "I. F. Bissell, Secretary."

Q. And you have already testified that, prior to that time, the name of Mr. Putnam had been used on deposits?

A. Yes, sir.

Q. Now, then, in this proposed amendment there is a provision that the treasurer or president might sign checks, to be countersigned by the secretary; did the president, after that time, exercise, on any occasions, that authority?

A. In one or two instances, I think he did, in Mr. Putnam's absence.

Q. Now, when checks were endorsed for deposit, what was done with them?

A. They were pinned to the deposit slip, placed in the

book, and taken to the bank and given to the receiving teller.

Q. Were they entered in your check book?

A. Yes, sir.

Q. Who took them to the receiving teller?

A. Sometimes I would do it and sometimes I would send them up by the clerk, just which happened to be the most convenient.

Q. That is the procedure on the depositing of money
10 in the bank?

A. Yes, sir.

Q. When there was occasion to pay out money, what was the process?

A. I would draw the necessary checks; if they were for bills, each check would be placed on the different bill, the checks would be placed on Mr. Bissell's desk for Mr. Putnam to sign.

Q. That is for the treasurer?

A. Yes, sir.

20 Q. Then, when did the treasurer come there during the years that we are concerned with, from 1891 to 1893, inclusive?

A. He would come once a week regularly; at one time it was his custom to come on Tuesdays, and it was afterwards changed to Mondays.

Q. And did you have these checks prepared for him then?

A. Yes, sir.

Q. Then these would come into the hands of the
30 treasurer?

A. Yes, sir.

Q. Who else would sign them?

A. Mr. Bissell would countersign them.

Q. Whose business was it to send them away?

A. He always sent them away himself—mailed them.

Q. I now refer you to checks and drafts, a copy of which was annexed to the declaration in the suit of the New York company—forty in number—will you look at those; what endorsement do you find on those checks
40 and drafts?

A. The American Saw Company, I. F. Bissell, secretary.

Q. Is there any reference that they are endorsed for deposit on the back of them?

A. No, sir.

Q. What stamp is used in creating that impression?

A. An ordinary rubber stamp which we used for stamping letters; in some instances they are endorsed by hand.

Q. In ink writing?

A. Yes, sir. 10

Q. Was there any one of those forty checks or drafts which were shown to you as bookkeeper when received to be credited to the account of the customers who sent them?

A. No; no, sir; not in any instance.

Q. Was any credit given on the books to the customers for those checks?

A. No, sir.

Q. Did it come to your knowledge in any of those cases that the checks had been received? 20

A. Not until November, 1893.

Q. Not until the discovery of the defalcation?

A. Yes, sir.

Q. Are any of those checks credited to the American Saw Company on the pass book of the bank?

A. No, sir.

Q. Have you examined to see?

A. Yes, sir.

Q. That book was in your custody?

A. Yes, sir. 30

Q. Did any entry appear in any of the books of the company down to 1893 that such checks had been received?

A. No, sir.

Q. You say that in the pass book the bank has given no credit to the saw company for those checks?

A. None whatever.

Q. Do these checks bear the stamp of the First National Bank?

A. They do. 40

Q. Is the signature of Mr. Bissell genuine?

A. Yes, sir.

Q. He has signed Isaac F. Bissell on each one?

A. Yes, sir.

Q. And they do not appear to your credit on the books of the bank?

A. No, sir.

Q. Whose endorsement do they bear on behalf of the First National Bank; what is the endorsement; give it 10 to us verbatim?

A. "Credit on account of the First National Bank, Trenton, N. J., C. Whitehead, cashier."

Q. That is the same on each of them?

A. Yes, sir.

Q. Did you make an examination of the books of the bank in order to see whether they had collected these checks?

A. Yes, sir.

Q. And when?

20 A. Yes, sir.

Q. In whose presence?

A. In your own and the partial presence of Mr. Holt, his clerk, and Mr. Charles Whitehead, the cashier.

Q. Mr. Whitehead produced the book?

A. Mr. Vannest was also present at the time.

Q. Did you go over these various items on the checks enumerated in the schedule annexed to the declaration in the case of the American Saw Company of New York, and see whether they appear there as collected?

30 A. Yes, sir; in each case.

Q. Did you note the dates when the collection had been made?

A. Yes, sir.

Q. I will ask you to give the dates without going into too great detail; state the date of the check and the date of its collection as shown by that book; you need not particularly describe the check, take them in the order as they appear in the schedule: Check, February 27, 1891, paid March 2; is that correct?

40 A. Yes, sir.

Mr. Lanning—What do you want to show?

Mr. Corbin—The actual date of collection, and we have it noted here from your books in the bank; it was collected a few days later.

Mr. Lanning—We admit that.

Q. Was this statement made by you showing the particulars?

A. Yes, sir.

Mr. Beasley—Does that correspond with the printed book? 10

Mr. Corbin—Except that you haven't the date of payment.

Q. What does this statement show.

A. It shows the dates and the amount of the check, and the dates when the First National Bank received the money.

Q. As shown by their collection books?

A. Yes, sir.

Q. And examined by you, and this statement is made up from that source? 20

A. Yes, sir.

Mr. Corbin—For convenience sake we will offer this statement in evidence instead of going through all the items.

[Said statement was received in evidence and marked *Exhibit P5.*]

Q. You have these here in the order in which they appear in the schedule annexed to the declaration?

A. Yes, sir.

Q. And that is in the order of their dates? 30

A. Yes, sir.

Q. The dates here are those of the collection as appears by the bank?

A. Yes, sir.

Q. And the amounts shown there are the amounts of the checks and drafts?

A. Yes, sir.

Q. As shown on the face of the checks and drafts?

A. Yes, sir.

Q. And as shown by the books of the bank too?

10 Mr. Corbin—We also offer the checks themselves; it is not necessary to mark them separately; we offer the bundle, forty checks and drafts of the New York company, and forty-nine of the New Jersey company, being those, copies of which are annexed to the declaration. I offer them all, I don't know the exact number, whatever copies are annexed to the declaration. The New York company checks were received in evidence and marked *P6*. The New Jersey company checks were received in evidence and marked *P7*.

20 Mr. Lanning—We make no objection to any of these checks except one, which is the tenth, dated at Leipsic, Ohio, November 21st, 1891, pay to the order of Isaac F. Bissell, secretary, \$157.60, directed to the Chase National Bank, N. Y., and signed W. W. Edwards, cashier. It is endorsed American Saw Company, Isaac F. Bissell, secretary. We submit that, as the check was drawn payable to the order of Isaac F. Bissell, it could have been endorsed simply Isaac F. Bissell and drawn by him, and the fact that it was endorsed as secretary of the saw company does not alter the fact, and it cannot be recovered
30 in this suit.

Mr. Corbin—If it had not been endorsed American Saw Company, I would agree with the counsel, but since he placed that endorsement upon it, he apprised the bank that it belonged to that company, and they had no right to pay the money to him,

The Court—My present view is that the bank was justified in paying that check, but I will dispose of it before the summing up if counsel will call my attention to it.

Q. During the time of your connection with the company as bookkeeper, commencing, I think you stated, in 1889, and coming down to the commencement of this suit, about December, 1893, or a little later, what occasion did the saw company have to discount any notes?

A. Two.

10

Q. When were those?

A. January, 1893, and either June or July, 1893, I disremember which month.

Q. At that time were the notes all discounted in one lot?

A. Yes, sir.

Q. A lot of notes discounted in January, 1893, and another lot in July, 1893?

A. Yes, sir.

Q. January 27th, 1893, I think the date has been fixed; it was shortly before the New Jersey company was formed?

A. Yes, sir.

Q. Was it after these checks of the New York company on which we bring suit had been paid?

A. Yes, sir.

Q. So that it was after this defalcation from the New York company and from the organization of the New Jersey company?

A. Yes, sir.

30

Q. And this discount must have been for the New York company?

A. Yes, sir; it was.

Q. How many notes?

A. 21.

Q. Do you know who endorsed that lot for discount?

A. Mr. Bissell.

Q. What became of the money?

A. It was placed to the credit of the American Saw Company on the books of the First National Bank.

Q. Did any of it come into the custody of Mr. Bissell?

A. Not one cent.

Q. And the second occasion of discounting checks, the second discount obtained by the company; did Mr. Bissell endorse the checks then?

A. No, sir; he did not.

Q. Who endorsed them then?

10 A. Mr. Putnam.

Q. Apart from those two occasions you know of no discounting by the company?

A. No, sir.

Q. They didn't have occasion to discount their papers?

A. No, sir.

Q. When they got notes what did they do with them?

A. The notes were handed over to me and I kept them in a private compartment in the safe in a pocket book; when they became due I handed them to Mr. Bissell to be
20 sent away for collection.

Q. Didn't you put them through the bank?

A. Sometimes they were put in the hands of the First National Bank, and sometime, they were sent to the banks from which they were drawn.

Q. Directly from your office?

A. Yes, sir.

Q. Without calling in the First National Bank?

A. Without calling in the First National Bank at all.

Q. Then when they were sent off to other banks the
30 money came to you in a bank draft?

A. Yes, sir.

Q. And that draft was to the order of the American Saw Company?

A. Yes, sir.

Q. And went through the usual routine?

A. Yes, sir.

Q. Was there any occasion, to your knowledge, when Mr. Bissell drew any money on any sort of paper except checks made payable to himself, the American Saw Com-
40 pany, prior to your discovery of this defalcation?

A. No, sir.

Q. How did you get hold of these checks and drafts?

A. By writing to the parties and requesting them to send the checks and drafts back to us.

By Mr. Buchanan—

Q. You mean the checks and drafts in suit?

A. Yes, sir.

Further direct—

Q. That is these checks and drafts, of course, had been returned to them; they were checks on their account? 10

A. Yes, sir.

Q. And you got them from them?

A. Yes, sir.

Q. That was after you discovered the defalcation?

A. Yes, sir.

Q. About what time was that when you made this discovery?

A. In October, 1893; the early part.

Q. That was the first discovery?

A. Yes, sir.

20

Q. How did you find it out?

A. Parties sent a check to pay for a bill of goods; Mr. Bissell being away I opened the mail and found this check, and knowing that they had a large balance for them on the books—

Q. That is owing a large balance?

A. Yes; I wondered why they hadn't paid the other before paying this latter bill.

Q. And then you made inquiry of them?

A. The matter was brought to Mr. Putnam's attention 30 in a different manner than we had ever talked over the accounts before, and he asked me—

Q. It aroused suspicion?

A. Yes, sir.

Q. And that led to this discovery?

A. Yes, sir.

Q. How many accounts did you have on your books at that time?

A. Well, opened and closed accounts on the ledger, I suppose, amounting to between \$3,300 and \$3,500.

Q. How many open accounts?

A. \$2,200 to \$2,400, or more or less.

Q. How many were involved in these defalcations; there would be several checks on a single account, would there not?

A. Yes, sir; I suppose 50 or 60, maybe not that number; I disremember exactly how many accounts.

10 Q. You could tell by going over them?

A. Yes, sir; not in the First National Bank alone; there may not be so many.

Q. You have explained what you meant by drafts of the company on their debtors; I show you some blanks here; is that the form of the draft?

A. Yes, sir.

[Said blanks were received in evidence and marked *Exhibit P8.*]

20 Q. In addition to these drafts that you yourself draw on people who owe you money, you were receiving bank drafts all the time?

A. Yes, sir.

Q. You received part of the money in checks drawn on your debtors' bank account?

A. Yes, sir.

Q. And also drafts in the neighborhood of the debtors on some city bank?

A. Yes, sir; and then our debtors sometimes would buy New York drafts and send them to us.

30 Q. About how many deposits of checks would you make daily during these years, 1891, 1892 and 1893?

A. I think, if the deposits can be averaged up, it would average twelve checks on each deposit, and we deposited nearly every day, it would range in amount from \$150 to \$2,000.

Q. How was it during the preceding years of your connection with the company?

A. Averaging about the same, I should judge; we always kept a good balance in the First National Bank.

4) Q. You had these checks coming in?

see page 88

A. Yes, sir; when we were getting the money due us, we had a good balance there; I have known as high as \$10,000 to be there.

Q. Were any of the checks and drafts made payable to the order of the company ever, to your knowledge, during your connection with the company, collected in any other way than by deposit to the credit of the company, except these defalcations by Bissell?

A. None other; everything went to the credit of the company by deposit. 10

And being cross-examined on the part of the defendant, testified as follows—

Q. How often were bills made out at your office and sent to your customers?

A. Every day.

Q. How soon after filling an order would a bill be made out and sent?

A. The same day that the goods were shipped?

Q. I understand you to say that it was the duty of some clerk to make out the bill? 20

A. Yes, sir.

Q. By what name was that clerk known; I don't mean his individual name; has he any special designation as a clerk in the office; entry clerk?

A. Entry clerk; shipping clerk; he would make up the bills and the directions for shipping the goods.

Q. Were the entry clerk and the shipping clerk one and the same persons?

A. It would depend very much how much business there was to do; if we had enough to keep the shipping clerk busy, then the entry clerk would have nothing to do with the shipping.

Q. During the years 1891, 1892 and 1893 did you employ more than one person as entry clerk and shipping clerk?

A. No, sir.

Q. Only one person employed was there during those years?

A. Only one.

Q. And that one person discharged the double duty of entry clerk and shipping clerk ?

A. Yes, sir.

Q. What was his name ?

A. We had a man named Titus and another one named Purdy.

Q. What Titus ?

A. He was a young man from Pennington.

Q. Give his full name ?

10 A. I knew him as Harry Titus ; I can't say ; I think he used to sign his name as A. Harry Titus or W. Harry Titus ; the first letter I don't remember.

Q. What portions of the years 1891, 1892 and 1893 was he there ?

A. He was in our employ in 1890 and part of 1891.

Q. What was the name of the other clerk ?

A. Caleb F. Purdy.

Q. He was there during the remainder of those years ?

A. Yes, sir.

20 Q. Did you have a clerk known as bill clerk ?

A. No, sir.

Q. After the entry or shipping clerk made out a bill, what was done with it ?

A. It was copied in an impression sales book ; after the copy was finished I took the book and extended the amounts out into the money column, added the book up, put the ledger folio on and posted the amount to the debt of the customer.

Q. You say it was copied in the sales book ?

30 A. Yes, sir.

Q. That was the next step taken with the bill ?

A. Yes, sir.

Q. Is your sales book here upon which the impressions were made ?

A. Yes, sir.

Q. What is the next step in regard to the bill after taking an impression in the sales book ?

A. Put in an envelope and mailed to the customer.

Q. Who did that ?

40 A. He did that.

Q. Did Bissell have anything at all to do with the sending of the bills?

A. No, sir.

Q. Did you?

A. Only to see in a general way that they went out properly; that none of them were left behind.

Q. A bill, I suppose, was an itemized statement of whatever goods went into the order, was it not?

A. It was a description of the goods that were shipped and their prices. 10

Q. In detail?

A. Yes, sir; in detail.

Q. Then at intervals after the bill was sent off, if no settlement had been made, statements, as you call them, were sent out?

A. Yes, sir.

Q. Did those statements contain a detailed and itemized description of the goods?

A. No, sir.

Q. What did they contain? 20

A. They contained the ledger folio on which the account was to be found, and the page on which the account was contained in the ledger, the name of the parties, the amount of the debt, when the goods were shipped and the amount.

Q. How often were the statements made out?

A. Once a month.

Q. The first of the month or the last of the month?

A. The first part of the month.

Q. Who made them out? 30

A. I did.

Q. Did you make out a statement the first part of the month for every open account?

A. Not every open account; no, sir.

Q. At this time you were the bookkeeper.

A. Yes, sir.

Q. During all of the years 1891, 1892 and 1893?

A. Yes, sir?

Q. How did you determine upon which account you would not send a statement? 40

A. Well, if we sent the goods C. O. D. by express we would not send a statement, and we would not send out statements for large consignment accounts when settlements were supposed to be made at intervals.

Q. During the years 1891, 1892 and 1893 according to your best judgment, how many open accounts did you have on your books?

A. It would range anywhere from 2,000 to 2,400 open accounts at a time, some would stay open 30 days, 10 some 60.

Q. Did you prepare the first of every month during the years 1891, 1892 and 1893 a statement for each and every one of these 2,000 or 2,400 accounts, except in cases where goods had been sent C. O. D., or where the account represented a consignment account?

A. In every instance except people that we knew had failed, and it was no use to make out statements.

Q. That is the third exception; now then we are sure that during any of these years, 1891, 1892 and 1893, 12 20 times each one of these years you prepared statements for each and every one of the 2,000 or 2,400 accounts except, first, where goods were sent C. O. D.; or second, where there were consigned goods; or third, where you knew the party had failed and could not pay?

A. Yes, sir.

Q. Now, then, on an average, how many statements did you prepare the first of every month?

A. I prepared as high as 2,000 statements at one time.

Q. Have you ever prepared more during those years, 30 1891, 1892 and 1893?

A. I can safely say that I have.

Q. How many, as near as you can tell, of these 2,000 or 2,500 were consigned accounts?

A. I suppose 50 or 60 may be.

Q. Can you form any judgment as to how many of them represented accounts of persons who had failed; could not pay?

A. There might be 100 on the book.

Q. What is your custom as bookkeeper with regard to

the accounts of persons who have failed; did you carry them on your books as open accounts?

A. Until a certain time would come, and we would charge them to the suspense account.

Q. About how long would you carry them after learning that person had failed before charging them into the suspense account?

A. It would depend on circumstances; if we had any idea of recovering part of the money, we would leave it open until we got some settlement from the receiver or assignee, or determine in some way whether we could get anything.

Q. Can you give me any more definite information; you were bookkeeper?

A. No, sir; we cannot give definite information with regard to these things; it is sometimes nine months and sometimes eighteen months before we realize from a person that has failed.

Q. Then do you wish us to understand that, during the years 1891, 1892 and 1893, you were carrying on your books fifty or sixty accounts of persons who you understood had failed, but which hadn't yet been carried into the suspense account?

A. Yes, you could understand it that way.

Q. Then is that the fact; that is what I want to know?

A. We always have accounts on our books representing people that had failed.

Q. I don't doubt that; how many?

A. I can't tell you that.

Q. As near as you can tell?

30

A. It is impossible to tell.

Q. Who gave you, as bookkeeper, information each month, or from time to time, as to the persons against whom statements should not be made, or did you use your own discretion?

A. I used my own discretion.

Q. You used that discretion during the time you filled the position of bookkeeper?

A. Yes, sir.

Q. These statements, you say, after being prepared, were handed to Mr. Bissell?

A. Yes, sir.

Q. Why?

A. It was his duty to inform me what to do with certain accounts with regard to drawing drafts and also write to the people and get them to remit if they thought they were slow.

Q. Did you ever send drafts out with the bills?

10 A. In very few instances.

Q. If a draft accompanied the statement was it always by the order and direction of Mr. Bissell?

A. Yes, sir.

Q. You exercised no authority to prepare a draft to accompany a statement unless you received instructions to do so from Mr. Bissell?

A. None whatever, and the drafts never accompanied the statement.

Q. Then you never prepared any drafts or wrote any
20 letters, dunning letters, unless you were authorized or requested so to do by Mr. Bissell, after an examination of the statement, is that correct?

A. That is correct.

Q. Who attended to the mailing of all these statements, sometimes as high as 2,000 at a time?

A. They were handed over to the stenographer and directed and put in the envelopes and mailed.

Q. When a draft was ordered to be drawn by Mr. Bissell, did you not prepare it?

30 A. Yes, sir.

Q. I show you a draft, or what purports to be a draft dated August 16, 1892, on Samuel K. Wilson, in favor of Charles Whitehead, cashier, and ask you if that is one of the drafts drawn in the usual course of business?

A. Yes, sir.

Q. That is signed by Isaac F. Bissell, secretary?

A. Yes, sir.

Q. And that is the form in which those drafts went out?

40 A. Yes, sir.

[Drafts referred to marked *Exhibit D5* for identification.]

Q. I show you four others, the same in form, one dated October 31st, 1892, on Woodrough & Clemson, and one October 17th, 1892, on the Trenton Lumber Company, and one January 18th, 1892, on Samuel K. Wilson, and one December 19th, 1892, on the Trenton Lumber Company, all seem to be signed by Isaac F. Bissell, secretary, and all appear to have been accepted, and all made payable to the order of Charles Whitehead, cashier, and I ask 10 you if these papers are drafts of the saw company made in the usual course of your business?

A. Yes, sir.

[Draft dated October 31st, 1892, marked *Exhibit D6* for identification.]

[Draft dated October 17th, 1892, marked *D7* for identification.]

[Draft dated January 16th, 1892, marked *Exhibit D8* for identification.]

[Draft dated December 19th, 1892, marked *Exhibit D9* 20 for identification.]

Q. You spoke of a number of statements that you had discovered secreted in Mr. Bissell's drawer after he severed his connection with the saw company, where are those papers?

A. In Mr. Corbin's possession.

Q. Do you know how many of them there are?

A. No, sir; I could not tell you exactly, there are quite a number of them.

Q. Do you know to how many different accounts they 30 relate?

A. No, sir; I could not tell you that definitely.

Q. Do you know whether any of them relate to any account other than the account of persons on whom these checks and drafts in suit were given?

A. They do not.

Q. Do you know whether they relate to all the accounts to which these checks and drafts do relate, or only a portion of them.

A. To a large portion of them.

Q. Not to all of them?

A. I don't think to all of them; I would not be positive, but I think to a large portion of them.

Q. When remittances were made to the company by checks or drafts or post office orders they came, as a usual practice, through the mail?

A. Yes, sir.

Q. Who had the authority to take and open the mail?

A. The secretary.

10 Q. You mean Mr. Bissell?

A. Yes, sir.

Q. He did so I suppose?

A. Yes, sir.

Q. When remittances were found he has, as I understand you, laid them before you, and you credited them on the books?

A. Yes, sir.

Q. To the proper accounts?

A. Yes, sir.

20 Q. Sometimes remittances were made by express?

A. Yes, sir.

Q. In those cases who opened the express packages?

A. When I was present I opened them and signed for them myself; when I was away Mr. Bissell would do it.

Q. He had the general charge of the office force had he?

A. Yes, sir.

Q. And when he was there you were subject to his authority?

30 A. Yes, sir.

Q. When he was not there you sometimes exercised authority yourself?

A. Yes, sir; when he was not present I had charge of the office.

Q. Not by any formal resolution of the Board of Directors, had you?

A. No, sir.

Q. At whose request or appointment did you exercise this authority?

40 A. If he was going away for any length of time he

would tell me that I would have charge of the office, and to look after certain things.

Q. Then when he was away you exercised the authority by virtue of his appointment?

A. Yes, sir.

Q. And he was the man who had the full control and management of the affairs of the company when he was there?

[Objected to as calling for an opinion and not for facts.]

The Court—I think it is competent to show that he 10 had full control of the office.

Q. And full control of all business transacted in the office while he was there?

A. It would depend very much on the nature of the business, there were some things he had to refer to the executive committee; he had no authority over them.

Q. What?

A. For instance, the running of the works, the purchase of machinery, the employment of a certain amount of men, the amount to be paid to men, things of that 20 kind were always out of his jurisdiction altogether.

Q. I don't suppose he would make a contract to put up a new factory without referring it to the executive committee?

A. No, sir; he would not take a large order without referring it to the executive committee?

Q. But I mean in the transaction of the ordinary affairs of the office, and of the business connected with the office, he was chief?

A. Yes, sir; just the same as I am now.

30

Q. In the early part of 1893, you say, there was some notes discounted by the First National Bank for the saw company; do you remember how many notes there were?

A. Twenty-one.

Q. All discounted at the same time?

A. Yes, sir.

Q. All endorsed by Mr. Bissell?

A. Yes, sir.

Q. Do you remember how they were endorsed?

A. To the best of my belief, he used the same stamp for stamping the notes as he did for collecting the money on the checks and drafts in suit.

By Mr. Beasley—

Q. That is what you call the letter stamp?

A. Yes, sir.

Further cross—

10 Q. That is to say, the endorsement on the twenty-one notes was like the endorsement I now show you on this voucher for \$29, dated July 11th, 1892, from the Portland Lumber Company, which is in suit?

A. To the best of my knowledge, it is precisely the same thing.

Q. This is one of the drafts sued on in the New York company's suit; were you present at the office of the saw company at any time after these notes were discounted, when there was a discussion between Mr. Putnam, vice president, and Mr. Ely, the president, and Mr. 20 Bissell, the secretary, respecting his authority to endorse?

A. Yes, sir.

Q. Did you hear Mr. Putnam say to Mr. Bissell that he had no authority to make that endorsement?

A. Yes, sir; I did.

Q. You were in the habit, sometimes, of making deposits, sometimes, yourself, were you not?

A. Ninety per cent. of the deposits were made by myself.

30 Q. Sometimes Mr. Bissell made deposits?

A. Sometimes; not very frequently.

Q. Why did you say on your direct examination when Mr. Corbin asked you who made deposits that it was either you or the clerk sent by you?

A. That was true.

Q. Was that the whole truth?

A. The clerk could make about $7\frac{1}{2}$ per cent.

Q. But he didn't?

A. I say Mr. Bissell sometimes did, and the elerk and I make the remainder; I said about 90 per cent.

Q. The truth is that the deposits were made by you and Mr. Bissell and by some clerk?

A. Yes, sir; that is true, but he would sometimes take a deposit, but so rarely that we would not consider it.

Q. You say you made some 90 per cent. of the deposits; did you ever give any information to any of the officers of the bank concerning that conversation?

A. No, sir.

10

Q. The saw company got the credit of the discounts of all these notes?

A. Every cent of it.

Q. And I think you have already stated that all of these twenty-one notes were endorsed in the same way by Bissell?

A. Yes, sir.

Q. Do you know whether Bissell at any time when he made deposits to the credit of the saw company deposited checks and drafts endorsed as these notes were endorsed, 20 or don't you know?

A. To the best of my knowledge he did not; we cannot find a single instance that he endorsed any other than the regular way.

Q. You have spoken of a number of open accounts as ranging from 2,000 to 2,500, and I think you said that the checks and drafts in suit were sent to be credited upon some 50 or 60 accounts, 2,000.

A. Yes, sir.

Q. Have you counted the accounts to see how many 30 there are?

A. No, sir; I have not recently.

Q. Do you know whether of these 89 checks and drafts sued on more than one of them relate to any particular account?

A. There are several checks and drafts that relate to the same account.

Q. What is the greatest number of checks and drafts relating to any particular account?

A. I think you might safely say 6; it might not be 40

that many and it might be one or two more; it is so long since I have had them in my possession that I don't know definitely about that now.

Q. Let me hand you the printed book that was used in the Supreme Court and show you the printed lists of checks and drafts in the suit of the New York corporation, beginning on page 3 of the printed book, and you will notice that I have numbered them on the margin from 1 to 40, and also in the New Jersey Corporation suit
10 beginning on page 36, where you will find I have numbered the checks and drafts from 41 to 89; you say you think there were as many as a half a dozen checks and drafts applied to a single account; look at check No. 5; look at all of those checks and drafts to which I now refer and see if they were not all sent to be applied to the account of the Buffalo Lumber Company; Check No. 5, \$50.10?

A. Yes, sir; that is right.

Q. Check No. 12, \$216.58?

20 A. That is right, the Buffalo Lumber Company.

Q. Check No. 15, \$272.95?

A. That is right.

Q. Check No. 19, \$34.50?

A. That is right.

Q. Check No. 29, \$133.06?

A. That is right.

Q. Check No. 33, for \$162.00?

A. That is right.

Q. Check No. 37, for \$124.58?

30 A. That is right.

Q. No 43, for \$24.20?

A. That is right.

Q. No. 48, for \$25.60?

A. That is right.

Q. No. 82, for \$10.65?

A. That is right.

Q. And No. 89, for \$15.00?

A. That is right.

Q. That makes eleven checks on that one account?

A. Yes, sir; that is the only account you will find that many on.

Q. Now those checks you looked at, No. 5 are under date from September 16th, 1891, down to October 30th, 1893, are they not?

A. Yes, sir.

Q. A little over two years?

A. Yes, sir.

Q. Now look at those checks, and see if they don't all relate to the account of J. B. Fox: No. 11, for \$1,000; No. 16, for \$1,000; No. 40, for \$500; No. 19 for \$500; and No. 65, for \$353.75; all of those should have been credited to the account of J. B. Fox?

A. Yes, sir.

Q. And they are under date from September 1st to July 5th, 1893, are they not?

A. Yes, sir; aggregating \$3,353.35.

Q. Now let us see whether these checks and drafts should not have been applied to Whitman and Barnes Lumber Company; No. 21, for \$141; 64 for \$17.28; 66 20 for \$516.21?

A. Yes, sir.

Q. 69, for \$25.72?

A. Yes, sir.

Q. 70, for \$243.88?

A. That is right.

Q. 73, for \$65.59?

A. Yes, sir.

Q. Ought not all of these to have been credited to the Whitman & Barnes Manufacturing Company? 30

A. Yes, sir.

Q. And they range in date from August 8th, 1892, No. 21st, to August 14th, 1893, just a little over a year?

A. Yes, but No. 21 was the oldest, the others are right close together in 1893.

Q. Now take the Buffalo lumber account, is that a good company?

A. At the time their account was open on our books they were not supposed to be good; that was Mr. Bissell's excuse for not collecting the account. 40

- Q. Have you the ledger account here?
A. Yes sir.
Q. Turn to it on page 106?
A. Yes, sir.
Q. What is the date of the last credit on that account?
A. The last credit on that account is November, 1892.
Q. What was that?
A. \$100.
Q. Cash?
10 A. Yes, sir.
Q. What was the next preceding date, the next preceding credit?
A. April 11th, 1892.
Q. How much?
A. \$26.
Q. That was cash on account?
A. No, sir; it was credit for either goods returned or defective.
Q. What was the next preceding credit?
20 A. That runs into the other ledger.
Q. How far back does this ledger run?
A. July, 1891.
Q. Then there are no credits in July, 1891, except these two?
A. Yes, sir.
Q. \$26 credit, that was for what?
A. Either goods returned or defective.
Q. Then \$100 credit in September, 1892?
A. Yes, sir.
30 Q. Did the fact that this account was so far in arrears attract your attention?
A. Yes, sir.
Q. There were after July, 1891, all of these checks had been sent, these 11 checks that have just been mentioned, and nothing had been paid on account except \$100—now, did that give rise to discussion between you and the officers of the company?
A. Yes, sir.
Q. You say that Mr. Bissell reported to you that the
40 company was not in good standing?

A. Yes, sir.

Q. And that is the only reason that you can give for not having sent directly to them by yourself or otherwise?

A. He reported that he had made efforts to collect the money that was due from the Buffalo Lumber Company after it got up to the amount—well, November, 1893, or previous to that, he reported that he had made efforts to collect the account and that they were in such tight papers that it could not be collected, that there was no use suing them, if we did we would push them to the wall and never get anything.

Q. Do you know when that report was made by him first?

A. That was made first by him in the spring of 1892.

Q. What is the date of the last charge against the Buffalo Lumber Company?

A. November 8th, 1893.

Q. Then, if Mr. Bissell reported to you, in the spring of 1893, that the Buffalo Lumber Company was in tight 20 papers, and that there was no use suing them, for you would not get anything, you yet did not send them goods as late as November, 1893?

A. Oh, only in very limited amounts; they were not running and didn't want much material.

Q. Read to us all your charges against the Buffalo Lumber Company from the first of April, 1893, down to November, 1893?

A. \$10.65 and \$15.

Q. What dates were they sent?

30

A. July 17th and November 8th.

Q. Were these statements that were made by you each month ever laid before any other persons, officers of the company, than Mr. Bissell?

A. On one occasion.

Q. Was there, at any time, any report made by you to the treasurer of the company, Mr. Putnam, concerning these accounts that were so largely in arrears?

A. Not a formal report; we would go over it; whenever

he could come to Trenton the matter would be talked over.

Q. Over the books?

A. Yes, sir.

Q. Did he go over the books with you?

A. Yes, sir.

Q. How often?

A. His attention would be called to the books every week; in 1893 he had conversations with myself and
10 Mr. Bissell with regard to the open account on the ledger, every week.

Q. Then at that time you had at any rate some 50 or 60 accounts on which these drafts and checks had been sent?

A. Yes, sir.

Q. And that were largely in arrears?

A. Yes, sir.

Q. Did your discussion or conference with Mr. Putnam lead to any effort of any sort different from that which
20 you have already described?

A. It lead to the writing of letters to a large number of open accounts to people who owed us money, asking them to settle up, and they replied that at that time they were unable to settle; later they did send the checks, and some of those checks, a large number of the checks in the New Jersey suit, in the summer of 1893, are the very checks that were realized on those dunning letters.

Q. When were these dunning letters sent?

A. To the best of my knowledge it was in March or
30 April, 1893.

Q. They were dictated by Mr. Bissell?

A. That is the best of my knowledge; I didn't hear him do it, but I suppose he did.

Q. As a matter of fact you know they were sent, do you; such letters were written?

A. Yes, sir; because I saw the replies.

Q. Do you know whether those letters stated to these people who were in arrears the amount that they owed to the company?

40 A. I do not; I did not see the letters,

Q. That would be a customary thing for them to set forth?

A. It would depend on circumstances; take a house like Whitman & Barnes Manufacturing Company; if you were to write them a letter and ask them to remit you on account, you would not mention any amount; you would ask them if they would remit you something on their account.

Q. Still it would not be reasonable to expect in all these 50 or 60 accounts in arrears to whom you would write letters of that sort that you would not at least state the amount?

A. It depends very much on circumstances.

Q. That would be reasonable?

A. Yes, to some people; take a house like Whitman & Barnes, who keep an accurate set of books, they know how much they owe us.

Q. Take the Buffalo Lumber Company?

A. They would know.

Q. Would it not be entirely reasonable to have inserted the amount in the letter?

A. It would be reasonable, certainly, you would have to be guided as to how to handle that particular customer.

Q. If you have any idea that the company was pressed to the wall, in tight papers as you express it, it would be particularly reasonable, would it not, that you should insert in your letter the amount due?

A. Certainly, under those circumstances it would; yes, sir. 30

Q. Where is Mr. Bissell, do you know?

A. Not positively; no, sir.

Q. How long since you have know of his whereabouts?

A. I have kept track of his whereabouts for the last three years.

Q. Where was he when you last knew of his whereabouts?

A. In the south, the last I heard of where he was.

Q. Is he in Trenton at the present time?

A. Not to my knowledge. 40

Q. Are you expecting him?

A. No, sir.

Q. Do you expect that he will be here at this trial?

A. I do not expect him.

Q. Were you before the grand jury to complain of Mr. Bissell?

Re-direct—

Q. Have you the drafts that were handed in, *Exhibits D5, 6, 7, 8 and 9*; are they drafts on the same blank
10 forms that they were shown to you sometime ago by Mr. Corbin?

A. Substantially the same.

Q. Nothing was said to you on your direct examination as to whether or not they were accepted; as a fact were they accepted?

A. Yes, sir.

Q. They were accepted, and in the regular course of business to whom would they be returned?

A. The proceeds would be returned to the First
20 National Bank, and they would credit our account with the amount of money; we would never see the draft or know anything about it until we were notified over the 'phone that the account had been paid.

Q. What would become of the accepted drafts?

A. They would go to the people on whom they were drawn; they would keep them as receipts, showing that they had paid the bill.

Q. As vouchers?

A. Yes, sir.

30 Q. In your cross-examination, referring to the question as to the authority of Mr. Bissell, you spoke about the control he had at the office, and you said in that connection that he did just as you do now?

A. Yes, sir.

Q. Just state to the court and jury what duties you perform now?

A. Would you take the daily routine of work in the office?

Q. Just make clear what you mean?

Mr. Lanning—Objected to because it was gone over in the chief examination what he did.

Mr. Buchanan—The point is this, in referring to the authority of Mr. Bissell he illustrated that authority by referring to what he does now.

The Court—The question was whether Mr. Bissell did not have the entire management and control of the affairs of the office; the witness said yes just as I do now. The last part of the answer was not responsive and does not, it seems to me, throw any light on this case 10 what Mr. Eccles does now.

Q. Just state what Bissell's authority and duties were?
[Objected to.]

The Court—That has been gone into, but if there is any doubt about it I will permit the question to be answered again.

A. He would open the mail, accept the orders he cared to, or return what orders he didn't wish to have go through the factory; he would dictate the letters and carry on the correspondence; he would direct the work 20 of the office as to how many hours or what hours we should come in the morning or go in the afternoon; he had general authority over the office; he was looked to as the man in charge; if we wanted any information we didn't do it on our own responsibility but we went to him; whatever he said in regard to orders or anything else was the authority under which we acted; if the factory was to be closed down for a day in the week Mr. Bissell said so; if we wished to run fewer hours per week; if the pay rolls were too large for what we were 30 selling, he was the man who decided whether the factory was to be closed down one day in the week or whether we should run 48 hours in the week, and he controlled in that direction; but there may be certain things in

which he was under the charge and direction of the executive committee and directors.

Q. You were asked with respect to the making of endorsements on customers' paper; I mean by that checks and papers received in payment of customers' bills, and whether or not you knew of any endorsement similar to the endorsements on the checks and drafts comprised in this suit, other than those that can be found on the checks and drafts in suit, and I think you said you knew of
10 none?

A. Yes, sir.

Q. You have already said that in case of the company receiving payment by means of such checks and drafts, and they were deposited regularly in the First National Bank to the credit of the account of the saw company, the company would not get them back again?

A. No, sir.

Q. They would not get them back again?

A. Our company would not; no, sir.

20 Q. Now, I ask you whether or not you have received back from your customers, or any of them, checks and drafts regularly endorsed by the saw company or for deposit to the credit of the saw company, and which were deposited in the First National Bank on the same dates and times that any of these checks or drafts in suit were deposited?

A. Well, I believe we have; I haven't checks, the checks in suit in question to ascertain that fact, but I think we have checks that were deposited the same day
30 that Mr. Middleton paid him money on these papers and drafts; that is to say, he deposited money in one window and drew out money in the other window.

Q. You have spoken about the regularity of the deposit of the checks and drafts on your cross-examination that were endorsed to be deposited to the credit of the saw company, and which were actually so deposited; have you verified that knowledge by inspection of any such papers as you have received?

A. Yes.

40 And the plaintiffs also offered in evidence a report on

file in the cause wherein said The American Saw Company of New York is plaintiff and said The First National Bank of Trenton is defendant, and dated November first, eighteen hundred and ninety-four, made by Garret D. W. Vroom, as referee, in pursuance of an order made by the court therein, bearing date May tenth, eighteen hundred and ninety-four, whereby it was ordered that the matters at issue therein be referred to said referee, to state and report an account between the parties, to which evidence the defendant objected, and prayed 10 that the same might be overruled; and the plaintiffs insisted that the same was lawful and admissible.

Whereupon his Honor, the said Justice, held and affirmed that the said evidence was unlawful and inadmissible, and overruled the same.

To which ruling of his Honor, the said Justice, the plaintiffs did then and there except, and tendered this, their bill of exceptions, and prayed that the same might be sealed according to the statute in such case made and provided, and it is sealed accordingly. 20

WM. S. GUMMERE, [L. s.]
Justice of Supreme Court.

And the plaintiffs also offered in evidence a report on file in the cause wherein said The American Saw Company of New Jersey is plaintiff and said The First National Bank of Trenton is defendant, and dated November first, eighteen hundred and ninety-four, made by Garret D. W. Vroom, as referee, in pursuance of an order made by the court therein, bearing date May tenth, eighteen hundred and ninety-four, whereby it was or-30 dered that the matters at issue therein be referred to said referee, to state and report an account between the parties, to which evidence the defendant objected, and prayed that the same might be overruled; and the plaintiffs insisted that the same was lawful and admissible.

Whereupon his Honor, the said Justice, held and affirmed that the said evidence was unlawful and inadmissible, and overruled the same. To which ruling of his Honor, the said Justice, the plaintiffs did then and there

except and tender this their bill of exceptions, and prayed that the same might be sealed, according to the statute in such case made and provided, and it is sealed accordingly.

WM. S. GUMMERE, [L. s.]
Justice of Supreme Court.

And thereupon the plaintiffs further called as a witness, Charles Whitehead, the cashier of the defendant, and offered to produce the defendant's bank book commonly called the signature book, and offered to prove that such signature book contains the signature of the "American Saw Company, Samuel W. Putnam, Treasurer," written by Mr. Putnam, and contains no other signature for the American Saw Company, for the purpose of showing what signature the defendant had had a right to pay money on, that that was the essential signature, and that such signature was evidence to the bank that such signature was necessary to the validity of a draft on the fund; to which evidence the defendant objected, and prayed that the same might be overruled, and the plaintiffs insisted that the same was lawful and admissible. Whereupon his Honor, the said Justice, held and affirmed that the said evidence was unlawful and inadmissible and overruled the same. To which ruling of his Honor, the said Justice, the plaintiffs did then and there except and tendered this their bill of exceptions, and prayed that the same might be sealed, according to the statute in such case made and provided, and it is sealed accordingly.

30 WM. S. GUMMERE, [L. s.]
Justice of Supreme Court.

And thereupon the plaintiffs further offered in evidence that said minute books, by-laws, checks and drafts sued on, which were received in evidence.

Whereupon the said plaintiffs rested.

The defendant to maintain and prove the issues aforesaid on its part called as a witness,

Charles Whitehead, who being duly sworn, testified as follows—

Q. Where do you reside?

A. In Trenton, N. J.

Q. How many years have you lived in Trenton?

A. About 50 years.

Q. Are you an officer of the First National Bank?

A. Yes. 10

Q. And have been for how many years?

A. For 30 years.

Q. In what capacity?

A. As cashier.

Q. Prior to that had you any connection with any bank?

A. I was with the Mechanics National Bank and the old Mechanics and Manufacturers Bank before it was re-organized.

Q. What has been your duty since you have been 20 cashier of the First National Bank as such cashier?

A. Having general charge of the affairs of the bank, the direction of the business and the clerks under me.

Q. Do you know the American Saw Company?

A. Yes, sir.

Q. How long have you known that corporation?

A. For a great many years; I don't know how many; 20, probably.

Q. Did you know Samuel W. Putnam?

A. Yes, sir. 30

Q. For how long?

A. I knew him for a number of years; I could not say how many; 20 years, probably.

Q. Was he in any way connected with the American Saw Company?

A. Yes.

Q. In what capacity?

A. He was their treasurer most of the time, I think.

Q. Do you know whether he held any other office?

A. I am not sure, but I think he was the vice president at one time.

Q. Did you have any conversation with him during the time he was connected with the saw company?

A. Yes, I had numbers of conversations with him; he came into the bank occasionally and talked.

Q. Was that company in the habit of doing business with the bank?

A. Yes.

10 Q. For what length of time?

A. I think from the time of her organization almost, they opened their account with us at that time.

Q. Made their deposits with your bank?

A. Yes.

Q. Do you know Isaac F. Bissell, or did you know him during some of his transactions?

A. Yes.

Q. For how long?

A. Ten, 12 or 15 years, probably.

20 Q. Did you know him in connection with the American Saw Company?

A. Yes.

Q. As what; in what connection?

A. I knew him as secretary of the company; I think previous to that he was in the office in some other capacity.

Q. Will you state to the court and jury whether you had any conversation with Mr. Putnam with regard to Mr. Bissell and his dealings with the bank; first tell me
30 if you did have; when was it?

A. I had a conversation with Mr. Putnam and Mr. Bissell; I don't remember the exact date, but about the time, if I remember correctly, that Mr. Bissell withdrew from the active business of the office here.

Mr. Lanning—Mr. Putnam you mean?

A. Mr. Putnam, I mean; probably 8 or 10 years ago, I could not fix the date exactly.

Q. Where did the conversation take place?

A. In my office at the bank.

Q. State, if you remember, who was present at that interview?

A. I don't remember that anyone was present except Mr. Putnam and Mr. Bissell and myself.

Q. Do you know of any reason of their coming beyond what the conversation disclosed?

A. I do not.

Q. Can you tell or can you give the language that was used by Mr. Putnam on that occasion? 10

A. I could not give the exact language; I can give the purport of it.

Q. You may give the language—you may give his declarations in substance as near as you can?

A. It was that Mr. Putnam was about leaving the active duties of the Trenton office.

Q. Who said this?

A. Mr. Putnam said that, and that hereafter Mr. Bissell would have charge of the Trenton office, the management of the business of the concern, and of the financial 20 affairs of the company, and would attend to the banking business and such duties as Mr. Putnam had been attending to previously.

Q. Will you explain to the jury what you did subsequent to that by way of transaction of business with Mr. Bissell?

A. Mr. Bissell after that frequently came to the bank; sometimes making deposits, sometimes to talk over business affairs.

Q. Have you any knowledge of Mr. Bissell's transact-30 ing any business with the bank that came directly under your observation?

A. He brought notes for discount to the bank; on several occasions he came into my office with statements of the business of the American Saw Company, showing the prosperity of the company—seemed proud of its condition.

Q. State, if you recall, whether you had a conversation with him concerning the notes when he wanted discount?

A. I remember distinctly his bringing in a batch of notes in January, 1893, for discount; he said that was 40

unusual, not usual to ask for discount, but they needed money at this time and had to offer quite a lot of notes, and he brought them to the bank and offered them for discount.

Q. Was the question discussed at all as to the financial condition of the makers of the notes?

A. No, I think not.

Q. State if you recall how these notes were endorsed by the company for discount?

10 A. These notes were stamped with the name of the company and signed by Mr. Bissell as secretary of the company; I speak of this one lot of notes in January.

Q. I show you a check bearing date Piedmont, West Virginia, 10, 31, 1892, purporting to be drawn by the Buffalo Lumber Company in favor of the American Saw Company, being one of the checks that is sued on, and direct your attention to the endorsement of the American Saw Company, and ask you if that endorsement on that check was the same endorsement that was on those notes
20 that were discounted by the bank to the American Saw Company in January, 1893?

A. The same endorsement was upon the notes that is on that check

Mr. Holt—I do not suppose it is necessary to have this marked?

The Court—It is in evidence already.

Q. You have some knowledge of the checks that have been sued on here, and the drafts?

A. Yes.

30 Q. State whether those checks, or the proceeds of those checks and drafts, were paid by the bank to Mr. Bissell?

A. I could not testify to that positively; they were paid, as far as I know, to the American Saw Company on that endorsement; whether Mr. Bissell got the money personally or some other person got the money I can't say.

And being further cross-examined on the part of the plaintiff, testified as follows—

Q. I hand you the checks and drafts in these two suits, copies of which are annexed to the declaration, and which were referred to in the question by Mr. Holt, and ask you to examine them carefully; you will notice that the first check comprised in the suit of the New York company is one for \$189.20, and is dated February 27th, 1891; have you examined that check?

A. Yes, sir.

10

Q. Do you know whether that check was put into the account of the American Saw Company in your bank?

A. This check was collected through our bank for the American Saw Company.

Q. (Question repeated)—I ask you whether you know if that check was put into the account of the American Saw Company with your bank?

A. There is nothing upon the check itself to show that, but if this is one of the series of checks that is sued upon, it did not go into the account to the credit of the 20 company.

Q. Examine the residue of the checks embraced in the two suits, and state whether the proceeds of any of those checks or drafts went into the account of the American Saw Company, in your bank?

A. Without examining them, I would say, if they are those checks, that I have previously examined them with the officers of the company; they were not credited to the company.

Q. Look again at the first check I refer to, being the 30 one for \$189.20, dated February 27th, 1891; in the cashing of that check, did the paying teller act under any directions from you or upon his own responsibility?

A. He acted upon his own responsibility.

Q. In the cashing of all these checks and drafts in these two suits, or any of them, did the paying teller of your bank act upon your instructions or upon his own responsibility?

A. He acted upon his own responsibility.

Q. You gave him no particular directions or instructions in that regard?

A. None, whatever.

Q. So far as you know, did he receive any instructions in that regard from any other officers of the bank?

A. Not to my knowledge.

Q. When did you first learn, and from whom, that your paying teller had cashed these checks in these two suits?

10 A. I don't remember the date, but when it first came to my knowledge, it was when Mr. Putnum came in with one of these checks for examination, to compare with our books.

Q. Fix the year, if you can, when it was?

A. In 1893 probably.

Q. Was it after Bissell had ceased to act for the saw company?

A. Yes; about the time that he left.

Q. It is in evidence that he left in the month of October or November, 1893, I believe, is that about the time?

A. I think it is.

Q. That you learned this?

A. Yes, sir.

Q. Before that you had no knowledge or information that these checks or any of them had been cashed?

A. No.

Q. And your first knowledge was derived from the saw company's officer Mr. Putnam?

A. Yes, sir.

30 Q. You have referred to some notes that you say were discounted for the American Saw Company, and which you say were endorsed in the same manner as the checks and drafts in your hands, and which are in this suit?

A. Yes, sir.

Q. You haven't referred to what became of the proceeds of those notes; what in fact did become of the proceeds of those notes which you say were discounted for the American Saw Company?

A. They went to the credit of the American Saw Company.

Q. In their account with your bank?

A. Yes, sir.

Q. Immediately upon their being discounted?

A. Yes, sir.

Q. That I think you said was in January, 1893?

A. Yes, sir.

Q. Do you keep books of account in your bank in which appear all notes that you discount for your customers?

A. Yes, sir.

Q. You were interrogated upon the matter of notes on the former trial of this suit; I mean notes which were discounted for the American Saw Company, were you not?

A. I think it is probable.

Q. When before did your bank discount for the American Saw Company, if ever, any notes?

A. Previous to this lot I think it was several years that they had offered no paper for discount. 20

Q. Have you examined recently your books to see when previous to this lot, offering of paper had been made by the American Saw Company for discount at your bank?

A. I have not.

Q. You say for several years before the month of January, 1893, no such paper had been offered for discount; can't you be a little bit more explicit?

A. I don't think I can. 30

Q. Had they ever during the time Bissell was acting as secretary for them offer for discount at your bank any promissory notes?

A. That I could not answer.

Q. You could, if you desire, ascertain that fact by recourse to your books?

A. I could ascertain the dates.

Q. You have no doubt that the dates appear on your books?

A. No, sir. 40

Q. Look upon *Exhibits D4 and D5* both inclusive, and state whether they are the accepted drafts of Trenton parties?

A. Four of them are on Trenton parties and one on Boston.

Q. Did you or your bank procure them from the acceptors of them for the purposes of this suit?

A. We collected these from the parties and placed them to the credit of the American Saw Company.

10 Q. And your stamp appears on the back?

A. Yes, sir.

Q. In due course, from your familiarity with bank usage, would they or not go back to the acceptors?

A. The acceptor would get them when he pays them.

Q. And they were paid at or about their dates?

A. Yes, sir.

Q. And you procured them from the acceptors for the purposes of this trial?

A. I can't say; perhaps our counsel did; he got pos-
20 session of them somehow.

Mr. Lanning—We will admit that we did.

Q. You have referred to a conversation with Mr. Putnam in the presence of Mr. Bissell; it is in evidence that Mr. Bissell was made secretary in the month of August, 1883; is that about the time, according to your memory, when you had this conversation?

A. I don't think it was so long back as that, more recently, I think; my recollection is 8 to 10 years.

Q. Commencing to run when?

30 A. Backwards.

Q. Commencing to run now?

A. Now.

Q. That is from the year 1896; he was introduced to you by Mr. Putnam, you say, as about to be made the secretary, or had been made the secretary?

A. As the secretary of the company who would take possession of the duties of the Trenton office.

Q. Do you recollect whether that was at the time of the appointment of Mr. Bissell as secretary?

A. I think he had been appointed previous to that time.

Q. How long?

A. I don't know.

Q. According to your best recollection?

A. I don't know.

Q. Have you at present in your mind any fact with which you associate the date of this conversation with 10 Mr. Putnam, or are you stating merely from your general recollection?

A. From the fact that Mr. Putnam was about to retire from the duties of the Trenton office, been relieved of them, and Mr. Bissell was to take his place as financial agent and manager of the business of the company.

Q. To what date do you connect that fact of Mr. Putnam's retiring?

A. I can't fix the exact date.

Q. Can you fix the year by any document or any other 20 evidence?

A. Well, I should think it was previous to 1890, 1887, or 1888 probably.

Q. I ask you if there is any document or paper or writing that enables you to fix this date?

A. No, sir.

Q. You are speaking then from your general recollection?

A. From any general recollection.

Q. Just state again now what that conversation was 30 with Mr. Putnam?

A. Mr. Putnam and Mr. Bissell came into the office and we had a conversation, and Mr. Putnam stated that on account of impaired health he was about to be relieved of some of the duties of the office, and that Mr. Bissell would then attend to those duties, to the duties of the Trenton office, he would have charge and management of the office and of its financial affairs, and perform such duties as he had been performing while here, he would not be able to come over so often.

Q. What duties had he been performing before that so far as you know?

A. Well, he was the treasurer of the company and he would come to the bank occasionally, with deposited more frequently they were sent, and he would talk over business affairs; he didn't come very often.

Q. Who?

A. Mr. Putnam.

Q. So far as you know had he ever before that time
10 got any check or draft, payable to the order of the American Saw Company discounted at you bank by the teller paying to him the cash over the counter?

A. Not to my knowledge.

Q. I understood you to say that the first knowledge you had of the cashing of any of these checks and drafts in controversy was from the saw company's offices in the latter part of the year 1893?

A. That is right.

Q. What were the words of Mr. Putnam; reproduce
20 his language?

A. I could not reproduce his language, I could only give the purport of it.

Q. Do it as near as you can?

A. I think I have done that already.

Q. Try again and reproduce his language?

A. It would be impossible for me to do that; I could only give the purport of it as I have already done.

Q. Did you report that conversation to anyone?

A. I don't remember distinctly that I did, but it is
30 very probable that I spoke to the clerks of the bank about it, yet I don't remember distinctly.

Q. Have you a recollection that you spoke to anyone, and if so, to whom?

A. I have no distinct recollection about that.

Q. Do you swear that you did speak to anyone and report that conversation?

A. No, I will not.

Q. You spoke something about the financial affairs of the saw company as having been referred to in that con-

versation with Putnam, but anything particularly said as to what Mr. Bissell was to do in that regard?

A. I think not; nothing distinct or definite.

Q. In that conversation, did Mr. Putnam say that Mr. Bissell would have power to come to your bank and have cashed and discounted checks and drafts payable to the saw company like those sued on here?

A. I don't think he did.

Q. Before learning from the saw company's officers of the cashing of such checks and drafts, had you ever¹⁰ heard of any like checks and drafts being cashed by your paying teller for the saw company?

A. I have not.

Q. After this conversation with Bissell, did you understand that Mr. Putnam gave up his office of treasurer of the saw company?

A. No.

Q. Did or not Mr. Putnam, after this conversation continue to serve the saw company in the capacity of treasurer? 20

A. I think he did.

Q. State whether your bank ever paid any money to the deposit of the saw company on any check drawn by the saw company, save one signed by the treasurer and countersigned by the secretary?

A. I think that was the usual form, I could not remember the exact facts.

Q. Have you any knowledge or remembrance that any was so paid?

A. I have not. 30

Q. Otherwise than drawn and signed by Mr. Putnam as treasurer and countersigned by the secretary?

A. I have no recollection of it.

Q. Have you made an examination of your books to see, for the purposes of this suit?

A. I don't think our books would show.

Q. Have you or not made an examination of your books?

A. I have not in that respect.

Q. You have examined them carefully so as to see 40

what is on them that relates to the matters in controversy, haven't you?

A. As to these checks, we examined the books as to those thoroughly.

Q. You made repeated examinations, didn't you?

A. No, not repeated examinations.

Q. You examined them carefully to see?

A. I went over the books with the company's officers and counsel in regard to these checks in dispute, and I
10 examined the discount book as to these two lots of notes that were discounted recently.

Q. You have spoken of two lots, one lot has already been referred to, that lot in the month of January, 1893; the other lot was a lot later in the 1893 year?

A. Yes, sir.

Q. In the month of July, 1893?

A. Right.

Q. How were they endorsed?

A. They were endorsed by Mr. Putnam.

20 Q. As treasurer?

A. Yes.

Q. And all those notes also went to the credit of the American Saw Company on your book?

A. They did.

Re-direct—

Q. You were asked on your cross-examination whether your attention had been called to the payment of any of these checks that were not endorsed by the treasurer, and I understood you to say that sometime in 1893 that Mr.
30 Putnam called and brought in one of the checks; you didn't mean by that answer that checks had not been paid a long time that, but that was the first time that your specific attention had been called to it?

A. The first time that it was brought to my attention.

B. In the ordinary course of business in your bank who receives checks; who pays checks?

A. The paying teller takes checks that are cashed, and the receiving teller receives checks that are deposited.

Q. Now do those matters in the ordinary course of business come to the attention of the cashier at all?

A. No.

Q. In the ordinary course of business Mr. Putnam came in and made the statement which you have detailed in substance—would you, I say, in the ordinary course of business make that conversation known to the receiving and paying teller?

[Objected to.]

The Court—He says he don't remember that he did or 10 not, but it is quite probable that he did.

Re-cross—

Q. You have stated on your redirect examination that in the ordinary course of business the checks that are cashed by your paying teller and the checks that are received and deposited by your receiving teller to the credit of your customer, do not fall under your notice; look upon the checks and drafts in controversy in these suits and state who put upon them the endorsement, the stamp and your name? 20

A. My name is not written on any of them.

Q. You will observe that upon each of them in this endorsement, "Credit account First National Bank, Trenton, N. J., C. Whitehead, Cashier?"

A. Yes.

Q. Did you or not put on that endorsement?

A. I did not.

Q. Is not that the function of the cashier to put on the endorsement of the bank?

A. It is the duty of the corresponding clerk in whose 30 hands these checks go to be forwarded for collection.

Q. And he is one of the clerks that you have under your superintendence as cashier?

A. Yes, sir.

Q. And you did not in person endorse any of these?

A. No.

Q. You were speaking of the duties of the paying

teller, you say that he is the one who cashes the checks that are cashed at the bank?

A. Yes.

Q. After he cashes the checks, what does he do, what is his next duty in that regard?

A. They are passed to the check clerk to be recorded, then they go to the corresponding clerk to be forwarded to their destination.

Q. Do you keep an accurate history of each of the 10 checks that are cashed?

A. Not a very full history, but such a record as we would be able to identify them.

Q. Identify the place of the maker?

A. Not always.

Q. The amount and date?

A. Not the date.

Q. Generally?

A. No, sir.

Q. What do you take down in these in respect to 20 checks cashed?

A. We take down the name of the party from whom received and the name of the bank or town upon which it is drawn.

Q. Now then after the paying teller cashes the checks does he make any entry in the books of the bank?

A. He makes no entry; he keeps a record during the day so as to settle his cash at night.

Q. Is not this the usage when a check comes in to be cashed: the paying teller takes out of the cash of the 30 bank the money to pay the check?

A. Yes.

Q. During the day you say he makes an entry somewhere to keep his cash account straight?

A. Yes, sir.

Q. Where?

A. Upon the slip on his desk.

Q. Is anything done with the entry on the slip?

A. Nothing with that, but the entries are made by the check clerk from the entries themselves; those entries 40 must correspond with his,

Q. Does he make any entry of the person who actually gets the money on the check?

A. No, he does not.

Q. Would these checks that are cashed appear on what are called deposit slips?

A. They would not.

Q. Would they be on the pass book of the customer?

A. No.

And the defendant further called as a witness on its part *William S. Middleton*, who, being duly sworn, testified as follows:

Q. Where do you reside?

A. Trenton, N. J.

Q. How long have you lived in Trenton?

A. About forty-six or forty-seven years.

Q. Are you connected with the First National Bank in any way?

A. I am.

Q. In what way?

A. Paying teller.

20

Q. How long have you been teller in that bank?

A. Thirty-two years last March.

Q. Do you sometimes act as receiving teller?

A. I do.

Q. Do you know the American Saw Company?

A. Yes, sir.

Q. How long have you known it?

A. Well, I can't say positively; twenty years.

Q. Did you know Mr. Putnam, the treasurer?

A. Yes, sir.

30

Q. Did you know Isaac F. Bissell?

A. Yes, sir.

Q. Were you acquainted with Isaac F. Bissell in any capacity, as connected with the American Saw Company?

A. Yes.

Q. Was the American Saw Company accustomed to do business in your bank?

A. Yes, sir.

Q. Keep its accounts there?

A. Yes.

Q. Deposits its money and draw money?

A. Yes.

Q. In depositing and drawing, how was its commercial paper endorsed, by manuscript or stamp?

A. By stamp.

Q. How many kinds of stamps did you ever see used by that company?

A. Well, there were two stamps, one was a blue stamp 10 which read on it "For deposit to the credit of the American Saw Company."

Q. And the other?

A. And the other was a red stamp: "Credit American Saw Company" or "Credit account of the American Saw Company"—no, "American Saw Company," that was it.

Q. I show you two pieces of paper, being what purports to be the stamps of the American Saw Company, and ask you to examine them and say if those are the two kinds of stamps that you referred to in your testimony 20 money?

A. That is it exactly.

Q. Now, I show you a check or draft bearing date May 21st, 1891, purporting to be drawn by Edwin F. Mack, acting as cashier, upon the Chase National Bank, in favor of the American Saw Company, and ask you to examine the endorsement on that, and say whether that endorsement frequently appears in your bank?

A. Yes, sir.

Q. I show you another paper purporting to be drawn 30 by William Wyeth on the Chatham National Bank of New York City, in favor of the American Saw Company, and ask you to look at the endorsement on the back of that; is that the same endorsement?

A. Yes, sir.

Q. And those frequently appear in your bank?

A. Yes, sir.

Q. State how and for what purpose these endorsements were used; first direct your attention to the endorsement which reads: "For deposit to the credit of the American

Saw Company," leaving a blank for somebody's name to be signed?

A. Yes, sir.

Q. Was that frequently used for depositing money in the bank on checks and drafts?

A. Yes, sir.

Q. At such times the name would be written in there?

A. Yes, sir.

Q. Was that stamp used for drawing out money?

A. No.

10

Q. Why?

A. Because it says: "For deposit to the credit;" we could not pay a check of that kind.

Q. Now I direct your attention to the endorsements that were shown you a few moments ago, American Saw Company, Isaac F. Bissell, secretary, and ask you if that was used also for the purpose of depositing to the credit of the saw company?

A. It was.

Q. And also for the purpose of drawing?

20

A. Yes, sir.

Q. Do you know whether sometimes Mr. Bissell's endorsement appeared without a stamp, that is, in manuscript?

A. I can't recollect that.

Q. Who was the man representing the American Saw Company, that transacted business mostly with your bank?

A. Mr. Bissell.

Q. State whether Mr. Bissell as an officer of the company was in the habit of depositing with the bank?

A. Yes, sir; he was.

Q. State whether anybody else was in the habit of depositing money for the saw company with the bank?

A. Yes, sir; there was some clerks in the company made deposits.

Q. Do you remember the names?

A. Mr. Eccles often made deposits and Worthington sometimes.

Q. Did you ever see Mr. Putnam at the First National Bank?

A. Oh, yes.

Q. You were well acquainted with him?

A. Yes.

Q. And also with Mr. Bissell?

A. Yes.

Q. Did you ever see them there together?

A. Yes, sir.

10 Q. When can you fix the date?

A. I can't fix any date.

Q. Can you fix the occasion; can you remember anything that was said or done?

A. I can remember on one occasion when Mr. Putnam and Mr. Bissell came in the bank.

Q. Where were you at that time?

A. I was at the receiving teller's window; they passed by.

Q. Did you sometimes act as receiving and paying
20 teller both?

A. I did

Q. Why would you be filling both positions?

A. It would be between the hours of 12 and 1 when the receiving teller had to go to dinner, and I filled that position.

Q. State where Messrs. Bissell and Putnam came from when you saw them?

A. They came in the front door and went back into the cashier's room.

30 Q. And then what?

A. They were in there a few minutes and they came out and stopped at my window there again.

Q. Was it necessary to pass your window for them to go out of the bank?

A. Yes, sir.

Q. State what occurred as they were passing by your window?

A. They stopped and Mr. Putnam said, as near as I
40 can repeat the remarks that he made, that he was going to leave the city for awhile and that Mr. Bissell would

take charge and attend to the financial part of the business of the American Saw Company.

Q. Was their conversation lengthy?

A. No, sir; only for a minute or so.

Q. State whether you said anything about that conversation to anybody else?

A. I don't recall that I did; I may have spoken of it to the cashier; the cashier spoke to me about it.

Q. When, with regard to time?

A. The same day he came in there and made the¹⁰ remark that Mr. Bissell was to have all charge; that was the remark he made; but it was all done in a minute; he was to transact the business.

And being cross-examined on the part of the plaintiff, testified as follows—

Q. You were called as a witness on the previous trial of this case?

A. Yes, sir.

Q. You heard the testimony of Mr. Whitehead at that time, didn't you? 20

A. No, I didn't hear it; no, sir.

Q. At that time, did you testify to any such conversation as you have now related, with Mr. Putnam?

A. No; I don't think I did.

Q. You didn't say anything about that?

A. No; the question was not asked.

Q. Mr. Putnam was then living and was here in court?

A. Yes.

Q. You have referred to stamps; you say you think that the stamp bearing the general endorsement, not for³⁰ deposit, but the general endorsement, was used for drawing out money; do you mean stamp at the foot of the checks of the saw company?

A. I mean the stamp that said American Saw Company.

Q. When they drew checks on their account?

A. No, foreign checks.

Q. Endorsements, you mean?

A. Yes; their endorsement was American Saw Company, Isaac F. Bissell, secretary.

Q. That is you cashed certain drafts and checks with that general endorsement on for Mr. Bissell?

A. Yes, sir.

Q. And you think you have seen that same endorsement on checks deposited?

A. Yes, sir.

Q. Can you designate any checks?

10 A. I cannot.

Q. A single one?

A. Not a one.

Q. Can you give the date of any?

A. Not one.

Q. Can you give the date of any deposit?

A. No, sir.

Q. Have you caused any examination to be made to procure any of them?

A. No, sir.

20 Q. Have you ever seen one, a single check, that was so deposited since Mr. Bissell's defalcation?

A. Not any particular check at all.

Q. Or draft?

A. Nor draft.

Q. Then you state this from general recollection, do you?

A. That is all.

Q. But you can't produce any such checks?

A. No, sir.

30 Q. You can't designate any such checks?

A. No, sir.

Q. Can you give the dates?

A. No, sir.

Q. Can you give the name of the party whose check or draft was so deposited?

A. No, sir.

Q. You can't give any information whatever by which the correctness of your recollection can be tested?

A. No, sir.

40 Q. For whom did you ever cash drafts of the American

Saw Company bearing this general endorsement for Mr. Bissell?

A. Yes, sir.

Q. For anybody else?

A. I think not.

Q. Then the first time you ever cashed a check or draft payable to the order of the American Saw Company on that endorsement or on any endorsement was for Mr. Bissell, wasn't it?

A. Yes, sir. 10

Q. Up to the time that Mr. Bissell commenced to cash over the counter checks or drafts of the American Saw Company, no such business had ever been done?

A. Not to my knowledge.

Q. When did you begin that; was it not in February, 1891?

A. It was about that time; I can't give the exact date.

Q. This conversation that you referred to as having taken place with Mr. Putnam and Mr. Bissell was in 1887?

A. I can't say. 20

Q. Was it 1889?

A. I can't say; I could not fix the date at all; it was at the time he talked with Mr. Whitehead.

Q. Was it at the time that Mr. Putnam ceased to be daily at Trenton?

A. That is the idea; yes, sir.

Q. And that has been fixed as being 1889?

A. That is the time.

Q. Then it was two years or more after that time, if that is the correct date? 30

The Court—I thought that was 1887?

Mr. Buchanan—It is 1887.

Q. Then from 1887 down to 1891 no checks or drafts payable to the order of the American Saw Company were ever cashed for anybody over your counter?

A. No.

Q. And nothing of that business was ever done by anybody except Bissell?

A. No.

Q. Now, in your dealings with Mr. Bissell you had other transactions with him in all those years?

A. Yes, sir; I think so.

Q. You supplied money for the weekly pay roll check?

A. Yes, sir.

Q. Did Mr. Bissell draw that money usually?

10 A. Well, yes.

Q. Sometimes others?

A. Sometimes some of the clerks, Mr. Eccles or others.

Q. And that was drawn by a pay roll check?

A. Principally, I think.

Q. That was a weekly draft during all of your knowledge of the company's business?

A. Yes, sir.

Q. That has gone back some 20 years?

A. I guess it has.

20 Q. And every week you would furnish bills for \$1,000 or so to pay the pay roll?

A. Yes, sir.

Q. And there was a check drawn for it by the treasurer?

A. Yes, sir.

Q. Always signed by the treasurer?

A. Yes, sir.

Q. And countersigned by the secretary?

A. Yes, sir; I think so.

Q. And payable to his order?

30 A. Yes, sir.

Q. Made to his order for pay roll?

A. Yes, sir.

Q. Then first and last, there were hundreds of those checks, every week, you expected it every week?

A. Yes, sir.

Q. Did you make up the bills to meet the pay roll?

A. Yes, sir.

Q. Did the company inform you what shape they wanted the money in?

A. Yes, sir; just had a printed statement how they wanted it.

Q. In what denominations?

A. Yes, sir.

Q. That is, so many fives, so many ones and so many tens, is that the idea?

A. Yes, sir.

Q. Now in the course of these dealings with the bank Mr. Bissell often came to get this money, didn't he?

A. Yes, sir. 10

Q. Now were there not to your personal knowledge improper dealings with the money of the company by Mr. Bissell in connection with his pay roll checks?

A. I don't recollect of anything else.

Q. Didn't you on several occasions advance Mr. Bissell money on those pay roll checks before the time they bore date?

A. No, sir.

Q. Do you swear that you never did on any occasion advance to Mr. Bissell money on pay roll checks before 20 the time they bore date?

A. I have no recollection of anything of the kind.

Q. The books of the bank will show the date when the checks were cashed, will they not?

A. Yes.

Q. I call your attention to a check dated May 6th, 1892, and ask you whether you did not cash that for Mr. Bissell on May 5th?

A. I suppose I did; but I can't say, it has all the appearance of a pay roll check. 30

Q. I show you another check dated March 24th, 1893, and ask you whether you didn't cash that for Mr. Bissell on March 20th?

A. Well I suppose I did.

Q. Now then when the twenty-fourth, came how was the pay roll provided for, if this had been cashed several days previous?

A. I don't know, I can't say whether it was paid before the pay roll or not, he may have held it in his pocket. 40

Q. I show you a check made by Isaac F. Bissell on the Broad Street National Bank, to the order of Charles Whitehead, Esquire, cashier, dated March 24th, 1893, endorsed Middleton, teller, and Whitehead, cashier; I will ask you whether you received that check from Mr. Bissell?

A. Well, it is marked cashed, I can't remember anything about it.

Q. Your name is on the back of it?

10 A. Yes, sir.

Q. It must have gone through your hands?

A. It went through my hands as paying teller.

Q. Is it not a fact that you cashed for Mr. Bissell or advanced money to Mr. Bissell on that check dated March 24th, four days before it came due, and that when pay day came he gave you this check to help make up the pay roll?

A. No, I can't say.

Q. You can't deny that, can you?

20 A. I can't say.

Q. You can't say that it is not so?

A. I don't remember; there is nothing to show that that comes in connection with this.

Q. It is the same date?

A. It may be the same day.

Q. You have cashed that check four days ahead of time?

A. I don't know.

Q. Can't you ascertain by looking at the books?

30 A. No, sir.

Q. Your book would show whether that check was paid?

A. It would show, I suppose, I made a memorandum slip on my table of those things, and at night we destroy those slips.

Q. The bank book will show when that pay roll check was charged up to the saw company?

Mr. Corbin—I ask for the production of the individual

ledger of the account of the American Saw Company for 1893.

Mr. Beasley—The books are here.

Q. Did you make that date of the twentieth in pencil on that check?

A. They are not my figures at all.

Q. Can you say that that statement that I have made that that check was paid to Mr. Bissell four days in advance, and this given to you on the day when the pay roll was due, to make up the amount of the pay roll, is 10 not a fact?

A. I can't say.

Q. Didn't Mr. Bissell procure the cash on these checks, didn't you hold part of the money in your hands waiting for the day the pay roll came due and let him have the rest?

A. I have no recollection of that.

Q. You can't say that it is not so?

A. I can't say that it is not so.

Q. I show you now a check dated December 12th, 20 1890, pay roll check signed by Samuel W. Putnam, treasurer, and countersigned by Isaac F. Bissell, to the order of Isaac F. Bissell, secretary, for the pay roll, endorsed Isaac F. Bissell, secretary, and I ask you whether it was not paid four days before its date by you to Mr. Bissell?

A. I can't say; I have no recollection of it.

Q. Do you not recall a conversation on the twelfth of December, 1890, with Mr. Eccles with regard to your having advanced improperly money to Mr. Bissell on a 30 pay roll check?

A. No; I have no recollection of it.

Q. Didn't Mr. Eccles tell you that if he ever learned of such a thing again, he would expose it?

A. No, sir; I have no recollection of anything of the kind.

Q. Didn't he ask you why you had done it, and didn't you tell him it was none of his business?

A. No, sir.

Q. Didn't he tell you that he would expose it if you did it again?

A. No, sir; I would not talk to him in that way.

Q. Mr. Kirkbride is bookkeeper of the bank?

A. Yes, sir.

Q. Didn't Mr. Eccles in the presence of Mr. Kirkbride, the bookkeeper, tell you and Mr. Kirkbride that if ever you again ever advanced money to Bissell on the pay
10 roll check he would report it to the officers of the company and make a row about it?

A. I don't recollect anything of the kind.

Q. Now, I ask that the book produced may cover the date of December 12th, 1890, the individual ledger of the American Saw Company account and down to May, 1893?

Mr. Lanning—What is the amount of the check dated December 12th?

Mr. Corbin—\$1,100.

20 Q. Didn't Mr. Eccles at that time, December 12th, 1890, bring you Bissell's check for \$1,065, toward making up the amount of the pay roll money, and I show you check?

A. I have no recollection of it at all.

Q. You say that didn't take place?

A. I don't say it didn't I have no recollection of it.

Q. I show you a check of March 17th, 1893, marked in pencil March 15th, 1893; can you say whether the money was advanced on that check by you to Bissell two
30 days before it was due?

A. I can't say about the time, it was paid; I have no recollection of paying it, and I have no recollection of its being paid before it was due.

Q. Was any money advanced on that, and didn't Mr. Bissell send in this check to make good the pay roll on the date when the pay roll check was required; it is dated May 17th, 1893?

A. I have no recollection of it at all.

Q. I show you a check dated May 6th, 1892, marked in pencil May 5th, 1892, and I ask you whether you didn't advance the money to Bissell on that on May 5th and whether he didn't on May 6th, send you the check now shown you to make up the pay roll?

A. I can't say, I have no recollection of it.

Q. I show you a check dated May 12th, and changed to May 9th, 1893, and I ask you whether you did not advance Mr. Bissell on May 9th on that check, and whether he didn't on May 12th, give you this check now shown you drawn on his own private account to make up the amount of the pay roll?

A. I can't say, I have no recollection.

Q. Can you say that is not the case?

A. I have no recollection.

[The checks referred to were then marked for identification as follows: two checks, pinned together dated December 12th, 1890, one signed by Bissell and another by Putnam were marked *P9* for identification.] 20

[Two checks pinned together and dated May 12th and May 9th, were marked *Exhibit P10*.]

[Two checks pinned together and dated respectively March 24th and March 20th, marked *Exhibit P11*.]

[Two checks pinned together and dated March 17th and March 15th respectively, were marked *P12* for identification.]

[Two checks pinned together and dated May 5th and May 6th respectively, were marked *Exhibit P13* for identification.] 30

Q. Didn't you in conversation with Mr. Eccles and Mr. Whitehead, after the discovery of this embezzlement was made, state in their presence that you must have made these changes in the dates yourself?

A. No, sir; never did.

Q. Can you explain what the purpose of these checks of Mr. Bissell to the order of Charles Whitehead, cashier, was?

A. I could not.

Q. These are checks on the Broad Street Bank out of 40

his private account, and every one dated the date when the pay roll was due; can you explain that?

A. I cannot; no, sir.

Q. Can you explain how Mr. Bissell brings checks on his private account to the First National Bank to be cashed on the day of the pay roll?

A. I cannot; I may have cashed it for him seeing that the check was all right.

Q. Do you mean to say that you don't recall any-
10 thing about these matters?

A. I do not at all.

Q. You mean to say you would pay a check one, two, three and four days—signed by the treasurer of the saw company—before it was due, and you can't give any explanation of it?

A. I cannot; no, sir.

A. And then on the day when the pay roll is due a check was produced on the private account of Mr. Bissell, and you cannot explain that?

20 A. No, sir.

The Court—Are these checks on Mr. Bissell's private account drawn to the order of the cashier of the First National Bank in every instance?

Mr. Corbin—I think in every instance; all except the first one to which I referred; I will have to suspend the further examination of this witness for the present until the books are produced.

And the defendant further called as a witness on its part,

30 *Arthur H. Wood*, who being duly sworn, testified as follows—

Q. Where do you reside?

A. Trenton, N. J.

Q. Are you connected at all with the First National Bank?

A. Yes, sir; I am.

Q. For how long a time have you been connected with the bank ?

A. Something over seven years.

Q. In what capacity ?

A. Part of the time as check clerk and the remainder as receiving teller.

Q. As check clerk, what were your duties ?

A. My duty was to take the check which had been negotiated at the windows, enter them in books for that purpose. 10

Q. And as receiving teller, what were your duties ?

A. My duties were to take deposits, money and checks from the customers of the bank.

Q. Do you know Mr. Isaac F. Bissell ?

A. Yes.

Q. Did you frequently see him at the bank ?

A. Yes.

Q. On his own business or for somebody else's business ?

A. Generally in transacting business for the American Saw Company. 20

Q. State what business he did for the American Saw Company ?

A. He would make their deposits and procure money for them at the bank.

Q. State whether you frequently observed commercial paper that was frequently used by Mr. Bissell as agent for the company ?

A. I did.

Q. Did you observe how it was endorsed ? 30

A. Yes; I would know the endorsement of all the checks used.

Q. State what kind of endorsements you observed ?

A. I observed two kinds of endorsements, imprints by stamp, the imprint of one read as I recollect: "For deposit to the credit of the American Saw Company," and the other was simply "American Saw Company;" that was the imprint of the stamps.

Q. When such endorsement was used what would be added to the stamp ? 40

A. Generally, Isaac F. Bissell, Secretary.

Q. Mr. Bissell brought paper there with both kinds of stamps?

A. Yes, sir; he did.

Q. State whether Mr. Bissell or any other members of the company, employees of the saw company, deposited money with the endorsement "American Saw Company, Isaac F. Bissell, Secretary?"

A. You mean checks, I presume?

10 Q. Checks; yes?

A. Yes; there was such deposits made.

Q. State whether the same endorsements were used in his drawing money or getting checks or drafts cashed?

A. Yes, sir; that same endorsement was used when the checks were cashed.

Q. State whether the same endorsement for deposit and for drawing money was used promiscuously there in the bank?

A. I should say it was.

20 And being cross-examined on the part of the plaintiff, testified as follows—

Q. You were check clerk up to what date?

A. May or June I think, 1893.

Q. What checks came to your hands, all checks?

A. All checks, both those deposited and those cashed.

Q. That is checks on other banks than you own?

A. Yes.

Q. Had you any way of ascertaining when a check came into your hands, not bearing the stamp for deposit,
30 whether it had been cashed or deposited?

A. Yes, the fact of its location when I would take the checks would settle that.

Q. Have you any distinct recollection of any particular check of the American Saw Company bearing one stamp or the other?

A. No, I can't give you any particular check.

Q. Then you have a recollection of having seen that general stamp on some checks?

A. Which do you mean by general stamp?

Q. The stamp with the general endorsement not for deposit?

A. Yes, sir; I remember having seen it.

Q. You could not undertake to say now whether these checks were checks which Mr. Middleton had cashed over the counter or not, could you?

A. I can say from memory that they were both cashed and deposited.

Q. You remember some of them that were deposited bearing the general stamp? 10

A. Yes, sir.

Q. What ones?

A. I can't tell you the ones.

Q. On whose account?

A. I can tell you why I recollect it.

Q. Give us any date or anything by which we can test the correctness of your memory?

A. I can't give the date.

Q. Can you give us any account on which such checks were drawn? 20

A. I can say it is impressed on my memory because it was somewhat out of the usual to have the general stamp used for deposit, but it was done, and therefore impressed upon my memory.

Q. Can you give us any party whose checks were so stamped, to see if your memory is correct; can you give us the name?

A. No; I remember it in a general way.

Q. There were parties from whom they received a great many checks; can you remember any of those? 30

A. No.

Q. Can't you give us any date?

A. No.

Q. Nor anything by which we could ascertain whether that recollection is correct?

A. No; I think not.

Q. Then it is simply a general recollection you have without any particulars?

A. It is a general recollection.

And the defendant further called as a witness on its part,

Barker Gummere, who being duly sworn, testified as follows—

Q. Are you clerk of this county?

A. I am.

Q. Have you the record of the indictments which have been found for some years back?

A. I have.

10 Q. What is the book called containing those references?

A. The criminal record.

Q. Do you find in that book any record of an indictment found against Isaac F. Bissell?

A. I do.

Mr. Holt—I am not quite sure whether we formerly offered *Exhibits D5, 6, 7, 8 and 9*, being drafts drawn by the saw company on their customers, Wilson and the Trenton Lumber Company; we make the formal offer
20 now and the same were received in evidence.

Whereupon the defendant rested its cause.

Which being done, the counsel on the part of the said plaintiff in rebuttal read the said testimony of said Samuel W. Putnam from said printed book as follows:

“*Samuel W. Putman*, recalled for the plaintiff in rebuttal.

“Direct examination by Mr. Corbin—

“Q. Mr. Putman did you ever tell Mr. Whitehead that Mr. Bissell would take your duties in the American Saw Company?

30 “A. I did not.

“Q. Do you recall any conversation at all with Mr. Whitehead at the time you removed from Trenton to New York?

“A. I do not,

"Q. When you changed your—did you change your residence from Trenton?

"A. I can hardly say that I changed my residence; I was here all the week and then went to New York on Saturday night and came back Monday morning.

"Q. Well, you broke up your housekeeping merely?

"A. No, I did not; I returned to my home every week.

"Q. Where did you live when you were here; at a hotel?

"A. At a hotel. 10

"Q. Then how long did that continue?

"A. Why, I can't recall; it may have been a year or it may have been two or three years.

"By the Court—

"Q. When did you move?

"A. I don't recollect the date.

"Further direct—

"Q. Can't you fix somewhere near the date when you ceased to come and stay here every day?

"A. I cannot. 20

"Q. Do you recall any conversation at all with Mr. Whitehead in regard to Mr. Bissell taking you place?

"A. I do not.

"Q. You won't undertake to say there wasn't any?

"A. No.

"Q. But you do say you didn't tell him that he would take your duties?

"A. I am certain of that.

"Q. As a matter of fact did he undertake your duties?

"A. He did not. 30

"Q. What did he undertake when you ceased to attend to the business?"

Mr. Lanning then read as follows:

"Cross-examination—

"Q. Do you recall going to the First National Bank with Mr. Bissell?

"A. I do not.

"Q. Did you say you did not?

"A. No; I do not.

"Q. Do you say you did not go there with him and have a conversation with Mr. Whitehead in his presence?

"A. I don't recall anything of the kind.

"Q. You do recall the introduction of what has been called the Loomis resolution, the preamble of which stated that you were in ill-health, and for that reason you
10 could not attend to your duties at the works?"

Mr. Corbin—I do not think that is quite a correct recital.

Mr. Barton—It is only for the purpose of directing his memory to an event.

"Q. Referring to that resolution, the adoption of it; when was it that you changed your residence from Trenton to any other place; was it about that time?

"A. As I said, I did not change my residence at any time; I had a residence in Elizabeth and was here dur-
20 ing the week days, and then returned to my house every week.

"Q. But there was a time when you ceased to live in Trenton, wasn't there?

"A. There was.

"Q. When was that?

"A. That I can't recall.

"Q. Well, was it as much as six or seven years ago?

"A. I should think it was."

And the plaintiff thereupon recalled for further cross-
30 examination the said *William S. Middleton*, who testified as follows—

Q. Please refer to the ledger under date of December 8th, 1890, account of the American Saw Company?

A. (The witness did so.)

Q. See if you can find that; a check for \$1,100 now shown you was paid; can you tell when that check was

paid, dated December 12th, 1890, for \$1,100, drawn by the treasurer or the American Saw Company; can you tell when that was paid?

A. I don't seem to have any record of it here.

Q. You don't have any record of it at all?

A. No.

Q. It is marked and appears to have been paid?

A. It has our cancel mark on it.

Q. Turn to May 5th, 1892, for the check of \$1,000?

A. That book is not here. 10

Q. Did you find when this pay-roll check, dated December 12th, 1890, was paid to Mr. Bissell, according to the book?

A. On December 8th, 1890.

Q. Four days before the date of it, was it not?

A. Yes; well, there was one afterwards, on the 19th; I don't know which it is.

Q. They were weekly pay rolls?

A. Yes, sir.

Q. The way it is entered is the figure 11, in the thousand and hundred columns, and the ciphers are not carried out?

A. No, sir.

Q. That is why you overlooked it before?

A. Yes, sir.

Q. Now, please look in the daily balance book, now produced, under date of March 17th, 1893; I show you a check dated March 17th, with a pencil mark 15th, *Exhibit P12*, pay roll check, endorsed Isaac F. Bissell, secretary; will you please tell me whether that was paid prior to the time it bears date, and if so, on what date?

A. The fifteenth.

Q. See if you can find any check for \$950 paid on the seventeenth of March?

A. There don't seem to be any on that date.

Q. Now then turn to March 20th, 1893, do you find a payment there of \$950?

A. Yes, sir.

Q. I show you a check, *Exhibit P11* for \$950, dated

March 24th, and in pencil March 20th; do you find any payment under March 24th, of \$950?

A. I do not.

Q. Nor on the twenty-fifth or twenty-sixth?

A. No.

Q. Now turn to May 9th, 1893, I show you check for \$900 pay roll, endorsed by Isaac F. Bissell, dated May 12th, and changed in pencil to the ninth; do you find that under the date of the ninth?

10 A. Yes.

Q. Do you find any such entry under the twelfth?

A. No.

Q. Nor under the following day do you?

A. No.

Q. Are you not able to explain how these checks came to be paid in advance of their dates?

A. I cannot.

Q. Are you now able to explain how Bissell's personal check to the order of Charles Whitehead, cashier, bearing date on the same date, on the corrected date of the pay-roll check, came to be delivered to your bank?

Mr. Corbin—I did not use the one of May 6th, because I could not find it, and I thought I would not take up time.

Redirect—

Q. I refer you to the check dated March 20th, 1893, and ask you if that check when it was presented to you bore the date of March 20th or March 24th; was it in the same condition then as it is now as far as you know?

30 A. As far as I know it is.

Q. The check looks as though it was originally dated March 24th, and then changed in ink to March 20th?

A. Yes.

Q. And you cashed it as a March 20th?

A. I suppose so.

Q. It shows on the books here as though paid then?

A. Yes, sir.

Q. And that mark above is to show that the mark be-

low was twenty and not twenty-four; we show you a check dated originally March 17th, 1893, and ask you if that was changed in ink to March 15th, 1893; is not that the mark that stands on it now?

A. Yes, sir; the fifteenth.

Q. Was that in the same condition when it was presented to you?

A. Yes, sir.

Q. And you marked about there the fifteen to show that it was dated and you cashed it on that date? 10

A. Yes, sir.

Q. And the book shows that was paid as of that date?

A. Yes, sir.

Q. State whether these pencil marks which were put on above the date, one the twentieth and one the fifteenth, are your figures?

A. I can't say that it is my figures.

Q. Then they were not placed there by you?

A. No.

Q. Now I show you a check which purports to bear 20 date May 9th, 1893, but which looks as though originally it bore date May 12th, 1893, and ask you if, when that check was presented, it had been changed from the twelfth to the tenth, or to the ninth?

A. I can't say.

Q. Did you cash that?

A. Well, I suppose I did.

Q. Don't the books show you did?

A. It went into the cash.

Q. Somebody cashed it? 30

A. Yes, sir.

Q. It was put into the account that day—the ninth?

A. Yes, sir.

Q. And the date of it stood then as it does now?

A. Yes, sir.

Q. But the figure above, which is nine, is not your figure?

A. No.

Q. State whether Mr. Bissell, in his transaction with

the bank for the saw company, sometimes deposited bank bills to the credit of the company?

A. Yes, sir.

Q. I show you what purports to be a check signed by Isaac F. Bissell on the Broad Street National Bank in favor of Charles Whitehead, cashier, for \$350, which has been pinned by counsel for the plaintiff to pay-roll check dated March 17th, 1893, and afterwards changed to March 15th, 1893, and ask you if you can trace from your own
10 knowledge any relation between those two checks whatever?

A. I can't.

Q. We also show you another check of Bissell's, dated March 24th, 1893, in favor of Charles Whitehead, cashier, for \$450, which is pinned to the pay-roll check of Samuel W. Putnam, dated March 24th, 1893, and changed to March 20th, and ask you if you can trace any relation between those two checks; have you any knowledge of any relationship between those two checks?

20 A. No, I have not, because that is a pay-roll check, I don't see where that would come in connection with the pay-roll check.

Q. We also show you a third check drawn by Bissell on the Broad Street National Bank in favor of Charles Whitehead for \$624.96, bearing date May 12th, 1893, pinned to Samuel W. Putnam's pay-roll check of May 9th, and changed to that from May 12th, 1893, for \$900, and ask you if you can trace any relationship whatever between those two?

30 A. I cannot; I have no recollection of it.

Q. Mr. Thomas was formerly paying teller in your bank?

A. Receiving teller.

Q. And he would sometimes act as paying teller, too?

A. Yes, sir.

Q. You exchanged work?

A. Yes, sir.

Q. State when Mr. Thomas died?

A. Two or three years ago, July 12th.

40 Q. And he acted up to the time of his death?

A. Yes, sir.

Mr. Beasley—We think there is no doubt that these moneys were paid to Mr. Bissell, but if there is any doubt we want to ask Mr. Middleton.

The Court—My recollection is that the witness has already testified that they were.

Q. You have seen a copy of the checks and the drafts that were sued upon?

A. Yes, sir.

Q. So far as you were acting as paying teller were they 10 paid to Mr. Bissell himself?

A. Yes, sir.

Q. For the American Saw Company?

A. Yes, sir; for the American Saw Company.

Mr. Corbin—That is a conclusion; we object to that; that is an inference.

The Court—The witness says that he paid them to Mr. Bissell for the American Saw Company; whether Bissell received them for the American Saw Company is another question I suppose. 20

And the plaintiff further called as a witness on its part in rebuttal the said

Alfred L. Eccles, who testified as follows—

Q. I show you this pay-roll check marked *Exhibit P9* for identification, and the check annexed to it of the same date made by Isaac F. Bissell on the Broad Street National Bank to order of A. L. Eccles, do you recall that transaction?

A. I do.

Q. What is the date of the check? 30

A. December 12th, 1890.

Q. Did you have knowledge of the obtaining of money on pay-roll checks during Mr. Bissell's connection with

the company prior to the discovery of the defalcation in any case?

A. In this one particular case.

Q. In any other?

A. No, sir.

By Juror Skirm—

Q. Why didn't you report it to the company?

A. That will come out later.

Further direct—

10. Q. When did you discover the other cases?

A. After the defalcation.

Q. How did you discover them?

A. We discovered and found all of Mr. Bissell's return vouchers from the Broad Street Bank.

Q. His private checks?

A. Yes, sir; and found there a large number of them drawn to the order of Charles Whitehead, cashier of the First National Bank; it excited our suspicion as to why these checks were drawn, and remembering this one
20 transaction I looked back over the pay-roll checks to determine what pay-roll checks they applied to, because I had surmised—

Q. You discovered it, then, on that investigation?

A. Yes, sir.

Q. What was this transaction on December 12th, 1890?

A. December 8th, Mr. Putnam signed this check, together with a large number of other checks for the payment of bills, and it was laid on Mr. Bissell's desk.

Mr. Beasley—I think they ought to confine themselves
30 strictly to rebuttal, to show the conversation they had with the bank.

The Court—Let the witness go on.

Q. It was drawn December 8th?

A. Yes, sir.

Q. And dated December 12th?

A. Yes, sir.

Q. Was that common?

A. Yes, sir; that was the common custom.

The Court—Never mind that; confine yourself to this check.

Q. Mr. Putnam was there?

A. Yes, sir.

Q. When was he there?

A. Monday morning.

Q. What date was that?

10

A. December 8th.

Q. You say this check was disposed of how?

A. Placed on Mr. Bissell's desk for him to countersign; in the afternoon, about half-past 3 o'clock, I was working on my books, at the desk, and the telephone rang; I was called up personally by Mr. Kirkbride, the bookkeeper of the bank; he said, does thee know thy account is overdrawn in the bank; I said, no, we do not; he said, it is overdrawn nearly \$100; I said, Kirkbride, that is impossible; it cannot be; we have over \$900 in the 20 bank to-day; he said, no, the account is overdrawn; I said, tell me this—

Mr. Beasley—Is this rebuttal.

The Court—I will admit it.

Mr. Beasley—I suppose we will be allowed sur-rebuttal?

A. I said tell me what check overdrew it; he walked up to the books I suppose, and he said a check for \$1,100; I said man, that was drawn for pay roll to the order of Isaac F. Bissell, and you had no business to pay that 30 before it was due; he said I know nothing about that, will you see that the account is made good to-morrow; I said, I will; next day we made deposit of course which settled the shortage; Mr. Bissell didn't come to the office

Tuesday nor Wednesday; on Thursday, when he came to the office I took him into his room——

Q. When was Thursday?

A. The 11th.

Mr. Holt—You propose to tell now the conversation between this man and Mr. Bissell?

Mr. Corbin—I don't call for that.

Q. You say you had a conversation on Thursday, the eleventh?

10 A. Yes, sir.

Q. What action did you take in reference to that; that is the first you saw Bissell?

A. Yes, sir; the first time he had been there since Monday, I immediately apprised him of the fact——

Q. What action did you take as the result of your conversation with Bissell; did you go to the bank?

A. Yes, sir.

Q. Whom did you see?

A. Mr. Middleton.

20 Q. What conversation did you have with him?

A. I told him that he had paid Mr. Bissell a pay-roll check which was paid before it was due; he said he had done it; I told him that he had done wrong; that it was not Mr. Bissell's business to collect pay-roll checks before they were due; he said it was drawn to Mr. Bissell's order; I said it specified that it was pay roll, and that it is a trust reposed in his hands for the wages of the men; he looked at me——

Q. What did he say?

30 A. He said it was none of my business.

Q. What else did you say to him?

A. I told him that it was and the next time I heard of a pay-roll check being paid that I would report the matter to New York and there would be some smoke raised about it.

Q. Did you see the bookkeeper at that time?

A. Yes, sir.

Q. Who was that?

A. Mr. Kirkbride.

Q. Did you discuss the same matter with him?

A. Yes, sir.

Q. How did you get the money for the pay roll that day?

A. Mr. Bissell said that——

Q. How did you get the money?

A. He gave me a check for \$1,065 on the Broad Street National Bank, and I exchanged that check for the pay-10 roll money with Mr. Middleton.

Q. Where did you get the rest of the pay-roll money?

A. Mr. Bissell handed \$35 to me in cash.

Q. For this \$1,065 you got a check on his private account and the rest he gave you in cash?

A. Yes, sir.

Q. Did you ever report it to anybody?

A. No, sir.

Q. Why not?

A. Mr. Bissell pleaded so hard for his wife and 20 family——

Q. It was by his importunities?

A. Yes, sir.

Q. You were bookkeeper at that time?

A. Yes, sir.

Q. Under his direction?

A. Yes, sir.

Q. You never reported it to the directors?

A. No, sir.

Q. Until after this discovery?

30

A. Yes, sir.

Q. You had no knowledge of these other transactions?

A. None whatever.

Mr. Corbin—I will offer these checks which have heretofore been marked for identification *P9, P10, P11, P12 and P13* and the same were received in evidence.

Q. Did you have a conversation with Mr. Middleton and Mr. Whitehead in regard to this particular check?

A. Yes, sir.

Q. Did Mr. Middleton make any explanation there about it; did he say anything about the marking of the date here?

A. He said he might have done it.

Q. He might have made these pencil changes?

A. Yes, sir.

Q. When was that conversation?

A. It was in the early part of 1894.

10 By Mr. Buchanan—

Q. Have you examined the books of the American Saw Company with respect to discounts that have been obtained from the First National Bank within the last ten or twelve years?

A. Yes, sir.

Q. With what results?

A. I find no discounts except the two that have already been discussed in the trial.

Q. When were they?

20 Mr. Beasley—There is no dispute about that.

Q. Something has been said here about the promiscuous use of two stamps in the case of endorsements of checks deposited in the First National Bank, to the credit of the American Saw Company?

The Court—He has testified about that.

Q. Have you testified as to who made the entries on the deposit slips?

A. In some instances.

Q. Did you examine the stubs of the check book?

30 [Not answered.]

Q. Now then with respect to the checks of Mr. Bissell, endorsed for deposit, have you made any examination of such checks?

A. A larger number of them; yes, sir; as many as we have been able to get.

Q. Have you those checks here?

A. Yes, sir.

Q. In court?

A. Yes, sir.

Q. Are they endorsed?

A. They are endorsed regularly with the deposit stamps.

Q. You have them here in court?

A. Yes, sir.

Q. Will you produce them? 10

The Court—It is unnecessary to produce them.

Q. How many did you get?

The Court—I do not think it material; he said he got a great many, all that he could get.

And being further cross-examined on the part of the defendant testified as follows—

Q. You were a witness at the last trial?

A. Yes, sir.

Q. You, I suppose, assisted counsel a great deal in preparing that case for trial? 20

A. Somewhat; yes, sir.

Q. You were very much interested, were you not?

A. Decidedly so.

Q. You made up your mind that Mr. Bissell had defrauded the company out of some money, and you took charge of these cases?

A. To a certain extent.

Q. Both in the criminal matter and in this?

A. I was a witness in the criminal proceeding.

Q. Before the grand jury? 30

A. Yes, sir.

Q. You looked, I suppose, at the books of the Broad Street Bank before the last trial?

[Objected to as not cross-examination. Overruled.]

Q. Did you look for checks at the Broad Street Bank, made by Isaac F. Bissell, at the last trial?

The Court—He said he found them among the returned checks of Mr. Bissell.

Q. Did Mr. Bissell send you those checks?

A. No, sir.

Q. Where did you get them?

A. Found them in his desk at the office.

Q. These very checks?

A. Yes, sir.

Q. You had those at the last trial?

10 A. They were here; yes, sir.

Q. And you didn't make any question about the matter at that time?

A. That, I think, is a question for the counsel.

Q. Did you do anything in the matter at all, the last time?

A. I had nothing to do with preparing anything to be asked at the trial.

Q. You gave no testimony concerning this matter at the last trial?

20 A. No, sir.

Q. It is all since that time that you talked over the conversation you had at the bank relative to these checks and so on?

A. No, we knew all about it.

Q. But you didn't give the testimony, now Mr. Eccles your memory no doubt is very good; do you remember perfectly the transaction of going to the telephone in the year 1890 and talking to the clerk at the bank?

A. Yes, sir.

30 Q. There is no doubt about that at all?

A. No, sir.

Q. Do you remember Mr. Kirkbride's words?

A. Yes, sir.

Q. You knew at the last trial too?

A. Yes, sir.

Q. You found out, say on Friday, that Mr. Bissell had received on a pay-roll check?

A. It was Monday.

Q. I suppose you are certain about that?

- A. Yes, sir; positive.
- Q. What time of the day was it that you found it out?
- A. About half past three.
- Q. You are certain about that?
- A. Yes, sir.
- Q. In the year 1890?
- A. Yes, sir.
- Q. What did you do then, when you found that out?
- A. Waited until the next day when we could make the balance good. 10
- Q. Did you go to the bank right away?
- A. Went to the bank on Thursday.
- Q. Didn't go to the bank on that day?
- A. No, sir.
- Q. You knew that Mr. Bissell had received money on that check at that time?
- A. Yes, sir.
- Q. About how much was it?
- A. I suppose he had received the whole amount.
- Q. How much was that? 20
- A. \$1,100.
- Q. That was on Monday?
- A. Yes, sir.
- Q. You were all alone at the works then?
- A. I was all alone at the office; one clerk was there.
- Q. Mr. Bissell was away?
- A. Yes, sir.
- Q. Sunday went by?
- A. No; this was on Monday.
- Q. Tuesday went by? 30
- A. Yes, sir.
- Q. What did you do on Tuesday about the matter?
- A. Sent up enough money to make the balance good.
- Q. Where did you get that?
- A. Checks that came in.
- Q. How much?
- A. I don't know exactly how much it was.
- Q. Can't you tell about the amount of the checks and who they were from?
- A. I could if I had my records here. 40

- Q. Don't you remember who they were from?
A. No.
Q. But you are certain you sent enough money?
A. Yes, sir; to make up the balance.
Q. That was Tuesday?
A. Yes, sir.
Q. You have a distant recollection of that?
A. Yes, sir.
Q. Have you got anything to show for that?
10 A. The bank books here will show.
Q. You could turn to that could you?
A. I suppose the bookkeeper could.
Q. What about the stub check book, would that show
it?
A. Yes, sir; that would show it.
Q. Have you got that here?
A. No, sir.
Q. Wednesday went by, did you do anything then?
A. No, sir.
20 Q. Did you write a letter to Mr. Putnam?
A. No, sir.
Q. Just sat still?
A. Yes, sir.
Q. You knew that Mr. Bissell had taken \$1,100 of
money that he had no right to and you did nothing?
A. Could not do anything until I saw him.
Q. And you knew that Mr. Bissell had taken \$1,100 of
the funds that didn't belong to him, had appropriated it
to his own use?
30 A. I supposed he had taken it.
Q. I suppose you kept in communication with Mr.
Putnam the officer of the company in New York?
A. No, sir.
Q. Never?
A. I never wrote them.
Q. Mr. Putnam was here every week?
A. Yes, sir.
Q. Where did Mr. Ely, the gentleman here in court,
live?
40 A. In New York.

Q. Where was his office?

A. New York.

Q. That was the head office?

A. The head office is in Trenton.

Q. What was the office in New York?

A. We have no office in New York.

Q. What does Mr. Ely do?

A. He is the president and has his own business and office in New York.

Q. You knew Mr. Ely?

10

A. Yes, sir.

Q. Did you communicate with him?

A. No, sir.

Q. Why didn't you?

A. I wanted to know whether it was true or not.

Q. You knew that the account was overdrawn; had you any doubt?

A. I did have considerable doubt about it.

Q. Why didn't you find out about it?

A. I was waiting for the man to come back that I 20 could find out from.

Q. Why didn't you go to the bank?

A. Mr. Kirkbride's information concerning the matter was that the money had been taken out.

Q. But you say you were certain about Mr. Bissell's taking the funds?

A. I was not.

Q. Who did you think had taken them?

A. I didn't know how much he had taken.

Q. Is there any doubt in your mind that you knew on 30 Monday, Tuesday and Wednesday that Mr. Bissell had taken the funds of the company and put them in his own pocket?

A. Not in the least, in the aggregate.

Q. What do you mean in the aggregate?

A. I supposed he had taken; I can say positively that he had taken some; how much I don't know.

Q. Wednesday went by?

A. Yes, sir.

Q. And Thursday came, what did you do then?

40

A. Mr. Bissell came and I went to him about the matter immediately.

Q. And he gave you his personal check to pay that money; is that right?

A. Yes, sir.

Q. Then you went back to the bank with the check?

A. Yes, sir.

Q. And \$35, or whatever it was, in cash?

A. Yes, sir.

10 Q. You went up there and who did you see?

A. Mr. Middleton.

Q. Where was he?

A. At the paying teller's window.

Q. Did you see Mr. Whitehead?

A. No, sir.

Q. Why didn't you go to him?

A. Mr. Bissell importuned me not to do it; it would implicate Mr. Middleton.

Q. That is the reason you didn't go to Mr. Whitehead?

20 A. Yes, sir.

Q. You knew that Mr. Bissell at that time had committed a fraud upon the company?

A. Mr. Bissell claimed—

Q. Answer the question; on Thursday after Mr. Bissell returned and you had talked to him about the matter and he had given you his check for say \$1,065, and say \$35, or whatever it was, to make up the balance; you knew at the time you went to the bank that Mr. Bissell had had the money of the company in his pocket, ap-
30 propriated it to his own use for three days, didn't you?

A. He had had \$65 of it.

Q. Answer the question.

A. No, sir; at that time I knew that he hadn't had it; he had not had the whole of it at that time.

Q. You want the jury to understand that Mr. Bissell had not had the funds of the company for three days to his own use?

A. I do.

Q. Why do you say that?

40 A. Mr. Bissell said that Mr. Middleton had a certain

amount of this money in his own possession ; advanced this money to him on the strength of the pay roll, and promised it would not go into the company's account ; that he would keep it in his own supervision, and simply advance him this money that he wished to use for his own private convenience, and hold the balance in his possession.

Q. He told you all this ?

A. Yes, sir.

Q. And you want this court and jury to understand 10 that Mr. Middleton, the paying teller of the First National Bank, was in league with Mr. Bissell to defraud your company ?

A. In that transaction he was.

Q. That was your understanding ?

A. Yes, sir.

Q. That Mr. Middleton had entered into some compact or some agreement with Mr. Bissell whereby your company was to be defrauded ?

A. That was the understanding that I had of it at 20 that time.

Q. Then you, as bookkeeper of the company, as a trusted officer of the company, because Mr. Bissell asked you not to see the president of the bank, did not go to see him ?

A. I did not.

Q. And because Mr. Bissell told you that he had entered into an illegal agreement with Mr. Middleton, whereby your company was to be defrauded, you refused to see the officers of your company and tell them that 30 you had a dishonest official in the employ ?

A. He didn't claim that it was illegal.

Q. (Question repeated.)

A. I did not.

Q. Why didn't you do it ?

A. Mr. Bissell importuned me with tears in his eyes to save his wife and family from disgrace.

Q. And you knew from the year 1890, that you had a dishonest official in the employ of that company, didn't you ?

A. The small amount of money that he used of that check did not show he was dishonest, having given it back.

Q. You knew from the year 1890, up to the time that the indictments, 104 of them, were found against Mr. Bissell, that you had in the employ of the company a fellow employee, a dishonest man?

A. No, I did not.

Q. You believed then that the transaction you spoke
10 of was an honest one?

A. Considering the circumstances it might not be considered strictly dishonest.

Q. You thought that was a proper way to have business conducted?

A. I did not, it was open to criticism.

Q. You therefore told Mr. Kirkbride if he did it again you would report it?

A. Yes, sir.

Q. What did you do that for if you didn't think it was
20 very dishonest?

A. Because I didn't wish to have it repeated.

Q. What difference would it make if it was not dishonest?

A. I was not running any risks.

Q. You knew all the bank had done was to loan Mr. Bissell a certain sum for a certain time?

A. I didn't know that until Thursday.

Q. That is true?

A. That is the understanding.

30 Q. That is that Mr. Bissell had taken a check which was made payable to him as secretary of the company and had gone to the bank and got a loan of the amount of that check for a few days?

A. Yes, sir.

Q. That is about all there was of it?

A. Yes, sir.

Q. That was not extraordinary?

A. Yes, sir; it was.

Q. Why?

A. Because they had anticipated the payment of the pay-roll check.

Q. He was a trusted officer of the company?

A. It was drawn to his order on Friday.

Q. He had a right to the money?

A. On the day it was specified.

Q. But the bank had loaned him the money ahead of time?

A. That is the way he looked at it.

Q. Did you see the check on that occasion; I mean 10 that Bissell had drawn money upon?

A. No, sir; it was in the possession of the bank.

Q. When did you first see that check?

A. Not until the vouchers were returned.

Q. This was in what month?

A. 1890.

Q. You went up to the bank and saw whom?

A. Mr. Middleton.

Q. Where was he standing.

A. At the paying teller's window.

Q. Mr. Kirkbride was near by?

20

A. Yes, sir; at the next window.

Q. Did you speak to Mr. Middleton or to Mr. Kirkbride?

A. I spoke to both; Mr. Middleton first.

Q. What did you say?

A. I said he had advanced money on a pay-roll check to Mr. Bissell; he said he had; I said, don't you know that is irregular; he said he did not know that he did; it was drawn to Mr. Bissell's order and he thought he 30 had a right to advance the money on that pay-roll check, and I said you have the money in your possession to cover this check; he said he had; don't you know, I said, it is irregular to advance money to Mr. Bissell on pay-roll checks; he didn't see it that way; I said, I do; he said, I don't consider it any of your business.

Q. And Mr. Kirkbride stood right by?

A. Yes, sir.

Q. Where was Mr. Bissell.

A. I don't know where he was; I presume up town. 40

Q. Did you ask Mr. Bissell to go to the bank with you?

A. No; I did not.

Q. You went yourself to see the officers and told them they must not do that?

A. I went to get the pay-roll money.

Q. Was that check made payable to you?

A. Yes, sir.

Q. How did that happen?

A. Mr. Bissell said Mr. Middleton has that money in
10 his possession, and by giving him this check he will give you money for the pay roll, and I will get money to pay it in the Broad Street Bank, and he went up town for that specific purpose.

Q. (Referring to *Exhibit P9*.)—That is made payable to your order?

A. Yes, sir.

Q. And you endorsed it?

A. Yes, sir.

Q. What did Mr. Kirkbride say in that conversation?

20 A. He made no reply to me whatever.

Q. He heard everything that was said?

A. Everything that I said to him directly he heard.

Q. Did you tell them not to say anything to Mr. Whitehead?

A. No; I did not.

Q. Did you say Mr. Kirkbride, Mr. Middleton, don't tell the directors?

A. No; not a word.

Q. You said it openly in the bank?

30 A. Yes, sir.

Q. Anybody could hear it?

A. Yes, sir; I spoke loud enough.

Q. Yet you didn't want the cashier to know anything about it?

A. I didn't care.

Q. Why didn't you go to him?

A. Mr. Bissel made me promise not to go to him.

Q. Then you did care?

A. No, sir; not personally.

40 Q. How did you care?

A. If I had given my word to a man after an hour and a half's pleading I would stick to it.

Q. But you nevertheless spoke so loud that you didn't care whether anybody heard you?

A. In one sense I didn't care whether they exposed themselves, but I would not be the party to expose them.

Q. You felt very sorry for Bissell when he came with tears in his eyes, talked about his family, and you had promised you would not speak to Mr. Whitehead, but when you went in the bank, in a loud voice, you told the 10 paying teller and bookkeeper about the transaction and notified them not to do it again; it didn't make any difference who heard it?

A. I don't know that it made any difference.

Q. You forgot all about your friendly feeling for Bissell at that time?

A. Oh! no.

Q. Do you want the court and jury to believe that you as bookkeeper of that company did not notify any members of the executive committee or any officers of the 20 company of Bissell's bad transactions merely because Mr. Bissell asked you not to; do you want them to understand that?

A. It was stronger than an ask.

Q. Besought you then?

A. Yes, sir.

Q. Do you want them to believe that you, as the trusted bookkeeper of that concern, merely because this man, who had acted in the way you say he had, asked you not to speak to the officers, that that is the reason 30 you didn't do it, is that what you want them to understand?

A. Yes, sir; that is exactly the truth.

Redirect—

Q. Mr. Kirkbride is here in court?

A. Yes, sir; sitting right there.

Mr. Buchanan—We offer these writings referred to by

the witnesses in rebuttal, and the same were received in evidence.

And thereupon the plaintiff rested.

And the plaintiff further called as a witness sur-rebuttal on its part—

William B. Kirkbride, who, being duly affirmed, testified as follows—

Q. Where do you live?

A. In Ewing township.

10 Q. What is your business?

A. I am now clerk in the First National Bank, Trenton.

Q. How long have you been there, sir?

A. About 14 years.

Q. It is in testimony that Mr. Eccles, Alfred L. Eccles, on about December 12th, 1890, came to your bank, the First National, and in your presence asked Mr. Middleton why he had cashed a pay-roll check ahead of time, and that Mr. Middleton said he thought he had a right to do so, and that he told Mr. Middleton that if he did
20 it again he would report that fact to the officers of the company, and there would be some smoke raised about it, and that Mr. Middleton said, it is none of your business, or words to that effect; have you any recollection of any such conversation?

A. I don't remember.

Q. From your memory, Mr. Kirkbride, can you say whether such conversation took place or not?

A. I don't remember hearing such conversation.

Q. It is your duty to answer the telephone?

30 A. No, I sometimes do it.

Q. It is a common thing or otherwise for messages to come over the 'phone stating that the accounts of depositors are overdrawn?

A. We often don't get such messages as that.

Q. But you do have them at times?

A. Seldom.

Q. I say send a message?

A. Every few days we send such a message as that.

Q. In the year 1890, have you any recollection on the eighth day of December, of sending a message to Mr. Eccles that the account of the American Saw Company was overdrawn, over the telephone?

A. I could not fix the date, I remember there was such a circumstance.

Q. But you can't tell when it was?

A. No.

Q. What is this book?

10

A. That is the personal ledger.

Q. Will you just look at the day, December 8th, 1890, and state to the court and jury whether the account of the American Saw Company, at the First National Bank was overdrawn on that day?

A. It was not overdrawn according to the books.

Q. What was the balance?

A. \$116.19.

Not crossed-examined.

William S. Middleton, recalled in sur-rebuttal on the 20 part of the defendant.

Q. You have heard the testimony of Mr. Eccles this afternoon respecting a transaction that he says occurred about the twelfth of December, 1890?

Mr. Buchanan—That was gone into by this witness when he was on the stand.

The Court—No question has yet been asked.

Q. You heard him say that he came to the First National Bank and told you that you had cashed a check in advance, and that you had no business to do that; did 30 he ever make any such statement as that to you?

A. Never.

Mr. Buchanan—Objected to.

The Court—I understand that Mr. Middleton said on his direct examination that he had no recollection of any such transaction taking place.

Q. The conversation has now been sworn to, and I want to ask whether it did occur.

The Court—He has already said that he has no recollection whether Mr. Eccles came to the bank on the twelfth, of December, 1890, and charged him with having paid a pay-roll check of the company before it was due, and
10 that he ought not to have done it; as I recollect Mr. Middleton's testimony he said that he had no recollection of such a conversation having taken place, and to the best of his memory it did not; is not that right?

Mr. Lanning—Yes, that is right; but your Honor will note that he has now heard the testimony of the witness and heard the alleged conversation in detail, and it is possible that his mind may be in a somewhat clearer condition after having heard that testimony.

The Court—Do you want to prove that he did have it?

20 Mr. Lanning—He may be able to swear positively whether this thing took place.

The Court—He may detail what conversation he had with Mr. Eccles if he desires.

Mr. Lanning—The point is that he may possibly be able to say whether this particular language was used

The Court—You may ask it.

By Mr. Holt—

Q. Did the conversation which has this afternoon been detailed by Mr. Eccles as having taken place between
30 you and Mr. Eccles, in the presence of Mr. Kirkbride ever take place?

A. I have no recollection of anything of the kind.

Q. Did you ever have any agreement with Mr. Bissell by which you should cash the pay-roll checks and hold the pay-roll checks or the money therefor for Bissell?

A. No, sir; never did.

Q. Whenever you cashed the pay-roll check did you at once have it charged up to the company?

A. Yes, sir.

Q. Was there any agreement between you and Mr. Bissel at any time by virtue of which you were to hold 10 any of the saw company's money?

A. No, sir; never.

And thereupon the defendant rested.

Rest for all.

The testimony in the said causes having been concluded, and the parties having rested the causes His Honor the Judge charged the jury as follows:

Gentlemen of the Jury—The amount involved in these cases make it proper that they should receive very careful attention at your hands; both parties are entitled to 20 expect that you will thoroughly consider the testimony in these cases, and the verdicts which you shall render. Your duty, and mine, has been a good deal simplified by the completeness with which the cases have been tried, and the exhaustive manner in which they have been summed up, and in what I shall have to say to you I shall only refer generally to the testimony in the case. It has already been gone over in detail by counsel.

Many of the facts are undisputed. The man Bissell, who was the secretary of the American Saw Company, 30 without any question drew from the treasury of the First National Bank of this city, on checks drawn by the customers of the saw company, to the order of the saw company, a very large amount of money, something like \$17,000 or \$18,000, and appropriated it to his own use; and the question really at issue in this case is: Who is

to bear that loss? The saw company claims that the bank must stand the loss, and the bank says that the saw company must stand the loss.

Let us start with the ownership of the checks, and see what the situation is. When these checks were drawn by the makers and sent to the saw company to pay debts which they owed to the saw company, they became the property of the saw company, and the saw company was entitled to the money on them. Bissell took these checks
 10 to the bank and cashed them. The saw company says he had no authority to do this; that what he did, in law, was to steal those checks, and, taking advantage of his connection with the saw company, forge their endorsement on the back of the checks and then turn them over to the bank and get the money on them. They say that this did not give the bank any more title to those checks, or to the money which they represented, than if some one had broken into the saw company's office in the night and taken those checks and presented them to the
 20 bank after having forged the endorsement of the saw company, and collected the money upon them.

This contention on the part of the saw company is sound, unless Bissell was their agent in the transactions.

These checks belonged to the American Saw Company, and unless they parted with their title to those checks to the bank, the bank never got any interest in them; and when the bank collected the money on those checks the saw company had a right to go to the bank and say, you have collected money on those checks of ours, and we
 30 want you to pay that money over to us.

The only way the bank could discharge itself from that responsibility is by saying, we have already paid those checks to your agent, and if he has run away with the money, why that is no concern of ours; we have paid you the money and cannot be called upon to pay it more than once.

That is really the question in the case, whether the bank did pay that money to the saw company, or, in other words, whether Bissell was the agent of the saw
 40 company when he did these things, and, as I look at the

case, it is practically the *only* question in it. Was Bissell the agent, either by express authority or by implication of the saw company, in the endorsement of these checks and in the drawing of the money on them.

Now, it is not pretended by the defense that the by-laws of the American Saw Company authorized any such action on the part of its secretary or manager as produced this result in these cases—I mean the endorsement of these checks and drafts and the collecting of the money on them by Bissell. The by-laws only allowed 10 the money of the saw company to be drawn out of their account in the bank by the signature of the treasurer of the company and the counter-signature of a member of the executive committee of the board of directors, or afterwards of the secretary.

The defendants, however, say that it is not necessary, and that is true, gentlemen, that there should be an express authority given by the by-laws to this man Bissell to sign the name of the company to checks, or on the back of checks, by way of endorsement, in order to 20 discharge the bank from liability, and they say that such an authority can be established by proof of a course of business between the bank and the saw company by the usages and practice which the saw company permitted to grow up in the conduct of its business with the bank; and they claim to have produced here before you facts which will authorize you in concluding that the saw company had, by its course of business, recognized the right of Bissell to generally endorse its commercial paper. They say that the transaction in January, 1893, 30 of the endorsement of the twenty-one promissory notes by Bissell, and the acceptance of that act by the saw company, was one such circumstance. There is no doubt, gentlemen, but that the saw company did ratify that endorsement, because they knew that Bissell had endorsed these notes; they remonstrated with him for having done it, and told him that he hadn't any business to do it, but they told the bank, by their conduct, that he did have business to do it, because they used the proceeds of the discount of the notes; they allowed that to be put to 40

their credit, and they used the money raised on that general endorsement without ever notifying the bank that it was an improper act on the part of Bissell. But that was some three years, or certainly two years after these speculations of Bissell began; after sums amounting to something like \$10,000 had been abstracted by Bissell, and, of course, could not have had any influence upon the bank in the payment of those sums whatever influence it may have upon them in the payment of the subsequent amounts.

It is hardly necessary for me to call your attention to all the different facts in the case which, the defendants claim, warranted them in treating this man Bissell as the general agent of this company, having power to deal with its funds as he did in this case. They claim that what has been called the Loomis resolution authorized that. That resolution, as you will remember from having heard it read a number of times, after reciting that Mr. Putnam, the treasurer of the company was compelled to
20 cease the active management of the company, provided that Bissell should take his place as manager of the business of the works, with full power in all matters, in the absence of Mr. Putnam; and it is claimed that that meant that he should have full charge of the finances as well as of the business of the works when Mr. Putnam was absent. That resolution was passed in 1887, and you will remember that continuously after that time, whenever any money of the American Saw Company was drawn out of their deposit in the bank, it continued
30 to be drawn out exactly as it had been before that resolution was passed, that is by the signature of Mr. Putnam, the treasurer, countersigned by some member of the executive committee or the secretary. So it will be for you to say whether, in view of that fact, this Loomis resolution could be considered to have gone as far as it is claimed to have done by the bank, in the matter of authorizing Bissell to deal with the finances of the company.

It is said, too, that about that time, Mr. Putnam, the
4 vice president and treasurer of the company, went with

Bissell to the First National Bank, and that he there told Mr. Whitehead, the cashier of the bank, that he was about to retire from the active management of the company, and that Mr. Bissell would take his place, and that he would have entire charge of the financial affairs of the company; and it was said that on the same occasion Mr. Putnam made a similar statement to Mr. Middleton, the teller. But, as I said before in referring to this Loomis resolution, in about the year 1887, that these interviews are said to have taken place, and the testimony shows that, continuously, from that time down to the time when these peculations began, notwithstanding the fact that Mr. Putnam had made this representation to the officers of the bank, the money of the company was drawn out of the bank exactly in the same way as it had been before. There was no change in that regard in the position of Mr. Putnam and Mr. Bissell; that is, as to the signature of Mr. Putnam and the counter-signature of the member of the executive committee or the secretary. It is not pretended that a dollar was ever 20 drawn out of the bank, on the check of the concern, except in that way.

As I said when I began my charge, the facts in these cases have been discussed very thoroughly by counsel and I do not deem it necessary to comment further on the testimony. The question for you to determine is whether Bissell had implied authority from the way in which the company transacted its business, from these facts to which I have referred and from the other evidence in the case, whether he had apparent authority 30 from the saw company to do this thing, to endorse generally the signature of the saw company to these checks, and to collect the money on them. If he had such apparent authority, why then your verdict in these cases should be for the defendant, the bank. If he had not such authority—it is admitted he had not express authority—then your verdict should be for the plaintiffs in this case, and in that event, unless some objection is made by counsel, you can render a verdict for the amount which has been stated to be due—\$10,815.94 due 40

to the New York Company, and \$9,437.70 due to the New Jersey Company, so that in either event you will not be put to the trouble of making any long calculation. If your verdict is for the defendant, of course that ends this case. If you find that the defendant is liable, if you find for the plaintiff, then you can render a verdict for the amounts I have mentioned, which are set forth in this statement prepared by counsel.

I have not attempted to refer to all the facts which are
 10 urged by the defense as showing apparent authority. Of course you must look at all the evidence to determine whether such apparent authority existed, and if from the whole evidence you should conclude it did exist, then, as I said, your verdict should be for the defendants. If you should conclude from the whole evidence that it did not exist, then your verdict should be for the plaintiff.

And thereupon the jury retired.

Whereupon the counsel of the plaintiffs made excep-
 tion to so much of said charge of His Honor, the said
 20 Judge, charged and instructed the jury that no doubt the American Saw Company ratified the endorsement of the twenty-one promissory notes which were discounted in January, eighteen hundred and ninety-three, and prayed that said Judge would set his hand and seal to this bill of exceptions, and it is sealed accordingly.

WM. S. GUMMERE, [L. s.]
Justice of Supreme Court.

And the counsel of the plaintiffs also made exceptions to so much of said charge of His Honor, the said Judge,
 30 as charged and instructed the jury that in view of the fact that continuously after the Loomis resolution was passed in eighteen hundred and eighty-seven, whenever any money of the American Saw Company was drawn out of their deposit in the bank it continued to be drawn out exactly as it had been before that resolution was passed, that is, by the signature of Mr. Putnam the treasurer, countersigned by such member of the executive committee or the secretary, it would be for the jury

to say whether this Loomis resolution could be considered to have gone as far as it was claimed to have done by the bank, in the matter of authorizing Bissell to deal with the finances of the company, and prayed that said judge would set his hand and seal to this bill of exceptions, and it was sealed accordingly.

WM. S. GUMMERE, [L. s.]
Justice of Supreme Court.

And the counsel of the plaintiffs also made exception to so much of said charge of His Honor, the said Judge, 10 as charged and instructed the jury that the jury must look at all the evidence to determine whether apparent authority existed, and prayed that said Judge would set his hand to this bill of exceptions, and it is sealed accordingly.

WM. S. GUMMERE, [L. s.]
Justice of Supreme Court.

And thereupon His Honor, the said Justice, recalled the jury and upon their return into court further charged them as follows: 20

The Court: Gentlemen of the jury—I have called you back for the purpose of charging you specifically on certain requests to charge which have been submitted to me by the saw company and which I think are proper. They are these: That the authority of an agent of a company to endorse checks and drafts for deposit does not imply authority to dispose of them for cash.

That is undoubtedly good law, and I do not understand that it has been disputed by counsel for the bank.

They say that by the course of the conduct of the business of the saw company with the bank, they gave to this man Bissell apparent authority to generally endorse checks and drafts, and to have them cashed over the counter of the bank as well as express authority to endorse for deposit. That is the situation as I understand it. It is for you to determine whether such apparent authority did exist, as well as actual authority to endorse for deposit.

Another request is this: That it is no part of the contract between a bank and its depositor, that the bank will cash over its counter checks or drafts drawn on other banks to the order of its depositor; and authority to an officer of a company to represent the company as a depositor, would not imply authority to endorse and collect drafts without depositing them to the credit of the company.

That is undoubtedly true; it is no part of the contract
10 between a bank and its depositor that the bank will cash over its counter, checks or drafts drawn on other banks to the order of its depositor, but it is an every day thing to be done, as testified to here by the officers of the bank; so also the authority of the officers of the company to represent the company as a depositor would not give authority to cash an endorsed draft. But as I said before, the question is whether this particular agent of the company did have apparent authority to do this thing.

20 Another request is, that the governing power (I suppose it means of a corporation), is in the directors, and that Mr. Putnam could not confer power on Mr. Bissell to dispose of checks or drafts for cash. The treasurer had no such power himself.

That is true; and I so charge you.

Another request is: That the power of the secretary to draw and sign drafts on customers for their debts to the company, did not place cash in his hands and could not imply power to endorse and cash checks and drafts
30 payable to the company.

That request is sound, and I charge you, that the power of the secretary to draw and sign drafts on customers for their debts did not place cash in his hands. That is a matter of fact which has been admitted on both sides; nor did that power alone imply the power to endorse and cash checks and drafts payable to the company.

The question is, as I said before, whether the general conduct of the business of this company with the bank
40 apparently clothed this man with power, and to ascertain

that you must take the whole case into consideration, and not only one particular feature.

Another request is: That there is nothing in the fact that certain accounts were in arrears, which tended to appraise the company that the bank was cashing the checks and drafts for Bissell.

The company owed no duty to the bank to press their customers.

That is true and I so charge you.

And the counsel of the said plaintiffs requested His Honor, the Judge, to charge and instruct the jury as follows:

That the evidence established that Bissell was not authorized by the company to draw cash on drafts or checks payable to the order of the company.

But His Honor, the Judge, declined to charge the jury in said causes as above requested.

To which refusal to charge and ruling of His Honor, the said Justice, the plaintiffs did then and there except, and tendered this, their bill of exceptions, and prayed that the same might be sealed according to the statute in such case made and provided, and it was sealed accordingly.

WM. S. GUMMERE, [L. s.]

Justice of Supreme Court.

And the counsel of the said plaintiffs also requested His Honor, the Judge, to charge and instruct the jury as follows:

That the office of secretary does not imply authority to endorse the name of the company on its checks and cash the same over the counter of the bank.

No by-law or custom or resolution or other authority has been shown warranting any such payment to Bissell. But His Honor, the Judge, declined to charge the jury in said cause as above requested.

To which refusal to charge and ruling of His Honor, the said Justice, the plaintiffs did then and there except,

and tendered this, their bill of exceptions, and prayed that the same might be sealed according to the statute in such case made and provided, and it was sealed accordingly.

WM. S. GUMMERE, [L. s.]
Justice of Supreme Court.

And the counsel of the said plaintiffs also requested His Honor, the Judge, to charge and instruct the jury as follows :

- 10 That the Loomis resolution passed February 8th, 1887, appointing Mr. Bissell manager, must be read in harmony with the by-laws, and must be interpreted in view of the fact that the treasurer continued to sign every check ; and this Loomis resolution gave Bissell no power to dispose of the checks and drafts of the company for cash paid to himself.

But His Honor, the Judge, declined to charge the jury in said cause as above requested, except as he had already charged.

- 20 To which refusal to charge and ruling of His Honor, the said Justice, the plaintiffs did then and there except, and tendered this, their bill of exceptions, and prayed that the same might be sealed according to the statute in such case made and provided, and it was sealed accordingly.

WM. S. GUMMERE, [L. s.]
Justice of Supreme Court.

And the counsel of the said plaintiffs also requested His Honor, the Judge, to charge and instruct the jury as follows :

- 30 That the bank cannot rely on the Loomis resolution as giving Bissell power to cash the drafts and checks in question in the absence of proof that Putnam ever did so and in the absence of proof that the bank ever knew of the Loomis resolution.

But His Honor, the Judge, declined to charge the jury in said cause as above requested, except as he had already charged.

To which refusal to charge and ruling of His Honor, the said Justice, the plaintiffs did then and there except, and tendered this, their bill of exceptions, and prayed that the same might be sealed according to the statute in such case made and provided, and it was sealed accordingly.

WM. S. GUMMERE, [L. s.]
Justice of Supreme Court.

And the counsel of the said plaintiffs also, requested His Honor, the Judge, to charge and instruct the jury as follows:

That authority of an agent or officer of a company to sign checks on the deposit of a company does not imply authority to dispose of the checks and drafts payable to the order of the company to that bank for cash over the counter.

But His Honor, the Judge, declined to charge the jury in said cause as above requested.

To which refusal to charge and ruling of His Honor, the said Justice, the plaintiffs did then and there except, and tendered this, their bill of exceptions, and prayed that the same might be sealed according to the statute in such case made and provided, and it was sealed accordingly.

WM. S. GUMMERE. [L. s.]
Justice of Supreme Court.

And the counsel of the said plaintiffs also requested His Honor, the Judge, to charge and instruct the jury as follows:

That the statement of Mr. Putnam to the cashier, that Mr. Bissell would look after the financial affairs of the company in Mr. Putnam's place, if such statement was made, would not authorize the bank to cash the checks and drafts in suit for Mr. Bissell as the saw company and Mr. Putnam had never so cashed check or drafts.

But His Honor, the Judge, declined to charge the jury

in said cause as above requested, except as he had already charged.

To which refusal to charge and ruling of His Honor, the said Justice, the plaintiffs did then and there except, and tendered this their bill of exceptions, and prayed that the same might be sealed according to the statute in such case made and provided, and it was sealed accordingly.

WM. S. GUMMERE. [L. s.]

10

Justice of Supreme Court.

And the counsel of the said plaintiffs also, requested His Honor, the Judge, to charge and instruct the jury as follows:

That the endorsement for discount in the bank by Bissell of twenty-one notes, in January, 1893, whether authorized or not, could not imply power in Bissell to draw cash on any endorsement, for the reason that the proceeds of the discount went to the credit of the company and could only be drawn by the treasurer.

20 The prior cashing of checks and drafts by the bank shows that they did not rely on this endorsement.

But His Honor, the Judge, declined to charge the jury in said cause as above requested, except as he had already charged.

To which refusal to charge and ruling of His Honor, the said Justice, the plaintiffs did then and there except, and tendered this, their bill of exceptions, and prayed that the same might be sealed according to the statute in such case made and provided, and it was sealed
30 accordingly.

WM. S. GUMMERE, [L. s.]

Justice of Supreme Court.

And the counsel of the said plaintiffs also requested His Honor, the Judge, to charge and instruct the jury as follows:

That the fact that all the checks on the bank covering

many years were signed by the treasurer was notice to the bank that his signature was essential.

But His Honor, the Judge, declined to charge the jury in said case as above requested.

To which refusal to charge and ruling of His Honor, the said Justice, the plaintiffs did then and there except, and tendered this, their bill of exceptions, and prayed that the same might be sealed according to the statute in such case made and provided, and it was sealed accordingly. 10

WM. S. GUMMERE, [L. s.]
Justice of Supreme Court.

And the counsel of the said plaintiffs also requested His Honor, the Judge, to charge and instruct the jury as follows:

That the fact that all the checks on the bank for a long course of years bore the signature of two officers, was evidence to warn the bank that a draft should not be paid on one signature.

But His Honor, the Judge, declined to charge the jury 20 in said cause as above requested.

To which refusal to charge and ruling of His Honor, the said Justice, the plaintiffs did then and there except, and tendered this, their bill of exceptions, and prayed that the same might be sealed according to the statute in such case made and provided, and it was sealed accordingly.

WM. S. GUMMERE, [L. s.]
Justice of Supreme Court.

And the counsel of the said plaintiffs also requested 30 His Honor, the Judge, to charge and instruct the jury as follows:

That the fact that no checks on account of the saw companies were ever signed by Bissell was notice to the bank that he was not the proper officer to endorse and cash checks over the counter.

But His Honor, the Judge, declined to charge the jury in said cause as above requested.

To which refusal to charge and ruling of His Honor, the said Justice, the plaintiffs did then and there except, and tendered this, their bill of exceptions, and prayed that the same might be sealed according to the statute in such case made and provided, and it was sealed accordingly.

WM. S. GUMMERE, [L. s.]

Justice of Supreme Court.

10 And the counsel of the said plaintiffs also requested His Honor, the Judge, to charge and instruct the jury that the jury should find for the plaintiffs in both cases the amount claimed.

But His Honor, the Judge, declined to charge the jury in said cause as above requested.

To which refusal to charge and ruling of His Honor, the said Justice, the plaintiffs did then and there except, and tendered this, their bill of exceptions, and prayed that the same might be sealed according to the statute in
20 such case made and provided, and it was sealed accordingly.

WM. S. GUMMERE, [L. s.]

Justice of Supreme Court.

EXHIBITS AND DOCUMENTS OFFERED.

PLAINTIFFS' EXHIBITS.

EXHIBIT P, No. 1.

Certified copy of certificate of incorporation of the American Saw Company of New York, dated January 18th, 1866, certified May 11th, 1896, by Secretary of State
30 of State of New York, under the great seal of the State of New York,

Certifies said company incorporated under statute of New York, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February 17th, 1848, and the several acts supplementary to or amendatory thereof.

EXHIBIT P, No. 2.

Certified copy of certificate of incorporation of the American Saw Company of New Jersey, dated January 31st, 1893, certified May 12th, 1896, by Secretary of State of New Jersey, under the great seal of the State of New Jersey.¹⁰

EXHIBIT P, No.

New York statute under which the American Saw Company of New York was organized entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February 17th, 1848, and to be found in the pamphlet laws of New York for that year, page 54, &c.

EXHIBIT P, No.

New York statute being a supplement to the statute²⁰ last above recited entitled "An act to amend an act entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes,'" which supplement was passed June 7th, 1853, and is to be found in the pamphlet laws of New York for that year on pages 705, &c.

EXHIBIT C1.

By-laws of the American Saw Company of New York, adopted March 27th, 1880.

EXHIBIT C3.

By-laws of the American Saw Company of New Jersey, adopted January 31st, 1893.

EXHIBIT P4.

Checks payable to the American Saw Company endorsed "For deposit to the credit of the American Saw Company, I. F. Bissell, Secretary."

EXHIBIT P.

Resolution presented June 11th, 1889, to Board of Directors of the American Saw Company, of New York, proposing amendment to by-laws.

EXHIBIT P5.

Statement showing dates and amounts of checks and drafts sued on with dates when collected by defendant.

EXHIBIT P6.

Forty checks and drafts comprised in suit brought by the American Saw Company of New York.

EXHIBIT P7.

Forty-nine checks and drafts comprised in suit brought 20 by the American Saw Company of New Jersey.

EXHIBIT P8.

Blank draft on customer.

EXHIBITS P9, 10, 11, 12 AND 13.

Pay-roll checks.

EXHIBIT P.

Book of minutes and resolutions of the American Saw Company of New York.

EXHIBIT P.

Book of minutes and resolution of the American Saw Company of New Jersey.

ASSIGNMENT OF ERRORS AND PRAYER FOR CERTIORARI.

[Filed October 22, 1896.]

NEW JERSEY COURT OF ERRORS AND APPEALS. 10

THE AMERICAN SAW COMPANY OF NEW YORK,	} In Error.
Plaintiff in Error,	
v.	} Assignment of Errors and Prayer for Certiorari, &c.
THE FIRST NATIONAL BANK OF TRENTON,	
Defendant in Error.	

Afterwards, that is to say, on the thirtieth day of June, in the year eighteen hundred and ninty-six, in this same term, before the Judges of the said Court of Errors and Appeals, in the last resort in all causes, at Trenton, come the said The American Saw Company of New York, by Collins and Corbin, its attorneys, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in giving the verdict and judgment aforesaid, there is manifest error in this, to wit: that by the record aforesaid, it appears that the judgment in form aforesaid, was given for the said The First National Bank of Trenton,

against the American Saw Company of New York, whereas by the law of the land judgment ought to have been given for the said The American Saw Company of New York, against the said The First National Bank of Trenton.

And also, there is error in this, for that the said Justice before whom the issue joined in the said action was tried, at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, overruled as evidence
 10 offered to him on behalf of the said plaintiff, The American Saw Company of New York, as in the bill of exceptions is mentioned, a report on file in said cause, wherein said The American saw Company of New York is plaintiff and said The First National Bank of Trenton, is defendant, dated November first, eighteen hundred and ninety-four, made by Garret D. W. Vroom, as referee, in the record aforesaid mentioned in pursuance of an order made by the court therein, bearing date May tenth, eighteen hundred and ninety-four, whereby it was
 20 ordered that the matters at issue therein be referred to said referee to state and report an account between the parties, the said Justice holding and affirming that the same was unlawful and inadmissible, whereas, by the law of the land, the said Justice ought to have admitted the said evidence in this action, because the same was lawful and admissible, which said order of reference and report are not certified and returned with the writ of error depending in this court.

And the said The American Saw Company of New
 30 York prays that a writ of the State of New Jersey be directed to the judges of the said Circuit Court, to certify to the said Court of Errors and Appeals the truth of the same. And it is granted to it, &c.

And also there is error in this, for that the said Justice, at and upon the aforesaid trial of the said issue before him as aforesaid, overruled as evidence offered to him on behalf of the said plaintiff, the American Saw Company of New York, as in the bill of exceptions is mentioned the bank book of the defendant, the First
 40 National Bank of Trenton, commonly called the signa-

ture book, in the record aforesaid mentioned, and also the said plaintiff's offer to prove that such signature book contains the signature of the "American Saw Company, Samuel W. Putnam, Treasurer," written by Mr. Putnam, and contains no other signature, holding and affirming that the said last-mentioned evidence was unlawful and inadmissible, whereas, by the law of the land, the said justice ought to have admitted the said last-mentioned evidence in this action, because the same was lawful and admissible.

10

And also there is error in this, for that the said Justice, at and upon the aforesaid trial of the said issue before him, charged and instructed the jury, as in the bill of exceptions is mentioned, that no doubt the American Saw Company of New York ratified the endorsement of the twenty-one promissory notes, which were discounted in January, eighteen hundred and ninety-three, in the record aforesaid mentioned.

And also there is error in this, for that the said Justice, at and upon the aforesaid trial of the said issue before him, charged and instructed the jury, as in the bill of exceptions is mentioned, that, in view of the fact that, continuously after the Loomis resolution, in the aforesaid record mentioned, was passed in eighteen hundred and eighty-seven, whenever any money of the American Saw Company was drawn out of its deposit in the bank, it continued to be drawn out exactly as it had been before that resolution was passed, that is, by the signature of Mr. Putnam, the treasurer, countersigned by some member of the executive committee or the secretary, it would be for the jury to say whether this Loomis resolution could be considered to have gone as far as it was claimed to have done by the bank in the matter of authorizing Bissell to deal with the finances of the company.

And also there is error in this, for that the said Justice, at and upon the aforesaid trial of the said issue before him, charged and instructed the jury, as in the bill of exceptions is mentioned, that the jury must look at all

the evidence to determine whether apparent authority existed.

And also there is error in this, for that the said Justice, at and upon the aforesaid trial of the said issue before him, refused to charge and instruct the jury, as in the bill of exceptions is mentioned, that the evidence established that said Bissell was not authorized by the company to draw cash on drafts or checks payable to the company.

- 10 And also there is error in this, for that the said Justice, at and upon the aforesaid trial of the said issue before him, refused to charge and instruct the jury, as in the bill of exceptions is mentioned, that the office of secretary does not imply authority to endorse the name of the company on its checks and cash the same over the counter of the bank; that no by-law or custom or resolution or other authority has been shown warranting any such thing to said Bissell.

- 20 And also there is error in this, for that the said Justice, at and upon the aforesaid trial of the said issue before him, refused to charge and instruct the jury, as in the bill of exceptions is mentioned, that the said Loomis resolution passed February eighth, eighteen hundred and eighty-seven, appointing said Bissell manager must be read in harmony with the by-laws, and must be interpreted in view of the fact that the treasurer continued to sign every check, and that this Loomis resolution gave said Bissell no power to dispose of the checks and drafts of the company for cash paid to himself.

- 30 And also there is error in this, for that the said Justice, at and upon the aforesaid trial of the said issue before him, refused to charge and instruct the jury, as in the bill of exceptions is mentioned, that the bank cannot rely on the said Loomis resolution as giving said Bissell power to cash the drafts and checks in question in the absence of proof that said Putnam ever did so, and in the absence of proof that the bank ever knew of the Loomis resolution.

- 40 And also there is error in this, for that the said Justice, at and upon the aforesaid trial of the said issue before

him, refused to charge and instruct the jury, as in the bill of exceptions is mentioned, that authority of an agent or officer of a company to sign checks on the deposit of a company in a bank does not imply authority to dispose of the checks and drafts payable to the order of the company to that bank for cash over the counter.

And also there is error in this, for that the said Justice, at and upon the aforesaid trial of the said issue before him, refused to charge and instruct the jury, as in the bill of exceptions is mentioned, that the statement of the said 10 Putnam to the cashier that said Bissell would look after the financial affairs of the company in said Putnam's place, if such statement was made, would not authorize the bank to cash the checks and drafts in suit for said Bissell as the said company and said Putnam had never so cashed checks or drafts.

And also there is error in this, for that the said Justice, at and upon the aforesaid trial of the said issue before him, refused to charge and instruct the jury, as in the bill of exceptions is mentioned, that the indorsement for dis- 20 count in the bank by said Bissell of said twenty-one notes in January, eighteen hundred and ninety-three, in the record aforesaid mentioned, whether authorized or not, could not imply power in said Bissell to draw cash on any endorsement for the reason that the proceeds of the discount went to the credit of the company and could only be drawn by the treasurer.

And also there is error in this, for that the said Justice, at and upon the aforesaid trial of the said issue before him, refused to charge and instruct the jury, as in the 30 bill of exceptions is mentioned, that the fact that all the checks on the bank covering many years were signed by the treasurer, was notice to the bank that his signature was essential

And also there is error in this, for that the said Justice, at and upon the aforesaid trial of the said issue before him, refused to charge and instruct the jury, as in the bill of exceptions is mentioned, that the fact that all the checks on the bank for a long course of years bore the

signature of two officers, was evidence to warn the bank that a draft should not be paid on one signature.

And also there is error in this, for that the said Justice, at and upon the aforesaid trial of the said issue before him, refused to charge and instruct the jury, as in the bill of exceptions is mentioned, that the fact that no checks on account of the saw companies were ever signed by said Bissell was notice to the bank that he was not the proper officer to endorse and cash checks over the
10 counter.

And also there is error in this, for that the said Justice, at and upon the aforesaid trial of the said issue before him, refused to charge and instruct the jury, as in the bill of exceptions is mentioned, that the jury should find for the plaintiff, the American Saw Company of New York, the amount claimed.

Wherefore the said The American Saw Company of New York, prays that the judgment aforesaid, by reason of the aforesaid errors, and of other errors appearing in
20 the record and proceedings aforesaid may be reversed, annulled and for nothing holden, and that said The American Saw Company of New York, may be restored to all things which it hath lost by occasion of the said judgment.

COLLINS & CORBIN,

Attorneys for and of Counsel with the Plaintiff in Error.

JOINDER IN ERROR.

[Filed October 28, 1896.]

And hereupon, afterwards, to wit, on the twenty-eighth 30 day of October, A.D. eighteen hundred and ninety-six, the said The First National Bank of Trenton, by Woodbury D. Holt, its attorney, comes into court and says that there is no error either in the record and proceed-

ings aforesaid, or in giving the judgment aforesaid, and it prays here that the court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c.

W. D. HOLT,

Attorney for Defendant.

W. M. LANNING,

CHAUNCEY H. BEASLEY, 10

Of Counsel.

WRITS OF CERTIORARI.

ORDER OF REFERENCE.

The above-entitled cause being regularly on the list for trial at the May term, 1894, of the Mercer Circuit Court, and being called and it appearing to the court that matters of account are in controversy in said cause, and the plaintiff having opposed a reference in said cause on the ground that matters of account are not in controversy in said cause, and that the said cause is not referable with-20
out consent;

It is on this tenth day of May, 1894, ordered that the said cause be referred to Garret D. W. Vroom to ascertain, state and report an account between the parties, and the amount due, if anything, from the defendant to the plaintiff, and the said referee shall make his report within sixty days from the date hereof.

By the court, rule entered May 10th, 1894.

We dissent from the reference above ordered.

COLLINS & CORBIN, 30

Plaintiff's Attorney.

W. D. HOLT,

Defendant's Attorney.

May 10, 1894.

The counsel for the above-named parties having stipulated that the time of the referee appointed in the above-entitled actions to make his report shall be extended until Saturday, October 20th, 1894, on or before which date the report shall be filed; that the cases shall be placed regularly on the list for trial at the October term, 1894, of the Mercer Circuit; that the defendants shall have until and including the sixteenth day of October, A. D. 1894, to close their testimony before the referee, and that
 10 the plaintiffs may have the seventeenth, eighteenth and nineteenth days of October, A. D. 1894, to rebut, if they desire, and that exceptions, if any, shall be filed on or before October 23d, A. D. 1894, and the two cases on exceptions be tried without further notice at as early a day thereafter as the court will fix, such stipulation to be subject to such modification as the court may direct by reason of the intervention of circumstances not contemplated at the time of the stipulation.

It is on this twenty-second day of September, eighteen
 20 hundred and ninety-four, ordered that the said stipulation be ratified and that the time of the referee to report shall be extended on the terms in such stipulation set forth, to Saturday, October 20th, 1894, on or before which date the referee shall file his report.

LEON ABBETT, *J.*

Entered September 27th, 1894.

The referee desiring further time to make his report in the above-entitled causes referred to him:

It is ordered that the said referee have until the third
 30 day of November next in which to make and file his report therein.

Dated October 27th, 1894.

LEON ABBETT, *J.*

The parties in the two above-entitled suits having heretofore entered into stipulation, approved by the order of the court herein providing for a trial of the cause on exceptions to the report of the referee therein at the October Term, 1894, of the Mercer Circuit, on such day

as the court may fix, subject to such modifications as the court may direct, as appears by the order entered in said causes September 27th, 1894. Now on motion to Collins & Corbin, attorneys of plaintiff in said two causes, in the presence of W. D. Holt, attorney for defendant ;

It is on this fourteenth day of November, A. D. 1894, ordered that the said order of September 22d, 1894, be modified, and Wednesday, the sixteenth day of January, A. D. 1895, be fixed for the trial of the cause of which the parties shall take notice, and that the reports of the 10 referee may meantime remain on file in the office of the clerk of the Mercer Circuit, and need not be presented to the Supreme Court at the present term, and the exceptions filed by defendant shall stand as if a trial by jury had been regularly demanded in the Supreme Court, and all rights of the plaintiff to object to the exceptions or to move to strike out the same as not proper exceptions under the statute are preserved. Notice of trial on either side is waived by both parties in open court.

Entered November 14th, 1894.

20

On motion of

COLLINS & CORBIN,

Attorneys.

LEON ABBETT, J.

REPORT OF REFEREE.

In pursuance of an order made in the above cause, bearing date the tenth of May last past, whereby it was ordered that the matters at issue in the above cause be referred to me, Garret D. W. Wroom, to state and report an account between the parties and the amount due, if 30 anything, from the defendant to the plaintiff, I, the said referee, do respectfully report to the court that I was first duly sworn, faithfully and fairly to hear and examine the cause in question and to make a just and true report,

according to the best of my skill and understanding, as will appear by the oath taken by me and hereunto annexed; and the said parties and their attorneys having appeared before me at my office, at No. 24 East State street, in the city of Trenton, in the county of Mercer and State of New Jersey, on the twenty-fourth day of May last past, and having heard the allegations and proofs of the parties and examined the checks and drafts, copies whereof are set forth in the bill of particulars
10 annexed to the plaintiff's declaration, filed in said cause, and the books of account produced and offered before me, and considered the said cause, I do hereby report that at the times hereinafter mentioned the plaintiff was a saw manufacturer, carrying on business at the city of Trenton aforesaid, and the defendant was then a banking company, carrying on the business at a banking house in said city, and the plaintiff was then a customer of the defendant and kept a banking account with the defendant at said banking house; that one Isaac F. Bissell was
20 then the secretary of the plaintiff, and as such was authorized to endorse checks and drafts received from the plaintiff's customers, in payment for goods sold by the plaintiff to such customers, to be deposited and paid into the plaintiff's account with the defendant, but not otherwise, and was not then lawfully entitled to receive payment of such checks or drafts, of which the defendant then had notice; that the defendant, at the dates and times hereinafter mentioned, without the knowledge, sanction or authority of the plaintiff, paid to the said
30 Isaac F. Bissell, and the said Isaac F. Bissell received from the defendant, payment of the checks and drafts hereinafter mentioned, which were received from the plaintiff's customers in payment for goods sold by the plaintiff to such customers, through a forged and unauthorized endorsement of the plaintiff's name on the back of each of said checks and drafts by the said Isaac F. Bissell; that is to say, on the second day of March, in the year 1891, the check first in the order of mention in said bill of particulars and the schedule hereto annexed;
40 on the second day of April, 1891, the check second in

order of mention therein; on the fifteenth day of May, in the year 1891, the check third in the order of mention therein; on the twenty-third day of May, in the year 1891, the check or draft fourth in the order of mention therein; on the seventeenth day of September, 1891, the check fifth in order of mention therein; on the thirtieth day of September, in the year 1891, the check or draft sixth in the order of mention therein; on the twenty-third day of October, in the year 1891, the check seventh in the order of mention therein; on the thirty-first day 10 of October, in the year 1891, the check or draft eighth in the order of mention therein; on the eighteenth day of November, in the year 1891, the check ninth in the order of mention therein; on the twenty-sixth day of November, in the year 1891, the check or draft tenth in the order of mention therein; on the eleventh day of December, in the year 1891, the check or draft eleventh in the order of mention therein; on the twenty-first day of January, in the year 1892, the check twelfth in the order of mention therein; on the fifteenth day of April, in the 20 year 1892, the check thirteenth in the order of mention therein; on the twenty-third day of April, in the year 1892, the check fourteenth in the order of mention therein; on the second day of May, in the year 1892, the check fifteenth in the order of mention therein; on the twenty-seventh day of May, in the year 1892, the check or draft sixteenth in the order of mention therein; on the thirteenth day of July, in the year 1892, the check seventeenth in the order of mention therein; on the eighth day of July, in the year 1892, the check or draft 30 eighteenth in the order of mention therein; on the thirteenth day of July, in the year 1892, the check nineteenth in the order of mention therein; on the sixth day of August, in the year 1892, the check or draft twentieth in the order of mention therein; on the twelfth day of August, in the year 1892, the check twenty-first in the order of mention therein; on the twelfth day of August in the year 1892, the check twenty-second in the order of mention therein; on the twelfth day of August, in the year 1892, the check or voucher twenty-third in the order 40

of mention therein; on the seventeenth day of August, in the year 1892, the check twenty-fourth in the order of mention therein; on the thirty-first day of August, in the year 1892, the check or draft twenty-fifth in the order of mention therein; on the twenty-third day of August, in the year 1892, the check twenty-sixth in the order of mention therein; on the sixth day of September, in the year 1892, the check twenty-seventh in the order of mention therein; on the fifteenth day of September, in the year 1892, the check twenty-eighth in the order of mention therein; on the sixth day of October, in the year 1892, the check twenty-ninth in the order of mention therein; on the twenty-fourth day of October, in the year 1892, the check thirtieth in the order of mention therein; on the twentieth day of October, in the year 1892, the check or voucher thirty-first in the order of mention therein; on the first day of November, in the year 1892, the check thirty second in the order of mention therein; on the first day of November, in the year 1892, the check thirty-third in the order of mention therein; on the twenty-first day of November, in the year 1892, the check or voucher thirty-fourth in the order of mention therein; on the twenty-sixth day of November, in the year 1892, the check thirty-fifth in the order of mention therein; on the twenty-fourth day of December, in the year 1892, the check or draft thirty-sixth in the order of mention therein; on the thirtieth day of December, in the year 1892, the check thirty-seventh in the order of mention therein; on the third day of January, in the year 1893, the check or draft thirty-eighth in the order of mention therein; on the ninth day of January, in the year 1893, the check thirty-ninth in the order of mention therein; on the twentieth day of January, in the year 1893, the check or draft fortieth in the order of mention therein; that the defendant presented the said checks and drafts for payment to the bankers upon whom the same were respectively drawn, and received from each of the said bankers the amount for which each of the said checks and drafts were respectively drawn. And I do further report that I find that there is due the plaintiff from the defendant, on

the date of this my report, the sum of ten thousand and seventy-five dollars and five cents, in respect of the matters aforesaid, and that the schedule hereunto annexed and making part of this my report contains a particular statement of the principal and interest money due to the plaintiff from the defendant, to which, for greater certainty, I refer.

In witness whereof I have hereunto set my hand and seal the first day of November, eighteen hundred and ninety-four. 10

Dated November 1st, 1894.

G. D. W. VROOM, [L. s.]
Referee.

And we do also find annexed to the said report of the said referee a schedule in the words and figures following, to wit:

SCHEDULE.

Check dated February 27th, 1891, drawn by Shriver, Bartlett & Co., on the Commonwealth Title Insurance and Trust Co., No. 813 Chestnut street, in favor of plaintiff,	20
Cashed by defendant March 2d, 1891.	
Interest thereon from March 2d, 1891, to November 1st, 1894, 3 years, 7 months and 29 days,	\$189 20
	41 59
Check dated March 26th, 1891, drawn by Shriver, Bartlett & Co., on the Commonwealth Title Insurance & Trust Co., No. 813 Chestnut street, in favor of plaintiff,	26 82
Cashed by defendant April 2d, 1891.	30
Interest thereon from April 2d, 1891, to November 1st, 1894, 3 years, 6 months and 29 days,	5 76
Check dated May 12th, 1891, drawn by Collins & Kreidler on the National Bank of Brookville, in favor of plaintiff,	239 25
Cashed by defendant May 15th, 1891.	

Interest thereon from May 15th, 1891, to November 1st, 1894, 3 years, 5 months and 16 days,		\$49 67
Banker's check or draft dated May 21st, 1891, drawn by the Citizens' Savings Bank, Detroit, Mich., Edwin F. Mack Tellston, Cashier, on the Chase National Bank, New York City, in favor of plaintiff,		139 37
Cashed by defendant May 23d, 1891.		
10	Interest thereon from May 23d, 1891, to November 1st, 1894, 3 years, 5 months and 8 days,	28 75
Check dated September 16th, 1891, drawn by the Buffalo Lumber Co., Wm. Whitmen, Treasurer, on the Central National Bank in favor of plaintiff,		50 10
Cashed by defendant September 17th, 1891.		
Interest thereon from September 17th, 1891, to November 1st, 1894, 3 years, 1 month and 14 days,		9 38
20	Banker's check or draft dated September 26th, 1891, drawn by the Bank of Montreal, M. Mund, Manager, Henry B. Black, Accountant, on the Bank of New York, National Banking Association, New York, in favor of plaintiff,	109 75
Cashed by defendant September 30th, 1891.		
Interest thereon from September 30th, 1891, to November 1st, 1894, 3 years, 1 month and 1 day,		20 31
30	Check dated October 19th, 1891, drawn by J. M. Schram on the Ridgway Bank, in favor of plaintiff,	500 00
Cashed by defendant October 23d, 1891.		
Interest thereon from October 23d, 1891, to November 1st, 1894, 3 years and 8 days.		90 67
Banker's check or draft dated October 29th, 1891, drawn by the First National Bank, of Detroit, State of Michigan, L. E. Clark,		
40	Cashier, on the National Bank of Commerce	

in New York, in favor of plaintiff,	\$186 39
Cashed by defendant October 31st, 1891.	
Interest thereon from October 31st, 1891, to November 1st, 1894, 3 years,	33 55
Check dated November 14th, 1891, drawn by Stearns Manufacturing Co., John T. Boyd, General Manager, on the First National Bank, of Erie, in favor of plaintiff,	173 40
Cashed by defendant November 18th, 1891.	
Interest thereon from November 18th, 1891, to November 1st, 1894, 2 years, 11 months and 13 days,	10 30 73
Banker's check or draft dated November 24th, 1891, drawn by the Bank of Leipsic, W. W. Edwards, Cashier, in favor of plaintiff on the Chase National Bank, New York,	167 50
Cashed by defendant November 26th, 1891.	
Interest thereon from November 26th, 1891, to November 1st, 1894, 2 years, 11 months and 5 days,	29 45 20
Banker's check or draft dated December 3d, 1891, drawn by the Puget Sound National Bank, of Seattle, R. V. Ankney, Cashier, on the National Bank of Republic, New York, in favor of plaintiff,	1,000 00
Cashed by defendant December 11th, 1891.	
Interest thereon from December 11th, 1891, to November 1st, 1894, 2 years, 10 months and 20 days,	173 33
Check dated January 20th, 1892, drawn by the Buffalo Lumber Co., Wm. Whitman, Treasurer, on the First National Bank, of Piedmont, in favor of plaintiff,	30 216 68
Cashed by defendant January 21st, 1892.	
Interest thereon from January 21st, 1892, to November 1st, 1894, 2 years, 9 months and 10 days,	36 11
Check dated April 8th, 1892, drawn by J. M. Schram, on the Elk County Bank in favor of plaintiff,	500 00 40

	Cashed by defendant April 15th, 1892.	
	Interest thereon from April 15th, 1892, to November 1st, 1894, 2 years, 6 months and 16 days,	\$76 33
	Check dated April 22d, 1892, drawn by A. L. Brooks & Co., on the Old Lowell National Bank in favor of plaintiff,	93 08
	Cashed by defendant April 23d, 1892.	
10	Interest thereon from April 23d, 1892, to November 1st, 1894, 2 years, 6 months and 8 days,	14 07
	Check dated April 30th, 1892, drawn by the Buffalo Lumber Co., Wm. Whitman, Treasurer, on the Central National Bank in favor of plaintiff,	272 95
	Cashed by defendant May 2d, 1892.	
	Interest thereon from May 2d, 1892, to November 1st, 1894, 2 years, 5 months and 29 days,	40 90
20	Banker's check or draft dated May 20th, 1892, drawn by the First National Bank, of Seattle, Wash., H. L. McManus, President, on the National Park Bank, New York, payable to order of J. E. Fox and by him endorsed to plaintiff,	1,000 00
	Cashed by defendant May 27th, 1892.	
	Interest thereon from May 27th, 1892, to November 1st, 1894, 2 years, 5 months and 4 days,	145 67
30	Check dated June 29th, 1892, drawn by Duncan Mackenzie on the Trenton Banking Company in favor of plaintiff,	181 23
	Cashed by defendant July 13th, 1892.	
	Interest thereon from July 13th, 1892, to November 1st, 1894, 2 years, 3 months and 18 days,	25 01
	Banker's check or draft dated July 5th, 1892, drawn by the First National Bank, Bay City, Mich., countersigned F. P. Thorne, F.	
40	P. Thorne, Cashier, on the National Bank	

of Commerce, in New York, payable to the order Wm. Ward, and by him endorsed to plaintiff,	\$300 00.
Cashed by defendant July 8th, 1892.	
Interest thereon from July 8th, 1892, to November 1st, 1894, 2 years, 3 months and 23 days,	41 65
Check dated July 8th, 1892, drawn by the Buffalo Lumber Co., Wm. Whitman, Treasurer, on the Central National Bank in favor of plaintiff,	10 34 50
Cashed by defendant July 13th, 1892.	
Interest thereon from July 13th, 1892, to November 1st, 1894, 2 years, 3 months and 18 days,	4 75
Banker's check or draft dated August 2d, 1892, drawn by the Kane Bank, W. P. Weston, Cashier, on the Importers and Traders National Bank, New York, in favor of plaintiff,	234 75 20
Cashed by defendant August 6th, 1892.	
Interest thereon from August 6th, 1892, to November 1st, 1894, 2 years, 2 months and 25 days,	31 49
Check dated August 8th, 1892, drawn by the Whitman & Barnes Manufacturing Co., J. Y. Stone, Manager, on the Missouri National Bank, Kansas City, Mo., in favor of plaintiff,	144 00
Cashed by defendant August 12th, 1892.	30
Interest thereon from August 12th, 1892, to November 1st, 1894, 2 years, 2 months and 19 days,	19 18
Check dated August 10th, 1892, drawn by Thad. M. Chapman, on the First National Bank, in favor of plaintiff,	80 00
Cashed by defendant August 12th, 1892.	
Interest thereon from August 12th, 1892, to November 1st, 1894, 2 years, 2 months and 19 days,	10 65 40

Voucher dated August 12th, 1892, drawn by the Portland Lumber Co., E. G. Beck, Chief Bookkeeper, countersigned J. K. P. Hall, pay- able at the St. Mary's Bank, St. Mary's, Elk Co., Pa., in favor of plaintiff,		\$29 00
Cashed by defendant August 12th, 1892.		
Interest thereon from August 12th, 1892, to November 1st, 1894, 2 years, 2 months and 19 days,		3 86
10 Check dated August 16th, 1892, drawn by J. M. Schram on the Elk County Bank, Ridg- way, Pa., in favor of plaintiff,		250 00
Cashed by defendant August 17th, 1892.		
Interest thereon from August 17th, 1892, to November 1st, 1894, 2 years, 2 months and 14 days,		33 09
Banker's check or draft dated August 29th, 1892, drawn by the First National Bank, Bay City, Mich., F. P. Browne, Cashier,		
20 countersigned J. M. Lewis, on the National Bank of Commerce, in New York, payable to the order of Wm. Ward and by him en- dorsed to plaintiff,		400 00
Cashed by defendant August 31st, 1892.		
Interest thereon from August 31st, 1892, to November 1st, 1894, 2 years and 2 months,		52 00
Check dated August 22d, 1892, drawn by Henry Bayard & Co. on the Market Street National Bank in favor of plaintiff,		102 95
30 Cashed by defendant August 23d, 1892.		
Interest thereon from August 23d, 1892, to November 1st, 1894, 2 years, 2 months and 8 days,		13 51
Check dated September 2d, 1892, drawn by Stearns Manufacturing Co., John T. Boyd, general manager, on the First National Bank of Erie, in favor of plaintiff,		128 48
Cashed by defendant September 6th, 1892.		
Interest thereon from September 6th, 1892, to		

November 1st, 1894, 2 years, 1 month and 25 days,	\$16 57
Check dated September 14th, 1892, drawn by the Cambria Lumber Company, M. N. Leonard, Treasurer, on the Bank of North America, in favor of plaintiff,	282 68
Cashed by defendant September 15th, 1892.	
Interest thereon from September 15th, 1892, to November 1st, 1894, 2 years, 1 month and 16 days,	36 09 10
Check dated October 5th, 1892, drawn by the Buffalo Lumber Co., Wm. Whitman, Treasurer, on the First National Bank of Piedmont, in favor of plaintiff,	133 06
Cashed by defendant October 6th, 1892.	
Interest thereon from October 6th, 1892, to November 1st, 1894, 2 years and 25 days,	16 52
Check dated October 17th, 1892, drawn by the Wyeth Hardware and Manufacturing Co., W. M. Wyeth, President, on the Chatham National Bank, New York City, in favor of plaintiff,	20 100 32
Cashed by defendant October 24th, 1892.	
Interest thereon from October 24th, 1892, to November 1st, 1894, 2 years and 7 days,	12 15
Voucher dated October 19th, 1892, drawn by the Portland Lumber Company, E. G. Beck, Chief Bookkeeper, countersigned J. K. P. Hall, on the St. Mary's Bank, St. Mary's, Elk Co., Pa., in favor of plaintiff,	17 20 30
Cashed by defendant October 20th, 1892.	
Interest thereon from October 20th, 1892, to November 1st, 1894, 2 years and 11 days,	2 08
Check dated October 26th, 1892, drawn by the Wyeth Hardware and Manufacturing Co., W. M. Wyeth, President, on the Chatham National Bank, New York City, in favor of plaintiff,	86 64
Cashed by defendant November 1st, 1892.	

Interest thereon from November 1st, 1892, to November 1st, 1894, 2 years,	\$10 39
Check dated October 31st, 1892, drawn by the Buffalo Lumber Co., Wm. Whitman, Treas- urer, on the First National Bank of Pied- mont, in favor of plaintiff,	162 00
Cashed by defendant November 1st, 1892.	
Interest thereon from November 1st, 1892, to November 1st, 1894, 2 years,	19 44
10 Voucher dated November 21st, 1892, drawn by the Portland Lumber Company, E. G. Beck, Chief Bookkeeper, countersigned J. K. P. Hall, payable at the St. Mary's Bank, St. Mary's Elk Co., Pa., in favor of plaintiff,	97 27
Cashed by defendant November 21st, 1892.	
Interest thereon from November 21st, 1892, to November 1st, 1894, 1 year, 11 months and 10 days,	11 34
Check dated November 26th, 1892, drawn by 20 J. M. Schram, on the Elk County Bank, Ridgway, Pa., in favor of plaintiff,	250 00
Cashed by defendant November 26th, 1892.	
Interest thereon from November 26th, 1892, to November 1st, 1894, 1 year, 11 months and 5 days,	28 96
Banker's check or draft dated December 21st, 1892, drawn by the Somerset County Na- tional Bank, Milton J. Pritts, Cashier, on the National Bank of the Republic, Philadel- 30 phia, Pa., in favor of plaintiff,	129 80
Cashed by defendant December 24th, 1892.	
Interest thereon from December 24th, 1892, to November 1st, 1894, 1 year, 10 months and 7 days,	14 42
Check dated December 29th, 1892, drawn by the Buffalo Lumber Co., Wm. Whitman, Treasurer, on the Central National Bank, in favor of plaintiff,	124 58
Cashed by defendant December 30th, 1892.	
40 Interest thereon from December 30th, 1892, to	

November 1st, 1894, 1 year, 10 months and 1 day,	\$13 72
Banker's check or draft dated December 30th, 1892, drawn by the Citizens' Savings Bank, Detroit, Mich., Frank F. Tillson, Assistant Cashier, on the Chase National Bank, New York, payable to the order of R. B. Ridgway and by him endorsed to the plaintiff,	77 50
Cashed by defendant January 3d, 1893.	
Interest thereon from January 3d, 1893, to November 1st, 1894, 1 year, 9 months and 28 days,	10 8 50
Check dated January 2d, 1893, drawn by the Goldsboro Lumber Co., per L. Y. Street, V. P., on the Bank of Wayne, in favor of plaintiff,	53 70
Cashed by defendant January 9th, 1893.	
Interest thereon from January 9th, 1893, to November 1st, 1894, 1 year, 9 months and 22 days,	5 83 20
Banker's check or draft dated January 9th, 1893, drawn by the First National Bank, of Seattle, Wash., G. R. Fisher, Teller, Cashier, on the National Park Bank, New York, in favor of plaintiff,	500 00
Cashed by defendant January 20th, 1893.	
Interest thereon from January 20th, 1893, to November 1st, 1894, 1 year, 9 months and 11 days,	53 42
	30
	\$10,075 05

G. D. W. VROOM,
Referee.

And this we do certify to the said judges of the Court of Errors and Appeals in the last resort, as we are within commanded. *Per curiam.*

[L. s.]

B. GUMMERE, JR.,
Clerk.

PLAINTIFF'S EXHIBIT C1.

BY-LAWS OF THE AMERICAN SAW CO. OF NEW YORK.

Adopted March 27th, 1880.

Sec. 1. The annual meeting of the stockholders of the company shall be held at the office of the company, in the City of New York, at twelve o'clock at noon, on the fourth Tuesday of January in each year, at which meeting a general report of the condition and affairs of the
10 company shall be laid before the stockholders by the President of the company.

Sec. 2. The affairs of this company shall be managed by a Board of Trustees, consisting of nine stockholders (a majority of whom shall constitute a quorum) to be elected at the annual meeting, by such of the stockholders as shall attend for that purpose either in person or by proxy, and such election shall be held between the hours of twelve noon and two o'clock in the afternoon; and such election shall be conducted as prescribed by
20 law. Should any vacancy happen among the Trustees from any cause, it may be filled for the remainder of the term by the remaining Trustees, by election or appointment, at a meeting of the Board; and in case it shall happen at any time that an election of Trustees by the stockholders shall not be made on the day designated by these by-laws, the same shall be made by such of the stockholders as shall attend for that purpose either in person or by proxy, on such other day as shall be designated for that purpose by a resolution of the Board of
30 Trustees. Notice of the time and place for holding every such election by the stockholders shall be published not less than ten days previous, in the newspaper printed nearest to the place where the business of the company shall be carried on.

Sec. 3. The company shall have a common seal which shall bear on its face the corporate name of the company

and such other words or device as the Trustees shall from time to time approve and adopt.

Sec. 4. The officers of the company shall be a President (who shall be a Trustee), Vice President, Treasurer and Secretary to be elected annually by the Trustees by ballot, and to hold office during the pleasure of the Board and until the election of their successors. The same person may hold the offices of Treasurer and Secretary if the Trustees shall so determine. The Treasurer may be required to give such security for the faithful discharge of the duties of his office as the Board of Trustees shall from time to time prescribe. The President, Vice President and a Trustee to be named by the Board, shall constitute an Executive Committee, to whom shall be entrusted all powers that may be lawfully delegated, and such committee may employ such agents, attorneys and other employees as in their judgment the business of the company may from time to time require; provided, that no change in the officers shall be made before the expiration of the time for which they may have been elected unless by an affirmative vote of two-thirds of all the Trustees of the Board.

Sec. 5. The President shall preside at all meetings of the Board of Trustees, and perform such other duties as naturally pertain to his office. In the absence of the President or his inability to act, his duties shall devolve upon the Vice President. The Treasurer shall have charge of all funds of the corporation, under the direction of the Executive Committee; he shall deposit all moneys, received from any source on account of or for the use of this company, in such bank or banking house, to the credit of the company, as shall be selected by the Trustees or Executive Committee. All checks or drafts upon any such fund exceeding two hundred dollars in amount shall be drawn by the Treasurer and countersigned by the President or one other member of the Executive Committee. The Treasurer shall be authorized at all times to make, sign, draw and endorse all checks, drafts or orders for the payment of money, for deposit in bank to the credit of the company, which may be required in

the ordinary course of business, and he shall pay all book accounts, book debts and demands (other than written obligations), after they shall have been approved by the Board or Executive Committee; and he shall pay all notes, drafts and other written obligations issued by the direction of the Board, as they shall mature. The books and accounts of the Treasurer shall be examined and audited at least once in six months by the Executive Committee, or an especial committee appointed by the Board. The Secretary shall notify the Trustees and stockholders of all meetings to be held, and keep correct minutes of the same, also in proper books the accounts of the business of the company, and perform such other duties as the Board or Executive Committee may require. He shall have general charge of the common seal and shall attend to the publication of the annual statement, as required by law. His books shall at all times be open to the inspection of the Trustees.

Sec. 6. All certificates of stock issued by the company shall be subscribed by the President and attested by the Treasurer, and shall be registered in a book, to be kept for that purpose in the office of the company, by the Secretary or Clerk, and every transfer of stock shall be made on the books of the company on surrender of the outstanding certificate, either by the holder in person or by attorney duly authorized in writing.

Sec. 7. The President, Treasurer and Secretary of the company shall receive for their services in their respective capacities, such salary or compensation as the Board shall from time to time fix by resolution.

Sec. 8. The contracts and obligations of the company shall be made and executed in such form and manner as the Board of Trustees may determine.

Sec. 9. The principal office of the company for the transaction of its business shall be in the city of New York; and the Board of Trustees may in their discretion upon compliance with the requirements of the law, re-establish or change the principal and other offices and places of business of the corporation.

Sec. 10. No dividends shall be made or paid except

from actual surplus profits, and all dividends shall be payable at the office of the company in the city of New York.

Sec. 11. The order of business at the meeting of the Board shall be:

1st. Reading and approval of the minutes of the previous meeting.

2d. Election of officers.

3d. Reports of officers.

4th. Reports of committees.

10

5th. Miscellaneous business.

Sec. 12. In case the absence of any officer of the company, the Board may designate some one of their number to perform the duties of such absent officer pro tem. during his absence.

Sec. 13. The Board of Trustees may hold stated, adjourned or special meetings at such times as they shall deem expedient or proper, or as shall be called by the President or any two Trustees.

Sec. 14. These by-laws, or any of them may be altered, 20 amended or repealed, or any new by-law not inconsistent with the laws of this State or of the United States, may be added thereto at any regular meeting of the Trustees by a vote of a majority of all the Trustees in office; provided, such proposed alteration, amendment or repeal or additional new by-law shall have been considered at a previous regular meeting of the Board of Trustees.

PLAINTIFF'S EXHIBIT P8.

BY-LAWS OF THE AMERICAN SAW CO. OF NEW
JERSEY.

30

I. Annual Meeting of Stockholders.

The annual meeting of the Stockholders of the Company shall be held at the office of the Company, in the

City of Trenton, at twelve o'clock, at noon, on the fourth Tuesday of January in each year, at which meeting a general report of the condition and affairs of the company shall be laid before the Stockholders by the President of the Company.

II. Board of Directors. Their Election, Etc.

The affairs of this Company shall be managed by a Board of Directors, consisting of nine Stockholders (a majority of whom shall constitute a quorum), to be elected
 10 at the annual meeting by such of the Stockholders as shall attend for that purpose, either in person or by proxy, and such election shall be held between the hours of twelve noon and two o'clock in the afternoon, and the polls shall remain open one hour, and such election shall be conducted as prescribed by law. Should any vacancy happen among the Directors from any cause, it may be filled for the remainder of the term by the remaining Directors by election or appointment, at a meeting of the Board, and in case it shall happen at any time that an
 20 election of Directors by the Stockholders shall not be made on the day designated by these By-Laws, the same shall be made by such of the Stockholders as shall attend for that purpose, either in person or by proxy, on such other days as shall be designated for that purpose by a resolution of the Board of Directors. Notice of the time and place of holding every such election by the Stockholders shall be published not less than ten days previous in the newspapers printed nearest to the place where the business of the Company shall be carried on.

30 III. Common Seal.

The Company shall have a Common Seal, which shall bear on its face the corporate name of the Company and the word Seal, 1893.

IV. Officers. Their Election, Etc.

The officers of the Company shall be a President, Vice President (who shall be Directors), Treasurer and Secretary, to be elected annually by the Directors by ballot, and to hold office during the pleasure of the Board and until the election of their successors; provided that no
 40 change in the officers shall be made before the expiration

of the time for which they may have been elected, unless by an affirmative vote of two-thirds of all the Directors of the Board. The same person may hold any two offices if the Board of Directors shall so determine, provided that the same person shall not hold the offices of President and Vice President. The Treasurer may be required to give such security for the faithful discharge of the duties of his office as the Board of Directors shall from time to time prescribe. The President, Vice President and a Director, to be named by the Board, shall constitute an Executive Committee, to whom shall be entrusted all powers that may be lawfully delegated, and such Committee may employ such Agents, Attorneys and other employees as in their judgment the business of the Company may from time to time require.

V. Duties of Officers.

The President shall preside at all meetings of the Board of Directors, and perform such other duties as naturally pertain to his office.

In the absence of the President, or his inability to act, his duties shall devolve upon the Vice President.

The Treasurer shall have charge of all funds of the corporation, under the direction of the Board or the Executive Committee. The Treasurer and Secretary, or either of them, shall be authorized at all times to make or endorse all checks, drafts, or orders for the payment of money for deposit in Bank, Banking House or Trust Company, which may be required in the ordinary course of business. All checks or drafts upon any such Bank, Banking House or Trust Company, shall be drawn by the Treasurer or President, and countersigned by the Secretary, or by a member of the Executive Committee. The Treasurer shall pay all book accounts, book debts and demands (other than written obligations), after they shall have been approved by the Board or Executive Committee, and he shall pay all notes, drafts, and other written obligations issued by the Directors or the Board as they shall mature. The books and accounts of the Treasurer shall be examined and audited at least once in

six months by the Executive or a Special Committee appointed by the Board.

The Secretary shall notify the Directors and Stockholders of all meetings to be held, and keep correct minutes of the same; also, in proper books, the accounts of the business of the Company. The Secretary or Treasurer shall sign any drafts or orders for the payment of money due by any debtor in the ordinary course of business, and perform such other duties as the Board or Executive Committee may require. He shall have charge of the Common Seal, and shall attend to the publication of the several statements as required by law. His books shall at all times be open to the inspection of the Directors.

VI. Certificates of Stock.

All certificates of stock issued by the Company shall be subscribed by the President and attested by the Treasurer, and shall be registered in a book to be kept for that purpose, in the office of the Company, by the Secretary or Clerk, and every transfer of stock shall be made on the books of the Company on surrender of the outstanding certificate, either by holder in person or by attorney duly authorized in writing.

VII. Salaries.

The President, Treasurer and Secretary of the Company shall receive for their services in their respective capacities such salary or compensation as the Board shall from time to time fix by resolution.

VIII. Contracts.

The contracts and obligations of the Company shall be made and executed in such form and manner as the Board of Directors may determine.

IX. Principal Office, and other Offices.

The principal office for the Company for the transaction of its business shall be in the City of Trenton, and the Board of Directors may, in their discretion, upon compliance with the requirements of the law, re-establish or change the principal and other offices and places of business of the corporation.

X. Dividends.

No dividends shall be made or paid except from actual

surplus profits; and all dividends shall be payable at the office of the Company in the City of Trenton. Dividends shall be declared semi-annually in the months of January and July.

XI. Order of Business.

The order of business at the meetings of the Board shall be:

1. Reading and approval of the minutes of previous meetings.
2. Election of Officers. 10
3. Reports of Officers.
4. Reports of Committees.
5. Miscellaneous Business.

XII. Absence of Officers.

In case of the absence of any officer of the Company, the Board may designate someone of their number to perform the duties of such absent officer *pro tem.* during his absence.

XIII. Directors' Meetings.

The Board of Directors may hold stated, adjourned, or 20 special meetings, at such times as they may deem expedient or proper, or as shall be called by the President or any two Directors.

XIV. Amendments.

These by-laws, or any of them, may be altered, amended or repealed, or any other or new by-laws not inconsistent with the laws of this State, or of the United States, may be added thereto at any annual meeting of the Stockholders, or at any special meeting called for that purpose.

DRAFT ON CUSTOMER.

PLAINTIFF'S EXHIBIT P8.

AMERICAN SAW CO.

\$..... TRENTON, N. J.....189...
.....At sight, (protest waived) Pay to
the order of.....
.....Dollars
Value received and charge the same to account of
as advised.
To..... } American Saw Company.
..... }
Treas.

