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Bill of Complaint.

BILL OF COMPLAINT.

Filed July 9, 1919.

In Chancery of New Jersey

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

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The complainant, George A. Smock, of the City of Asbury Park, Monmouth County, New Jersey, respectfully shows that:

(1) Complainant is the owner of three hundred and fifty-six (356) shares, of the par value of \$100 each, of the capital stock of Buchanon & Smock Lumber Company, a corporation of the State of New Jersey, whose total issued capital stock is nine hundred and ninety-one (991) shares. 20

(2) The president of said corporation is Harry W. Smock of said City of Asbury Park, and said corporation is under his control.

(3) The said corporation, Buchanon & Smock Lumber Company, has been requested by complainant to bring this action, but has refused to do so.

(4) Before and during the month of April, 1916, and from that time until the month of August, 1918, the said Harry W. Smock, now the president of said corporation, was a director thereof and in charge of the factory or mill department of said company, known in the business and books of said company and hereinafter called the "mill," and in the conduct and management of said mill received and disbursed large sums of money of the said corporation. The money received by him appeared on the general books of the company or on the mill department, petty cash and storage books kept at the mill, but no record of the moneys disbursed by him at the mill 30
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Bill of Complaint.

appears on the general books of the company. It was the duty of said Harry W. Smock to keep books showing the details of disbursements at the mill and he had books there in which he set forth disbursements made through the medium of petty cash or otherwise. Complainant has examined these books at the mill covering
10 a period from April 14, 1916, and assuming that they truthfully represent the cash received and disbursed, there is due from said Harry W. Smock to the said company for moneys received and not paid out by him the sum of \$2,417.28, or thereabouts, for the period between April 13, 1916, and April 30, 1919. From the books so examined by complainant it is impossible to tell what moneys were received by said Harry W. Smock in excess of the amounts paid out by him during the years
20 preceding April 14, 1916, during which he was in charge of said mill department, but judging from the books which complainant has been permitted to see he takes such sum to be a large one.

(5) Said Harry W. Smock has refused to account for the said sum of money appearing to be due from him for the period above mentioned between April 13, 1916, and April 30, 1919, and has refused to let complainant examine the books kept by him during the years preceding April 14, 1916, during which time he was in receipt of large sums of money to be used in the management of
30 said mill department.

(6) The said corporation will not produce or compel production of the books kept by said Harry W. Smock at said mill prior to January 1, 1917.

(7) Complainant by reason of the refusal of the corporation and said Harry W. Smock to produce or submit said books is unable to state the amount due from said Harry W. Smock to the corporation, but alleges on information and belief that said sum is large and in
40 excess of \$4,000.

Bill of Complaint.

Complainant is without adequate remedy in the courts of law and therefore prays (1) that Buchanon & Smock Lumber Company and Harry W. Smock, who are the defendants to this suit, may answer this bill of complaint, without oath, and each statement therein made.

(2) That an account may be taken of the moneys received by said Harry W. Smock while in charge of the mill department of said Buchanon & Smock Lumber Company, and of the disbursements made by him out of said moneys so received, and that all books kept by him at said mill department may be produced, with all other evidence tending to show receipts or disbursements by him. 10

(3) That said Harry W. Smock may be directed to pay to said Buchanon & Smock Lumber Company the amount so found due, with interest and costs.

(4) That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises. 20

McDERMOTT & ENRIGHT,
Solicitors of Complainant.

Answer of Defendant, Harry W. Smock.

ANSWER OF DEFENDANT, HARRY W. SMOCK.

Filed.

10 The defendant, Harry W. Smock, residing at Asbury Park, Monmouth County, New Jersey, answering the bill of complaint in the above cause says he admits the allegations of paragraph 1.

20 2. He admits the allegations of paragraph 2 that he is president of Buchanan & Smock Lumber Co., but denies that such corporation is under his control, but on the contrary charges that up to about August, 1918, the said corporation and the managment thereof in all its details was under the absolute control of the complainant, who used the same and its affairs in his own personal interest, using the finances thereof for purposes of his own and against the interest of said corporation and without its consent or knowledge with the result that about
30 August, 1918, after the said complainant had been apprehended in the act of abstracting monies from the cash register of said corporation unlawfully, at a meeting of the Board of Directors called for that purpose, said complainant was dismissed as President and Director thereof and a suit has been instituted in the Court of Common Pleas of Monmouth County against said complainant to recover from him the sum of \$400 monies unlawfully abstracted by him from the funds of said corporation.

3. The allegations of paragraph 3 are denied and on the contrary defendant charges that not only has said complainant never requested either the defendant Buchanan & Smock Lumber Co. or this defendant to bring the action instituted by said complainant herein, but has never intimated to this defendant or said corporation that he the said complainant had any grounds for bringing same.

40 4. He admits that he, this defendant, on or about August, 1918, became president of this corporation and was

Answer of Defendant, Harry W. Smock.

up to that time a director thereof and in charge of the mill department referred to as the "mill" and in the conduct and management thereof received and disbursed large sums of money. He denies that the monies received and expended by him do not appear on the books of the company or those of the mill department. He denies that it was the duty of defendant to keep books showing all details of disbursements owing to a custom and arrangement relating to the manner of keeping the petty cash account authorized by the corporation and the said complainant and practised with their full knowledge and consent; that the custom and procedure referred to was as follows:

The business of the defendant company was that of buying and selling lumber and manufacturing the same into mill work products such as sash, blinds, stairs, moulding, etc. That the management was conducted in three departments; one known as the lumber department, presided over by the complainant; another designated as the finance department and presided over by W. Harvey Jones, a director of said corporation and the third designated as the mill department and conducted by this defendant. That the three departments while together constituting the defendant corporation were conducted exclusively by the three executives as aforesaid respectively.

This defendant in the control and management of said mill department had a petty cash account which represented receipts of cash payments made to his department daily which said payments were entered in a small book, known as Cash Book, as were also payments made by this defendant for expenses in the conducts of said department. The monies representing said payments and the balance were kept by defendant in a small box in a drawer of his desk in his department as a petty cash fund and whenever said fund exceeded an amount that defendant considered unsafe to keep in his desk, protected

Answer of Defendant, Harry W. Smock.

only by a simple lock and key, the greater portion thereof was taken by him and placed in the department safe and there kept as a reserve or emergency fund and all sums so taken from the petty cash fund and placed in the safe as a reserve or emergency fund were charged in the petty cash book hereinbefore referred to. The custom and
10 practice relating to the petty cash and reserve fund as above recited had continued for some fifteen years with the consent and full knowledge of the defendant corporation and the complainant and the same practice and custom for a similar length of time had been pursued by the complainant in the conduct of the lumber department.

In the natural course of the business of the mill department there were many items of expense, necessitating the immediate payment of cash monies among which was one of sending workmen to distant parts of the country for
20 the purpose of setting up mill work contracted for and manufactured by defendant corporation which expenses were paid by this defendant in cash out of the reserve fund held in the safe of said department. There was no record kept of said payments in the petty cash book referred to herein as the cash book nor elsewhere, which fact was known to the complainant and said corporation and had been known by him and it during the continuation of said custom, which covered a period of
30 some fifteen years and was authorized by him and it and was likewise practiced by said complainant in the department over which he presided.

That the petty cash books in which were kept the daily records of monies received and expended as aforesaid are not all in the possession of this defendant; some defendant believes he can produce, but many have been thrown away and others have been mislaid. No attempt was ever made to preserve them. The said books or records were small account books about 6 inches long and 3 or 4
40 inches wide.

Answer of Defendant, Harry W. Smock.

This defendant further charges that it is impossible, owing to the inability of himself or the corporation to produce the successive books or records of said cash account, to render now or at any time an accounting of the monies received and expended by him in the management of said mill department, and likewise it is impossible to determine the actual amount of said reserve fund at any time because no record or account was kept of the disbursements of said reserve fund and because of this fact it is likewise impossible to determine how much and for what the monies of said reserve fund were disbursed. 10

Defendant denies the charge as made by complainant in his bill of complaint and denies the inferences and imputations to be drawn from charges therein made that he has at any time unlawfully or dishonestly abstracted funds of the defendant corporation or of the complainant or that he has wrongfully used or expended said funds, but on the contrary charges that all monies which may have come into his hands and possession as an officer of the defendant corporation or its servants, or agent have at all times been honestly expended and disbursed in the lawful interest of the defendant corporation, the complainant and the stockholders thereof and that there is no money due from this defendant to the corporation nor to the complainant. 20

Defendant further charges and insists that in view of the premises and of the fact that the custom and practice relative to the cash and reserve funds and the disbursement thereof, hereinbefore recited, were fully known, authorized and consented to by the complainant and the defendant corporation and owing to the absolute inability and impossibility of this defendant, or any other person to render an accounting of the disbursements of said reserve fund and said petty cash, the result of the custom and practice authorized by the complainant as aforesaid and because of complainant's failure, notwithstanding 30 40

Answer of Defendant, Harry W. Smock.

ing full knowledge of the facts to undertake to compel defendant to render the accounting as demanded in complainant's bill of complaint until at or about the commencement of this action, no decree or order requiring this defendant to account should be made by this honorable Court, but on the contrary because of the premises the
10 complainant's bill should be dismissed.

5. The allegations of paragraph 5 are denied. On the contrary defendant charges that complainant has at all times had free and unmolested access to defendant's department, its books and accounts and has often examined said books and accounts and been fully conversant with the way and manner in which defendant's department was conducted, as well as the accounts thereof and at no time has said complainant ever objected to the manner in which defendant conducted said department, but on the
20 contrary as hereinbefore recited has authorized and acquiesced in defendant's said management in all its details.

6. Defendant denies the allegations in paragraph 6 and charges that the said corporation and this defendant have given complainant every opportunity to examine the books and accounts of the mill department.

7. The allegations of paragraph 7 are denied.

Defendant further answering charges that complainant
30 should be dismissed because the complainant has an adequate remedy at law and that that the subject matter of complainant's bill does not call for the exercise of the jurisdiction of our Chancery Court and defendant prays the same relief as though he had demurred to complainant's complaint and reserves the right to object to said bill of complaint on motion in lieu of demurring on the ground that it discloses no cause of action.

PATTERSON & RHOME,
Solicitors of Defendant, Harry W. Smock.

Amendment to Answer of Defendant, Harry W. Smock.

**AMENDMENT TO ANSWER OF HARRY W. SMOCK,
DEFENDANT.**

Filed.

By way of counter-claim against complainant this defendant says:

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1. That the complainant is indebted to the defendant, Buchanon & Smock Lumber Company in the sum of four hundred dollars, moneys unlawfully taken by him from the funds of said Buchanon & Smock Lumber Company to recover which suit has been instituted in the Court of Common Pleas of Monmouth County, and in addition thereto the said complainant is indebted to said defendant, Buchanon & Smock Lumber Company for moneys received by him as treasurer of said defendant and otherwise, and not accounted for, in an amount unknown at this time to this defendant, but this defendant from the information he has judges that said sum is a large one.

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2. That said complainant while the treasurer and a director of said defendant corporation did use its finances and its name for his own purposes and against the interest of said defendant corporation and without its knowledge or consent.

3. That there are certain obligations as this defendant is informed and believes to be true contracted by the complainant in the form of promissory notes and otherwise, whereby said complainant has pledged the name of the defendant, Buchanon & Smock Lumber Company, as security for certain personal indebtedness of said complainant, all without the knowledge of said defendant, Buchanon & Smock Lumber Company.

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This defendant therefore prays:

1. That the said complainant may answer this counter-claim and each statement herein made.

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Replication to Amendment to Answer.

2. That said complainant may be decreed to account for all moneys received and expended by him as treasurer of said Buchanon & Smock Lumber Company, or while acting or purporting to act in any capacity in relation to the business of said Buchanon & Smock Lumber Company.

10 3. That said complainant be decreed to discover and to account concerning any and all obligations he has incurred in his own interests in the name of said Buchanon & Smock Lumber Company.

4. That complainant may be decreed to pay to the defendant, Buchanon & Smock Lumber Company, the amount found to be due on said accounting.

PATTERSON & RHOME,
Solicitors of Defendant, Harry W. Smock.

20 Service of the within amendment to answer is hereby acknowledged this 4th day of February, 1920.

McDERMOTT & ENRIGHT,
Solicitors of Complainant.

**REPLICATION TO AMENDMENT TO ANSWER OF
HARRY W. SMOCK, DEFENDANT.**

30 Filed February 17, 1920.

The complainant joins issue on the answer of said defendant.

As to the counter-claim contained in said amendment to answer of Harry W. Smock, defendant, complainant says:

Paragraphs 1, 2 and 3 are denied.

McDERMOTT & ENRIGHT,
Solicitors of Complainant.

Answer of Defendant, Buchanan & Smock Lumber Co.

**ANSWER OF DEFENDANT, BUCHANON & SMOCK
LUMBER COMPANY.**

Filed August 14, 1919.

The defendant, Buchanan & Smock Lumber Co., whose place of business is at Asbury Park, Monmouth County, New Jersey, answering the bill of complaint in the above cause, says they admit the allegations of paragraph one. 10

2. It admits the allegations of paragraph two that Harry W. Smock is president of Buchanan & Smock Lumber Co., but deny that such corporation is under his control, but on the contrary charge that up to about August, 1918, the said corporation and the management thereof in all its details was under the absolute control of the complainant, who used the same and its affairs in his own personal interest, using the finances thereof for purposes of his own and against the interest of this defendant and without its consent or knowledge with the result that about August, 1918, after the said complainant had been apprehended in the act of abstracting moneys from the cash register of this defendant unlawfully, at a meeting of the board of directors called for that purpose, said complainant was dismissed as president and director thereof and a suit has been instituted in the Court of Common Pleas of Monmouth County against said complainant to recover from him the sum of \$400, moneys unlawfully abstracted by him from the funds of this defendant. 20 30

3. The allegations of paragraph three are denied and on the contrary defendant charges that not only has said complainant never requested either the defendant, Henry W. Smock, or this defendant to bring the action instituted by said complainant herein, but has never intimated that he, the said complainant, had any grounds for bringing same until after complainant had been apprehended abstracting corporate funds. 40

Answer of Defendant, Buchanan & Smock Lumber Co.

4. It admits that defendant Harry W. Smock, on or about August, 1918, became president of this corporation and was made up to that time a director thereof and in charge of the mill department referred to as the "mill," and in the conduct and management thereof received and disbursed large sums of money. It denies that it was
10 the duty of defendant Harry W. Smock to keep books showing all details of disbursements owing to a custom and arrangement relating to the manner of keeping the petty cash account authorized by the corporation and the said complainant and practised with their full knowledge and consent; that the custom and procedure referred to was as follows:

The business of the defendant company was that of buying and selling lumber and manufacturing the same into mill work products such as sash, blinds, stairs,
20 moulding, etc. That the management was conducted in three departments; one known as the lumber department, presided over by the complainant, another designated as the finance department and presided over by W. Harvey Jones, a director of said corporation and the third designated as the mill department and conducted by Harry W. Smock. That the three departments while together constituting the defendant corporation, were conducted exclusively by the three executives as aforesaid respectively. That the complainant, the defendant Harry W.
30 Smock and W. Harvey Jones are the sole stockholders of said corporation, each owning approximately one-third of the total stock.

The defendant, Harry W. Smock, in the control and management of said mill department had a petty cash account which represented receipts of cash payments made to this department daily which said payments were entered in a small book known as cash book, as were also payments made by defendant, Harry W. Smock, for expenses in the conduct of said department. The moneys rep-
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Answer of Defendant, Buchanon & Smock Lumber Co.

resenting said payments and the balance were kept by defendant Harry W. Smock in a small box in a drawer of his desk in his department, as a petty cash fund, and whenever said fund exceeded an amount that the defendant, Harry D. Smock considered unsafe to keep in his desk, protected only by a simple lock and key, the greater portion thereof was taken by him and placed in the department safe and there kept as a reserve or emergency fund, and all sums so taken from the petty cash fund and placed in the safe as a reserve or emergency fund were charged in the petty cash book hereinbefore referred to. The custom and practice relating to the petty cash and reserve fund as above recited had continued for some fifteen years with the consent and full knowledge of this defendant and the complainant and the same practice and custom for a similar length of time had been pursued by the complainant in the conduct of the lumber department.

In the natural course of the business of the mill department there were many items of expense, necessitating the immediate payment of cash moneys among which was one of sending workmen to distant parts of the country for the purpose of setting up mill work contracted for and manufactured by defendant corporation which expenses were paid by defendant, Harry W. Smock, in cash out of the reserve fund held in the safe of said department. There was no record kept of said payments in the petty cash book referred to herein as the cash book nor elsewhere, which fact was known to the complainant and this defendant, and had been known by him and it during the continuation of said custom, which covered a period of some fifteen years and was authorized by him and it was likewise practiced by said complainant in the department over which he presided.

That the petty cash books in which were kept the daily records of moneys received and expended as aforesaid, are not all in the possession of the defendant, Harry W.

Answer of Defendant, Buchanon & Smock Lumber Co.

Smock; some defendant Harry W. Smock believes he can produce, but many have been thrown away and others have been mislaid. The said books or records were small account books about six inches long and three or four inches wide.

10 This defendant further charges that it is impossible, owing to the inability of the defendant, Harry W. Smock, or this defendant, to produce the successive books or records of said cash account, to render now or at any time an accounting of the moneys received and expended by defendant, Harry W. Smock, in the management of said mill department, and likewise it is impossible to determine the actual amount of said reserve fund at any time because no record or account was kept of the disbursements of said reserve fund and because of this fact it is likewise impossible to determine how much and for what
20 the moneys of said reserve fund were disbursed.

Defendant denies the charge as made by complainant in his bill of complaint and denies the inferences and imputations to be drawn from charges therein made that defendant, Harry W. Smock, has at any time unlawfully or dishonestly abstracted funds of this defendant or of the complainant or that defendant Harry W. Smock has wrongfully used or expended said funds, but on the contrary charges that all moneys which may have come into
30 his hands and possession as an officer of the defendant corporation, or its servant or agent, have at all times been honestly expended and disbursed in the lawful interest of this defendant, the complainant and the stockholders of defendant corporation and that there is no money due from defendant Harry W. Smock to this defendant nor to the complainant.

Defendant further charges and insists that in view of the premises and of the fact that the custom and practice relative to the cash and reserve funds and the disbursement thereof, hereinbefore recited, were fully known,
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Answer of Defendant, Buchanon & Smock Lumber Co.

authorized and consented to by the complainant and this defendant and owing to the absolute inability and impossibility of this defendant or any other person to render an accounting of the disbursements of said reserve fund and said petty cash, the result of the custom and practice authorized by the complainant as aforesaid, and because of complainant's failure, notwithstanding full knowledge 10 of the facts, to undertake to compel defendant to render the accounting as demanded in complainant's bill of complaint until at or about the commencement of this action, no decree or order requiring this defendant or Harry W. Smock to account should be made by this Honorable Court, but on the contrary, because of the premises, the complainant's bill should be dismissed.

5. The allegations of paragraph five are denied. On the contrary defendant charges that complainant has at all times had free and unmolested access to defendant's departments, its books and accounts, and been fully conversant with the way and manner in which defendant, Harry W. Smock's, department was conducted as well as the accounts thereof, and at no time has said complainant ever objected to the manner in which defendant conducted the department, but on the contrary as hereinbefore stated, has authorized and acquiesced in defendant, Harry W. Smock's, said management in all its details. 20

6. Defendant denies the allegations in paragraph six and charges that the said corporation, this defendant, and the defendant Harry W. Smock, have given complainant every opportunity to examine the books and accounts of the mill department. 30

7. The allegations of paragraph seven are denied.

Defendant further answering charges that complainant should be dismissed because the complainant has an adequate remedy at law and that the subject matter of complainant's bill does not call for the exercise of the jurisdiction of our Chancery Court and defendant prays 40

Amendment to Answer of Buchanon & Smock Lumber Co.

the same relief as though he had demurred to complainant's complaint and reserves the right to object to said bill of complaint on motion in lieu of demurring on the ground that it discloses no cause of action.

PATTERSON & RHOME,
Solicitors.

10

A true copy,

JESSE R. SALMON,
Clerk.

We consent to filing hereof as in time. Aug. 12, 1919.
Copy rec'd.

McDERMOTT & ENRIGHT,
Solicitors of Complainant.

20

**AMENDMENT TO ANSWER OF BUCHANON & SMOCK
LUMBER COMPANY, DEFENDANT.**

Filed.

By way of counter-claim against complainant this defendant says:

30 1. That the complainant is indebted to this defendant in the sum of four hundred dollars, moneys unlawfully taken by him from the funds of this defendant to recover which suit has been instituted in the Court of Common Pleas of Monmouth County, and in addition thereto the said complainant is indebted to this defendant for moneys received by him as treasurer of this defendant and otherwise, and not accounted for, in an amount unknown at this time to this defendant, but this defendant from the information it has judges that said sum is a large one.

40 2. That said complainant while the treasurer and a director of defendant's corporation did use its finances

Amendment to Answer of Buchanon & Smock Lumber Co.

and its name for his own purposes and against the interest of this defendant and without its knowledge or consent.

3. That there are certain obligations as this defendant is informed and believes to be true contracted by the complainant in the form of promissory notes and otherwise, whereby said complainant has pledged the name of this defendant as security for certain personal indebtedness of said complainant, all without defendant's knowledge.

This defendant therefore prays:

1. That the said complainant may answer this counterclaim and each statement herein made.

2. That said complainant may be decreed to account for all moneys received and expended by him as treasurer of defendant's company, or while acting or purporting to act in any capacity in relation to defendant's business.

3. That said complainant be decreed to discover and to account concerning any and all obligations he has incurred in his own interests in the name of this defendant.

4. That complainant may be decreed to pay to this defendant the amount found to be due on said accounting.

JOHN S. APPLEGATE & SON,
Solicitor of Defendant,
Buchanan & Smock Lumber Company.

Service of the within amendment to answer is hereby acknowledged this 4th day of February, 1920.

McDERMOTT & ENRIGHT,
Solicitors of Complainant.

Replication to Amendment to Answer.

**REPLICATION TO AMENDMENT TO ANSWER OF
BUCHANON & SMOCK LUMBER COMPANY.
DEFENDANT.**

Filed February 17, 1920.

10 Complainant joins issue on the answer of said defendant, Buchanon & Smock Lumber Company.

As to the counter-claim contained in said amendment to answer, complainant says:

1. Paragraph 1 is denied.
2. Paragraph 2 is denied.
3. Paragraph 3 is denied.

In reply to the defenses stated in said amendment to answer and not anticipated in the bill of complaint, complainant, by leave of the Court says that:

20 1. Complainant is not guilty of the charges set forth by way of counter-claim, but admits that there is an open account between said defendant corporation and complainant and hereby tenders himself ready and willing to account to said defendant corporation, and insists that said defendant corporation shall account to him for all matters open and unsettled between them, whether such claims on the part of said defendant corporation be
30 against this complainant in his capacity as treasurer, director or officer of defendant corporation, or as an individual, and whether the claims of complainant against said defendant corporation be within the allegations of said answer by way of counter-claim or not.

2. Defendant, Buchanon & Smock Lumber Company, is indebted to complainant for salary as president of said defendant corporation, for services rendered said defendant corporation, for moneys advanced to and for said corporation, for moneys paid for said defendant corporation, and for moneys otherwise due and owing to him
40 from said defendant corporation, for all which com-

Answer to Replication Setting Up New Matter.

plainant demands that the defendant corporation account to him, to the end that a full, complete and final accounting of all matters and things of every kind and character whatsoever between said defendant corporation and this complainant may be had, this defendant tendering himself ready and willing to account to said defendant corporation for and in relation to all such matters and things. 10

McDERMOTT & ENRIGHT,
Solicitors of Complainant.

**ANSWER TO REPLICATION SETTING UP NEW
MATTER.**

Filed. 20

Defendant, Buchanon & Smock Lumber Company, in answer to the matters contained in complainant's replication to amendment to answer of said Buchanon & Smock Lumber Company, defendant, says it denies the allegations contained in paragraphs 1 and 2.

PATTERSON & RHOME,
Solicitors of Defendant,
Buchanan & Smock Lumber Co. 30

Opening.

IN CHANCERY OF NEW JERSEY.

Between

GEORGE A. SMOCK,

Complainant,

10

and

BUCHANON & SMOCK LUMBER COM-
PANY and HARRY W. SMOCK,

Defendants.

Transcript of testimony in the above entitled cause before Hon. John E. Foster, Vice-Chancellor, at the Chancery Chambers, Long Branch, New Jersey, on November 28, 1919, at 10:30 A. M.

20 *Appearances:*

Mr. Frank P. McDermott, of McDermott & Enright, for complainant.

Mr. J. Otto Rhome and Mr. John S. Applegate for defendants.

30 *The Court.* It being represented to the Court that the defendants may wish to amend the answers filed, by setting up the statute of limitations, if you should desire to make application at the proper time, before the close of the case, by giving you leave to plead the statute of limitations, I will consider it in connection with the rest of the case, and see whether it should be granted.

Mr. Applegate. Either Wednesday afternoon or Thanksgiving, Mr. Harry Smock, at my direction, made a most exhaustive search for any books and papers that he might find relative to the subject matter, and he found some books that Mr. McDermott had called for, but which were not submitted to Mr. McDermott.

40 *Mr. McDermott.* You found others?

Harry W. Smock, direct.

Mr. Applegate. Yes, between 1915 and—further books.

Mr. McDermott. I gave Mr. Rhome a notice to produce a letter written by me to his firm June 26, 1919.

Mr. Rhome. I consent to the use of the copy.

Mr. McDermott. I offer the copy in evidence.

(Marked Exhibit C. 1.)

10

Mr. McDermott. I also offer Mr. Rhome's reply, written to Exhibit C. 1, dated June 27, 1919.

(Marked Exhibit C. 2.)

(Letter read.)

HARRY W. SMOCK, one of the defendants, sworn for complainant.

Direct examination by Mr. McDermott.

Q You are now the president of the Buchanon & Smock Lumber Company? A Yes, sir.

20

The Court. Are you related to George A. Smock, the complainant?

The Witness. Yes, sir.

The Court. What is the relationship?

The Witness. Brother.

Q You were subpoenaed to bring the petty cash books of the mill department of the company; have you brought those? A I have all that are available; all that I could find.

30

Q Will you produce them? A Yes, sir.

The Court. The witness has produced a number of books.

Q From what period do the books which you have produced run? The beginning period, Mr. Smock. A I don't know of any here back of 1914.

40

Harry W. Smock, direct.

The Court. They run consecutively from 1914 to date, do they?

The Witness. I am not sure of that. I misunderstood. I had a copy of the paper served, and that called specifically for from April, 1916, to August, 1918. Yes, I have.

10 *The Court.* Have you produced all these petty cash books which Mr. McDermott called for, that are in your possession or under your control, of which you have knowledge?

The Witness. Yes, sir, every one.

Q I show you book running, apparently, from October 20, 1913, to February 3, 1914; what is that book known as in the mill department? A Petty cash book.

(Book offered and marked Exhibit C. 3.)

20 Q Next in date, apparently, is book February 5, 1914, to July 31, 1914; is that a book of the same character? A Yes.

Q Used by you in the mill department? A Yes.

(Book offered in evidence and marked Exhibit C. 4.)

A (Continuing.) It is used by the company; I haven't kept these books personally, you know.

30 *The Court.* They were used in the mill department of the company?

The Witness. Yes.

The Court. While under your supervision?

The Witness. Yes.

Q The next appears to be August 1, 1914, to January 30, 1915; is that a book of the same character? A Yes.

(Book offered in evidence and marked Exhibit C. 5.)

40

Harry W. Smock, direct.

Q Book, February 1, 1915, to April 16, 1915; is that a book of the same character? A Yes.

(Book offered in evidence and marked Exhibit C. 6.)

Q The next I find is from June 11, 1915, to July 23, 1915; is that a book of the same character? A Yes. 10

(Book offered in evidence and marked Exhibit C. 7.)

Q The next is July 24, 1915, to September 23, 1915; is that a book of the same character? A The same character.

(Book offered in evidence and marked Exhibit C. 8.)

Q Next, September 23, 1915, to December 14, 1915; 20 is that a book of the same character? A The same.

(Book offered in evidence and marked Exhibit C. 9.)

Q Next, December 15, 1915, to March 27, 1916; is that a book of the same character? A Yes.

(Book offered in evidence and marked Exhibit C. 10.)

Q The next book I show you apparently runs from 30 March 27, 1916, to June 15, 1916; is that a book of the same character? A Yes, sir.

(Book offered in evidence and marked Exhibit C. 11.)

Q Next, June 15, 1916, to September 20, 1916; is that a book of the same character? A Yes, sir.

(Book offered in evidence and marked Exhibit C. 12.)

Harry W. Smock, direct.

Q Next, September 20, 1916, to January 1, 1917; is that a book of the same character? A Yes.

(Book offered in evidence and marked Exhibit C. 13.)

10 Q Next, January 1, 1917, to May 26, 1917; is that a book of the same character? A Yes.

(Book offered in evidence and marked Exhibit C. 14.)

Q Next, May 26, 1916, to November 3, 1917; is that a book of the same character? A Yes, the same.

(Book offered in evidence and marked Exhibit C. 15.)

Q Next, November 3, 1917, to January 23, 1918; is that a book of the same character? A Yes, sir.

20 (Book offered in evidence and marked Exhibit C. 16.)

Q I show you another book, of a different size, running from January 24, 1918, to August 17, 1918, and ask you if that is a book of the same character? A Yes, sir.

(Book offered in evidence and marked Exhibit C. 17.)

30 Q Another book running from August 17, 1918, to May 1, 1919; is that a book of the same character? A The same.

(Book offered in evidence and marked Exhibit C. 18.)

Q Another, which, I take it, is the last one, running from May 1, 1919, to November 25, 1919; is that a book of the same character? A Yes.

40 (Book offered in evidence and marked Exhibit C. 19.)

Harry W. Smock, direct.

Q Is the last, Exhibit C. 19, the book now in use by the company, in connection with the mill department?

A Yes, sir; it is just about filled; it is the current book.

Q With the exception of the period between April 16, 1915, and June 11, 1915, these books seem to be a continuous series from October 20, 1913, to date? A Yes.

Q Do you know where the book is covering the period between April 16, 1915, and June 11? A I do not. 10

Q These books were kept in the mill department, were they, of the Buchanon & Smock Lumber Company? A Yes.

Q During that period? A Yes, sir.

Q Kept under your supervision? A Under my supervision. The mill department was under my supervision.

Q And the bookkeeping, of course, was under your supervision? A Certainly. 20

Q I call your attention to your answer filed in this case, the answer of the defendant Harry W. Smock—

The Court. It is not in yet, I presume, and not called for?

Mr. McDermott. No, sir.

Q I call your attention to page 2, about ten lines from the bottom, reading as follows: "The business of the defendant company was that of buying and selling lumber and manufacturing same into mill work products, such as sash, blinds, stairs, moulding, etc.; that the management was conducted in three departments; one known as the lumber department, presided over by the complainant; another designated as the finance department, and presided over by W. Harvey Jones, a director of said corporation, and the third designated as the mill department, and conducted by this defendant; that the three departments, while together constituting the defendant corporation, were conducted exclusively by the 30 40

Harry W. Smock, direct.

three executives as aforesaid, respectively"; that is true, is it not? A It is true, yes. Of course, the last clause, if your Honor please, I scarcely know how to answer that by yes or no.

The Court. You are not obliged to if you give a responsive answer.

10 *The Witness.* It states that they were conducted exclusively by the three executives as aforesaid, respectively, that had charge of those various departments.

Mr. McDermott. This is his answer filed in this case. I am asking whether his answer filed in this cause is true or not. I submit that is something he can answer without a long statement.

20 *The Court.* Does that statement contained in your answer, to which your attention has been directed, correctly state the fact as to the management of those respective departments?

The Witness. As far as the management goes, yes; but in my department, for instance, I did not keep the books of the general accounts.

30 *The Court.* That would not follow, that because it was under your management, you did. You probably had various assistants. No more than you drove the wagons to drive out the mill stuff.

Mr. McDermott. If that is what he means.

The Court. I place that construction on it; you managed that department the same as the other gentlemen managed theirs, and they had assistants in doing so, and no doubt did, and unless there was some exception to it, you would be held responsible for their conduct under your management.

40 Q I read the next sentence of your answer: "This defendant in the control and management of said mill

Harry W. Smock, direct.

department had a petty cash account which represented receipts of cash payments made to his department daily which said payments were entered in a small book, known as Cash Book, as were also payment made by this defendant for expenses in the conduct of said department." Is that true? A Yes.

Q This is the answer filed by you in this case. Mr. Smock, that I am calling your attention to; I would like to know if it is true? A Yes, it is true. 10

Q And are the books that are there referred to, those books which you have produced and I have offered this morning? A Yes.

Q I again call your attention to a statement in the answer, following what I read a moment ago: "The moneys representing said payments and the balance were kept by defendant in a small box in a drawer of his desk in his department, as a petty cash fund, and whenever said fund exceeded an amount that defendant considered unsafe to keep in his desk, protected only by a simple lock and key, the greater portion thereof was taken by him and placed in the department safe and there kept as a reserve or emergency fund, and all sums so taken from the petty cash fund and placed in the safe as a reserve or emergency fund were charged in the petty cash book hereinbefore referred to." Is that true? A That is true. 20 30

Q And that is the item which in these books appears at frequent intervals as "reserve"? A Yes.

Q With the amount carried opposite? A Yes.

Q On the right-hand side of those books as well as on the left? A Yes.

Q Whenever there are items in the books, occurring at intervals, in which on the left there appears "Reserve fund," stating the amount, those represent items drawn by you from the reserve fund and indicated in your book?

A That is a fact; yes, sir. 40

Harry W. Smock, direct.

Q I go further down the page, Mr. Smock: "In the natural course of business of the mill department there were many items of expense, necessitating the immediate payment of cash moneys among which was one of sending workmen to distant parts of the country for the purpose of setting up mill work contracted for and manufactured by defendant corporation which expenses were paid by this defendant in cash out of the reserve fund held in the safe of said department. There was no record kept of said payments in the petty cash book referred to herein as cash book nor elsewhere"—is that true? A They weren't retained.

Q What? A They were not retained; there was a record kept of them temporarily, that is all.

Q "There was no record kept of said payments in the petty cash book referred to herein as the cash book nor elsewhere"—is that true?

The Court. You said there were records kept, but not preserved.

The Witness. Just temporarily, I meant, by that. When those moneys were paid—if you will allow an explanation—when those moneys were turned over to those workmen referred to, they rendered to me the amount of their expenditures, but I did not retain those amounts.

Q Nor did you enter it in any book? A I did not, sir.

Q You did not enter it in any book? A No, sir.

The Court. How was the company at that time informed, then, that you had made such expenditure?

The Witness. The company was not informed.

The Court. Were those expenditures at all large in amount?

Harry W. Smock, direct.

The Witness. Sometimes.

The Court. For instance, what would be the sums?

The Witness. It would depend upon the distance.

The Court. Can you state a maximum?

The Witness. I think the maximum amount that I ever gave any man at one time was \$125. I don't recall any larger than that. 10

Q Did any of those items go for your own personal expenses of the same character? A Yes.

Q Then, of course, you had opportunity to enter the exact amount? A Yes, sir.

Mr. Applegate. What do you mean by personal expenses?

Q And did not do it; you did not make such entries? 20
A You mean my personal expenses when I was traveling for the company?

Q Yes, and drawn out of the reserve fund. A Yes, sir.

Q You did not make any entries of those? A No.

The Court. He asked you any personal expenses of yours?

The Witness. Pardon me; I would say absolutely no. 30

The Court. Do you understand the question? You say no, and you have said yes, in a qualified way.

Q You mean you didn't keep any account of them; you didn't make any entry in your books?

Mr. Applegate. You say any personal expenses. He does not mean board bills at home and things of that kind. 40

Harry W. Smock, direct.

Mr. McDermott. I don't mean his personal expenses at his house; I am asking him about his personal expenses when he, as the agent of the company, went out of town for the company.

The Court. Were they entered in the book?

The Witness. They were not.

10 *The Court.* Or any record made of them elsewhere?

The Witness. Not that was permanently kept.

The Court. When you say "permanently," was a record made and kept for any time?

The Witness. May I show how I did it?

The Court. Yes, we want to know.

The Witness. That is the way my record was kept of my expenses.

20 *The Court.* Personal expenses connected with the management of your department?

The Witness. Yes.

Q This is a late one, 1919? A Yes, that is an illustration.

(Paper produced and marked Exhibit C. 19 for identification.)

30 Q This (C. 19 iden.) you say is a late exhibit, February, 1918? A Yes.

Q During 1919 you have been entering the reserve fund in those books, anyway? A Yes.

The Court. Your personal expenses as well?

The Witness. Everything.

The Court. Then you had two records, the slip marked for identification and the entries in the book?

The Witness. Yes.

Harry W. Smock, cross.

Q When did you change your system so as to embrace— A Sometime in January, 1918.

Q You say that from January, 1918, you have kept in these books a statement of what was taken and disbursed from the reserve fund? A Yes.

Q But never before? A No, sir.

The Court. For either personal expenses or otherwise? 10

The Witness. No.

The Court. Mr. McDermott is asking you the particular question, whether prior to 1918 you kept in these books any record of your disbursements from the reserve account for personal—

Mr. McDermott. I don't mean to limit it to his personal expenses; I mean to include in my question, Mr. Smock, the payment of the expenses of yourself or anyone else in the employ of the company, from the reserve fund. 20

The Court. These books do not contain any entry of yours?

The Witness. Prior to that they do not.

Q You say they do since then? A Yes.

Cross examination by Mr. Applegate.

Q Have you the subpoena that was served upon you to produce these books? A I have (producing same). 30

Mr. Applegate. We offer the subpoena in evidence.

(Marked Exhibit D. 1.)

Q And this subpoena asks you to produce all cash books and petty cash books of the mill department of the company; also the storage cash books of said company, or similar books kept in said mill department, from January 1, 1914, to date; also, your personal bank books 40

Harry W. Smock, cross.

or bank pass books, check books, and check stub books, and checks from January 1, 1914, to date. Now, referring to the company's books which you are asked to produce, under this subpoena, you have produced all that you were asked to produce of the company's books? A I have, sir, produced all of the company's books that were
10 in my possession.

Q With the exception of three months, you have produced—from April 16, 1915, to July 23, 1915—with that exception you produce all that you were asked to produce of the company's books? A I have.

Q And you have, in addition, produced company's books that you were not asked to produce, have you not? You have books there of 1913? A Yes.

Q Your answer, then, is what? A Yes.

Q Have you produced all the company's books that
20 you could find? A I have.

Q Have you made a thorough search, in your endeavor to find the books of the company? A I made several searches.

Q And have others searched for them besides? A Yes.

By the Court.

Q Where were these books kept which you have pro-
30 duced? A Your Honor, the books from some time in the middle of 1916 up to the present time, were in this drawer where we ran this little petty cash account.

Q In the mill department? A Yes, sir; and the balance of them I did not find until yesterday morning, and they were in the closet way in under the stairs, through which I had looked before, but had not moved out some of the things, and found them there. The closet, a place where we placed a lot of things that are
40 of no further value—so considered.

Harry W. Smock, cross.

Q The three departments, are they all carried on from the one office in the one building, or are the buildings and offices and departments detached or long distance from each other? A The mill department is on the block in the rear of the lumber and hardware department.

Q Is there a separate office in connection with it? A Yes, sir.

10

Q And the transactions of that department, are they taken and transferred in some way to the main office of the company? A All of the general books are kept in the main office of the company.

Q Which is on the same plot of ground? A On another block.

Further examination by Mr. Applegate.

Q Under the same roof? A No.

Q Different buildings? A Yes, a block apart.

Q Mr. Smock, in regard to books, book of 1913, relating to the company, have you searched for such books? A I have.

20

Q Were you able to find any? A I was not.

The Court. Relating to the company in connection with this subpoena?

Q Relating to the mill department, even outside of the subpoena, but relating to the subject matter of this suit, have you searched for such books? A I have; I made a search for any books relative to the company.

30

Q You have produced here all that you have been able to find? A All that I have been able to find.

The Court. In whose handwriting are the entries in this petty cash books that have been marked; in the handwriting of yourself or book-keeper?

The Witness. There are a few entries which were made by myself. These books are kept by one of the employees of the establishment.

40

Harry W. Smock, cross.

Q Of that department? A Of that department.

Q And the same employee made all the entries in the different books, or different employees? A Different employees, depending upon which one happened to be in the office.

10 Q Depending on that as well as having one succeed the other? A No, depending upon which one was in the office at the time of the transaction.

Q You had charge of the mill department, you say? A Yes.

Q What was the nature of your duties with relation to the mill department? A General supervision of the entire business pertaining to the mill end of the business, manufacturing end.

20 Q Tell us what the mill end of the business was; what do you mean? A The mill end of the business is the plant in the block attached thereto, where we manufacture.

The Court. You purchase and manufacture?

The Witness. Yes.

Q Manufacture what? A Interior work, sash and doors, frames.

Q In connection with your mill department did you have occasion to set up the work which you manufactured?

30 A Occassionally; we didn't do a great deal of setting, but we did in some cases.

Q You referred in your direct testimony, to expenses of men paid by you; to what did that relate, that expense money? A That reference to expense money paid by me to men related very largely to the expense of men going to the various operations in order to obtain measurements from which to manufacture the materials.

Q For which you were given orders? A For which we had orders or contracts.

The Court. Also setting up occasionally?

40 *The Witness.* Yes, sir; occasionally.

Harry W. Smock, cross.

Q Before your work was completed? A Yes, sir.

The Court. You said the entries were made by several employees, the one who happened to be in at the time the transaction occurred; from whom would he get the data from which to make the entry, or how would he get it?

10

The Witness. These books were kept there and I think I can answer that question, your Honor, better by an illustration.

Mr. Applegate. I was going to have him explain the system.

The Court. I will withdraw my question for the present.

Q It was part, then, of your duties to supervise the mill department, which included the manufacturing work and the steps necessary in preparing that manufacturing work for delivery, is that so? A Yes.

20

Q And what other departments were there of the corporation besides your department? A Lumber department and the hardware.

The Court. Finance, you said; you divided it into three—lumber, finance and mill. State whatever the fact is, lumber and hardware or finance and hardware.

The Witness. The three departments of which the officers had charge were stated there—the finance, the lumber and the mill.

30

The Court. The lumber, under the complainant's management, Mr. Smock; the finance, under Mr. Jones' management, and the mill, under Mr. Harry Smock's management.

The Witness. Correct.

Q Who had the hardware? A That was under Mr. George Smock, and embraced in the lumber department.

40

Harry W. Smock, cross.

The Court. Make it, then, lumber and hardware.

Q Who was president of the corporation during the period of time between 1913 and 1918?

Mr. McDermitt. I object as not proper cross examination. This is an adverse witness.

10 *The Court.* It is outside of the scope of the examination.

Mr. Applegate. I withdraw the question.

Q Going back to your mill department, of which you had charge, were there many occasions when it was necessary to send men out of town to make measurements preparatory to constructing your mill work according to order?

A Yes.

20 Q How extensive were those trips; how frequent; for instance, where did you have occasion to send men? A do you wish me to answer that just as the places come to my mind?

Q Where did you send them to?

The Court. Give the most remote point or nearest point.

30 A We have had contracts where it was necessary to send men up into northern Vermont, a number in Virginia, a number in New York State, various parts, and in Pennsylvania.

The Court. You say that occurred quite frequently?

The Witness. Oh, yes, sir. I might say it occurs all the time. There isn't any time during the progress of our business but what we have operations of this character at a distance.

40 Q Now, calling your attention to your system of book-keeping in the mill department—

Harry W. Smock, cross.

The Court. That is in relation to the cash, I suppose?

Mr. Applegate. In relation to anything.

Q (Continuing.) —did you have any other system of bookkeeping than that illustrated by the petty cash books that you have produced here? A We have a department which is a part of the mill department, of the storage business, where we had to have a separate set of books. 10

Q But that related to the storage business only? A Yes, but it was carried in connection with these books.

Q Did you have any general bookkeeping system other than represented by the petty cash system that you have explained here? A We did not.

Q Where was the general bookkeeping department? A In the main office; we called it the main office, a block away.

The Court. That would come under the control of the finance department? 20

The Witness. Not the bookkeeping.

Q Who had charge of the bookkeeping department of the corporation? A George A. Smock.

Q Won't you explain, please, how and for what you received moneys which you entered in the cash books which you have produced here? A The moneys which were entered in those books were received for the sales of materials— 30

Q In what department? A In the mill department only—for materials or work, as the case might be, for our customers who wished to settle for materials or for work in cash.

Q Then did they represent cash sales? A Cash sales.

Q When you had completed your work of setting up mill work that had been manufactured and sent out to these distant places to which you referred a moment ago 40

Harry W. Smock, cross.

—like Vermont and other places, how were the bills of such work paid? A They were paid to the main office; we didn't have the handling of that part of it at all.

Q Then such items did not pass through your hands at all? A They did not.

10 *The Court.* That is, payments by the purchasers or contractors?

The Witness. Yes.

Q The cash that you have referred to that came into your hands represented simply petty cash payments from day to day? A That is all.

Q Did that amount to much in daily transactions? A No.

The Court. What would you say the average would be?

20 *The Witness.* That is rather a hard question to answer. Some days there might be only a few cents, and other days it might amount to several dollars.

Q What would be the maximum amount of any day, the most you took in in any day, \$100 or \$1,000?

Mr. McDermott. The books are the best evidence.

30 *The Court.* That is true, but we are getting this as a general idea of the situation.

Q Was it one or one hundred thousand? A I don't think we ever received a hundred dollars in this petty cash way; just small petty cash operations.

The Court. Who received the moneys which you say were paid in daily?

40 *The Witness.* Moneys were received very largely by the employees of the office. It was very seldom that I ever took in any moneys personally. I

Harry W. Smock, cross.

did occasionally, personally, if I happened to be in the office. The only time that I really handled the money when it came in was when I happened to be in the office and the other employees happened to be out in the mill, or in the block waiting on someone else.

The Court. When you received the money, 10
what did you do with it?

The Witness. Put it in the cash books and entered it on these books.

The Court. When anyone else received money, what did they do with it?

The Witness. They did the same thing, so far as I saw or knew.

Q Who were the persons who were in the office in the period between 1914 and 1919, who handled these moneys and made these entries? A I cannot answer this question. 20

Q Are they working for you now? A Two of them are.

Q Who are they? A Mr. Hall and Mr. Jones; previous to that, Mr. Reed and Mr. Ridgway, who left our employ.

Q How long ago? A I think in 1915, I am not sure of that date. 30

Q The actual cash received by you or the men in your employ, what did they do with it? A They put it in this little drawer in the desk.

Q How long would it be left there? A That would depend upon how rapidly it accumulated.

Q What do you mean by that? A Well, if we had a few days of business that we took in considerable money, and the amount in that drawer was larger than we felt it should be safely left there, then they would take a part of it and give it to me. 40

Harry W. Smock, cross.

Q What would you do with it? A I would put it in the compartment in the safe in the office.

Q All the moneys you put in the drawer and the desk, so far as you know, were entered in these so-called petty cash books? A Everything.

10 Q And when the money accumulated in the drawer beyond a certain sum—how large a sum? A Well, usually they didn't leave over \$50 in the drawer, and oftentimes less.

Q Then when it would reach a sum over \$50, you would take some of it and put it in the safe? A Yes.

Q And still leave some in the drawer? A Yes, surely.

The Court. Would you make any entry in those books of the petty cash that was taken from the drawer and transferred to the safe?

The Witness. Yes.

20

Q And that amount that you took from the drawer and placed in the safe—which you called the reserve fund, I think? A Yes.

Q —is entered in the books? A Yes.

Q Or was entered? A Yes.

30 Q The moneys that you paid to the men who were sent off to distant cities for the purpose of making measurements, in preparation of mill work, such moneys were taken by you from where, the desk drawer or the safe? A If the trip that they were going to make was of sufficient size to require an amount of money that the drawer couldn't spare at the time, they came to me and I gave it to them from the reserve. If they were going on a short trip, and only meant the expenditure of a few dollars, I would take that from the drawer, and you will find it entered on this book.

The Court. Would they take it themselves, or some one pay it to them in the office? Were they at liberty to help themselves to their expenses?

40

Harry W. Smock, cross.

The Witness. The young men in the office were, the two that I spoke of; one of them is Mr. Hall, in charge of our drafting and estimating department, and Mr. Reed before his time. They would take it themselves, because they always had access.

Q They were the men who made these trips? A Yes. 10
If it was an employee from the mill it was necessary to send, the money was given to him either by Mr. Hall or Mr. Jones.

Q Or yourself? A Or myself.

Q When the trip involved expenses amounting to more than \$50 or \$75, or a larger sum than you could conveniently take from the drawer, then the moneys were taken from the reserve fund in the safe? A They were.

Q And who would take that money? A I would.

Q Would Mr. Hall or the other gentleman; did they 20
have access to the safe? A They had not access to the safe.

Q When you took the moneys from the reserve fund in the safe, was there any entry made? A There was not.

Q Then the only entries that were made were the moneys that came in in cash to your department? A Yes.

Q The moneys that you paid out in cash out of the 30
drawer? A Yes.

Q But not any moneys that you paid out from the reserve fund in the safe? That is correct, is it? A That is correct.

Q And why didn't you make any entries in your books, of the moneys taken out of the so-called reserve fund in the safe? A Simply because I had on numerous occasions in the eighteen or nineteen years intervening since I had charge of the mill department, considered that very question with Mr. George A. Smock, my su- 40

Harry W. Smock, cross.

perior officer in the firm, and it was his instruction that it was not necessary; they were legitimate expenses of the concern, and that it meant a double bookkeeping, and was not necessary to itemize those accounts and keep them.

10 *Mr. McDermott.* I move to strike that out as not in any sense cross examination.

The Court. It is his answer to a question that was competent under cross examination; I will let it stand as it is.

Q Calling your attention to the so-called reserve fund in the safe, did you at any time take any moneys from that reserve fund in the safe and turn it in to the general corporation funds? A Yes.

20 Q And when would you do that? A I would do that when I felt that there was sufficient money there—more than sufficient to meet the expenses that might be anticipated would be necessary to have money for.

The Court. About what amount did you endeavor to keep in the reserve fund?

The Witness. In the neighborhood of \$100 or \$150.

Q And if it got in excess of that to any extent, then you transferred it to the company's account? A Yes.

30 Q Would such transfer be entered in those books? A Not in those.

Q Would they appear in the company's general account? A In the general books, yes.

Q And would such transfers be made frequently? A Sometimes; sometimes it would be a long period.

Q Depending entirely on the amount of cash business you had done? A Depending upon the cash business that we did and the expenses that were necessary. They both had a bearing upon the amounts of moneys I had
40 there.

Harry W. Smock, cross.

Q As you have explained it, such was your system up to January, 1918? A Yes.

Q And you stated on your direct examination that you changed that system about that time? A Yes.

Q Why did you?

Mr. McDermott. I object.

10

The Court. I will receive it.

A Because just after the first of January, 1918—I cannot give you the exact date—I was over in the main office, in conversation with Mr. Smock and Mr. Jones—

Q Mr. Jones is the holder of the other third of the stock? A Yes. Mr. Smock said to me, “Harry, it is costing quite a little over there in the mill; you are spending quite a little money on expenses, and this reserve fund that is on the books has amounted to considerable money”—I don’t recall whether he stated the amount or not, but I think he did state that was \$1,200—and I asked him if he had taken the amount that was returned, and he said that he had.

20

Q What do you mean “returned”? A Returned from the reserve fund into the drawer. This reserve fund—if we paid out from the drawer sufficient moneys so that it left such a small amount there that there couldn’t be change made for ordinary transactions, the amount was returned—taken out of the reserve; they called upon me and I took from the reserve a sufficient amount of money and placed it back in the drawer. That was put on these books in order to keep the drawer account stated.

30

Examination by the Court.

Q You refer to the drawer account as the reserve funds; heretofore we have called it the petty cash fund.

A No, the reserve fund was in the safe.

40

Harry W. Smock, cross.

Q You mean, whatever you said, that when the petty cash fund in the drawer was exhausted, or about being exhausted, then you restored it to a certain fund, drawing on the reserve fund from the safe? A Yes.

Q And that was entered in the book? A Yes.

Q And that was your reply to Mr. George Smock's criticism of the reserve account? A Yes. And I said
10 to him—or them, because I was speaking to the two—I said, “You don't question for a moment, do you, that the moneys which are paid out are for anything except legitimate business purposes of this business?” and the answer was “No.” I said, “Since the matter has been brought up, from this time on we will enter everything in the books, in the petty cash books, of every character.” You will find that that has been done since that time.

Q And that is the reason why you adopted this system? A That is why I changed at that time.
20

Further cross examination by Mr. Applegate.

Q Had Mr. Smock ever made any complaint as to the system before that time? A Never.

Q He knew of the custom of keeping that reserve fund in the safe?

Mr. McDermott. I object as not cross examination.

30 *Mr. Applegate.* I withdraw the question.

Examination by the Court.

Q Is there anything else about your system in those books that you haven't told us? A I don't think so.

Q Or about your treatment of the cash and the reserve account? A I don't think so, except this: the only thing that I recall, that I might mention—I don't know that that has any bearing upon it—when these men, whether they were my office men or men from the mill,

Harry W. Smock, cross.

went off on these trips, they rendered to me on their return an itemized account of their expenditures.

Q In writing? A Yes.

Q What was done with that statement that they rendered? A I never tried to retain it. I didn't file it.

Q Did you do any work where you were not bound by an estimate you made, or did you charge up the expense account to the cost of the work in any instance? 10

A It was charged generally, yes.

Q How would the mill department get credit, then, for the disbursements connected with the performance of that work? If you had a job and a man came in and asked you to furnish such and such articles for his house, and you sent a man there to measure or install, or both, how would your department get credit for the expense money that this man had disbursed? A That would be charged up on the daily charge tickets and forwarded to the main office. 20

Q And charged against the account? A Yes.

Q That is the purchaser's account? A Yes.

Q Did you have any such instance of that kind, drawing upon the petty cash and reserve account? A Yes.

Further cross examination by Mr. Applegate.

Q Suppose the case just referred to by the Vice-Chancellor—a man went to your department and asked you to make an estimate for work and materials to be furnished his house; you send a man out there and the expense of that man is \$100 or \$200; when the man returns to you, he turns in to you his estimate of the cost of the work and the material, and did he include in that estimate the amount of his expenses, or did you afterwards include it? A He would include—well, that would all depend on how you made up the estimate; if I made it up, I would include it; if Mr. Hall made it up, he would include that expense. 30 40

Harry W. Smock, cross.

Q It would be included whoever made up the estimate? A Yes.

Q Then that estimate, what was done with it; sent over to the general office? A Not until the goods were delivered and charged; the charges went to the main office.

10 Q But the expense of the person who went out to make the measurements were always included in the bill that was finally sent to the person for whom the work was done? A Always.

Q Then that bill was sent out from what office? A The main office.

Q How would the main office get possession of the facts in relation to that bill of items? A Through the charges from our department—from the mill department.

20 Q How were they sent over? A They were sent over on our regular system of charge slips.

Q Then your charge slips would contain the expenses in relation to that particular job? A Yes.

Q Itemized? A No, not in the case of an estimate it would not.

Q The estimate wouldn't be itemized? A No, not in the instance that you speak of; where we had made an estimate for the work, it would not be itemized.

30 *The Court.* You would have received an itemized statement and you would simply put the total of the expenses?

The Witness. Simply put the total expense on the charge.

Q The estimate I am speaking of, would that be itemized, how much for steps or doors? A Not on the charge, no, sir.

Q What would it be, just a lump sum? A A lump sum.

40

Harry W. Smock, re-direct.

The Court. Say the contract called for \$200 worth of material and the expense account \$10; the lump sum would be \$210, without specifying expenses?

The Witness. It would be charged to the customer provided that was an estimate.

Q Is there anything in the books of the general corporation to indicate what part of any estimate was represented by expense? 10

Mr. McDermott. I object to that.

The Court. I will receive it.

A Not to my knowledge there isn't.

Q So that it would be impossible at this time to take up the books of the corporation and say this represents moneys that I expended to men who made measurements on jobs for which they were preparing estimates? A 20
No, there is nothing in the books in the main office to indicate it.

Q There is nothing? A No, sir.

Q That would be included in the general total of the estimates? A Yes.

Q Did you bring here today, as you were directed to by your subpoena, your personal bank books and pass books and check books? A Yes.

Q They are here, are they? A Yes. 30

Re-direct examination by Mr. McDermott.

Q Unless you kept some memorandum of these in some place, how could those expenses get charged to anybody? A Why, because when the men returned from their trip, the amount of their expenditures were charged.

The Court. Were reported by them to you?

The Witness. Yes. 40

Harry W. Smock, re-direct.

Q Were they reported to you by them in writing or orally? A Occasionally orally, but usually in writing.

Q And then what did you do with the writing; did you make an entry of it anywhere or destroy or preserve it? A I did not, I simply looked over it and I believed it was correct and just and I made no attempt to preserve it at all.

10 Q These books which you have produced go into great detail in the matter of expenditure, do they not? A Yes, sir.

Q They have items of a few cents? A Yes, sir.

Q Ten cents, four cents, and similar items, showing the payments made by your department out of the petty cash? Yes.

Q But when you carried a large item, say \$50, to the reserve account, or \$25, it was absolutely loss, so far as the books were concerned; that was the end of it so far as any entry in your books was concerned? A Unless it was afterwards taken over to the main office.

Q And of course if it went over to the main office, then it would go in the cash book of the main office? A Yes.

Q And sometimes you withdrew it from the reserve and put it back in the petty cash? A Yes.

Q And in that event you made an entry of it in the petty cash? A I did.

30 *The Court.* In these books here?

The Witness. Yes. (Referring to Books C. 1 to C. 18.)

The Court. Were these books ever audited in connection with the general books of the company?

The Witness. Not to my knowledge.

The Court. Did you actually render a statement of these books or the transactions connected with the petty cash and reserve fund to the corporation?

Harry W. Smock, re-direct.

The Witness. No, sir.

The Court. At no time?

The Witness. No, sir; I was never asked to.

Q Mr. Smock, do you recall the occasion when I was at your office two or three weeks ago? A Yes, sir.

Q You then produced books to me for inspection from March 27, 1916, to date? A Yes, sir. 10

The Court. These petty cash books?

The Witness. Yes.

Q You did not produce those that extend back some three or four years beyond that period? A No, sir.

Q You knew I was coming to inspect those books, did you? A Yes, I think Mr. Rhome told me a few days previous that you were coming down.

Q Why didn't you give me the books extending back to 1913? A Because I didn't at that time have them. 20

Q You say you found them since? A Yesterday morning; yes, sir.

Q Where? A In a closet under the stairs.

Q Been there all the time, haven't they? A As far as I know; I haven't touched them.

Q You hadn't looked there then when you knew I was coming to look at the books? A I had looked at the closet.

Q How did you happen to look better yesterday than before? A Because I decided yesterday morning or the night before last that Mr. Jones and I would go look and try to find the books, all that there were, and we did yesterday morning make a systematic search and we turned over everything and we found these books. 30

Q And that was a little extra effort that you didn't make before we inspected the books three weeks ago? A Yes, that is an extra effort.

Q I understood the money in the reserve fund you put away yourself in the safe? A Yes. 40

Harry W. Smock, re-direct.

Q And took it out of the safe yourself? A Yes.

The Court. And no one had access to that except Mr. Smock?

The Witness. That is correct.

10 Q Mr. Smock, I understood you to say in January, 1918, you changed your system and cut out the carrying of this money to the reserve fund? A I don't think I said, sir, that we ceased to carry money in the reserve fund; because we still carry some there.

Q You changed the entries in the book and eliminated the reserve item in the book? A Yes.

Q You continued to use, however, the item "To H. W. Smock," considerable sums? A Yes, sir.

20 Q Where did you keep that? A That is on the slips that I gave you a few moments ago (Exhibit C. 19 for identification) for 1918; I have these years here, if you would like them.

Q There are a large number of items after January, 1918, carried to H. W. Smock? A Yes.

Q Where did you keep that fund that was carried to H. W. Smock, in the drawer or safe or where? A No, these amounts were paid—

30 *The Court.* Suppose you took \$50 out of the drawer and put it in the safe, would you carry it in the name of H. W. Smock?

The Witness. No, sir; no account is carried in my name.

The Court. How would you carry that? For illustration, if you had \$50 in excess in the drawer, and put it in the safe, how would you carry it?

The Witness. Carry it in this book.

The Court. How would the entry read? Suppose you found \$75 in the drawer, and you thought that is \$50 more than I want to leave there, and you

Harry W. Smock, re-direct.

put \$50 in the safe, how did you make that appear in your book since January, 1918?

The Witness. That is carried, as far as I know, on the first page of the books since that time.

The Court. How does it appear?

The Witness. Simply the amount that is in there. The amount that was in the safe was carried in just a separate item. 10

The Court. Would the whole entry be \$50?

The Witness. If that is what it was in the safe, it would be \$50.

The Court. Suppose there were \$10 in the safe when you took \$50 from the drawer to put it in the safe, making a total of \$60 in the safe, then, what would appear, just \$60? 20

The Witness. Yes, \$60.

Q You have referred to the cover of this book, Exhibit C. 17, on which appear a number of items, the first of which is \$125; do I understand from what you have just told the Court, that that \$125 is the same sort of an item which would have been called reserve prior to January, 1918? A That might comprise several items, what would be called reserve previous to that.

Q I understood the Court to ask you as to what you did when you had large sums of money after January, 1918, when you say the system was changed, what you did then, when you found large sums of money in the drawer, whether you still transferred them to the safe? A We put it in the safe. 30

Q And what did you put in your book, to show that you had carried it to the safe?

The Court. Nothing, except as appears on the cover. 40

Harry W. Smock, re-direct.

A We put the amount that was in the safe. You will find the record of it, one of those books at that time, stating the balance.

Q I would like to have an illustration of that. Take the first one, \$125, which I understand would have been, under the old system, a reserve item; that or several
10 items going to make up that amount, let us know where you find that in this book, and also where you find any entry in the books as to what was done with it.

The Court. Take the first part of the question, first.

A I cannot of that \$125. Those are not my figures, I didn't make these entries. That is not added, consequently I don't know where it corresponds. Will I be permitted to take a little later date?

20 *The Court.* Take another date. Take the period when Mr. Jones had no direct supervision over this, when it was under your own control absolutely.

Mr. McDermott. I call the witness' attention to the fact that in answer to a question by the Court he himself referred to these items covered by that book as indicating something connected with his new system which began in January, 1918.

30

RECESS.

Q (Last question repeated.) A The first item, which will apply to all the items—

Q I want to ask you about the first one. A The first one is the amount of money which was in the safe.

The Court. That is, \$125 was in the safe when?

The Witness. At the time it was entered in the book.

40

Harry W. Smock, re-direct.

The Court. Does that appear, the date when it was—

The Witness. The date doesn't appear on that item; it is not my writing, but the amounts on the front page of the leaf—

The Court. The inside cover of the leaf?

The Witness. —is the amount of money in the safe. 10

The Court. At some time, not specified?

The Witness. Not specified.

The Court. But after the introduction of this new system, is that right?

The Witness. That is right, there was no distinction made between the moneys in the safe and in the drawer. After January, 1918, there was nothing shown as reserve, there was no reserve. 20

Q What is this \$125, then, the first item on the inside page of the cover of C. 17? A The amount of money that was in the safe at the time that was put there.

Q When was that? A I cannot tell you.

Q Didn't you have anything to do with it? A The only thing I had to do with it was that I knew that the money was in the safe, and gave it to Mr. Jones.

Q Was it kept in the safe for the same purpose that the so-called reserve had been kept there before? A Yes. 30

Q Or the petty cash in the drawer? A Yes.

Q Won't you show me in the book how it was paid out—C. 17?

The Court. That is the second branch of the question.

Q The \$125, the first item you referred to, show me where it was paid out. A I find on the right-hand page of the book the amount of money that was paid out; if it 40

Harry W. Smock, re-direct.

was paid out, it was paid out in those items that you find there.

The Court. Either in whole or in part?

The Witness. Yes.

10 Q Why put the amount \$125 on this cover without having something to indicate in the book where you got it or what you did with it?

The Court. Who suggested, in other words, the use of the cover for that purpose and in that way?

The Witness. I don't know that I can answer that; I don't know who suggested it, whether I did or Mr. Jones did.

The Court. Mr. McDermott asked why was it put on the cover.

20 *The Witness.* Simply to show the amount that was in the safe. This is merely a memorandum of the amount of money in the safe, and when the book is balanced, this amount is counted with the money in the drawer.

The Court. Do the pages following that inside cover indicate receipts for this fund?

The Witness. Yes.

The Court. And the disbursements from it?

30 *The Witness.* Yes, and disbursements of every penny that came in and went out. There was no reserve fund after this time.

Q You have had this question before you since the adjournment of court at one o'clock. A Yes.

Q And you had access to this book since that time? A Yes.

40 Q Won't you tell me where there is anything to show at any time that you had \$125 in the safe, except the entry on the inside cover?

Harry W. Smock, re-direct.

The Court. What is the item? Read it into the record, what appears on the inside of the cover.

The Witness. \$125, just the amount.

Mr. McDermott. With lines drawn through it.

(Question repeated.)

The Court. Does it appear anywhere in the book? 10

The Witness. Yes.

The Court. Are the pages numbered?

The Witness. No, sir.

The Court. State what you find; read it as it is written there.

Mr. McDermott. It is a page dated June 1.

The Witness. I find on this page that we have received \$208.85. 20

The Court. You find on this page entries as follows. If you read those entries will that enable you to answer Mr. McDermott's question?

The Witness. No, sir; this carries on from the previous page.

The Court. Have you Mr. McDermott's question in your mind, what he is asking you to answer? He is asking you what is that \$125. He is asking you whether you have an entry on your book. Have you such an entry? 30

Q You were referring to this page with the first item of which is June, with the idea that that amount was \$208.85, which was large enough to include the \$125, wasn't it? A At first glance.

Q But you found when you went over to the other page, that the gross items were \$136.83, and it didn't leave that much balance? A No.

Q So you are mistaken? A No. 40

Harry W. Smock, re-direct.

Q You were mistaken about that being a place where you could have had it? A Yes, I am, because that isn't equal to the amount in the safe; I don't know when that applies to, of course.

Q Do you want to say that you were not responsible for this book from January, 1918? A Do I want to say
10 that I was not responsible for it?

The Court. For the entries made in it.

Q You said once or twice that the entries were not made by you; do you want to say that you were not responsible for it? A I am not personally responsible for it, except that I had a general supervision over the department in which it was kept, that is all.

Q Aside from that, you have told us that in January Mr. George Smock insisted that the books should be kept
20 differently, and that the reserve item should show somewhere; haven't you said that? A Yes.

Q Haven't you also said that following this interview with Mr. George Smock you did start to keep this book differently? A Yes.

Q So that the reserve items would show? A Yes, sir. There has been no reserve item since that time.

The Court. Whether you call it reserve item or not, the money was used for the reserve item or the petty fund in the drawer, you still kept such a
30 fund, didn't you, for such purposes?

The Witness. Yes.

The Court. Regardless of what you call it, or whether you designated it by any name?

The Witness. Yes.

The Court. That is correct?

The Witness. Yes.

The Court. Mr. McDermott is directing your attention to the fund, whether called reserve or not.
40

Harry W. Smock, re-direct.

Mr. McDermott. Where you got it and what you did with it.

The Court. What is the question which is unanswered?

Q Haven't you also said that these items on the cover indicated amounts which were in the safe? A Yes, sir.

Q Show me on the book what you did with them, after they got in the safe, one or all. A They were paid out in—

10

The Court. He doesn't ask you that. Show him where the book shows it.

Mr. McDermott. This is after you reformed your method of accounting.

The Court. He wants to know, does that book show what you did with this money, and if so, where.

20

The Witness. You asked me, Mr. McDermott, what that was.

The Court. He is now asking what does the book show, if anything, in relation to the expenditure of that money that was in the safe; not merely the \$125, but any of it.

Mr. McDermott. All of those items.

The Witness. Here is one in this book.

The Court. Does the book show just what was done with that money that was in the safe?

30

The Witness. Not specifically.

The Court. In what way does it show?

The Witness. It shows in the items of expenditure.

The Court. Then your answer is that the book does show in the items of expenditure what was done with the money in the safe?

The Witness. Yes.

40

Harry W. Smock, re-direct.

Q Having answered, I ask you to indicate in the book where it is, any particular sum, any one of these sums. A Here is one that shows that, for \$176.76.

The Court. Where does that appear on the cover, before you start anywhere else?

10 *The Witness.* I don't know, for the simple reason—

The Court. Look and see.

The Witness. That amount doesn't appear because that \$176.76 is the amount of money that was in the drawer as well as in the safe on that particular morning.

The Court. And then it shows what was done with it?

The Witness. Yes, sir.

20 Q Where? A Right over here.

The Court. What date do you refer to?

The Witness. June 24.

The Court. From June 24 on, certain items appear and show how that was expended, is that what you mean?

The Witness. Yes.

30 Q That is the best answer you can give us, is it? A It is a true answer.

The Court. It is good enough if it is a fact, if the books do show.

Q Mr. Smock, after January 24, 1918, you changed your system of bookkeeping; you still carry items over to H. W. Smock? A Yes, sir.

40 Q And those items in the aggregate are much larger than the items that you indicated as paid back on the other page by H. W. Smock, you know that to be a fact, don't you? A I do not.

Harry W. Smock, re-direct.

Q These items which are carried to H. W. Smock indicate moneys which went to you, do they not? A Yes, anything that is down on that book to me, I received.

Q On the other page you indicated moneys paid back by you? A Yes.

The Court. Do you keep a debit and credit account on these books, debit on one page and credit on the other or opposite page? 10

The Witness. Yes.

Q You don't mean that this is a cash book, with the moneys received on one page, and the moneys paid out, on the other?

The Witness. Isn't that what your Honor meant?

The Court. Yes; I meant that the funds—

Q You added this account with yourself; have you been over that to see how much there was which had gone to you? A I have not, sir. Since when? 20

Q I am covering now in this question, since January, 1918, up to date. A I have not.

Q Up to August, 1918? A I have not.

(The foregoing questions all relate to Exhibit C. 17.)

Q Mr. Smock, I call your attention to the page headed May 21, 1918, of Book Exhibit C. 17, the aggregate of the items of receipts on the left-hand page appears to be \$190.39; the aggregate on the right-hand page of disbursements, \$66.27; and there is an item also "Over \$3.50." You have carried down below the next line \$27.62; the balance appears to be \$127.62. Can you explain that? A I cannot. 30

The Court. Are the entries in your handwriting? 40

Harry W. Smock, re-direct.

The Witness. No, sir.

The Court. Who wrote them?

The Witness. They are not my figures.

The Court. Who did write them?

The Witness. I think it appears like Mr. Jones' writing. It is not mine.

10

Q Mr. Harry Jones? A Yes.

Q Who had charge of this money, Mr. Smock; didn't you go over these books, to see if they were properly carried over; that certainly looks like \$100 missing, don't it?

A It looks that way on the face of it.

The Court. He can explain that \$100 discrepancy if he can.

The Witness. I cannot; it is not my writing.

20

Q Do I understand that you haven't been over this book, Exhibit C. 17, to see how the items which were turned over to you, "H. W. S.," exceed those which you paid back? A No, I have not.

Q And at this moment you don't know how much that is? A To my knowledge, there isn't any.

Q But you haven't been over it to see, have you? A No.

Q Don't you think it worth while? A I didn't see any reason for it.

30

Q If the excess is several hundred dollars after January first, that would seem to be worth while, wouldn't it? A Yes, sir, it surely would. Several hundred dollars would be worth while.

Q Have you anywhere in these books or any other book, a ledger account showing the moneys received by you and the moneys returned by you? A No, sir.

Q So the only way to get them is to dig them out of this book? A Yes, sir.

40

The Court. You are referring now to the particular period covered by this book?

Harry W. Smock, re-direct.

The Witness. Yes, sir.

Q You have stated in a general way that Mr. George Smock approved or acquiesced in this method. Will you tell me when, if at any time, you showed him those items of reserve in these books which have been used this morning? A I cannot specify any time when I did; no, sir; no particular time. 10

The Court. Did you tell him or show him on more than one occasion that item?

The Witness. No, I have never shown him that item.

Q You have never showed him that item? A No.

Q And you were very much offended when he discovered it in January, 1918? A I was, because it was a reflection—

Q You were? A Yes. 20

The Court. Leave it to Mr. Applegate to ask for the explanation.

Q And he was indignant at finding it, isn't that true? A I don't know.

Q In January, 1918? A I don't know.

Q Wasn't there evidence of that before you? A You might call it indignation. 30

Q At that time you were running the business altogether, you and your brother and Mr. Jones? A We were interested together.

Q And each of you running your department? A Yes.

Q Or was Mr. Jones out of it at that time? A No, he was in it.

Q We both know, you and I, that he was running the hotel part of the time? A Yes. I don't recall whether he was or not. 40

Harry W. Smock, re-direct.

Q These items which I understood you to say—if I am wrong, correct me—were added to the bills of people; if you sent a man to Poughkeepsie to estimate on a job, were those expenses charged to the man or did you merely include it in the amount of the estimate? A I don't know that we ever sent a man to a job to estimate upon it, out of town, until after it was estimated.

The Court. For any purpose.

Q I don't refer, of course, to a man who did the work, because that, I assume, was included in your estimate, but as to the man that was sent to look it over or to measure, you didn't charge that as a separate charge to the man for which you had estimated the work? A We included it in the price of the estimate if we gave him an estimate on it.

20 Q It was one of those items that is in, but you don't see; you didn't make a specific item in the charge, but you included it? A No, it was included.

Q It was included in your round estimate? A Yes.

Q So that wouldn't go to the main office at all, then? A No, except as a part of the charge.

Q Except as being included in the gross item of charge? A Yes.

30 Q What I wanted to know was, whether there were any items where you paid out to the workmen or yourself or whoever made these journeys, the item which was charged to somebody, the item of expense; not charged to your own concern, but charged to an outside party, were there any of those? A That would very rarely happen, if ever.

Q I assume that if an item of that kind happened, the item would be put on a bill and sent over to the main office?

A Yes.

Q But that, you say, rarely happened? A Rarely happened.

40

Harry W. Smock, re-direct.

Q So that unless you put those large items in some book, this book or another book, there was no way for them to appear anywhere on the books of this company?

A I don't know that I understand what you want me to answer.

Mr. McDermott. I withdraw the question.

10

Q Referring not to the petty items of negligible amount on the petty cash, which you have entered, but to the large items which you say were included in the disbursements out of this large reserve fund, unless you kept an account of them in some book. There wasn't any book in the company or any place in the company's accounts where they appeared at all, isn't that so? A If I understand your question correctly, I should say it was so.

The Court. If you spent \$50 or \$100, for instance, of the character you have mentioned, if you didn't keep an account in these books, there was no record of it anywhere? 20

The Witness. Not previous to 1918, if it was taken from the reserve fund.

The Court. Reserve or drawer.

The Witness. Of the drawer, there was.

The Court. If it was over \$50, I suppose it would be? 30

The Witness. Yes; it would have been taken from the reserve.

Q I mean, those that were paid out of the reserve?

A No.

Q Not of the items paid out of the petty cash, as outlined in your book. So that unless someone kept it somewhere, how could you check up with the man who had been paid these expenses, to prevent a second bill for the

40

Harry W. Smock, re-direct.

same amount? A How do you mean; how could I check up with the man? I don't understand your question.

10 *The Court.* He stated that when the men came back with any large expenditure of this kind, they presented him with an itemized statement of their disbursements, in most instances in writing, which he afterwards destroyed.

Q You have a receipt for it somewhere? A I did have.

Q What did you do with the receipts? A I said this morning, Mr. McDermott, that I made no—

The Court. They were more in the nature of reports than receipts?

20 *The Witness.* They were itemized expense accounts; I looked over them to see whether they were what I believed to be just, and I might have put them on the file and I might have thrown them in the waste basket, I don't know.

Q What I am trying to get at is, what you kept, to put yourself in a position of safety and your company in a position of safety, as to a second payment for these moneys which you paid out from the reserve fund; how did you safeguard yourself and the company? A I didn't.

30 *The Court.* Suppose you gave a man \$50 to go on a job, and he came back and reported to you that he had spent \$40, and gave you an itemized statement and you were satisfied, and he returned you \$10; how did the main office get that item of \$40 to charge up against the customer; in what form would you send it over to the main office?

The Witness. That would not go to the main office, because that expense was included in the original estimate which we had given for the work.

Harry W. Smock, re-cross.

The Court. The main office already had it in the form of the amount?

The Witness. In the form of the amount of the estimate chargeable to that customer.

Q You mean the estimate was large enough to cover these expenses? A Surely.

10

Q But it was not indicated in the estimate? A No.

Q Not itemized? A No.

Re-cross examination by Mr. Applegate.

Q Let me call your attention a moment to this item of \$125 which appears on the cover of the book, C. 17. Who put that item there; whose figures are they? A I think they are Mr. Jones'—Mr. Harry Jones.

Q They are not yours? A They are not.

Q If they are Mr. Harry Jones' or any one else's, where did he get the figures from? A It is the figures—the amount of moneys that were at that time in the drawer—a total of the moneys which were at that time in the drawer as well as in the safe.

20

Q How did he know what was in the safe; didn't you give it to him? A I gave it to him.

Q Then the \$125 represents the total of the moneys in the cash drawer and in the safe? A No, the \$125 was in the safe.

30

Q It represents the total cash in the safe? A Yes.

Q And for what purpose did you give it to him? A So as to balance his books.

The Court. Which book?

The Witness. C. 17.

Q After January, 1918, you changed your system, as you have related, so as to cut out the reserve fund by name? A Yes.

40

Harry W. Smock, re-cross.

Q And after that date you included in your book C. 17 and other books of that character, every item of expense and every item of receipt, did you not? A Yes.

The Court. In the so-called petty cash account?

Mr. Applegate. Of everything.

10 Q Every cent that you spent out of your department and every cent you took in, isn't that so? A That was paid in cash.

Q Was put in the book? A Yes.

Q That is all you got, wasn't it? A Yes.

The Court. But he had other transactions that were charged through the main office—a lot of them.

The Witness. Yes.

20 *Mr. Applegate.* I was referring solely to the mill department, where he received nothing but cash.

The Court. Checks came to you?

The Witness. In some cases, if a man bought a bill of goods and hadn't the money and gave us a check, we took the check.

30 *The Court.* Then you would not enter that in the book?

The Witness. Yes, that is entered in the book, and when it is taken to the main office, it is so entered and stated in here (indicating).

The Court. Then that covers everything.

Q Then your book covers every item of expense and receipt through your office, the mill department? A That we handle in that particular office.

40 Q In your office through the mill department? A Yes.

Harry W. Smock, re-cross.

Q So that your book and the items therein contained, include the moneys in your cash drawer and in the safe? A Yes.

Q And the figures on the cover represent simply the balance of moneys in the safe, or the amount of moneys in the safe, which you gave your bookkeeper, so that he might balance the book and save the trouble of counting the moneys over that were in the safe? A Yes. 10

Q You have been asked the question why it was that your disbursements exceeded the amount of moneys that you took in, as indicated by the book; you remember that question, do you?

The Court. He stated he didn't know whether that was so or not.

The Witness. That was on that date of May 24—if that was right—is that what you refer to? 20

The Court. That is the date Mr. McDermott directed your attention to, June 24.

Q If there are moneys in the book representing payment of moneys to you, what do they represent; what were they paid for, expense moneys?

Mr. McDermott. I object.

The Court. We have been examining about the system, and that is what the scope of the examination has been limited to. You are now going into the purposes for which the money was withdrawn by Mr. Smock, and Mr. McDermott hasn't touched on it. 30

Mr. Applegate. It is an explanation of the question Mr. McDermott asked in regard to the moneys indicated on the book being in excess of the moneys he had paid back.

The Court. The witness says he doesn't know; he hasn't examined the book to find it out, and 40

Harry W. Smock, re-cross.

the only way to find it out is to pick out the items. I don't charge him with admitting or denying there is anything due to or from him.

Q Are there any items in that book which show moneys paid to you? A Yes, there are several; there are a number of items which show moneys paid to me.

10

Q What do those payments to you represent? A There are several things, for which moneys were paid to me.

The Court. Expenses of the operation of the department?

The Witness. Yes.

Q What sort of expenses? A Traveling expenses, primarily.

20

The Court. Was there anything for your personal use?

The Witness. None whatever.

Q All connected with the business of the company, as far as you recall?

Mr. McDermott. Some of them were paid back.

30

The Court. And those items which you withdrew from the company's fund and then paid back, what do they relate to, generally speaking?

The Witness. They were for items that were for my personal use, and that I paid back.

Q If you wanted to use \$50 for some personal purpose, you would take it, and when you got ready you would pay it back? A I don't know that I ever took that much.

The Court. That is an illustration?

The Witness. Yes.

40

Harry W. Smock, re-cross.

Q When you say "personal purposes," what do you mean? A Money for my own personal use.

Q Not connected with the company? A Not connected with the company.

The Court. You treated it as a drawing account to that extent?

The Witness. Yes, to that extent.

10

Q And did you do that also prior to 1918? A To some extent.

The Court. Did the other members of the company and directors know you were doing that, or made a practice of it?

The Witness. I presume they did.

The Court. Why do you presume they did?

The Witness. Because they did the same thing.

20

Q Not in your department, but in their own, you mean? A Yes.

Q You knew they did? A Yes.

Q The system—if we may call it such—in your department, the mill department, in relation to your cash expenses and receipts, Mr. Smock had the same system in his hardware department?

Mr. McDermott. I object; the books will show.

The Court. I think I will receive it; in regard to the petty cash or general system.

30

Mr. Applegate. I mean as to the petty cash system and keeping moneys in the drawer and taking it out without making any account of it.

The Court. Was there another department in your company where they had the same sort of system of checking it?

The Witness. Yes.

The Court. Which one?

40

Harry W. Smock, re-cross.

The Witness. I understand the hardware department had the same system.

The Court. Do you know anything about it?

The Witness. I do know it.

10 *The Court.* You know that the hardware department had the same system?

The Witness. Yes.

The Court. That was in charge of whom?

The Witness. Mr. Laudenslauger.

The Court. Under the supervision of Mr. George A. Smock?

The Witness. Yes.

20 Q Mr. McDermott asked you in regard to the reserve item, as to whether or not you had ever shown Mr. Smock the reserve item; I think you touched upon that this morning. Mr. McDermott used the expression in that question "reserve item"; to what did you understand that question referred?

Mr. McDermott. I object to that question.

The Court. He may answer it.

30 A I understood that reserve item referred to the amount that was taken from the petty cash drawer and placed in the compartment in the safe; that was what was known as the reserve.

Q Did Mr. Smock ever know, to your knowledge, that it was part of the system in your department, to take moneys from the so-called petty cash drawer and place them in the safe? A He did.

The Court. How long has he known that to be the practice?

The Witness. For many years.

40 Q Did Mr. Smock know that the fund in the safe was known as the reserve fund; was it referred to in

Harry W. Smock, re-cross.

those words or by that name? It is so indicated in your book, in those petty cash books? A Yes, it is.

The Court. Did he know if it was designated or referred to, is the question.

The Witness. I wouldn't like to answer yes to that question, because I have no way of proving that Mr. Smock did— 10

Q Did you ever mention or refer to it as a reserve in conversation with him? A I am not positive on that point, and that is the reason I don't desire to say yes.

Q Did he have access to these petty cash books? A Absolutely.

Q That contained use of the expression "reserve"? A Absolutely.

The Court. Did you ever see him examine them? 20

The Witness. He never examined them in my presence.

The Court. Do you know if he did, from anything he said?

The Witness. I don't recall except in the case that I speak of.

Mr. McDermott. In January, 1918?

The Witness. Yes.

Q How do you know that Mr. Smock had knowledge of the custom in your department of keeping the petty cash in the drawer and the balance in reserve in the safe? A Because several times in the course of the years—I told Mr. McDermott this morning I could give no specific date, but several times I had a conversation with him concerning it and spoke to Mr. George Smock, and spoke of this fund several times during the year, and asked if I should make an accounting of that, and he said, no, it would make a double bookkeeping, and I 30 40

Harry W. Smock, re-cross.

was spending it for the purposes of the firm, legitimate expenses, and that I was in charge there, and it wasn't necessary.

Q How did you come to ask that? A Well, I cannot answer that specifically either, except that it was in the course of conversation concerning the affairs of my
10 department.

Q Did Mr. Smock ever object or complain about this system of petty cash and reserve in the safe? A Never.

Q Did any one else ever complain—any stockholder or director?

Mr. McDermott. I object.

A No.

The Court. If you had not had this so-called
20 petty cash or reserve fund in existence, how would you have had to obtain money from your corporation to pay for this expense account?

The Witness. We are a block away from the main office, and if we didn't carry on some system of this character, every man that came in for five cents worth or more or less of materials, we would have to keep him waiting while our man went a block to get his change, and in that case—

The Court. I am not so much referring to the receipt of money, the petty cash transaction, as I am—suppose you wanted to send a man out on a job which involved an expenditure of \$40, \$50 or \$100, if you hadn't the money in the petty cash account, what would be your system to get money to pay the petty cash expenses?
30

The Witness. We would have had to go to the main office and receive it there.

The Court. Receive it from whom and in what form?
40

Harry W. Smock, re-direct.

The Witness. Either from the cashier or book-keeper, in the main office, in the form of cash if they had it on hand, if not, in a check.

Q Who would sign the check? A Mr. Smock signed it in this business.

The Court. Would you have to see Mr. Smock 10
before you could get the money to go on the trip?

The Witness. Yes, under that system, because he had to sign our checks.

Q It was stated by Mr. McDermott in the course of his examination this morning, that Mr. W. Harvey Jones, a stockholder, had now charge, or since January, 1918, had charge of the books of your department; is that so?
A It is not.

Mr. McDermott. I didn't mean to say so, if 20
I did. Mr. Jones had charge of the books of the company generally.

Q Mr. Harvey Jones never exercised any supervision over the books of your department? A No, sir.

Q Hasn't right up to the present time? A No.

The Court. Then I did have the understanding that sometime subsequent to the date of C. 17, the books were kept under your supervision and also the supervision of Mr. Jones. 30

The Witness. Mr. Jones had charge of the general books of the corporation.

Q What is Mr. Jones' connection with the company?
A He is vice-president and treasurer.

Q Who has charge of the bookkeeping department of the corporation since 1918? A He has.

Re-direct examination by Mr. McDermott.

Q Mr. Smock, you have stated that the hardware department carried a bookkeeping item similar to the one 40

Harry W. Smock, re-direct.

that you carried in your department. Do I understand from that, that you mean to say that the hardware department had a reserve fund out of which it paid money, without keeping any memorandum of what it was paid for? A No, sir, I didn't say so.

Q You don't mean to say that any other department in this business had any reserve fund out of which it paid large sums of money without keeping a memorandum of it? A I didn't say so.

Q You don't mean to say so? A No.

The Court. You did say they did have a fund for expense purposes, or whatever it might be, which they could resort to; is that right?

The Witness. If I remember rightly, the question was whether any other department, or whether the other departments or any other department in our business had a system similar to the one that I maintained over in the mill department, and my answer was yes.

The Court. A system similar in regard to the petty cash or reserve fund?

The Witness. Yes.

The Court. And your answer still is—

The Witness. Yes.

The Court. Does that mean, Mr. McDermott wants to know, that in keeping that account in the other department, which you said was the hardware department, that they kept any account of what they did with it?

Mr. McDermott. Where they paid out large sums of money, for instance, or anything else, and they didn't keep any account of it?

The Witness. Yes.

The Court. Which department is that?

The Witness. Hardware.

Harry W. Smock, re-direct.

Mr. McDermott. Are the books here?

Mr. Applegate. Yes.

Mr. McDermott. I would like to have the books and I would like to have Mr. Smock show me any item in the hardware department or any other department.

Mr. Applegate. He said they wouldn't be in the books. 10

Mr. McDermott. The fact that they are not in the books will appear just as much as if they are in the books.

The Court. Does it make any difference whether it affects his veracity; you are not going into an accounting in that department?

Mr. McDermott. No.

The Witness. He says one excuse is that some other department did it; I don't make that excuse. 20

The Court. You don't make that excuse?

The Witness. I do not make it as an excuse. I make that statement because it was the custom and the system of the business under Mr. Smock's supervision; it is not an excuse; it is a reason.

Q I ask you as a fact, then, to point out in the book of any other department, where these items—any large amount, such as you have carried to reserve, and of which you have kept no account, is carried out in any other department. 30

The Court. Are you sufficiently familiar with the hardware department books to point out any similar system to yours?

The Witness. I am not familiar with the books of the hardware department, except that I know this, that the hardware department receives cash for its 40

Harry W. Smock, re-direct.

petty sales over the counter, places it in the drawer, and when occasion requires, in the judgment of the man in charge, that they pay that money out and there is no account of it. They haven't even a petty cash book.

10 Q Are you stating that from your examination of the books of the hardware department or from your knowledge as a member of the corporation? A From my knowledge as a member of the corporation, because I have seen it done.

Q You say that is the system in the hardware department, to take any money and pay it out without keeping any account of it whatever?

Mr. Applegate. Not quite so general as that.

A I didn't say that.

20 Q What did you say, to pay out petty cash items, out of it, without keeping any account? A Yes.

Q And you are the president of the company? A I am now, yes.

Q And you approve of that plan in the hardware department, do you? A The items that are referred to.

The Court. I suppose these men had confidence in each other and trusted each other to the extent of two or three hundred dollars for petty cash items?

30 *The Witness.* That is it.

Q Do I understand you now, after the last examination by your counsel, to say that Mr. George Smock didn't want the items of this reserve itemized? A I make that statement.

Q You mean to say that now? A Yes.

Q When do you say he said that? A I cannot tell a specific date.

The Court. Did he actually say that he didn't want them?

40

Harry W. Smock, re-direct.

The Witness. I don't know that the word "reserve" was used.

Q What did he say? A I asked him in reference to these amounts. He knew perfectly well, and has known for years, that I was using the moneys received from there for the expenses—the legitimate expenses of the Buchanon & Smock Lumber Company; he knew also that we didn't keep all the moneys we had there; he knew we kept a portion of it in the safe; whether that was referred to by him or me, either one, as a "reserve," I cannot say, because I really want to tell the truth, but he knew that I was carrying these amounts. 10

The Court. Did he ever say anything about that?

The Witness. Not a word.

The Court. How do you know he knew it? You say he did know it. Tell us how you think he knew it. 20

The Witness. Because he knew we were spending this, that my men were making trips that cost—he knew, \$50, \$75 or \$100 at a time, and he knew that I took the money from there to pay their expenses and to give them that money, and he never asked an accounting of me as to how much I gave them, nor as to how much they spent, and when I asked him, as I stated before, whether it was necessary for me to keep that separate, he said, no, it necessitated additional bookkeeping, which was unnecessary. 30

The Court. Was he in close touch with your department and its operations, to know what was going on there all the time that these expenses were being incurred?

The Witness. Yes, sir.

The Court. In daily touch with it, was he? 40

Harry W. Smock, re-cross.

The Witness. Not that he visited there every day, but he was practically in daily touch with it.

Q Mr. Smock, these books were originally begun at Mr. George Smock's suggestion; there was a time when you had no books at all, wasn't there? A I never remember it.

10 Q Then you began keeping these? A No, I don't recall any such thing.

Q And these books, of course, go into very minute details of expenditure? A Yes.

Q Of everything except the reserve account? A Yes.

Q There wasn't anything corrupt about that account? A What account?

Q The reserve account. A Positively no.

Q No reason it should not be kept? A No, except as
20 I have stated.

Q And everything else was kept down to a penny except this, the account which you have mentioned? A Yes, and that was the reason.

Re-cross examination by Mr. Applegate.

Q In regard to the question that the Court put to you as to the knowledge of Mr. George Smock of your spending moneys out of the moneys which you took in, in your
30 department, Mr. Smock knew, did he not, that men were going out making estimates in different parts of the country; he knew that was part of your mill work? A Yes, they were going out to make measurements.

Q To make up estimates; he knew that? A Yes.

Q And he knew that those men had expenses, necessarily so? A Surely.

The Court. Did he ever ask you how you were paying their expenses?

40 *The Witness.* I don't recall that he ever did.

Harry W. Smock, re-cross.

Q Neither you nor these men ever went to Mr. Smock's department or to him as treasurer to be paid their expenses? A I wouldn't answer that question, Mr. Applegate, because there might have been.

Q Generally speaking? A Generally speaking, no; positively not, very rarely.

Q And if the men were not paid out of the moneys in the office, how could they be paid? A Only from the main office. 10

Q And if they were not paid from the main office, then how could they be paid? A Only from the moneys from the mill department.

The Court. Did you make a report at any time during the year of the operation of your department to your company?

The Witness. No.

The Court. As manager, of what you had done, and the volume of business transacted? 20

The Witness. That was all carried at the main office.

The Court. You had your annual meetings?

The Witness. Yes.

The Court. Was any statement then made to the stockholders showing the operations of the company? 30

The Witness. A financial statement was made to the stockholders each year.

The Court. Was anything ever said about this financial statement, as to the result shown by your department, or any dissatisfaction expressed with it, or the receipts or disbursements of money in connection with it?

The Witness. No, that was never complained of. There were years when the department didn't make a good showing, and naturally we all felt it. 40

Harry W. Smock, re-cross.

The Court. I am speaking now about the manner of the receipt and disbursement of money and the manner in which the department was conducted.

The Witness. None whatever.

10 Q Can you give us approximately the largest amount—the maximum amount of money that you ever paid out of the mill department at one time in the way of expense moneys? A I think the largest amount that I ever paid out—gave to a man for his expenses at one time, was \$125.

The Court. What was the largest amount that you ever withdrew from the fund, no matter how it is designated, for your personal account?

The Witness. What do you mean “for my personal account,” that was referred to a few moments ago?

20 *The Court.* Yes, what was the largest amount you ever drew?

The Witness. I don’t think I ever drew over \$25.

The Court. At one time?

The Witness. I am not absolutely positive. That is my recollection.

30 *Mr. McDermott.* What is the largest item you ever paid yourself for expenses out of the reserve fund?

The Court. I meant reserve and cash; my question was supposed to cover the same thing; but to make it definite, Mr. McDermott has specified the reserve fund; what was the largest amount you ever used for your own personal use?

The Witness. I never took a dollar from the reserve fund for my personal use, except as expenses for the firm.

40 *The Court.* And what would that largest sum be?

Harry W. Smock, re-direct.

The Witness. The largest amount that I recall now was, I think, \$92.

The Court. And was it all expended?

The Witness. That was the amount.

The Court. That was the actual expense?

The Witness. Yes. I never took that money until 10
after I had expended it.

The Court. Then you simply paid yourself?

The Witness. This record will show that sometimes I went for weeks before I squared up.

The Court. And you used your own money to meet the expense account and drew upon the expense account to reimburse yourself?

The Witness. Yes, and in the matter referred to by Mr. McDermott, where I took moneys for my 20
own personal use, I did it because I hadn't made up my expense account; I hadn't entered it, and I took it out; and, of course, I would be going somewhere, and find I didn't have enough money to see me through, and I would take it that way and charge it to myself.

The Court. And at that time the company was actually indebted to you on your expense account, for as much or possibly more than you had with- 30
drawn?

The Witness. Yes.

Re-direct examination by Mr. McDermott.

Q You agree with me that that is what it was drawn for? A What?

Q Those items since January 1, 1918, H.W.S., they were drawn for your own personal account? A I cannot say yes to that, Mr. McDermott, because I don't know; I will not answer yes unless I know it is true. 40

Harry W. Smock, re-direct.

Examination by the Court.

10 Q You are giving me two impressions; the first I have is, that at no time, before or since January 1, 1918, have you drawn any money from the account, whether it be called petty cash, reserve or whether it has no name, for your personal use, to stand for yourself, but that you have frequently, or occasionally, at least, drawn money to reimburse you or to repay you for money you had expended for the firm or the corporation in transacting its business; is that right? A I might have undertaken—for instance, there are items there for \$15 or \$25; of course, that I may have used for my own purposes, or I may have used a portion of it on business for the firm.

20 Q You said that almost invariably you paid your own expenses out of your own pocket and then reimbursed yourself by drawing upon this fund at some later date after the actual expense had been incurred. That was usually your practice; wasn't that it? A Yes.

Further re-direct examination by Mr. McDermott.

Q You say these items since January 1, 1918, where they are marked H.W.S., may have been for your personal use? A Yes, they may have been.

Q Or they may have been for some expenses incident to the corporation? A Yes.

30 Q How can we find out which it was? A You can find out by my expense account; that is the only way.

The Court. Where is that?

The Witness. Right here (indicating C. 19 for identification.)

The Court. It is in the book.

The Witness. It is entered in the book, but in most cases, the amounts only.

40 *The Court.* He says you can find it by reference to his account which appears in a memorandum

Harry W. Smock, re-direct.

similar to that, which has been marked C. 19 for identification.

Q I understood you to say that on the book there was something to show that? A To show what?

Q These expenses that you paid out, this money for. A There is, there is an entry there.

Q Then you don't need this memorandum sheet at all? A This gives the details. 10

The Court. If there appears an entry on the book, "Expenses H.W.S. \$25," no other detail appearing, we would have to resort to C. 19 to get the details?

The Witness. Yes, there is something to show for just the even \$25.

The Court. I only used that sum as an illustration. 20

Q Your expense account will just show the even amount of the sum which was withdrawn by you? A My expense account, Mr. McDermott, will show the absolute amount of moneys that I used for the uses of the Buchanan & Smock Lumber Company; that is my expense account.

The Court. Will it show how much you charged and what you did with it, in the book or on that slip, or both together? 30

The Witness. The moneys that I got on my personal account, your Honor, I retained.

The Court. I ask you, will the book or the slip, or both combined, show how much you drew and what you did with it?

The Witness. Yes.

Proceedings of January 30, 1920.

Continuation of proceedings in the foregoing matter, before Hon. John E. Foster, Vice-Chancellor, at Long Branch, New Jersey, on Friday, January 30, 1920, in the presence of counsel as before.

10 *Mr. Applegate.* I have talked with Mr. McDermott and Mr. Rhome in regard to going on with the present suit, and it seems to me that an accounting, in view of the facts that had been brought to light, was inevitable, and it was more or less a waste of time for us to go on with our witnesses for the purpose of showing that the complainant was not entitled to an account. I made the suggestion to Mr. McDermott, for the purpose of ascertaining if he would consent to our amending our answer which sets up a claim—we asked for no affirmative relief against George Smock—so that we might also, when the accounting is prepared as against our client and the corporation,
20 have an accounting as against the complainant George Smock.

The Court. Of moneys of the concern?

Mr. Applegate. Of moneys of the concern. Mr. McDermott has gone a step further since we have taken it up, and we approve of his suggestion, namely, that first the pleadings be amended so as to make them sufficiently broad on both sides.

30 *Mr. McDermott.* That is, we answer his cross bill, and then that an order of reference be made by your Honor directing that all matters of difference between George Smock and the defendant corporation and the defendant Harry Smock be referred to the Master to take an account, and so forth.

The Court. You want it as broad as that?

Mr. McDermott. Yes, we do. There is now pending a suit brought by George Smock against the corporation on a claim for salary. There is a set-off in that case again,
40 on the part of the company, for moneys which the com-

Proceedings of January 30, 1920.

pany claims George Smock owes it, and that suit is in the hands of Mr. Carton, representing George Smock, and that is the occasion of my going to the telephone to see if Mr. Carton would agree to include that in the reference. I want to include that in the reference, otherwise, these gentlemen have all kinds of suits with each other, and it was in the interest of stopping multiplicity of suits and putting them in this one suit, and Mr. Carton has agreed with me about that, otherwise I couldn't have done it. 10

The Court. Then an order will be made referring the matter to Mr. Bindseil, if agreeable to you.

Mr. Applegate. Mr. Rhome thinks there is one question that should be brought to your Honor's attention, so there may be no mistake or misunderstanding. One of the differences involved is whether or not the directors of the Buchanan & Smock Corporation had the legal right and authority to discharge Mr. George Smock from the position that he then held as president. 20

The Court. Is that involved in this litigation?

Mr. McDermott. It is involved in the action of Mr. Smock against the company for his salary, and they contend he is not entitled to salary.

Mr. Applegate. The defense is he was discharged.

Mr. McDermott. Yes, and then the counter-claim. 30

Mr. Applegate. He would come back and say he was wrongfully discharged. We want that determined also. You will have to amend the pleadings. That is not covered by the present action.

The Court. Then the Court will make the reference to Mr. Bindseil covering the topics suggested by counsel, as soon as the pleadings have been amended—the pleadings to be amended, say, within fifteen days on one side and fifteen on the other, and then counsel will prepare a draft of the order showing the scope and the nature of 40

Proceedings of January 30, 1920.

the issues that are to be investigated in the course of the accounting.

Mr. Applegate. We want to plead the statute of limitation of the six years for the reason that we have no books back of those years, and it wasn't pleaded because the situation—

10 *The Court.* I thought Mr. McDermott limited himself to the six years in his examination.

20

30

40

Decree for Accounting.

DECREE FOR ACCOUNTING.

Filed March 3, 1920.

This cause coming on to be heard upon bill, answers, replications and other pleadings, and proofs on the part of the complainant having been taken and the several parties complainant and defendant now consenting hereto. 10

IT IS on this twenty-eighth day of February, 1920, ORDERED AND DECREED that it be referred to Nicholas W. Bindseil, Esq., one of the Masters of this Court, to take and state an account of the moneys received by the defendant, Harry W. Smock, while in charge of the mill department of the defendant, Buchanon & Smock Lumber Company, since July 9, 1913, and of the disbursements made by him out of said moneys so received during said period, and also to take and state an account of the moneys received and expended by the complainant during the same period as treasurer of said defendant, Buchanon & Smock Lumber Company, or while acting or purporting to act in any capacity in relation to the business of said Buchanon & Smock Lumber Company, and all moneys due or claimed by the defendant corporation to be due from said complainant, and all moneys due or claimed to be due by said complainant from the defendant corporation, including said complainant's claim for wages or salary up to the date of the accounting to be made herein, the intent of this decree being to avoid a multiplicity of suits at law or in equity, and to embrace in this accounting all claims and demands of whatsoever character existing between said defendant corporation and said Harry W. Smock and between said complainant and said defendant corporation, and the determination of such claims and the amount due thereon by the said Master under and by virtue hereof. 20 30

For the better clearing of which account the parties complainant and defendant, including Buchanon & Smock Lumber Company, are to produce before the said Master, 40

Decree for Accounting.

upon oath or affirmation if required, and leave with him all books and writings in their custody or power relating thereto, and are to be examined upon interrogatories as the said Master shall direct; and the said Master is also to have power to examine other witnesses in relation to said account and to the claims of each of said parties under and by virtue of this decree; and in taking of said
 10 account he is to make to each of said parties all just allowances and is to report what upon such accounting appears to be due from the defendant, Harry W. Smock, to Buchanon & Smock Lumber Company, or from said lumber company to said Harry W. Smock; and what upon such accounting appears to be due from the complainant to Buchanon & Smock Lumber Company or from said lumber company to the complainant; and the balance which upon the said account shall appear in each instance to be due. And the said Master is to make his report
 20 touching the matters hereby referred to him with all convenient speed, and if in taking the said account any special matter shall arise he is at liberty to state the same to the Court.

IT IS FURTHER ORDERED that upon the completion of his account the said Master present the same to the Court at the Chancery Chambers in the City of Newark, N. J., upon five days' notice of such presentation to be given by said Master to the solicitors of the complainant and
 30 defendants, at which time the fees of said Master will be fixed by the Court and ordered paid, and said complainant and defendants are hereby required within eight days after the presentation of said report to file exceptions thereto, which exceptions may be brought on and heard by the Court upon five days' notice to the opposing party or parties.

E. R. WALKER,

Respectfully advised,

C.

JOHN E. FOSTER,

V.-C.

Opening.

IN CHANCERY OF NEW JERSEY.

Between

GEORGE A. SMOCK,

Complainant,

and

BUCHANON & SMOCK LUMBER COM-
PANY and HARRY W. SMOCK,

Defendants.

10

Transcript of testimony taken pursuant to an order of reference made in the above-entitled cause on the twenty-eighth day of February, 1920, by Vice-Chancellor Foster, before Nicholas W. Bindseil, Esquire, Master in Chancery, at Asbury Park, New Jersey, on Tuesday, July 13, 1920.

20

Appearances:

Mr. Frank P. McDermott, of McDermott & Enright, for complainant.

Mr. Otto H. Rhome and Mr. John S. Applegate for defendants.

It is stipulated and agreed by and between the counsel for the respective parties that the testimony may be taken by the Master and afterwards reduced to type-writing, the signatures of the witnesses to their said testimony being waived.

30

By consent, the testimony taken before the Vice-Chancellor in open court on the main case in the above-entitled cause, is to be used.

Mr. McDermott. In order to define just what shall come before the Master, counsel on both sides have served upon each other a list of the items to which the attention of the Master is to be called.

40

Harry W. Smock, direct.

10 The first is the list served in the original cause, and relating to the matter which was at issue in the original cause; and in order to reduce the volume of items to be examined on, we have served two schedules: the first one, known as Schedule A—statement of items in the petty cash books kept by Harry W. Smock in the Mill Department of Buchanon & Smock Lumber Company between February 6, 1914, and December 25, 1918, for which said Harry W. Smock should account to Buchanon & Smock Lumber Company. And attached to that we have served also Schedule B. “Hereto attached is Schedule B, being statement of items taken from said books between February 2, 1914, and December 27, 1918, which complainant admits are to be credited to said Harry W. Smock against the amount shown in Schedule A.” That is strictly in the original case.

20 (Schedules referred to are offered in evidence and marked Exhibit C. 1.)

After the pleadings were amended—of which you have knowledge—so as to embrace accounts between the Lumber Company and the complainant, counsel on the other side served on me a statement of amounts for which George A. Smock should account to Buchanon & Smock Lumber Company, as insisted on the part of the defendants. There are only two items.

30 (Statement referred to offered in evidence and marked Exhibit D. 1.)

The next is a statement of moneys claimed by complainant from the defendant corporation.

(Statement referred to offered in evidence and marked Exhibit C. 2.)

HARRY W. SMOCK, sworn for defendants.

Direct examination by Mr. Applegate.

40 Q You have been connected with the Buchanon & Smock Lumber Company since when? A 1888.

Harry W. Smock, direct.

Q And during that time you have occupied the position as what officer? A Not in the entire time.

Q What time and what office? A I have been at various times vice-president and secretary. I cannot give you the dates.

Q During the years 1914 to 1919, inclusive, did you occupy any office? A I was secretary of the company. 10

Q Who was treasurer during that period? A George A. Smock was treasurer part of the time.

Q What part? A I cannot tell you without refreshing my memory.

Q You must have an idea; just generally. A Mr. George Smock was treasurer, I think, until February, 1918.

Mr. McDermott. From 1914 to 1918.

A (Continuing.) Mr. Jones was treasurer. I think, for about a year or a year and a half after 1914, in other words, until sometime in 1915, and then George A. Smock was treasurer until the early part of 1918—I don't know just the month. That is as I recall it. 20

Mr. McDermott. We can refer to the minutes for the purpose of making it definite.

Q What office do you occupy now, if any? A I am president and secretary. 30

Q When were you elected secretary? A In 1918, in August.

Q Mr. George Smock is no longer an officer of the company? A No.

Q But he is a stockholder? A Yes.

Q You during the years 1914 to 1918 had charge of what is known as the Mill Department? A Yes.

Q The Buchanon & Smock Lumber Company, for business purposes, was divided into three departments, as I recollect? A That is correct. 40

Harry W. Smock, direct.

Q The Mill Department, if which you had charge?

A Yes.

Q The Executive Department—what were the other two departments? A The other two was the Lumber Department and the Hardware and Paint Department.

Q Who had charge of the Lumber Department? A Mr. George Smock.

10 Q And the Hardware? A Mr. Joseph Loudenslager.

Q Mr. George Smock is your brother? A Yes.

Q How many years older than you is he? A I think thirteen.

Q Did he exercise any supervision over the entire Buchanon & Smock Company? A Yes.

Q What was the nature of it? A He was president during all that time.

Q Did he naturally exercise supervision irrespective of his office? A Yes.

20 Q And what did he do that indicated that supervision? A The accounts and books, outside of his petty cash books, were all kept absolutely under his supervision. The bills all passed through his hands, of course, and everything in a general way pertaining to the business was under his supervision.

Q Was Mr. George A. Smock an experienced book-keeper? A Yes.

Q Was he an accountant? A Yes.

Q He was what you would call an expert accountant?

30 A I would say so.

Q While you were in control of the so-called Mill Department, you have already testified that you had a method whereby you kept certain petty cash or moneys in a drawer of your desk, and when the cash in the drawer reached a certain amount or figure, it was your practice to take from that money a certain sum and put it in the safe, and the moneys that were in the safe you termed the reserve fund, or reserve—which was it? A Reserve.

Harry W. Smock, direct.

Q That is true? A Yes.

Q If you were going to a distant point on business of the company and found it necessary to take some funds with you, from which fund would you take the money, the cash drawer or the reserve fund in the safe?

A If the amount was small, I would usually take it from the cash drawer.

10

Q When you took it from the cash drawer did you make any record of it in any of the books? A I made a record of it in the petty cash book in the drawer.

Q And when you took it from the reserve fund, did you make any record of it in any book? A I did not.

Q When you took money from the cash drawer and put it in the reserve fund, did you make any record in any books? A In the petty cash book.

Q Calling your attention, Mr. Smock, to Exhibit C. 1, which has been offered in evidence this morning, Schedule A contains an itemized statement of dates, names and figures taken from exhibits already offered in this case, those exhibits being represented by petty cash books, as I recollect the small books; that is true? A Yes.

20

Q Calling your attention to Schedule A—showing you Exhibit C. 1—those figures represent what? What were they taken from? A These figures in which my name appears were moneys that were taken from the cash drawer.

Q I don't mean that; I mean what were these figures that appear in this statement, Exhibit C. 1—Schedule A, from what books were they taken? A Petty cash books.

30

Q And they commence February 6, 1914, and continue to December 24, 1918? A Yes.

Q Having in mind your explanation given just a few minutes ago in connection with your fund in the cash drawer and reserve fund in the safe, won't you explain the items appearing in Schedule A, commencing February 6, 1914? Take the first, H. W. Smock, \$7; that was taken from the cash drawer, wasn't it? A Yes.

40

Harry W. Smock, direct.

Q There are several items where your name appears, H. W. Smock, with amount set opposite, and again several items with the word "Reserve" and an amount set opposite. Explain those two different classes of entries. What does your own name signify? A It signifies that I personally took from the cash drawer the amount of
10 money set opposite my name.

Q And that is true throughout the entire schedule?

A Throughout the entire schedule.

Q Wherever your name appears, H. W. Smock, with an amount set opposite and a date, it means that you took from the petty cash drawer the amount set opposite your name? A Yes.

Q What did you use that money for? A I used it for the interest of the business.

Q In what way? A Things pertaining to the business.
20

Q Just explain, please? A I used it for traveling expenses; for materials that were required for business uses.

Q What else? A Anything that might come up that the business would require money for.

Q Do you say that the money set opposite your name—and I am now referring to the items just spoken of—was expended for any purpose other than the business of
30 Buchanan & Smock Lumber Company; did you spend the money set opposite your name for any purpose other than that connected with the business of Buchanan & Smock Lumber Company? A No, except where I did, I returned it. May I explain that?

Q Yes. A For instance, if I was going to New York or going out of town, and thought that I would require some money, I would take it from the cash drawer and charge it to me.

Q That was charged on the books? A Charged on the books to me. If I used any of that money for my
40

Harry W. Smock, direct.

own personal use, I returned it to the drawer, and it was credited to me.

Q And suppose you did not use all that money, then upon your return what was done? A It was put back in the drawer.

Q In connection with that statement, let me call your attention to Schedule B of the same Exhibit C. 1, and ask you if they represent the credits to which you have just referred? A Yes, they represent the credits. 10

Q So that whenever you found it necessary to use moneys of the company, in the interest of the company, as you have stated, you took it from the petty cash drawer? A Yes.

Q And always when you took it, you made the entry in the book? A Yes.

Q And if you used any of that money for your own personal benefit, or you had any money left over after expending it in part on business of the company, you returned it to the petty cash drawer? A Yes. 20

Q And made an entry in the book? A Yes.

Q In other words, crediting yourself? A Yes.

Q So when you took it, you charged yourself, and when you returned it, you credited yourself? A Yes.

Q And that was your practice? A Yes.

The Master. You mean you made the entry in the petty cash book? 30

The Witness. Yes.

Q And the petty cash books are those books which are referred to as exhibits throughout the schedule? A Yes.

Q Starting with Exhibit C. 4 to C. 18, that is the mark given those exhibits, namely, the petty cash books, at the hearing in the main cause? A Yes, as far as I know.

Q This practice of yours of taking money from the cash drawer and charging yourself and crediting yourself, as you have already stated, was that known to Mr. George Smock? 40

Harry W. Smock, direct.

Mr. McDermott. I object.

Mr. Applegate. Mr. Smock does not deny or dispute that these items as set forth in the schedule and exhibits offered in evidence were used by him, or doesn't deny that the moneys were expended by him.

10 *Mr. McDermott.* He doesn't deny that he received that money?

20 *Mr. Applegate.* That is it, exactly. His assertion is that the moneys were used by him in the interest of the company and for the company's exclusive benefit; that it is impossible for him to give in detail an itemized statement of these disbursements showing exactly what the moneys were expended for, so that it may appear upon the face of such a statement that they were expended for corporate purposes; and he says further that the reason why that is impossible is because of the time that has transpired since these moneys were expended; and furthermore, because of the attitude of the complainant, George Smock, in relation to the system—if it may be called a system—under which the moneys were expended by the defendant, Harry Smock; that Mr. George Smock was familiar with the system adopted—the so-called petty cash and reserve; that he knew that these
30 moneys were being expended by Mr. Harry Smock in the way that Mr. Smock says that they were; that he never at any time insisted upon a detailed statement or an account being kept of the expenditures either from the petty cash nor the reserve; that is, as to what exactly they were expended for, until now, at this time, 1919, when it is too late for Mr. Harry Smock to render any such detailed statement. He comes into court and says that Harry Smock should render an itemized statement and an
40 account of the moneys in question.

Harry W. Smock, direct.

Our contention is that Mr. George Smock, if we can prove that conduct on his part, is estopped from now saying to Harry Smock that while you admit that these moneys were expended, and while you say that the moneys were expended in the interest of the corporation, yet we are not bound by your statement as to how the moneys were expended, and we insist that you shall produce an itemized statement or written explanation of the disbursement of these moneys. 10

Mr. McDermott. In order that there may be no misapprehension, I wish to say on the record that we do not for a single moment admit—George Smock does not admit that he knew of this method of keeping the books at all until the month of January, 1918, when he discovered that the books of the company—the rest of the books of the company were never kept in any such way as this; this was an isolated instance of bookkeeping in that company—the way in which these accounts were kept by Mr. Harry Smock in the mill; and I want to make it clear that we do not admit anything of that kind, and say that it is not the fact that George Smock knew about this. But passing that for the moment—that has been gone into, in great detail—the method of bookkeeping, before the Vice-Chancellor, and now we come to this situation: 20 30

Mr. Harry Smock admits that these items, which we say were taken by him, were taken by him; and what the Court has directed to be done is that he shall now account for this, not by telling us again how he did it, or anything of that sort, but by telling us what was done with the particular money, in each instance, as nearly as possible, but certainly in some way disclose to us what was done. That is not an impossibility at all. But if it resulted 40

Harry W. Smock, direct.

10 from his method of bookkeeping, then Mr. Smock ought to bear the brunt of that, but my insistent is that the accounting is what we ought to have--- have the items now so far admitted to have been received by Harry Smock. A most ridiculous method of bookkeeping. Twenty-five cents that didn't go through Harry Smock's hands is in the books. The amounts which went through his hands are put down here in round numbers, and what they mean except by some statement from Harry Smock or someone who knows what was done with the particular items.

The Master. I will take the answer.

A Yes.

20 Q How do you know he knew it? A Because not once but many times, in conversation with him, I asked him if he thought it was necessary to keep a detailed itemized account.

Q Of what? A Of the moneys handled there at the mill department.

Q When you say that, do you mean moneys handled at the mill department; are you including the petty cash fund and the reserve fund, so called? A I am including all the cash.

30 *Mr. McDermott.* It includes all the items, all that was paid out of the petty cash?

The Witness. Yes.

Mr. McDermott. Not merely Harry Smock, but all the items?

The Witness. All the items.

Q You say you had such a conversation with him many times? A Yes.

40 Q What did he say? A He said it is not necessary; it makes double bookkeeping, and it is used for the

Harry W. Smock, direct.

good of the business, and it is unnecessary to go to that trouble, as near as I can recall his words.

Q Did he ever, prior to the commencement of this suit, ask you to render or keep any such detailed account? A Never but once.

Q When was that? A That was in December, 1917.

Q What was the occasion? A I was over at the office one day and he had some figures that he had evidently compiled, and he said, "You are spending a lot of money over there at the mill," and he said, "What do these items mean?" He referred to the reserve so marked in this exhibit, and I explained them to him. 10

Mr. McDermott. I understand this line of testimony is all subject to my objection.

Q What did he say? A I asked him if he thought there was any question about it, the way they were handled, and he said no, he just wanted to know what they were, and he said it seems to be a lot of money for expense over at the mill. 20

Q You told him what they were? A I did, as near as I could.

Q Did he ask you at any time to keep any different account? A He did not ask me; I told him if it was best to keep an itemized account, I would be only too glad to do it. 30

Q What did he say? A I don't recall whether he did say to or not.

Q Did you? A I did.

Q From that time you kept them? A I tried to keep an accurate account from that time.

Q Does that include your petty cash as well as your reserve fund? A Yes.

Q So that you kept as accurate account as you could, according to your statement, from December, 1917, on? A Yes. 40

Harry W. Smock, direct.

Q Explain the use of moneys from the reserve fund. I think we touched the cash, but not the reserve fund. The petty cash you kept an account of in the books. Now, as to the reserve fund. A When there was an accumulation of money in this little drawer in the desk and it seemed as if it was too much to lie around where
10 practically any one could get it out; either myself or one of the young men in the office would take a certain amount from the drawer and I would place it in a compartment in the safe in the office, of which I had the key, and it was entered on the book, the petty cash books, in order that the books might be balanced by the young man who had them in charge, as in reserve. And when our men, either workmen or men from the office had occasion to go out of town, the moneys were given them out of this reserve fund for their travelling and other
20 expenses.

Q Was there any account kept of that? A No.

Q So that after the moneys passed from the petty cash fund into the reserve, then no attempt was made to keep an accounting of the moneys that were expended from the reserve fund? A No.

Q Why didn't you? A Whoever was given moneys from that fund gave me their expense account when they came in, and I checked it up.

Q Checked it up with what? A Simply went over
30 it, and I considered whether it was right and just.

Q Whether it was reasonable or otherwise? A Yes.

Q But you made no entry in any of your books showing the expenditure from the reserve fund of the moneys you paid your workmen? A No.

Q For the purposes you have related? A No.

Q Why didn't you? A Simply because, as I said a few moments ago, in conversation with Mr. George Smock it was an understood thing; I knew it.

Q Knew what? A That it was unnecessary, because
40 it was double bookkeeping, as he expressed it, and the

Harry W. Smock, direct.

moneys were expended for the good of the concern, and we simply didn't make another entry of it.

Q What was the system you found in the mill department when you took charge; was it the same? A I went into the mill department practically at the commencement of the business.

Q What was in— A I think in 1901.

10

Q When you took charge of the mill department?

A Yes.

Q Then had this system you described as to reserve and petty cash been in existence from that time? A It has always been in existence.

Q Until 1917? A 1918.

Q You said awhile ago 1917 you adopted some different method. A 1918.

Q You said 1917, in December; you said you had a conversation with George Smock, and as a result of it you changed your system; is that 1917 or 1918? A That was the beginning of 1918. I said my conversation with Mr. Smock was in December, 1917, and we made the change in 1918.

20

Q And Mr. Smock knew all that time of the custom that you explained?

Mr. McDermott. I object.

Q Did Mr. Smock know of it? A He did.

Mr. McDermott. I object.

30

Q Why do you say he knew of it; why do you know he knew of it? A Because from conversation I had with him, and I talked to him about it several times.

Q How did you come to speak to him about it; did he ever complain to you about it? A He did not.

Q How do you know that he knew of this system? A Because I talked to him about it.

Q And why did you talk to him about it? A I don't know that he knew of the system, except as I

40

Harry W. Smock, direct.

stated a few moments ago, in conversation I asked him if he thought it was necessary that I should keep an itemized statement and account of the moneys expended there, and he said no.

Q Before you had that conversation, which I understand took place in December, 1917, did he know of your
10 system? A We had had many conversations—several conversations before that.

The Master. When you say “several,” how many do you mean?

The Witness. Certainly half a dozen.

Q How did you come to speak of it; what was the occasion of those conversations? A I would speak of it when we were discussing business matters in his office; I used to go over there and talk over business affairs
20 with him; I always tried to consult my associates on everything that was vital to the interests of the business pertaining to the part of which I had charge; it was just in the course of those conversations that I mentioned those things.

Q Did he ever examine these petty cash books? A I cannot tell you.

Q Were they where he could see them if he wished? A Always.

30 Q Where were they kept? A They were kept in the desk of the mill office.

Q And the record of the reserve fund, that was in the same petty cash books? A Yes.

Q Was there anything in the general books of the company at the bookkeeping headquarters that would indicate this system of petty cash and reserve? A I don't think so.

Q When your reserve fund reached a certain amount, was any part of that money paid into the corporation?

40 A Yes.

Harry W. Smock, direct.

Q Just explain that. A We always tried to keep enough money there to pay whatever expenses might be required.

Q About how much would you keep in the reserve fund? A We always tried to keep around \$100 to \$150, if we had that much.

Q When it reached over \$150 or \$200, then what; what was done with it? A We turned the surplus in to the main office. 10

Q To whom would you pay it? A We turned it over to—sometimes we gave it to Mr. Ruding, our bookkeeper and our bill clerk.

Q And who else? A Mr. Yates, the bookkeeper.

Q Any entries made in the books of the concern of the corporation? A Yes.

Q And are those books here; they can be produced if they are not here? A If they are not here we can produce them. 20

Q Did Mr. George Smock have access to those books? A Yes.

Q In the performance of his duties he had something to do with those books? A Yes.

Q What? A He had entire charge of them.

Q Were those payments—of course the books will speak for themselves—

Mr. McDermott. Go ahead.

30

Q Do those books indicate what these moneys represented, when they were paid out of the reserve fund, after the reserve fund had reached a certain figure? A Yes.

Q How would they indicate on the books? A In some cases they were credited to the storage department, and in others to the mill department.

Q By being credited, you mean that that would indicate from where the money came? A Yes. 40

Harry W. Smock, direct.

Q But was there anything to indicate that it came from this particular fund called the reserve fund? A No.

Q It simply showed on the books that it came from the mill department? Your department? A Yes.

Q That is all? A Yes.

10 Q In your department, which had to do, as I understand, with the mill work and erection and construction of buildings, etc., when bills were sent out to your customers, from what office were these bills sent, your office or the general office? A The general office.

Mr. McDermott. I object to this as already in evidence in great detail in the transcript now before the Master.

20 Q And the money that paid these bills was paid into what department? A Into the main office.

Q So that all the moneys your office handled was the petty cash? A Just the petty cash, the sales from day to day.

Mr. McDermott. Storage items went through your office?

Q What was the storage? A We run a storage business and that is carried with the mill department. We have a public storage warehouse.

30 Q That was run in connection with your mill department? A Yes.

Q How long had that been in operation? A I think we went into that business either 1914 or 1915, I am not sure which.

40 Q Mr. Smock, you have been asked to account for certain expenses or certain disbursements of moneys which came into your hands, as indicated by Schedule A, which is in part Exhibit C. 1; can you render any further accounting or give any further explanation than appears in said Schedule A, as supplemented by the

Harry W. Smock, direct.

books from which the items have been taken, than appears therein, down to January 1, 1918? A No, I cannot. May I add to that answer—

Q Just a moment. And why can't you? A Well, because in the expenditure of these moneys, when I bought materials or paid it out for expenses, I kept a record of it until I returned, and then it was destroyed; I didn't keep any record of it, I didn't enter it in the books; consequently I cannot tell now what I spent these moneys for, and it is impossible, except that every dollar of that money was expended for the legitimate expenses of the Buchanon & Smock Lumber Company. I absolutely used not one penny for my own personal use. 10

Q And commencing January, 1918, which was after your conversation with Mr. George Smock, to which you have referred, can you give further explanation? A Yes. 20

Q In what form? A I have the records that I have kept.

Q Just produce those records. A (Producing same.)

Q What records are you producing? A That is a record out of a memorandum book which I carried.

Q Kept by you? A Kept by me.

Q The figures are in your writing? A Yes.

Q And kept at the time? A Kept at the time of each expenditure. 30

Q As in the account? A That is true.

Q Calling your attention to the first item, of January 12, 1918, H. W. Smock \$10; what is that for? A That was taken to pay my expenses to New York.

Q For what? On what job? A I cannot tell you. Any trip I make to New York isn't always in connection with a job.

Q You say you have an itemized statement there showing the expenditure of that money; does it show what it is for? A I haven't that—the items, on this. 40

Harry W. Smock, direct.

Q Take the item of January 12, 1918; please explain that item, what it was for; you say you went to New York; is there anything there that shows you went to New York? A Yes.

Q Is it there that you went to New York? A Yes, I was in New York on the ninth.

10 Q Is it on the paper which you hold in your hand? A Yes.

Q Read the item.

Mr. McDermott. This is 1919, Mr. Smock.

Mr. Applegate. I asked about 1918.

Mr. McDermott. That is a mistake; it is 1918. You made the unusual mistake of dating a year ahead, instead of the common mistake of dating your diary back.

20 *The Witness.* This all follows in 1918.

Q Take the first item, January 12, 1918, \$10. A That was to pay my expenses to New York on the ninth.

Q Read what you have there in reference to that, exactly as it is there. A New York, \$2.16; lunch, 65c; drawing pens, \$1.95; total, \$4.76.

30 Q Do those items make up \$10? A No, sir; you will not find that they will balance—those books. Sometimes I made several trips before I balanced the account—my account in those books, in the petty cash book.

The Master. You mean before you made an entry of disbursements?

The Witness. Before I made an entry of disbursements.

Q Won't you please refer to your total items on your memorandum which you have in your hand, showing the first item aggregating \$10, January 12, 1918? A The first item after that aggregates a whole lot more than that.

Harry W. Smock, direct.

Q But in that petty cash book appears the item \$10?

A Yes.

Q January 12, 1918? A Yes.

Q You are asked to explain that. A I charged that to myself and it was carried on the book until February 20.

Q You charged that to yourself when you took it out? A Yes. 10

Q And that was the occasion, you say, of going to New York? A Yes. There may be some other items.

Q With that \$10 in your pocket you went to New York and you expended that \$10 as indicated on the paper which you have in your hand? A Yes. I might not have done it all that day.

Q Won't you read the items which you say is an explanation of the \$10, what you spent it for? A On the ninth of January I was in New York. 20

The Master. You spent how much that day?

The Witness. \$4.76.

The Master. When did you spend the balance of the \$10?

The Witness. On the nineteenth of January.

Q What is that for? A New York, \$2.16; lunch, 80c; street car fare, 25c; tracing cloth, \$7.20; two drills, 75c and \$1.08; total, \$12.54.

Q What do those expenditures total? A \$12.54. 30

Q How do you know that they are an explanation of that item of January 12, \$10? A I just explained that a balance was made periodically; I didn't make a balance every day. My next trip was on the twenty-third of January. New York, \$2.16; lunch, 65c; total, \$2.71.

Mr. Applegate. I suggest that the witness have the privilege of examining the books so that no charge of unfairness can be made on cross examination, and state as a fact that these items of 40

Harry W. Smock, direct.

expenses to New York are wrongfully credited to him on his book and are no explanation of the items that he is trying to attach them to.

Q Do you want to use your book in connection with that? A I can.

10 Q Do you want to? If you do, get your books. If you don't, say so. A The only way it can be used would be to check up the items in that book.

Q Then continue. Read that right into the record.
A On the twenty-fifth I was in Perth Amboy: \$1.19, carfare; 30c, Perth Amboy to N. B.; \$1.49, total for that day. Next, on the thirtieth of January, I bought an inventory book for 50c; two filing boxes, 70c. On the thirty-first of January I was in New York again: Carfare, \$2.16; lunch, 70c; three carfares, 30c; totaling, \$3.16. On February eleventh I had \$14.99 for supplies
20 and \$44 expenses. You will find that that totals that amount of the figures, and the total I had was \$14.99.

Q In addition? A No.

Q Included in the \$44? A Yes; that would make the expense \$29.01, and you will find that entry on the petty cash book.

Q When you refer to expenses in this reading of yours, what sort of expenses do you mean; expenses for what? A Just what I have read—these carfares and traveling expenses.
30

Q Are you able to say on what particular job they were? A No, sir.

Q They were all in connection with the business of the company? A Yes.

Q Not your individual business? A No.

Q Please continue. A The next item of expense was on February 5th, I was in New York again: \$2.16; lunch, 44c; total, \$2.61. February 9th, I was in New York again: \$2.16; lunch, 60c; total, \$2.76. February 12th: New York, \$2.26; carfare, 5c; lunch, 55c; total,
40

Harry W. Smock, cross.

\$2.86. February 15th, I was in Philadelphia: Carfare, \$3.24; lunch, \$1.00; street fare, 10c; total, \$4.34.

Q What were these trips for, generally speaking?

A In the general line of business I had various calls—architects and wholesale concerns; I was making them constantly and always have. February 19th I was in New York again: \$2.16; lunch, \$1.25. From there I went to Newark: Fare, 17c; street carfares, 10c; total, \$3.68. 10

The Witness. Witness reads from C. 19.

Q So that the paper that you have been reading from is Exhibit C. 19 for identification in the main case? A Yes.

Mr. Applegate. We offer it in evidence now.

Mr. McDermott. I want to cross examine him before it is marked, to see whether it ought to be offered. 20

Mr. Applegate. You might cross examine as to whether the entries were made at the time.

Q That is in your handwriting? A In my own.

Q And the entries were made at the time of the expenditures? A Yes, and it truly represents what it purports to represent, to the best of my knowledge, absolutely. 30

Cross examination by Mr. McDermott.

Q Mr. Smock, you say the entries here were made at the time they bear date? A Yes.

Q Were these separate sheets in the books? A Yes.

Q How did you happen to get them together in this shape? A Because I kept them that way.

Q In the book? A It was a book I carried, a loose leaf book.

Q And they have been taken from that? A Yes. (Producing book from which they were taken.) 40

Harry W. Smock, cross.

Q I see the first item here is February 20, 1918; I gather from what you have already sworn to, that that item was made by you there on that piece of paper on February 20, 1918; am I right? A Yes, sir; that is the item of February 20, 1918.

10 Q Take the next item, 1/19/19, directly under February 20, 1918; do I understand you to swear now, or to have what you have sworn to mean, that you made that entry on January 9, 1919? A No, that was made in 1918; I told you a few moments ago that 1919 on there is a mistake; it was 1918.

Q Then it was intended to be January 9, 1919? A No, 1918.

Q I beg your pardon, January 9, 1918? A Yes.

Q And that, you say, was made there on January 9, 1918, in your handwriting by you? A Yes, sir.

20 Q On that piece of paper? A Yes.

Q How did you come to get January 9, 1919, if you say it is '18 until February 20, 1918? A February 20, Mr. McDermott, was made when the books—when I balanced the books, and you will find that entry all the way along here on those items.

Q How did it come to be made on top of an entry of a month before? A Because I balanced the books at that time, of my account.

30 Q You are testifying now under oath? A Yes.

Q But you made that entry of February 20, 1918, on that day? A No, I didn't say so.

Q What you say now is, that the figures February 20, 1918, were written opposite the three items aggregating \$18.34 on February 20, 1918? A Yes.

Q But the figures aggregating \$18.34 were not written at that time? A They were not. They were previous to the ninth of January.

40 Q Then the next item of 1/9/19 you say ought to be 1/9/18? A Yes.

Harry W. Smock, cross.

Q And that the items above it preceded in date, although the entry opposite you say is afterward? A Yes; these dates on the left are the dates on which these moneys were spent, and the dates on the right are the dates at which the balance was made.

Q February 20, 1918, is the date when the balance was made? A Yes, and covered all these items. 10

Q Won't you explain to me how you wrote the date February 20 on this page several times February 20, 1918, that you entered these items on the left in 1919?

A I didn't enter them in 1919 I told you several times.

Q I don't mean you entered them in 1919; how did you come to write 1919, a year ahead of it? A I cannot tell you. For the same reason that you sometimes make one figure when you are thinking of another one. Any man will do that.

Q Isn't it a fact that you wrote this afterward? A No, sir; it is not. 20

Q How was it possible? A I am under oath and I am telling you the truth.

Q By what process of reasoning or what condition of mental calculation— A It was simply a mistake.

Q —you indicated on a book which you say was written at the time, a year ahead? I would like to know your mental reason.

Mr. Applegate. He has told you. 30

A I simply said it was a mistake of putting down the figure.

Q And you were writing in 1918 date after date? A Yes, I probably was; I may have written 1919 several times.

Q As to a thing that happened at the time? A Yes.

Q You know sometimes, of course, a man carries something over from the year before, because he is used to it, but how does a man get a year ahead on it? Mr. Smock, isn't it a fact that these were all written since 40

Harry W. Smock, cross.

that time? A I have said no, Mr. McDermott. I am telling the truth. I have said no.

Q And can you give me any explanation of any sort why you wrote the year 1919 repeatedly down this page, five times, when as a matter of fact you now say these things all occurred in 1918; can you give any explanation of that? A Only that it was a mistake; my only reason. I certainly didn't write them afterward.

Q You are quite sure—I want you to be sure, if you can—that these items were made on the date that they bear? A Yes, sir.

(Marked Exhibits A and B, July 13, 1920.)

Q I call your attention now to a page which the Master has marked Exhibit A for identification, of this date, and I ask you again if you still say that you made these entries on the day that appears to be their date?

Mr. Applegate. He has said so four or five times.

A Yes, I don't know of a single item in this book I didn't make on the date that the money was spent.

Q At the top of the page, the beginning of this page, your entries began 9/4/18? A Yes.

Q The next item is 9/12/18? A Yes.

Q And the next is 9/16/18? A Yes.

Q And the next 9/17? A Yes.

Q And the next below that is 9/17/18? A Yes.

Q You say those were made on those dates, do you? A Yes.

The Master. I will receive it.

(Marked Exhibit D. 2, July 13, 1920.)

Q Mr. Smock, you didn't first make your entries in another book, and then copy from the other book to these sheets? A It was made direct in that.

Harry W. Smock, further direct.

Further direct examination by Mr. Applegate.

Q Exhibit D. 2 today extends to the first of January, 1919? A Yes; the last entry is December 24, 1918.

Q What does this mean: cash, December 27, 1918? A That was the balance that was due me at that time, and you will find that is entered on the petty cash book.

Q These balances indicated in the exhibit were then transferred to the petty cash book? A Yes. 10

Q And were they transferred as of the dates, as appears in the exhibit? A No.

Q For instance, on page 1, the balance last date is February 20, 1918, cash \$29.01; is that the entry that appears in the petty cash book? A Yes, on that date.

Q Does it appear as of that date? A Yes.

Q The same is true as of all the other balances appearing in this Exhibit D. 2? A Yes.

Q The next one being February 20, 1918, cash \$16.25? A Yes. 20

Q That is the date that that entry was made in the petty cash book? A Yes, every one of them.

Q There is no total of these credits, is there? Do you say that the memorandum that has just been put in evidence, marked Exhibit D. 2, is your explanation of the items for which you have been asked to account, as appearing in the Schedule B of Exhibit C. 1? A Yes. 30

Q And commencing February 7, \$2, and closing December 24, \$10? A Yes.

Q And all these moneys were expended by you in the interest of the company? A Absolutely.

Q Any part of it for your own personal benefit? A No, sir.

Q And generally speaking they cover what sort of services? You spoke a little while ago of going to see architects. A They covered principally traveling expenses. 40

Harry W. Smock, further direct.

Q And the travel was for what purpose? A In the interest of the Buchanon & Smock Lumber Company.

Q In what respect? A I would go to see architects; I would go to see wholesalers.

Q For what purpose did you see wholesalers?
A Purchase of material, adjustment of accounts, ad-
10 justment of differences on shipments.

Q People who were your customers? A Yes.

Q Customers of the company? A No, people from whom we bought goods sometimes; oftentimes the case; and go to make purchases.

Q Any other purpose that these trips were made?
A Of course I did more or less purchasing of articles I brought home with me and paid cash for.

Q Purchases of what? A Tables of various characters, for the office, or blank books, or many times things
20 that were required in the manufacturing plant and pack-ings.

Q You mean when you made special trips to purchase these articles? A Sometimes; I usually have a number of calls and trips to make when I go away.

Q Here is an item in the account as set forth in Exhibit C. 1, August 24, 1918, Henry Hall, \$100? A That was moneys that Mr. Hall had to go away and either get measurements or—or both for some operation that we had on. I am not sure, but I think that par-
30 ticular item was at Langley, Virginia.

Q What sort of a job did your concern have there?
A We had an operation there for, I think, twenty-eight buildings for the government.

Q Who was Henry Hall? A He is our architect and draftsman.

Q It says Henry Hall, see August 30, \$100; do you know what that referred to?

The Master. Would that item of \$100 appear in
40 that bill to the government?

Harry W. Smock, further direct.

The Witness. No, sir.

Q Why not? A Because that was a part of our work—take the measurements at the building.

Q You mean this is preparatory to putting in specification or bid? A No, we had the contract but we have to verify that and take the measurements at the building in order to make the things. 10

Q So your \$100 would be charged up against your contract price? A Yes, that is always a very large item in conducting the mill business.

Q That would be taken into consideration then at the time that your contract figure was drawn? A Yes.

Q Calling your attention to another item, May 21, 1918, which says "Cash balance difference \$100," what does that mean. A I don't know, sir (witness shown exhibit). I don't know what that means; it means, I presume, the books were short. 20

Q If you had your books here would you be able to tell what it meant? A No, I didn't keep those books.

Q Who did keep them? A Harry Jones.

Q Is he the bookkeeper? A No; but he has charge of that part of it.

Q Harry Jones is here, is he? A Yes.

Q Would it refresh your memory in any way by referring to the books as to that item or any other item? A Not in that item, because it is not in my writing, and I knew nothing about it. 30

The Master. Did anyone else make entries in the petty cash book except yourself?

The Witness. I very rarely made any entries.

The Master. (Question repeated.)

The Witness. Yes, several of us.

The Master. Who?

The Witness. Mr. Jones, Mr. Hall. 40

Harry W. Smock, further direct.

Q What was the nature of their entries; why would they be making entries in that petty cash book? A If they sold a few pieces of moulding or anything else, they would go to the cash drawer and give the change and make the entry.

10 Q They didn't take any money out of the petty cash?
A Yes.

Q Did they make the entry of it in the petty cash book? A Yes.

Q Did they employ the same system that you did in regard to using the petty cash? A Yes.

20 Q If they found it necessary to expend moneys in the interest of the company, whether for purposes of taking a trip or what not, they would take that money from the petty cash and make the entry in the petty cash book? A They would if it was a short trip of a minor account. As I said in the beginning of this examination, if the men were going out of town on a long trip, or extended time, previous to 1918, I would give them the amount from the reserve.

Q But if it were short and incidental, they were privileged to take it from the petty cash? A They were.

Q And they would take it? A Yes.

30 Q And they made the entry in the petty cash book in their own writing? A In their own writing.

Q That they would do whether you were there or not? A Yes.

Q Did George Smock know anything about that practice? A As far as I know, he did. I never told him of that.

Q What is there that indicates to your mind that he actually did know? A Nothing.

40 Q Did he have any such system of petty cash in his department, or a reserve fund? A Not to my knowledge. He had no reserve fund.

Harry W. Smock, further direct.

Q What about petty cash fund? A He had a system in the hardware department where there wasn't even a book kept.

Q What was that system? A We kept this little book in the mill department—this little petty cash book; we kept that in order to show balances, and in the hardware department money is taken in and paid out and there was no record kept of it. 10

Q Who paid that money out? A Mr. Loudenslager or his assistant.

Q I ask you now if Mr. George Smock has any such system as you had in relation to petty cash; did he have a petty cash account in his department? A Yes.

Q And did he expend moneys from that petty cash account? Did he or didn't he?

Mr. McDermott. I object to it. 20

A The petty cash system will need an explanation. I can answer it.

Q Do it in your own way. A The petty cash system that prevailed in the lumber department, the money went right directly into the till of the main office.

Q Was that the department that Mr. George Smock had charge of? A One of them. The hardware department had a cash register of its own, and there was no record made of the receipts or expenditures from that. 30

Mr. McDermott. A National Cash Register?

The Witness. No, a drawer which locks underneath. The money was not rung up at all. The receipts were not rung up.

Q Were moneys expended from these amounts in this department for petty purposes? A Yes.

Q And no record kept of that? A Not in the hardware. 40

Harry W. Smock, cross.

Q I am speaking of the lumber department that Mr. George Smock had charge of, if he did have charge of that department; did he? A Yes.

Q Did he have any system of keeping petty cash? A He kept a petty cash book and the money went right into the till of the main office.

10 Q Have you any further explanation, Mr. Smock, to give relative to the figures appearing in Exhibit C. 1, other than you have given? A I know of no further explanation, except that the moneys shown there were used absolutely for business purposes for the Buchanon & Smock Lumber Company, and that I personally haven't knowingly benefited one penny for personal uses.

Cross examination by Mr. McDermott.

20 Q Mr. Smock, the order referring this account to Mr. Bindseil was made in February last. Do you remember being present when the Court said that an accounting should be made? A I was there in the court proceeding.

Q You were there when the Vice-Chancellor said that an order would be made directing you to account; you remember that? A I don't recall that.

30 Q I find by the minutes of January 30, 1920, in the main cause, that Mr. Applegate made a statement and then I made a statement also, and the Court made several, and it was then stated "the Court will make the reference to Mr. Bindseil"—you were there that day, on January 30? A I was there.

Q You knew you were to make an accounting for the company for these items which have been complained of? A No, I didn't know it.

Q You didn't know that the Court made that order? A No, I did not.

Q When did you first hear that the Court ordered you to account? A I never heard that.

40 Q You never heard of the order of February 28, 1920? A I never heard that the Court ordered me to account.

Harry W. Smock, cross.

Q And this order of February 28, 1920, was referred to Mr. Bindseil to take account of the moneys received by you while in charge of the company, and among other things, for the better clearing of the account, that you were to produce before the Master and leave with him, the books and papers. Haven't you ever heard of that before? A Yes, I heard that; the books are here. 10

Q You knew an account was to be taken of the moneys which you had received and which had gone in the reserve and which you handled in the mill account, as long ago as February? A I supposed that this hearing was to decide whether that was to be an accounting or not.

Q This hearing today? A Yes. I have never known that the Court—of any order of the Court for me to give an accounting. I didn't know that the decision had been made.

Q So that you came here today without knowing that an accounting was to be taken by the Master of the moneys which you had received, is that right? A I came here today supposing that the Master was appointed to receive testimony and make a record of the testimony, if you want to know what I thought about it. My understanding was that this hearing was to take testimony before the Master, and that the decision was to be rendered afterward. 20

Q On what subject? A On the moneys shown in the petty cash books of the mill department. 30

Q Have you made any preparation at all to produce before the Master the books? A The books are here.

Q Any preparation at all to show what you did with the money? A I have told all I know.

Q Did you make any preparation before coming here? A No more than I had before the previous hearing.

Q Do you wish the Master to understand that you have never understood, until now, that you were to make an account to the Buchanon & Smock Lumber Company, under the direction of the Court? A I have understood, 40

Harry W. Smock, cross.

Mr. McDermott, that this suit was instigated for an accounting.

Q And then we appeared several times before the Vice-Chancellor? A Yes.

Q And then the Vice-Chancellor made a direction in the matter, you knew that, and referred the accounting to
10 Mr. Bindseil, you knew that? A He referred the taking of evidence.

Q I mean he referred the accounting by you to Mr. Bindseil. Don't you know that yet? A I haven't understood it that way.

Q I did understand you to say that you read this order? A Yes.

Q So whatever was in the order you knew? A Yes, I think I read the order.

Q I want to find out what preparation you made to
20 comply with the order of the Court? A Mr. McDermott, I have told you all the preparation I could make.

Q You say that these items of reserve, some of them, were carried over in the main books of the company? A No, I didn't say so.

Q What did you say about that? A I said that when we had more money in the reserve than we thought should be kept there, we took the amounts over to the main office.

Q That embraced the items which had been carried in
30 reserve? A Yes, some of them.

Q I mean the same thing that you do. Have you been over the books of the company to find out how many of those items there are? A No, I haven't.

Q Have you made any effort to find out how many of those items would relieve you of accounting? A No.

Q Why not? A Mr. McDermott, simply I didn't understand that that entered into this suit at this time. I will be frank about it.

Q If you had understood that, would you have ex-
40 amined the books and tried to get the figures to bring

Harry W. Smock, cross.

here? A Naturally, I want everything brought here that is of advantage to me; I want to protect myself.

Q You want to produce the books which show anything of that kind? A Yes.

Q But up to this time you haven't felt that it was necessary to do that? A No, that isn't right at all. It is not that I haven't felt it was necessary; I didn't know. 10

Q You knew that there was a charge here of several thousand dollars on these books for money received by you? A Yes.

Q After giving credit for those which had been apparently repaid back by you; you knew that part of this money had gone into the books of the company? A Yes.

Q Those books are right there in the same general office with you, in the main office, I mean? A Yes.

Q You are the president of the company? A Yes.

Q You have control of those books? A Yes. 20

Q And you haven't taken the pains to produce before the Master appointed by the Court, a statement of a single one of these items, have you? A No.

Q Are those books here, the company's books, showing these items which were turned over? A Yes, they are here.

Q Can you pick out these items? A I can; it will take me some time.

Q Can you pick them out between now and the next hearing? A I think so, yes. You mean this afternoon? 30

Mr. McDermott. I don't mean necessarily this afternoon.

RECESS.

Q It was admitted this morning that the items in these schedules taken from the books Exhibits C. 4 to C. 18 in your name had been withdrawn by you. I am not speaking of the reserve. I am speaking of the H. W. 40

Harry W. Smock, cross.

Smock item. Can you tell us in any more detail than you did this morning, what became of any of those items prior to January 1, 1918? A I cannot.

Q I understood you to say that they were usually drawn by you to meet expenses—expenses of trips or something of that kind? A Yes.

10 Q They appear to be all drawn in round numbers, with two or three very slight exceptions; the exceptions are the items of March 24, 1914, \$6.75; November 21, 1916, \$5.59; February 27, 1917, \$19.71; March 9, 1917, \$2.55. So far as I observe, those are the only items which are not round figures. Mostly the items are \$10, \$20, \$25—items of that kind, and those moneys were drawn by you, then, in amounts of that character—even money,—generally speaking? A Yes, sir.

20 Q And in a good many instances the moneys paid back by you were in round figures, in the same way? A Yes, sir.

Q That seems to be so generally, with very few exceptions. You don't mean, do you, that these expenses which you incurred amounted to just the even money? A Certainly not.

Q Did you make any entry anywhere to indicate how much less than the even money they amounted to? A I did.

30 Q You did? A I kept a record just as I showed you.

Q I mean back of 1918. A I kept the same type of record in 1917 and previous to that.

Q Of these expenses? A Yes.

Q Where did the difference get to; how did the difference get back into any account; that is what I am getting at. Suppose you withdrew \$25 and went to New York and spent \$13; where did the \$12 go? A I made balances at that time, the same as I did in 1918.

40 Q On your book? A And you will find that when I made those balances, any differences were entered on whichever side they belonged.

Harry W. Smock, cross.

Q Will you get your books? A I think I can show you some.

Q Take the first item, February 6, 1914; you referred to that in your testimony this morning? A Yes.

Q That shows a withdrawal by you of \$7 on February 6? A Yes.

Q Can you tell what that was used for? A No. 10

Q It is an even sum of money? A Yes.

Q Can you indicate where it was put back? A I cannot. (Referring to Exhibit C. 4 in the main case.) That amount was handed me by one of the men; it is in his writing; that is not my writing; I didn't take that out of the drawer and I don't know what it was for.

Q If he took it and used it— A He didn't take it and use it, I am not accusing him; I must have had it; I don't know what it was for now.

Q What makes you think you used it for expenses? A Because I used no moneys from that concern for anything but the uses of the Buchanon & Smock Lumber Company. 20

Q Some things you charged up to yourself—used them and they were charged to you? A Yes, and all moneys I used, I paid back.

Q Can you indicate anything about this item? A No, I cannot.

Q You know you had it and that is the best you can tell us about it? A Yes. 30

Q Further down, the item of May 15, 1914—I am taking this at random—\$20? A Yes.

Q May 15—in the same book—\$20; you haven't any doubt you had that? A I am not accounting that I had that.

Q And if you used that for expenses, would you say you used just the even amount of \$20? A No, no more than it says in 1918 that I did; I kept the accounts in that same way. 40

Harry W. Smock, cross.

Q I want to know now where in this book there is anything to indicate any return of the unused portion to the petty cash. A I cannot tell you, sir.

10 Q You expected some one would want to know that sometime; if you used \$12 of that, there ought to be something to show where you put the \$8 back—that difference between your expenses and the \$20 is no different from any other cash? A No.

Q And in the orderly bookkeeping would require it to appear on the other side of the column. Did you take these round sums out in advance of the expenditure, for instance, or afterward? A Not always; sometimes I did and sometimes I did not.

20 Q If you did it afterward, why not make it the exact amount of the expenditure, as you did in many instances in 1918? A Because as I showed you there, it would sometimes be two or three weeks or a month before I balanced up my account with the drawer.

Q The drawer was right there with you every day, why not take it out and take the exact amount, so it would show exactly what you used it for? A I admit that.

Q You did that with everybody else except the reserve and H. W. Smock, didn't you, even to very minor items? A The minor items were kept, yes.

30 Q And aside from these items which you call reserve and the H. W. S. or H. W. Smock items. A Yes, as far as I know; I didn't keep the books.

Q You had oversight of the books? A Yes.

Q You ran that department? A Yes.

40 Q I would like to have you give me, if you can, any reason why, when you took a round sum, such as \$25 or \$20, to meet expenses, you didn't put down when you came back the difference between what you spent and what you took. A Only as I said a few moments ago in my testimony this morning, because I didn't bal-

Harry W. Smock, cross.

ance up only once in two or three weeks or a month; that is the only reason I didn't put it down.

Q How can anybody balance it unless you put down on the opposite side what you brought back; how could anybody balance it, you or an accountant or anybody? It is impossible to do it, isn't it? A The amount I took out had been already taken in, so that—

10

Q You are quite right about that. I am assuming that you were going on a trip, or something of that sort and withdrew from the cash drawer the amount of \$25. A Yes.

Q But, of course, you didn't mean to charge the company for any part of that except what you actually expended? A That is all.

Q Where did you put down anywhere on the book or make any entry, back of 1918, to show what your actual expenses were? A I haven't an itemized list, as I told you.

20

Q I am not asking you for the items; I am asking you to find anything which indicates it, back of 1918. Here is one in the same book, June 15, \$194; you have the item of H. W. S. expense \$3.85; we don't complain of that; you know that; this schedule of ours doesn't make any complaint about any item where you put down the exact amount spent. Our schedules relate only to these round numbers. I would like to have you show what you turned back out of the money. I don't confine you to that book; take any book back of 1918. A You have a schedule there of those things that were credited.

30

Q We have a schedule of the things we admit should be credited to you? A Yes.

Q Have you gone over this Exhibit C. 1 critically? A Yes, I have tried to.

Q Have you looked over that and checked it up with the books? A I have tried to.

40

Harry W. Smock, cross.

Q Have you found any single instance where this schedule shows moneys claimed to have been taken by you or taken into the reserve account, which is not taken from the book? A No, I don't think there is. I think it is correctly shown.

Q You think it is accurate? A Yes.

10 Q And these items—you find we have credited every item that the books show has been returned by you? A Yes, sir.

Q I think I asked you this morning—I meant to—whether you had been over the other books of the company, while you were president, to find what they showed as to the turning over to the company of larger amounts accumulated in the reserve? A I haven't.

Q You haven't? A No, sir.

20 Q Speaking from a bookkeeping sense, Mr. Smock, you know, of course, that where round sums are taken out by salesmen or agents, or whoever may be in the employ of the company, there is an account coming back to the company? A Yes.

Q And the return of the amount? A Yes.

Q I think some mention was made this morning of the Hall item, \$100; that appears to be August 24, 1918; perhaps it is August 30. There were three items; will you look at the item of August 24, 1918? A Yes.

30 Q That shows an item of \$100 paid to Henry Hall? A Yes.

Q And I infer from what you said today it was to meet his expenses in going to Virginia? A Virginia, I think.

Q I am not questioning that—to get in position to do some work for the government? A Yes.

Q You went over this schedule; did you look to see about the item of August 30? A Yes.

40 Q I find the item there of H. H. Wash. That is H. H. Washington. That is the same as Henry Hall? A Yes.

Harry W. Smock, cross.

Q \$56.35; doesn't that indicate that his expenses were \$56.35? A I would think so.

Mr. McDermott. I am referring to the book, Exhibit C. 18—book with gray cover and red back.

Q Mr. Smock, isn't that part of the same item of \$100? A I don't know, sir.

10

Q Do you remember the incident? A I remember his going down there.

Q Would you say the expenses were as much as \$156.35? A They might have been. It is not unusual at all on a trip of that character.

Q That would have to be that much to make this come out right? A Yes.

He went to Washington and over to Alexandria, as I recall the trip—I think it was that one—and from there to Langley Field and was there three or four days.

20

Q These items of expense, do they show anything about that trip, whether it was \$56.35 or \$156.35? A Not that I have.

Q Is Mr. Hall still in your employ? A Yes.

Q And that is a comparatively recent item, August, 1918? A Yes.

Q If the expenses were \$56.35, then there should be \$100 coming back on the other side of that page? A Yes.

30

Q There appears to have gone out \$100 on August 24 and \$56.35 on August 30, so if the expenses were \$56.35, there would be \$100 coming back as a receipt? A Yes.

Q Would you put that back as a receipt, or would you deal with it in some other way? A The difference should come back as a receipt.

Q Then it wouldn't be necessary to put it on this side at all? A Not if he spent \$56 and some cents for expenses, the balance should have gone back as a credit on the other side.

40

Harry W. Smock, cross.

Q Will you look at the item of May 21, 1918? A Yes, sir.

Q Referring to these items on May 21, 1918, what is the gross of the preceding page of receipts? A \$75.12.

Q And the gross of the preceding page of the disbursements? A \$38.62.

10 Q Carried over to the next page and added, what would be the gross up to May 21, of receipts? A I will have to add it.

Q According to the figures which are there, what is it? A \$190.39.

Q And the gross amount of the disbursements? A \$66.27.

Q The difference would be \$124.12? A Yes.

Q How much have you carried down as the balance? A I haven't carried anything.

20 Q How much does the book show? A \$27.62.

Q This bookkeeping after January 1, 1918, was according to the best methods? A We tried to have it so, but I didn't keep the book, of course.

Q You kept tab on the book? A Tried to.

Q How much is the balance? A \$27.62.

Q That is substantially \$100 less than the real balance as shown by the additions on the same page? A Yes.

Q Did you ever find that \$100? A We have not.

30 Q Did you ever look for it? A Yes.

Q When did you look for it? A I have looked several times; I looked first, of course, immediately after you called my attention to it at the previous hearing.

Q Have you taken any pains to find it since? A Yes.

Q What have you discovered? A I don't know where the difference is, except this, that at that time we had a painter working at the mill, painting some buildings, portable buildings that we were building, and he received \$100 at that time.

40

Harry W. Smock, cross.

Q How? A That I cannot tell you; I don't know whether it was paid to him from the mill office or not; it wasn't paid from the main office.

Q You wouldn't pay \$100 without mentioning the item somewhere? A No, you wouldn't think so, but it may have been done. That is the only explanation I can give for it.

10

Q What is the name of this painter? A Pitcher.

Q Did you look at the books at the office? A He is credited with that \$100.

Q As to the cash or check? A There was no check given; no cash paid out.

Q Did you ever pay him the \$100? A I cannot swear that I did.

Q That is the closest you can come to telling us about that \$100? A Yes.

Q You say he is credited with \$100 or charged with it? A Credited with \$100.

20

Q That wouldn't indicate any money was paid? A Why not?

Q He is credited with \$100? A Yes. If you pay us \$100, we credit you with it, we don't charge you with it.

Q Yes, I know that; of course, that is true; but when you paid the painter \$100 you charged him with it? A No, we credited him; he was working for us and we had an account against him, and we credited \$100 on his account.

30

Q You credit him with \$100 on account? A Yes.

Q Then he wasn't paid any money at all; he was credited on the account with \$100. See if we cannot agree with each other about this, if possible. If you paid him \$100 in money, that would be charged to him; am I right about that? A Yes.

Q And the fact that \$100 was credited to him on the account, means that he got credit for his work and not cash, doesn't it? A No, he got credit for the balance

40

Harry W. Smock, cross.

of his work. I haven't been able to trace that \$100; I don't know why it is, or where it went to.

Q You produced a memorandum this morning, Mr. Smock, referring to a number of items of expense, beginning with January 1, 1918—I think that is the book (indicating)? A That is it.

10 Q (Referring to Exhibit C. 16 in the main case.) Mr. Smock, you referred to a number of items of expense this morning on your little memorandum, and I find on Exhibit C. 17 in the main case, that you have carried out some of these items? A Yes.

Q And the items of expense and different things purchased by you, I suppose. Then those are carried for the exact amount expended. Can you tell from the book whether you had the money in advance to pay these, or whether you advanced the money yourself and then got
20 it back by making this entry? A No, I cannot from that, Mr. McDermott.

Q Can you tell from any book? A Oh, I probably advanced the money for that, I am not positive; I cannot swear to that.

Q These items to which I have just called your attention, extending from January 9 to January 30, in this book, C. 17 in the main case, follow the items of February 9; that is right? A Yes.

30 Q Four pages beyond is another list of items entered out of order? A Yes.

Q They follow the items of February 19 and are just before the items of February 21, and they embrace items of expenses of yourself between January 7 and February 19? A Yes.

Q So those items are in the book here? A Yes.

Q And they are part of the items that you referred to this morning on your memorandum? A Yes.

Q But they appear in the book? A I know they
40 are.

Harry W. Smock, cross.

Q And no objection is made to those; we never made any objection to those, have we? A Not that I know of.

Q We never made any objection to any item that appeared in any detail in the book at all, have we? A No.

Q That you know of? A No. I tried to keep it in detail after January 1, 1918.

Q How, then, do these items that you showed us this morning on your memorandum serve in any way to indicate what became of those round sums of money that we have been talking about; you carried these out in detail and of course you are entitled to credit them. A Mr. McDermott, I spent those moneys in the same way that I spent this; I kept the detailed account at the time I spent them, but I didn't enter them in the book. 10

Q Where do you show here where these were from; you just credit yourself with them? A Yes, I charged it to the business. 20

Q And credited yourself? A Yes.

Q Taking these two months of January and February, 1918, can you tell how much you drew from the firm--these items in detail, Mr. Smock, to which no objection is made, were supplemented also by items in round figures in January and February? A Yes.

Q \$10, \$12, \$10 and \$2 and \$3, is there anything in the book to show that they were the same as these figures for which you have taken credit in Exhibit C. 17? 30
A I cannot give you the figures, Mr. McDermott, without going over the items.

Q After January 1, 1918, I understand you there was a different system of bookkeeping. With that in mind, will you tell me where, if any place, you returned the \$10 which was paid you on January 12, 1918, or give me any reason why you should not account for it? These schedules do not show all the books; these are made up from the books of items which we find no use made by you on the books. A The book has all the entries. 40

Harry W. Smock, cross.

Q Don't you think yourself that you ought to show in some way where these moneys went? A Mr. McDermott, the moneys that are charged to me in 1918 are credited there.

Q They are charged to you first? A They are charged to me first and then credited.

10 Q We are charging them to you now, but where did you charge them to yourself? A Right on this book, Exhibit C. 17. That is a record of these books.

Mr. McDermott. It is a partial record only.

Q You might look at these items—the item of January 12, 1918, \$10; why shouldn't that item be charged to you? A It is charged to me.

Q Where? A Right here.

Q It shows you got it? A Yes.

20 Q You say you ought not to account for it? A No, I said I had accounted for it, but it is credited to me. It is charged to me first right here (C. 16).

Q Where is it credited to you? A (C. 17.) On April 15 I am credited with \$20.

Q On April 15 you returned \$20? A Yes.

Q In this schedule you ought to have a credit for the \$20; but why should you not be charged with the \$10? A I am charged with it.

30 Q And ought to be? A Ought to be.

Q Why isn't what you have said about that applicable to all these items in this schedule, Exhibit C. 1, today? A You mean in all these books?

Q Why isn't whatever you have chargeable to you, giving you all credits which appear there? A For this reason, any moneys that I used for personal use from the drawer, I returned; that I will make an affidavit to. I haven't knowingly used one penny of their money for my own personal use.

40 Q Does that show on the book? A No.

Harry W. Smock, cross.

Q Why wouldn't that show on the book? Leave out all the other items, the moneys you spent for someone else; you say the money you spent for your personal purposes, how are they distinguished in these books which you kept in any way? A They aren't distinguished in these books; no, sir; I have to concede.

Q That appeals to you as an imperfect method of bookkeeping? A Yes, I conceded that long ago. 10

Q And nobody alive could tell from these books whether these items had been used by you personally back of 1918, or by you for expenses for the company? A No.

Q Were you content to have them appear that way? A I didn't see any reason why they should not, or they wouldn't have been.

Q They amounted to thousands of dollars? 20

The Master. These items amount to something like \$4,000.

The Witness. It doesn't run into thousands of dollars.

Q How much does it run into? A My own personal account, as far as that is concerned, the moneys that are charged and credited to me?

Q The difference amounts to several thousand dollars. A If you count the reserve fund. 30

Q Perhaps I ought to distinguish the reserve fund from the H. W. Smock. A I would like you to.

Q Because that fund, I understand, went into the safe? A Yes.

Q What kind of a safe was that? Is it the safe in the mill department? A Yes.

Q You put them there for security? A It is a small safe.

Q How often did you take the reserve over to the main office? A Not very often; whenever we thought it was 40

Harry W. Smock, cross.

more money than we wanted to keep there and needed to keep there for the use of the mill business.

Q Do you believe that from your examination of the books, which I understand are under your control, that any considerable part of this reserve was taken over to the office.

10 Q Any entry of that on the books kept at the mill? A Yes, I think there is.

Q You ought to have credit for that? A I haven't checked that back. That would show particularly on the storage books, because we kept that as a separate account from the mill account.

Q You kept the storage money in the same way as the mill money? A Yes.

Q And it would show on the cash books at the office? A Yes.

20 Q How was that indicated on the cash books at the main office? A What was that?

Q I mean the moneys which you brought over from the reserve in the mill department. A It was simply credited on the main books at the main office, either of cash for the credit to the mill department or to the storage department.

Q It would be credited to one or the other? A Yes.

Q But it would also appear in the cash? A Yes.

30 Q The cash book of the main office? A Yes.

Q Is there any better indication you can give than that? A It would simply have the entry on the books in the main office.

Mr. Applegate. I had in mind whether there was anything on the books of the main office indicated as reserve fund.

The Witness. No, nothing different.

40 Q But it could be checked up by taking the cash book at the main office and your reserve fund and find out what

Harry W. Smock, cross.

went over there? A You mean find from the cash books in the main office?

Q You were asked about what Mr. George Smock knew of this bookkeeping of yours. I want to call your attention to the testimony on pages 73 and 74 of the main case—Mr. Applegate's question: "Mr. McDermott asked you in regard to the reserve item, as to whether or not you had ever shown Mr. Smock the reserve item; I think you touched upon that this morning. Mr. McDermott used the expression in that question 'reserve item'; to what did you understand that question referred? A I understood that reserve item referred to the amount that was taken from the petty cash drawer and placed in the compartment in the safe; that was what was known as the reserve. Did Mr. Smock ever know, to your knowledge, that it was part of the system in your department, to take moneys from the so-called petty cash drawer and place them in the safe? A He did." You still say that is the fact? A Yes.

Q The Court then asked you a question: "How long has he known that to be the practice? *The Witness.* For many years." You still say that is so? A Yes.

Q "Q Did Mr. Smock know that the fund in the safe was known as the reserve fund; was it referred to in those words or by that name? It is so indicated in your book, in those petty cash books? A Yes, it is. *The Court.* Did he (Mr. George Smock) know if it was designated or referred to, in the question." And then you said: "I wouldn't like to answer yes to that question, because I have no way of proving that Mr. Smock did— Q Did you ever mention or refer to it as a reserve in conversation with him? A I am not positive on that point, and that is the reason I don't desire to say yes." You still adhere to that? A I answered that that way because I want to be absolutely within the truth. I cannot make an affidavit that I ever said reserve. I knew the custom;

Harry W. Smock, cross.

whether I used "reserve," I cannot swear to; that is why I answered in that way.

Q When this matter came up in January, 1918, or December, 1917, Mr. George Smock did indicate some dissatisfaction with that method of bookkeeping? A He did at that time.

10 Q And it was changed? A Yes.

Q You spoke of the hardware department this morning--Mr. Laudenslauger had charge of it? A Yes.

Q He still has charge of it? A Yes.

Q And there the money was kept in the drawer? A Yes.

Q That was minor items, wasn't it, little cash items? A Yes.

Q Did Mr. Laudenslauger ever pay anything out of that? A I think so.

20 Q What sort of items did he pay out of that? A I cannot answer that.

Q You didn't pay any attention to that? A I did not; no, sir.

Q What you know about that is what someone has told you about it? A I knew the system was used there, but I cannot tell you what was paid out of it.

Q You wouldn't say that you ever paid items like \$20 or \$50 in round figures out of that? A No, I wouldn't say so, because I don't know.

30 Q Isn't it a fact that each night that was turned back to the main office, to the cash in the main office? A I don't know.

Q You don't know what was done with it? A No.

Q You haven't very much information about that? A Not a great deal; no, sir; except I know that the system was there.

40 Q I want what the system was; wasn't the system that he took these petty items for hardware sold for cash and that was a small item in your business; the big items of hardware were sold on credit, weren't they? A Yes.

Harry W. Smock, cross.

Q He took these small items and then at night turned it into the main office as cash? A I cannot answer that; I don't know when it was turned in.

Q That isn't very similar to your system, is it? A Yes, except we kept a petty cash book and he didn't keep any.

Q But you don't pretend to say he ever paid any considerable items out of it? A I don't know. I haven't knowledge of what he paid out. 10

Q You don't know what he did with it at night? A I do not.

Q What little you know about it, it isn't much like your system in the mill? (No answer.)

Q There was a petty cash in the lumber department, you say? A Yes.

Q Have you examined that? A Yes.

Q You mean to say no entries were made of the payment out of the petty cash in the lumber department? Do I understand you to say that there were no entries made of payment made out of the petty cash? A I didn't intend to say so; I don't think I said so. 20

Q You may have referred to the hardware; what was the fact as to the petty cash in the lumber department; was an entry made of the payments out of that petty cash? A The petty cash book of the lumber department did have payments entered—those that were made out of it. 30

Q And balanced, wasn't it? A Yes, periodically, but the bulk of the moneys that were paid out, were paid out of a drawer in the cash register and notation made in there, not in the petty cash book of the lumber department.

Q There was a cash register in the main office? A Yes.

Q In which the merchandise items which were paid for in cash came into the register? A Yes, all cash went in there that was received. 40

Harry W. Smock, cross.

Q There was something to show the particular amount that went out? A Yes.

Q And there was not in yours when it came to H. W. S. or reserve? A Yes.

Q Apparently George was more particular about there being extra work in your department than in his own?

10 A I presume so.

Q I understand in December, 1917, George spoke to you and said you were spending a lot of money in your department? A Yes, those are about his words.

Q He said, "What does this mean?" He then was looking at the books, wasn't he? A I cannot tell you.

Q When he spoke to you, what was he doing? A He was in his office.

Q They had been looking at the books? A He must have been.

20 Q And he was indignant? A He didn't act particularly so.

Q Well, he said, "You are spending a lot of money; what does this mean?" That seems to indicate some indignation? A Not as I would interpret it; not necessarily.

Q Then you said you explained it to him? A Yes.

Q Explained your system to him? A Yes; I explained it no more than I had previously; he was acquainted with it.

30 Q You said today that when he asked you "What does this mean," you explained it to him. I assume you mean you explained your books to him; is that what you meant? A I explained it no more to him than he had had it explained.

Q I ask you if he, when he said to you on that occasion, "You are spending a lot of money; what does this mean," and you stating that you explained it to him—
40 A I did explain it to him.

Harry W. Smock, cross.

Q The cash register wouldn't show anything as to the payments made, would it? A I don't think so.

Q It is a useful records of payments coming in, but is no value for payments going out? A No.

Q So that there would not be somewhere a record of payments going out? A Yes.

Q Wasn't there such a record in the lumber department? A Yes. 10

Q So that in the lumber department, the disbursements were kept both in the business generally, and also in the petty cash? A Yes.

Q That, I understand, is what you call a double system of bookkeeping? A No, I don't call it a double system.

Q You said if it was done in the mill department, or George said that if it was done in the mill department it would necessitate a double system of bookkeeping? A He said it would make double bookkeeping. 20

Q George, in the other department, did that very thing, he kept a statement of it, and yet you say that he advised you not to do it, because it would make double bookkeeping in that department? A Yes.

Q Why is that any more important than double bookkeeping in his department? A I don't know, except of course the mill department is a separate organization entirely and run separately. 30

Q No more important than the main business? A No, it wasn't as important.

Q Not so much at the time? A It wasn't as important.

Q And yet you tell us that Mr. George Smock, who followed the double system in the larger part of the business, advised you not to do it in the mill department, because of the extra bookkeeping? A He had a small book in the lumber department, a small petty cash book in the cash register for payments out, as well as we did. 40

Harry W. Smock, cross.

Q What did you explain to him? A That we were doing lots of work in various parts of the country, and it was necessary to spend money.

Q You explained the entries in your books? A No, never mentioned the entries in the books.

10 Q What were you explaining to him, then? A Simply the reason we had been spending the amount of money we had in the mill business.

Q At that time the events of the expenditures in 1917 were fresh in your mind? A Yes.

Q Did you take any pains to set out or set forth in any detail for future use how these moneys had been spent? A I asked him if he had any suspicions or any question about those expenditures, and I would make all the explanations that I possibly could, and he replied "No."

20 Q He never questioned any expenditure that was on the book; he doesn't today? A That is what the moneys went for.

Q The moneys that indicated expenditures—expenses, he has never questioned those, isn't that the fact; haven't we said over and over in court that we raise no question about any item in the book which indicates in terms an expenditure? That is the fact, isn't it? Wasn't the query about these large items which were marked H. W. Smock and marked Reserve that he wanted to know about? A He asked no explanation at that time.

30 Q He did bring that to your attention? A No, he said we were spending considerable money at the mill, and asked about it, and I told him, but he did not question any items at all at that time.

Q Didn't he bring to your attention at sometime these items of H. W. Smock and Reserve? A Never until this suit was instituted. The conversation pertaining to that was in his office, and in Mr. Jones' presence, and he made no requests for explanation.

40 Q I understood you to say that you at one time had some records of expenditures which you destroyed? A

Harry W. Smock, cross.

I don't think I said so; the only thing I mentioned, as I recall it—the only think that I recall is, I said I had always kept my expenses when I went away on trips the same as is indicated on the record, prior to 1918, but I didn't preserve those.

Q I understood you to say you destroyed them? A I don't know that I destroyed them.

10

Q But you must have still had some of these at the time of this talk in December, 1917? A No, I don't recall that I had; I might have had, I don't know.

Q Didn't you somewhere or other put down the exact expense? A I did at the time, yes. I couldn't keep any record any other way.

Q Didn't you keep a record showing how the difference was returned to the company? A I kept an account about as you have it there in the account of 1918. If I had had any records during the conversation to which you referred, and Mr. Smock had asked for them, I would have been perfectly willing to show them to him; he could have had anything he wanted that was within my power to show him.

20

Q Do you wish to go on record as saying that having known of this order for an accounting several months ago, and having had in your hands during all that period the books of the company, or under your control as president, that the only explanation you can give, or the only account you can give of those moneys that came to your hands and the moneys which you placed in what you call the reserve, is the explanation given today; or do you believe that with these books you can trace out all items for which you should have credit? A I think the items that go into the main office of course they will show, and I haven't searched these out.

30

Q You ought to have credit for those, of course? A Yes.

Q Can you think of any other books or papers which will aid you in showing any other item for which you

40

Harry W. Smock, cross.

ought to have credit? A I know of no other books or papers. I have, of course, some receipted bills and things of that character, where I have paid moneys, which show that I did pay moneys for the concern for purchases and materials for the business.

10 Q Why didn't you get those together so that the Master could have the benefit of those now? A I have got them together.

Q Where are they? A I didn't get the items on the books together. That is on the office books.

20 Q What I would like to do, would be to have you give the Master the benefit of any books, papers, vouchers, or anything in your possession or under your control which shows that you ought to have credit for any of these items which stand charged to you. Is there any other source that you can think of which will aid you in discharging that liability? A No other, except the evidence of the men to whom I gave money for expenses; that is all I know of.

Q They are available? A Yes.

Mr. McDermott. I call on the witness to produce at the next hearing anything he has in his possession or under his control which will in any wise tend to show the payments out of any of these moneys which are charged to him.

30 *Mr. Applegate.* I think that ought to be supplemented by this statement. Your statement would make it appear to the Court that Mr. Smock had appeared here today without being ready and without having prepared to produce the vouchers, papers and other evidence of payments of money. We cannot get our case all in in one mouthful, and we have men here today—one man is here, Mr. Hall—we had made preparations for other men to appear here today and testify to what moneys had been given them by Mr. Smock and

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Harry W. Smock, re-direct.

the bookkeeper. With that supplemental statement, I am perfectly willing to agree, and will say we propose to produce all books, vouchers and other evidence of payments of money that will tend to explain the charges that have been made against Mr. Smock, and anything else that we can do or produce, we are perfectly willing to do.

10

Re-direct examination by Mr. Applegate.

Q In 1917, when you had your conversation with Mr. George Smock, concerning which you have testified, when he told you, "Aren't you spending a good deal of money in the mill department," or words to that effect, were the relations of yourself and George Smock harmonious at that time? A Yes.

Q And there were no differences that you knew of? A No.

20

Q No personal differences whatever? A No, nor business differences.

Q You have testified in regard to not having preserved the old memoranda prior to 1918, corresponding to your memorandum of 1918; why didn't you preserve them? A Well, because of the manner in which we were carrying on the work over there and which I think I explained, or tried to.

Q What became of the sheets—the paper upon which you kept the memoranda? A It probably went in the waste basket.

30

Q Why did you throw them in the waste basket? A Because I saw no reason for retaining them. I didn't think there was any reason to retain them. I believed that I was doing what was absolutely right; in fact, I knew I was, and I didn't suppose there was a question in the mind of any man connected with the business that would think otherwise. I know I hadn't any suspicions of any one else.

40

Harry W. Smock, re-direct.

Q Did you have any intimation at that time that your accounts were questioned or would be questioned? A None whatever.

Q Did you have any regular period of time or times when you destroyed your memoranda? A I had not.

Q For instance, if you went to New York on Monday,
10 you would make your memoranda while you were making your expenditures? A Yes.

Q How long would you keep that particular memorandum? A I might keep it a week, I might keep it a month, or I might keep it longer.

Q Why make any memorandum at all if you were not going to keep it? A To know how much I spent.

Q Until when? A Until I took the money that I had expended.

Q Was that memorandum used then in order to carry
20 in your mind the amount of the balance due you? A It certainly was.

Q And after having made that memorandum—I understand you did make such memorandum in your book? A I did.

Mr. McDermott. In a book?

Q The amount of your balance? A In a loose leaf book.

Q I am referring now to your petty cash book; did
30 you make any memorandum in there of the balance due you? A No.

Q I don't know what Mr. McDermott meant. I wish, if for no other purpose, for my benefit—I don't quite comprehend it—you would explain how it was that in those books it appears that you took out of the petty cash certain amounts of moneys in round numbers, as termed by Mr. McDermott, we will say \$20; that you expended certain sums of money in the interest of the company, amounting to less than \$20, what became of
40 the difference; how was that taken care of, the differ-

Harry W. Smock, re-direct.

ence what you paid out and what you took out? A It was returned to the drawer.

Q And in what manner was it returned? A For instance, you will find that I kept a record of my expenses, and I would sometimes go one week, and sometimes a month, and sometimes longer, I might have taken two or three separate amounts from the drawer—\$5, \$10 or \$15, and at the end of that period, whether it was a month or six weeks, I took the amount of my expenditures and the amount that I took out, and returned the balance. 10

Q No entry was made in any of those books, petty cash books, of the amounts, the difference that you paid back?

A Yes, if the firm owed me money, it was put on the book, on one side; and if I owed the firm money, I put it on the other side.

Q Can you turn to one of those items back in 1918? 20

Mr. Applegate. They are the items that are not disputed, that appear in the book. They are the items that the witness has been testifying to that are not in the schedule; they are not disputed.

Mr. McDermott. Is that so? I would like to see him find the item first.

Q Find one or some items showing balances that you have charged yourself back of 1918 and credited to the company. A I find some. 30

Q Will you please refer to them? A Exhibit C. 15, September 22, 1917, I have \$20 received, and on the opposite page I have the expense \$11.19, and supplies \$13.41, and of course it would indicate that I paid more money. I can tell only from these entries.

Q What I am trying to do, Mr. Smock, is to have you explain this: it appears that you have taken from the company's petty cash certain sums of money; let us assume that one of those sums is \$20; that you used 40

Harry W. Smock, re-direct.

these moneys, as you say, in the interest of the company; that it must have been in certain cases that you didn't spend the entire amount of money that you had taken, namely \$20? A Yes.

Q Where and how did you indicate in the books, namely, the petty cash books, that difference; that is,
10 where and how did you credit the company with the moneys that you didn't spend—left over from the moneys that you took out? That is what I am asking you; you say you kept a memorandum of all your expenditures? A Yes.

Q I am not asking you about the memoranda. I am asking you how you kept straight with the company the moneys you didn't spend, and brought back? A Through the memoranda that I carried, I kept straight.

Q How did you credit the company with the balance; how did that get back into the company's account? Don't
20 you understand? A Yes.

Q If you took \$10 out and spent only \$5, what became of the other \$5? A It went back into the drawer.

Q Where does it indicate it went back into the drawer? A There are items all through.

Q I am asking you to refer to those items—items representing balances paid back into the cash drawer? A Any one of those items referred to it; there are numerous items there.

30 Q Refer to some of them; tell us what they are.

The Master. Mr. Applegate wants you to give him an instance showing where you paid back part of the money you drew out.

The Witness. On September 22, 1917, there is a record, credited to H. W. Smock, \$20.

Q Does that mean you paid that money back into the cash drawer? A Yes.

Q Is there any way of telling out of what fund that
40 was a balance? A Not now, no.

Harry W. Smock, re-direct.

Q Then, you could only explain by your memoranda?

A That is all.

Q Give us another illustration showing moneys paid back into the cash drawer.

Mr. McDermott. May I interrupt?

Mr. Applegate. Certainly.

Mr. McDermott. This is a round figure, \$20; perhaps you can find some which indicate a balance of some larger figure in the odd figures. Will you look this up between now and the next meeting?

10

The Witness. Yes.

Adjourned to Friday, September 10, 1920.

The further taking of testimony in this matter was continued from Friday, September 10, 1920, to Thursday, September 16, 1920.

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Harry W. Smock, further direct.

IN CHANCERY OF NEW JERSEY.

Between

GEORGE A. SMOCK,

Complainant,

10

and

BUCHANON & SMOCK LUMBER COM-
PANY and HARRY W. SMOCK,

Defendants.

Continuation of testimony in the above-entitled cause, before Nicholas W. Bindseil, Master in Chancery, at Asbury Park, New Jersey, on Monday, November 1, 1920, in the presence of counsel as before stated.

20

HARRY W. SMOCK, resumes the stand for

Further direct examination by Mr. Applegate.

Q Have you examined the books of the company for the purpose of ascertaining whether or not any cash payments were made from the reserve fund into the general treasury of the company? A I have.

30

Q What were they? A I have examined the books at the main office and made a list as accurately as I have been able to.

Q From the books themselves? A From the books of the company in the main office, and have made a record of the cash credited on those books from the reserve fund. (Producing paper.)

Q You produce a tabulated statement showing dates and amounts which you say are true copies of entries in the books of the main office, do you? A Yes.

40

Q Will you please explain that statement? This heading, "Petty Cash," what do you mean? A Each entry that is on here is credited in the petty cash book

Harry W. Smock, cross.

kept in the office of the company, at the main office. They are credited as cash from the mill department, and these moneys are not shown on the petty cash books in question from the mill; it was money that was taken from the reserve fund and paid to the main office, with two exceptions, where there was \$50 paid and \$25 of that in each case was from the reserve and \$25 from the drawer, and that \$25 in each case shows on those books as being paid to the main office. By these books, I mean the petty cash books of the mill. 10

Q Will you identify those two? A One is on November 24, 1914, and the other is on October 4, 1915.

Q Just read the items that you have.

Mr. McDermott. You wish to put in that statement?

Mr. Applegate. Yes, the books are here; we will go over it, item by item, if you say so. 20

Mr. McDermott. I don't think that is necessary.

Cross examination by Mr. McDermott.

Q Was this list made up by you? A Yes.

Q Are these items embraced on this list earmarked in the petty cash of the main office, so that they can be identified? A I put no mark on them, but you can find the entry in every case. 30

Q Are the entries in the petty cash books of the main office—are these entries appearing there earmarked in any way so you can tell from the book that they came from the mill? A Yes, they are credited to the mill department on that book. The petty cash books at the main office have three columns, one for lumber, one for mill and one for hardware, and the cash received from each department is entered under its respective column.

Q Would these then appear in the petty cash books of the main office as received from the mill department? A Yes, they would. 40

Harry W. Smock, further direct.

Q Is there anything to indicate that they came from the reserve fund? A Nothing; no, sir.

Q How do you ascertain, or how would an accountant ascertain that they had come from the reserve fund? A Only that they do not appear on these cash books, from the mill.

10 Q They do not appear on the petty cash books, from the mill? A No.

Q And if they had been taken from the petty cash which did not go into the reserve fund, they would then have appeared on your petty cash? A On these petty cash books; yes, sir.

Q So that your deduction from the figures of the petty cash book is that they must have come from the reserve fund? A That is the only place they could come from.

20 *Mr. McDermott.* We make no objection to the use of this statement, provided, of course, that we have the opportunity to look at the books and see that those items are there as they are claimed to be. We have no wish to deprive Mr. Smock of any credit of any item of any moneys which was paid to or used for the benefit of the company.

Further direct examination by Mr. Applegate.

Q The total of your petty cash statement is what, as
30 shown by this statement referred to—which I will ask to have marked for identification—

(Statement referred to marked Exhibit D. 3, November 1, 1920.)

Q Referring to Exhibit D. 3 of November 1, 1920, the first total is what? A \$1,082. Less \$50.00.

Q The total of the petty cash column? A Yes.

Q The next column is headed "Storage," showing a total of \$585.09; what does that mean; what do those
40 items refer to? A We have a storage department.

Harry W. Smock, further direct.

Q In your mill? A Yes. It is conducted in connection with the mill department, and these are items of the mill direct, and this of the storage (indicating).

Q Storage of what? A Public storage; we have a public storage warehouse.

Q That is rental? A Yes.

Q And the grand total is what? A The funds are all handled together, that is why we separated them in that way. 10

Q The grand total is what? A \$1,667.09, petty cash and storage account; of that amount there is \$50 that was paid from the drawer, and is entered in these petty cash mill books.

Mr. McDermott. From which drawer?

The Witness. The cash drawer of the mill.

Q And those two items representing the \$50 appear in these petty cash books of the mill department? A Yes. 20

Q Let me call your attention to certain letters appearing on this statement after each item, "R. R. R." all the way down, what does that mean? A I put those on there to indicate that they were paid from the reserve; these two items are marked "D" as being paid from the drawer, and entered on the books.

Q Mr. McDermott requested that you produce certain books and items; do you remember that? A These (indicating) are the books and items called for. That is all he asked for, that I know of. 30

Q The books from which the figures in the statement marked Exhibit D. 3, November 1, 1920, were taken, are here now, are they? A Yes.

Q And in possession of whom? A Mr. Ruthing.

Mr. Applegate. We will produce those books now. Do you want him to turn to that? 40

Harry W. Smock, further direct.

Mr. McDermott. I think they ought to be produced.

Q Won't you turn to the items which appear in your statement marked Exhibit D. 3, November 1, 1920? You are producing a book marked what? A Petty cash.

10 *Mr. McDermott.* That is the petty cash book of the main office?

The Witness. Yes.

Q Give the first and last entry? A June 6, 1911, this book starts, and ends on May 18, 1917.

Mr. Applegate. I offer that book in evidence.
(Marked Exhibit D. 4, November 1, 1920.)

Q When the moneys were transferred from your reserve fund, so called, to the main department, what was the operation; just describe it; how did it get there? A It was taken over and deposited in the drawer of the main office.

Q Taken over by whom? A I usually took it; I guess I did in each case.

Q Or anyone you sent over? A Yes.

Q What accompanied the money, if anything, in the way of a statement? A Nothing.

Q Merely the cash sent over? A Merely the cash.

30 Q And how would the cashier or accountant or whatever he was termed, know that they came from your department? A If it was given to him, he was told to credit it to cash, credit it to the mill department.

Q These items contained in the statement marked Exhibit D. 3, today, totaling \$1,667.09—is that sum included in the total amount of moneys which it is claimed on the part of the complainant in this case you should account for? A I presume so. I claim no storage money.

Q Your purpose, then, in producing that statement showing moneys paid into the main department from the

40

Harry W. Smock, cross.

mill department is to show that these moneys went into the company, and not retained by you for your individual benefit? A Surely, I retained none for my benefit.

Q Is that the purpose of showing it? A That is the purpose.

Cross examination by Mr. McDermott.

Q Turning to the first item on Exhibit D. 3, today, April 18, 1914, cash \$25, where did you find that in this book, Exhibit D. 4, today? A (Witness points to item on page 313.) 10

Q "Cash \$25" in the left-hand column? A Yes.

Q That is the first item. What is there in connection with that item to indicate that it came from the mill department? A Because this column is marked "mill"; there are the three columns at the head of the page.

Q At or near the top is the item of \$3.50; that didn't come from the petty cash or mill, did it? A I cannot tell you; I don't think so. 20

Q Will you look at your petty cash for that same day and let me see it, please; April 18, 1914? A (Witness produced petty cash, Exhibit C. 4 in the main case.)

Q What do you find there? A I find an item marked "reserve" there; there is none marked "main office \$25."

Q Don't you sometimes mark your main office? A Yes; I so stated there are two items on there that are marked main office. 30

Q In these petty cash books did you not mark money which went over to the main office? A If it was taken from the drawer, yes.

Q Why not when it was taken from the reserve? A Because it was not entered in those books.

Q You don't mean that all the items marked "reserve" here went to the main office? A I do not; no, sir; only this part of it.

Q The next item on Exhibit D. 3, today, "April 25, cash \$25," where do you find that in the petty cash of 40

Harry W. Smock, cross.

main office? A There it is (indicating an item which reads "\$25" under the heading "mill," page 315).

Q There is nothing in the petty cash book kept at the mill, Exhibit C. 4 in the main cause, to indicate that that went over to the main office? A None whatever.

10 Q Why didn't you indicate here that it went over to the main office, on the petty cash, I mean, kept at the mill? A Because, as has been shown through this whole suit, the reserve fund was not re-entered in this book.

Q But you haven't before told us that part of it was sent over to the mill; haven't you attempted to tell us what you used it for in a number of ways? A I have, yes. I think I said that a portion of it had been paid into the main office, and that is why you asked me to make up this list before this hearing.

20 Q You never considered \$20 and \$25 items of that sort too large to have in the reserve fund, did you? A No.

Q The next item on your Exhibit D. 3, today, is "May 16, 1914, \$20"; where do you find that item in the petty cash of the main office? A In the column marked "mill" \$20, page 321.

Q Nothing else to indicate where it came from, except that? A No.

Q Where is that in this book, Exhibit C. 4 in the main case? A It is not in there.

30 Q Why do you say it came from there, then? A Because it was the only place that it could come from.

Q I find here apparently on May 16, 1914, that you sent \$5 over, "main office \$5," that you entered in this book, Exhibit D. 4? A Yes.

Q There is nothing to indicate that \$20 went over at all? A Not in the petty cash book, Exhibit C. 4.

40 Q Is that the only reason for saying it went over, because you found it was in the petty cash book of the main office? A It would come from one of two places, it couldn't help it.

Harry W. Smock, cross.

The Master. By whom were the entries made in the book, Exhibit D. 4, today?

The Witness. Most of them were made by myself.

The Master. In the main office?

The Witness. Yes.

The Master. And when were they made?

10

The Witness. On the dates mentioned in the book.

Q Referring to this petty cash book of the main office, D. 4 of today, was that kept by you? A It lies on the counter.

Q Where? A In the main office.

Q Was it kept by you? A No.

Q You say it was kept on the counter in the main office? A Yes.

20

Q Who made most of the entries in it, however? A The man, whoever turned in the moneys, usually makes the entry.

Q Take page 321 as an instance, how many items on that page are in your handwriting? A I don't think there is any but the one.

Q Which one, the item of \$20 under "mill"? A Yes.

The Master. Did you make any entries under the other headings?

30

The Witness. Not on this page.

Q Turn back to page 313; are there any entries on that page in your handwriting? A Only that entry of "\$25 cash" appearing under the "mill" column, on April 18, to which I testified.

Q And on page 315 of Exhibit D. 4, today, are there any items on that page in your handwriting, except the item of \$25 under "mill"? A I don't see any.

40

Harry W. Smock, cross.

Q On one of those three pages that I have shown you, are there any entries in your handwriting, except these which you have referred to specially, \$25, \$25 and \$20?

A No.

Q The next item on your last Exhibit D. 3, today, is May 30, \$25; where do you find that in this book, Exhibit
10 D. 4 of this date? A Page 325.

Q And there is simply the bare item \$25? A Yes.

Q In whose handwriting? A That is mine.

Q Is there any other item on that page in your handwriting except this one of \$25, under the caption "mill"?

A I don't see any.

Q Do you recall how these items came to be made on that book? A I took the money over there and passed it in and credited it on this book.

Q Wasn't there any bookkeeper there to recognize or
20 acknowledge the receipt of money? A I don't know who took it.

Q You went over and made these entries yourself on that book? A Yes, and turned the money in.

Q And no one else made any entries, as far as you know, at all? A I wouldn't say that; I don't know.

Q Do you know of any entry which went into any of the books in the handwriting of any person except yourself in acknowledgment of these sums? A There was no other entry made; there is no other entry made in any
30 books.

Q Isn't there any other cash book? A Yes. They kept a general cash book, but just how this is used in connection with that, I cannot answer, so I don't know.

Q All you needed there was to go over and mark it down on this book? A That is all, and turned the money in; that prevailed with all three departments.

Q You don't know who took it or what they did with it, or where it was placed? A It was placed in the cash register, the cash drawer.

40 Q Who put it in there? A I cannot tell you, not now.

Harry W. Smock, cross.

Q Where does the item of \$25 appear on the petty cash book kept by you at the mill, Exhibit C. 4 in the main case? A It doesn't appear.

Q It doesn't appear in Exhibit C. 4 in the main case at all? A Except in those items to the reserve fund.

Q How does it appear in those; at the bottom of the items from May 28 you have made the deduction of the reserve fund and carried over \$27.30 to the date of May 29. There is nothing to indicate then that you carried any part of it to the main office at all, is there? A Not in those books; not in that book, no. 10

Q Can you tell me why you were so particular about these small items of ten cents, twenty-seven cents, and fifty cents, that you failed to indicate on this book these large items of money turned in? A I think that I have tried to explain that all through my testimony.

Mr. Applegate. Do it again. 20

A (Continuing.) These petty cash books were kept in a drawer and a record of every expenditure or receipt was supposed to be kept in them, and they were balanced by the young man in charge, and when the moneys in this cash drawer were deemed to be too large to be lying where it was handy for someone to get it, it was turned over to me and placed in this reserve fund, in the safe, and credited on the petty cash books as going into reserve. 30

Q Occasionally you took it over to the main office? A Yes.

Q And made no memorandum of it at all? A Not in the petty cash books of the mill.

Q The man in charge of the main office, then, became responsible for this \$125, or whatever it was, instead of you? A It was turned into the funds at the main office.

Q Someone in charge of the main office became responsible for each one of the items which you marked 40

Harry W. Smock, cross.

down in the petty cash book, Exhibit D. 4, today, at the main office? A Yes.

Q The responsibility for that fund was transferred from you to him, I gather from your testimony, by your making this entry on the petty cash book at the main office, without any entry on the books which you kept in
10 your own department at the mill? A Yes.

The Master. Was the same thing true as to the other two departments?

The Witness. Surely.

Q Having said that in response to the Master, let me ask you if that is so; isn't it the fact that these items which you have referred to, except one, which was marked "Cash" do not indicate in any sense where they came from, except from inclusion under the column, while the
20 other items in this book indicate the person by whom they were paid in? A It does not, only in a few cases.

Q Here is one here; there is \$9.73, there is 53 cents. You understand those to be cash items that are paid over the counter? A Yes.

Q And so it is, that all the way down the page, there are a few items that mention where they came from; the clerks making sales would bring the money in and hand it in? A Yes.

30 Q You didn't have that department under your control? A No.

The Master. I notice there are certain footings at different pages in this book; what was the object of making the footings?

The Witness. You will have to ask our book-keeper about that; I know nothing about it.

Q Turn to page 336 of Exhibit D. 4 of today; on June 30, item under "Mill," \$125; in whose handwriting is that? A Mine.
40

Harry W. Smock, cross.

Q Any other item on that page in your handwriting?

A I don't see any.

Q In the petty cash book kept at the mill, Exhibit C. 4 in the main case, is there anything to indicate that you turned over \$125 to the main office? A I think not.

Q Is there anything to indicate that you could have 10
turned over \$125 to the main office, in that book? I would like you to look at it. A (After examining books.) Except that through this book there are credits to reserve.

Q I am taking up this month of June. A Except for the items marked "reserve" there.

Q That is the only thing to indicate, then, is it? A Yes.

Q The next item is July 6, \$15, where do you find that 20
in the petty cash book, Exhibit D. 4? A On page 337, under the caption "mill."

Q Any other item on that page in your handwriting? A I think not.

Q And on page 336, is there any item on that page, except the item of \$125, in your handwriting? A I don't see any.

Q Anything in this petty cash book, Exhibit C. 4 in the main cause, to show a payment to the office of this item of \$15, under the head of "mill"? A No.

Q Can you tell where you got it? A From the re- 30
serve fund.

Q The next item on Exhibit D. 3 today, July 18, \$25, under the heading "mill," in whose handwriting is that item? A I don't know.

The Master. It is not in your writing?

The Witness. It is not; it looks like Mr. George Smock's, page 341.

Q Any recollection of that item at all? A No, I 40
haven't.

Harry W. Smock, cross.

The Master. Have you any idea how that item came to be entered by Mr. George Smock?

The Witness. I don't know that it is; it looks like his writing.

The Master. If it is, how did he happen to make that entry; have you any idea?

10

The Witness. Those moneys are often handed in, and whoever receives them is asked to put them in the column corresponding to the department. This book is often behind the desk, being balanced or for other reasons or purposes, and if the cash was handed to someone else, they were asked to put it down.

Q Did that exhaust the reserve fund when you sent that in? A I cannot tell you, but I don't think it did; I always kept some money there; we simply aimed to take the surplus over which we considered more than we needed there.

20

Q The next item is July 25, on page 343, in whose writing is that item? A That is mine.

Q Any other item on that page in your handwriting? A I don't see any.

Q On this petty cash at the main office, the only entries appearing so far to be in your handwriting, are these items which you say came from the reserve fund, and were taken over to the main office? A Yes.

30

Q How often would you make these entries over in the main office? A I have tried to explain that; I would make them whenever I considered that there was more money in the reserve than we needed for the demands of the mill.

Q It would run from \$15 to \$125? A No, it always varied; we had no fixed amount.

Q And the same thing is true, that nothing in this petty cash, Exhibit C. 4 in the main case, could indicate any transfer of funds to the main office? A Nothing

40

Harry W. Smock, cross.

only in those two cases mentioned on Exhibit D. 3 today, marked "D."

Q I call your attention to the items on your statement Exhibit D. 3 of this date, "October 4, 1915, \$50," that you have divided into two items, \$25 with the letter "R" and \$25 with the letter "D?" A Yes.

Q That appears on page 452 of Exhibit D. 4 of this date, \$50? A Yes. 10

Q In whose handwriting is that item of \$50? A Mine.

Q Anything else on that page in your handwriting? A I don't see anything.

Q And in that instance you entered \$25 taken to the main office regularly in your petty cash book, which is Exhibit C. 9 in the main cause? A Yes.

Q But on the book of the main office, under that date, you entered \$50? A Yes. 20

Q Do you know how much reserve you had on hand at that time? A I do not.

Q Can you ascertain? A I cannot.

Q Anything in this book, Exhibit C. 9, to indicate? A There is not.

Q So that it would appear, taking these two books together, as though you had entered on Exhibit C. 9, main office, \$25, and had entered on the book at the main office, \$50? A Yes. 30

Q Didn't it occur to you that that in itself was a suspicious series of entries? A Certainly not.

Q To put on your book that you took to the main office \$25 and to put on the book at the main office that you were taking \$50? A I wasn't taking it, I was turning it in.

Q I mean taking to the main office \$50; is there any business man or any accountant who could possibly tell from books kept in that way what the right of the thing was? A I cannot answer that question. 40

Harry W. Smock, re-direct.

Q You are the president of the company now? A Yes.

Q You are an executive with all these men under you; do you for a moment permit anybody to keep books in that way in your company now? A It wasn't a good way of keeping books. I have never expressed myself
10 otherwise.

Q Will you turn to the item of November 21, 1914; there you find the item, "cash \$50," under the mill department, on page 371? A Yes.

Q In whose handwriting is that? A I don't know; it is not mine.

Q You have divided up in this statement, Exhibit D. 3, today, into two items of \$25 each, one reserve and one drawer? A Yes.

Q What is there to indicate on this book, Exhibit C. 5 in the main cause, that you turned anything into the main office on November 21, 1914? A It is marked here
20 "main office \$25."

Q Under date of November 23 there is an item of "main office \$25" in the petty cash book, C. 5 in the main cause? A Yes.

Q There is no entry of that on the petty cash book of the main office? A No.

Q It doesn't show in there? A No.

30 *Mr. McDermott.* With the understanding that we may see these books and examine them, and especially that we may see the storage items, I think I won't examine him any further about them.

Re-direct examination by Mr. Applegate.

Q Mr. Smock, this book which has been referred to as the petty cash book of the main office, you say was kept lying on the desk in the main office? A Yes.

Q And was open to persons bringing cash payments to the main office? A Yes.
40

Harry W. Smock, re-direct.

Q There are other items appearing on the pages to which you have referred, under the column of "mill department," what do these items represent generally? You have referred to items in the book as being entered by you in many cases showing payments from the reserve fund to the main office; what do the other items under that same column represent? A They would indicate petty cash sales made.

10

Q From which department? A From the mill department, under the heading "mill department."

Q How would that information reach the main office and be entered in the book? A Simply by the man making the sale, if he received the cash, turning it in, or having the purchaser himself turn it in.

Q If the man who made the sale representing the mill department turned the cash in to the main office, who would make the entry in the book? A He would be likely to.

20

Q You mean by "he" who? A The man who made the sale.

Q Why wouldn't that item be entered in your mill department petty cash? A Because the money would go to the main office.

Q Why was it entered in the petty cash account? A Because we didn't receive the money, the mill department didn't receive the money.

Q Why didn't he receive the money? A Because it was paid to the main office.

30

Q Why sometimes make payments in the petty cash in the mill department and other times turn the money over to the main office? A Most of these entries under the "mill" column was money received, where the customer had come into the lumber yard or hardware department and purchased something from that department, and the man waiting on him had gone to the mill and gotten some item or items, and he paid the bill in total, and it was entered at the main office under the various heads.

40

Harry W. Smock, re-direct.

Q When the cash was turned over to the main office, as indicated by the items which have been referred to, out of the reserve fund, to whom was the cash given at the main office? A I cannot answer that; I don't know.

Q When you turned it in, to whom did you give it? A Anybody who happened to be behind the desk.

10 Q And who would be behind the desk; whose business was it to be behind the desk? A During this period there were several behind the desk, Mr. George Smock—

Q In what capacity was he behind the desk, as a clerk or officer? A As an officer of the company.

Q What officer? A He was always president, and part of the time he was president and treasurer, and Mr. Smock knew that this book was lying there and was used by me and others in which to make the entries as we desired.

20 Q Did Mr. Smock ever make any complaint to you of the method which you have described, which you had of making these payments into the main office and entering them in the book? A Never.

Q Did Mr. Smock ever go over this book for the purpose of making balances or anything of that sort? A I cannot answer that.

Q Are there any entries in there in Mr. Smock's handwriting which you can turn to for us, if you please? A
30 I am not sure.

Q Look and see. A There were two items that Mr. McDermott just called attention to that I think are both in Mr. Smock's handwriting, but I am not positive.

Q What items are they? They appear in your previous answers. Never mind those two particular items. Can you turn to any place in the book showing any entry in Mr. Smock's writing? A Yes, there are entries all through there in his handwriting.

Q Give us some? A I have one right before me,
40 September 9, 1914, I. B. Irons, 88 cents.

Harry W. Smock, re-direct.

Q What does that represent, do you know? A This is cash paid out, as it happens; G. D. Morrell, \$5, also cash paid out.

Q Turn to another page showing money received; Mr. Smock was the head of what department? A Lumber and hardware.

Q Can you turn to any item of the lumber or hardware department, or both, showing entries made by Mr. Smock, under the same circumstances as you made your entries in the book? A Here is one on page 320; the date is very indistinct; John A. Githens, \$7.50; that is under the column "Lumber." 10

Q Showing moneys paid? A Showing moneys received.

Q Describe the circumstances as represented by that item. A It means that he received and placed in the cash of the company \$7.50 from John A. Githens, and placed it on the petty cash book of the main office. 20

Q Any other item of the same nature? A Another one on the same page, it looks like his writing. I am not making affidavit to his writing. "J. B. Stewart \$4," under column "Lumber."

Q What does that indicate? A That he received \$4 from the sale of lumber and paid in over the counter.

Q And a record entered by him in that book? A Yes.

Q Was that the same as you did? A Yes. 30

Q Mr. McDermott referred to an item of \$25, I think, from the reserve fund; an item of \$50 paid into the main office. A Yes.

Q Just explain that, won't you, as to why in one case it would be \$25, and when it got to the main office it would be \$50? A Because \$25 of that was taken out of the drawer, and there being sufficient—

Q What drawer? A Out of the drawer of the mill office.

Q Petty cash drawer? A Yes, of the mill office. 40

Harry W. Smock, re-direct.

Q And then what? A And there being sufficient amount in the reserve—

Q For the needs of the mill department? A —it was taken to the main office.

Q How would it get to be \$50? A \$25 more was taken from the reserve.

10 Q In referring to the reserve fund can you state what the average amount of the reserve fund was which you considered it advisable to have in the surplus in the main office?

Mr. McDermott. I object to the next to the last question and answer.

The Master. I will permit the question and answer to stand.

A We usually figured on keeping \$100 in the reserve.

20 Q And when it reached beyond that sum, did you pay the surplus into the main office? A Yes.

Q That was your custom? A Yes.

Q Does that account for the payments of sums of different amounts into the main office? A Yes.

Q Sometimes \$15, other times \$125? A Yes.

Q So that at the time you made those payments from the reserve fund into the main office, for instance, when you made a payment of \$15, as shown by your statement,
30 you would have \$115 in the reserve fund before you made the payment? A Yes.

Q And when you made payment of \$125 into the main office, you would have had in your reserve fund \$225? A Yes.

Q I think you have already testified, Mr. George Smock was a bookkeeper? A He was president of the company, but he was also a bookkeeper, not the bookkeeper.

Q But an expert bookkeeper? A Yes, he was an
40 expert bookkeeper.

Harry W. Smock, re-cross.

Q There were payments from the petty cash of your department to the main office, were there? A Yes.

Q Direct? A Yes.

Q Those payments were written in your petty cash books of your department? A Yes.

Q Payments were also made from your petty cash to your reserve fund? A Yes. 10

Q But those payments, namely, from your petty cash over to your reserve fund were not entered in your petty cash books of your department? A Yes, they were entered there.

Q But the payment from the reserve to the main department were not entered in the books? A Not in those books, no, not in the petty cash books of the mill.

Q Can you say whether or not one reason for not doing that was that if you had entered in your petty cash payments from the reserve fund into the main department, you would have had a double record in your cash book, or petty cash book, of payments of the same cash? 20
A I would have had.

Mr. McDermott. I object to that as leading.

The Master. It is leading, and the objection will be sustained.

Q What would have been the result if you had kept a record in your petty cash books of payments from the reserve fund into the main office? A It would have made a double record. 30

Re-cross examination by Mr. McDermott.

Q You say it would have made a double entry of these disbursements, if you had done that. If you had kept any account of what became of the reserve fund, there would not have been any difficulty about the double entry? A No particular difficulty.

Q Then it would have been clear to even a casual observer, if you had shown what had become of all the 40

Harry W. Smock, re-cross.

money you got? A Yes, but we had by arrangement with Mr. Smock—

The Master. Answer the question.

Q (Question repeated.) A I presume it would have been.

10 Q Or by a very simple method, if you took it over to the main office, you could have said, "Withdrawn from reserve so much" and "Carried over to main office so much," that would have shown where part of your reserve went, on your books? A We could have entered it on both sides.

Q Nothing difficult or mysterious about that? A No.

Q You spoke about your brother, George, being behind the desk, and I observe that you mentioned some other people who were also behind the desk, who were they? A At times, Mr. George Ruding, Mr. Joseph Parrisen, Clarence Yates, and Mr. W. Harvey Jones was
20 part of this time also there.

Q You don't mean to indicate that Mr. George Smock was always behind the desk when those items came in? A No, sir.

Q You mentioned some items which you told us were in George Smock's handwriting; in each instance those items show the persons who paid or received the money? A I am not sure.

30 Q I. B. Irons, 88 cents, you mentioned? A Yes, that was paid out.

Q And when it came to the money paid in, John A. Githens, \$7.50, it showed where it came from? A Yes; I don't know whether it does in all of them or not.

Q Of course, this segregation of items at the top was merely to show the department in which the business was done? A Yes.

Q It didn't at all preclude the necessity of putting down the name of the person who paid in the money?

40 A No.

Harry W. Smock, re-cross.

Q You say you usually figured on keeping \$100 in the reserve; how often did you balance that? A Somewhere about that figure.

Q Can you turn to any of your petty cash books and show us how much at any one time was in the reserve? A No, sir.

Q Whether there was \$100 or \$500 nobody can tell from your book? A No. 10

Q This statement of yours is a general statement from your recollection? A Yes, just a general statement.

Q Did you need \$100 in the reserve fund? A We often did, yes, sir.

Q It sometimes ran down to much less than that? A Yes.

Q And then you trusted to its being replenished from moneys that came in? A Yes. 20

Q Did you tell me, or on some other occasion tell us, when you thought it was necessary to put it in the reserve fund; at what point in the petty cash receipts did you consider it necessary to transfer it to the reserve fund? A We had no stated amount fixed.

Q Why did you divide it between the petty cash and the reserve fund? A Because we considered that the little drawer in which the moneys were kept in the desk of the mill office was not secure enough to contain any considerable amount of money. 30

Q When did it reach that point? A I cannot give you any fixed sum. The young man in the office, in looking over it, it usually happens, he said, "Mr. Smock, I think we have a little too much money in here," and he would count out \$25 or \$50, or whatever it was, but there was no fixed sum.

Q Generally a round sum? A Yes.

Q And then from the time that was marked "reserve," the record was absolutely lost? A Yes, there was no record made of it. 40

Harry W. Smock, further direct.

Mr. Applegate. I have one question I overlooked.

Further direct examination by Mr. Applegate.

10 Q In regard to the name of the person who paid this money into the main department, Mr. McDermott has questioned you with regard to that; the name of the person paying the money in does not appear. The page of the book of the cash account in the main department is divided into three departments? A Yes.

Q So that a payment into one of the columns of those departments showed that the money was paid from that department, that the money came from one of those departments? A Yes.

20 Q When the money was put into the desk and the entry made in that column headed "mill department," that indicated that the money came from the mill department, did it? A Yes, that the sale was from the mill department.

Q That the money came from the mill department? A Yes.

Q What necessity was there for putting down the name of the person who paid the money in; any? A There wasn't any necessity for it, and it is not always done.

30 Q And if the names of the persons were set down as indicating the one who paid the money in to the main office, would that play any helpful part in writing up the books of the company? A No.

Q So long as it appeared from which department the money was paid, was that sufficient? A That was absolutely sufficient.

40 Q And writing down the name of the person that paid the money in to the department, into the main office, would that merely show as a matter of identification the man who paid the money? A That is all.

Harry W. Smock, re-cross.

Q In regard to the bookkeeping end of this system, would it be necessary, or was it necessary to refer to this book, that is, Exhibit D. 4 today, in writing up the books of the company? A I should say yes.

Q Why do you say yes; wouldn't it absolutely be necessary? A Yes.

Q And for what purpose? A To balance the cash, and for entry into the general cash books of the company. 10

Q And if the cash that you turned in, as represented by these records, did not balance, with the amount as entered in the book itself, when they came to be written up into the main books of the bookkeeping department, wouldn't it at once appear that there was a discrepancy? A Yes.

Q They wouldn't balance, would they? A No.

Re-cross examination by Mr. McDermott. 20

Q Into what book of the main department was this petty cash book carried; this is the petty cash book? A I cannot tell you, I didn't keep them.

Q Whether it was carried into any or not, you don't know? A No, I don't know.

Q Mr. Smock, referring to earlier questions of your counsel, as to the necessity of placing a name in connection with these separate columns, it was the practice to put down the names from whom the money came in most instances? A No. 30

Q In many instances? A In some instances.

Q But those where they didn't put it down, they were mostly small items where the cash came in over the counter? A Not necessarily.

Q That is the fact, isn't that so? A No.

Q Can you find any items at all approaching these items which you have referred to as coming from the mill department, which don't indicate the person who paid them? A There are numerous items here. 40

George W. Ruding, direct.

Q Take any page you like, what do you find there, any items of any size? A There are none of any big size; as a general thing the petty sales in the year are small. Here are items on page 573 of 90 cents, \$10, \$1.40, \$3.47, 75 cents.

10 Q None approaching \$25 or \$125? A Probably not \$125, no.

Q Or \$25? A There may be some.

Q But you don't find them? A Not just at the moment.

GEORGE W. RUDING, sworn for defendants.

Direct examination by Mr. Applegate.

20 Q Mr. Ruding, you have been with the Buchanon & Smock Lumber Company for quite a long time, haven't you? A Yes.

Q How many years would you say? A I don't know exactly; in the neighborhood of twenty years.

Q How old a man are you? A I am sixty-four years old.

Q You have been with the concern, then, since you were forty-four years old? A Yes, somewhere in that neighborhood.

Q In what capacity were you employed there? A I have done general office work of all descriptions.

30 Q What else besides general office work; were you bookkeeper? A Not regular bookkeeper.

Q Did you have occasion to keep the books at any time? Are you familiar with the system of bookkeeping there at the Buchanon & Smock Lumber Company? A Yes.

Q Were you in the main office? A Yes.

Q You were known as the bill clerk? A Yes.

Q And that meant what? A Making out of the bills, making out of the monthly bills.

40 Q Did you occasionally post the books? A Yes.

George W. Ruding, direct.

Q. You are familiar with the so-called petty cash book of the main department? A Yes.

Q Won't you tell us in your own words just what that was, that book, what it was used for? A That book laid on the outside of the office, right before the office window.

Q You don't mean out in the street or out on the window ledge? A No, it was in the building, outside of the main office, right in front of the window. 10

Q What window, office window? A Office window.

Q Lying on a ledge? A Yes.

Q Kept for that purpose? A Kept for that purpose, and when petty sales were made out in the yard, whoever made them came in and marked down, for instance, \$1.44, \$10, 52 cents, and passed it in the window.

Q That person who made the sale or who took the money at that time was the person who wrote the entry in the book? A Yes, unless perhaps sometimes the book would be inside for the purpose of making up the cash, and then he would say "Put down so much in the lumber column," or "hardware column," where it belonged. 20

Q And in that case someone else inside the office would do it? A Yes.

Q What was the purpose of doing that; what was the object?

Mr. McDermott. I object. 30.

The Master. I will take the answer.

Q What was the object of keeping this petty cash in that manner? A The object of that is to facilitate matters, I would judge; I didn't put these in the various columns myself, but at the end of the month this book is balanced; for instance, on pages 360 and 361, or page 360, you will see the totals of each column, and on the other page are expenditures for that month, what was paid out, and that deducted from the receipts, those were posted in the main cash book. 40

George W. Ruding, direct.

Mr. McDermott. What was posted in the main cash book?

The Witness. The balance.

Q The main cash book showed the total amount of the cash received and paid out, I presume? A Yes.

10 Q Suppose a man had paid over the counter a certain sum of money, but had entered into this petty cash book to which you have referred, a smaller amount of money, or rather, a larger amount of money, suppose the man had paid at the time he made his entry in the cash book, into the office \$100? A Yes.

Q But had entered in the petty cash book \$200, would that discrepancy show up in the course of balancing the office cash book? A Why certainly.

20 Q Explain how it would? A He would be \$100 short somewhere. That petty cash book is made up every other day, and if the receipts of that book calls for—doesn't balance with your cash drawer, there is something wrong.

Q That is perfectly clear, isn't it? A It is to me.

Q If Mr. Harry Smock had paid into your office \$50, but had made an entry in this petty cash book of \$100, or \$125, that discrepancy would show up at once? A Yes.

Q When you came to balance your cash? A Exactly.

The Master. Did you balance the cash?

30

The Witness. Yes.

Q Was that part of your duty? A Yes, sir.

Q The book that has been already offered and marked Exhibit D. 4 today, what is the name of that book? A Petty cash book of the main office.

Q And that is the actual book of the Buchanon & Smock Lumber Company, is it; you identify it? A Yes.

Q Do you know in whose handwriting this is mostly? A Page 391 is all mine.

40 Q How about the footings, who made them? A I did.

George W. Ruding, direct.

Q And as to not only that page, but other pages throughout the book? A Yes.

The Master. The footings are all yours?

The Witness. I think they are; I cannot tell whose writing this is (indicating), because there perhaps half a dozen different handwritings there. (Referring to the column "Lumber" on page 360.)

10

Q But generally speaking, the footings were all made by you? A Yes.

Q Did you ever see Harry Smock come in and make payments into the main office? A Have I ever seen him?

Q Yes. A Yes, sir.

Q And make entries in this book, Exhibit D. 4, today? A Yes.

Q Was that done by all the employees of the company that had occasion to handle cash and turn it in to the main office; was it always turned into the main office and at the same time an entry made in this petty cash book? A Yes.

20

Q Did you ever see Mr. George Smock make entries in the book? A Yes.

Q And make payments of cash into the main office at the same time? A He wouldn't make any payments of cash in the main office.

Q I mean in the same place or office that Mr. Harry Smock did, or any other person who made payments and at the same time made entries in this petty cash book, where would he make his cash payments, if he had any cash payment to make? A You mean cash sales?

30

Q Yes. A Right in that book, Exhibit D. 4, today.

Q Have you seen George Smock do that? A Certainly.

Q And turn the money in to the office? A Yes, sir.

Q That was the general practice? A It certainly was.

Q Was there any requirement that the name of the person making the cash payment be entered in the book,

40

George W. Ruding, direct.

any rule or requirement to that effect? A We were supposed to put the man's name down that bought the goods, but it didn't always get down.

Q How about, for instance, in case Mr. Harry Smock made a payment, if it were true that he did—made a payment out of the reserve fund in his department into the office, would there be any occasion there to make any entry of any name of any person? A No, because everybody knew where that money came from.

Q How did they know it? A Because they know the mill wouldn't make such sales as that.

Q The mill made much larger sales? A No, very small sales; cash sales. All through that column you won't find very many cash sales from the mill.

Q Would the size of the payment made by Mr. Smock indicate in any way that the money was coming out of the reserve fund?

Mr. McDermott. I object to it as leading and nothing to show that this gentleman knew anything about the reserve fund at all.

The Master. He may answer, if he knows.

A I don't know anything about the reserve fund, but I know where that money came from; it came from the mill.

Q And what indicated that? A From bringing it over there.

Q People from the mill department bringing it over, you mean? A Yes.

Q Did the size of the payment made from the mill department indicate anything to your mind, and if so, what?

Mr. McDermott. I object to that.

The Master. I will overrule the objection.

A That would indicate to me that it came from the mill, by the size of it.

George W. Ruding, direct.

Q You say it would indicate to you that it came from the mill; the mill cash sales, were they large or small?

A I cannot answer to that; I don't work over at the mill, but I know the cash entries of the sales in this book, Exhibit D. 4 today, were small.

Q What was there to sell in the mill department for cash? A All kinds of lumber, all kinds of mill work, but all their sales are not put down in this petty cash book. 10

Q What were they put in? A I cannot tell you.

Q The only thing that was put in this petty cash book was the cash which came in the main department? A Yes, with the exception of—you can see a few petty sales; as Mr. Smock said some time ago, a man might be in the yard and buy lumber of the yard man, and have some stuff from the mill included in that order, and when the man brought the money in, he would say: "Put so much down in the lumber column, and so much in the mill column." 20

Q When a sale was made in the mill department, where was the entry of that sale made? A I don't know.

Q It wasn't made in your main department? A No.

Q When a credit sale was made in the mill department where was the entry of that made? A What is the difference between a credit and cash sale?

Q Goods sold on credit and not for cash. A I charged it; that would be sent over to the main office.

Q The main office, then, would get the charge account direct? A Yes. 30

Q And the mill department, then, kept no record, so far as you know, of any charge accounts? A No, sir; not that I know of.

Q But they kept a record of the cash accounts? A Yes.

Mr. McDermott. There is no question about that.

Q Charge accounts were paid direct to the main office?

A Yes. 40

George W. Ruding, direct.

Q And bills were sent out directly from the main office? A Yes.

Q So that when the mill department sold goods on credit—the charge accounts, you call them—the cash representing that sale never came to the mill department? A It came to the main office.

10 Q From which office the bill was sent out? A Yes.

Q So that the only cash that the mill department handled were the cash sales? A That was all that I know of.

Q Was there any stated time when the proceeds of the cash sales were taken over from the mill department into the main department? A No.

Q That was part of the system, was it? A Always has been since I have been there.

20 Q And that was true of all the other departments, lumber, hardware and mill? A Well, of course the lumber sales came in every day.

Q What do you mean by that? A You asked me if there was any stated time of the cash being sent over; the mill took care of their own cash sales.

Q Was there any stated time when the mill department sent over into the main office its cash? A No.

30 Q What about the hardware department? A As I say, the hardware and the lumber was put down each day in the main office petty cash book.

Q Why was there a difference between the mill department and the hardware and lumber? A I cannot tell you.

Q There was no stated time for the payment of cash receipts from the mill department into the main department, how was that regulated; who controlled that part of the system, at the mill? A I don't know.

40 Q In the main office? A No, suppose no cash was brought in from the mill department into the main office for the month, I never heard anything said about it.

George W. Ruding, direct.

Q No complaint? A Not to my knowledge.

Q George Smock was president at that time? A Yes.

Q He was there in the office in the main department?

A Yes.

Q Did you ever hear him complain in regard to that practice? A No, sir; I don't remember it.

Q Did you ever hear him or didn't you? A I don't 10
remember hearing him make a complaint.

Q Did you ever hear him make any complaint in regard to the practice of Harry Smock in carrying cash from the mill department into the main office and making the entry in the petty cash book of the main office? A No, sir.

Q Did you know as a fact of the practice on the part of Harry Smock in the mill department of keeping a so-called reserve fund? A I never heard tell of it.

Q You didn't know anything about that? A No, sir. 20

Q Did you know of the practice on Harry Smock's part as a matter of fact, of his keeping a petty cash system in the mill department? A I didn't know anything about it.

Q You didn't know anything about that end of it? A No, sir.

Q When you footed this so-called balance of the petty cash book of the main department, did you have occasion ever to read the items appearing on the pages on which the footings were made? A No. 30

Q For instance, if it appeared on the page there a record of payment from the mill department of \$50 or \$125, as the case might be, did you have any knowledge or information as to what those figures represented? A There is \$25, and there is \$30, on page 354; I know that came from the mill.

Q Did you know anything further than that? A That is all I know.

Q As to what that represented? A I don't know what it represented. 40

W. Harvey Jones, direct.

Q Whether it represented a cash sale or represented something else? A I know it didn't represent cash sale, because they didn't bring the cash sales over; they brought what money they had in bulk.

Q And did you know what that money represented? A What it came from, if it didn't come from sales?

10 *The Master.* Did you know?

The Witness. No, I don't know where it came from.

Q Do you know what it represented? A No, it must have represented lumber in some description.

Q In its original source, you mean? A Yes.

Q In other words, it must have originated from a sale of some kind in the mill department? A Yes.

20 Q But as to the different forms through which it finally passed, you do not know? A I do not.

Mr. McDermott. No cross examination.

W. HARVEY JONES, sworn for defendants.

Direct examination by Mr. Applegate.

Q You are the treasurer of the Buchanon & Smock Lumber Company? A Yes.

30 Q How long have you been treasurer? A The last time, since January, 1918. The first time I was elected treasurer was in May, 1908. I was continuously treasurer until May, 1915.

Q And then who was put in your place? A Mr. George A. Smock, and then I was treasurer again from January, 1918, until the present time, and am still treasurer.

Q You have charge of one of the departments in the mill? A No, sir.

40 Q What is your business? A The treasurer and financial man of the Buchanon & Smock Lumber Company, in the main office usually my business in.

W. Harvey Jones, direct.

Q Are you familiar with the system of bookkeeping of the company? A In a general way; yes, sir.

Q And with the system of the bookkeeping department between 1913 and the present time? A I resigned in 1915 as treasurer; I wasn't active in the company.

Q So from 1913 to 1915 were you familiar? A Yes.

Q You went back when? A In January, 1918.

10

Q Did you find the same system prevailing then? A Yes.

Q As had existed in 1913 and 1915? A Yes.

Q Who had charge of the bookkeeping department? A Mr. George A. Smock was the man who was supposed to.

Q Who did have charge of the bookkeeping department? A I don't think there was anyone that had absolute charge.

Q Who had the main charge of the bookkeeping department? Who had the oversight and supervision? A Mr. George A. Smock.

20

Q So Mr. Smock's business was that of bookkeeper? A As a bookkeeper of the Buchanon & Smock Lumber Company, that wasn't his official capacity.

Q But generally was he a bookkeeper up there? A He has a very good knowledge of books and records; in fact, he has told me that he went to Eastman College to prepare himself for the duties of the bookkeeper in the Buchanon & Smock Lumber Company.

30

Q He is a bookkeeper now? A Yes, he has the ability of a bookkeeper.

Q He is keeping the books for a concern here in the city? A I understand so.

Q Where?

The Master. If you know.

A I have seen him in the office of Charles Hurley, a plumber, and books before him; I have seen a bill rendered in his handwriting.

40

W. Harvey Jones, direct.

Q From where? A From Hurley.

Q Did Mr. Smock take any part in keeping the books of the Buchanon & Smock Lumber Company? A He had the supervision; if there were any questions that came up that needed any special advice or ruling or supervision, Mr. George A. Smock was the one who was called
10 down; he was considered the most competent in the office to smooth out any knotty questions, if there were any.

Q Who originated the bookkeeping system of the company? A I cannot answer that, except that Mr. George Smock was there continuously.

Q Did Mr. Smock make any suggestions as to change in the system, so far as you know? A No, sir.

Q As far as you know, did he make any change or suggest any change in the bookkeeping system? A There was a change made.

20 Q Did Mr. Smock make any? A I cannot answer that.

Q Did you ever hear Mr. Smock make any suggestion as to change in the system? A No.

Q Were you familiar with the system on the part of Harry Smock in maintaining his mill department? A In a general way.

Q Did you know that Mr. Harry Smock had a so-called reserve fund? A I knew that he kept money in
30 reserve, to use on the various jobs we were operating in out of town, to send a man to get estimates, or to make measurements, or any other work that might be necessary. I know he had a fund that he called upon there to use.

Q And where was that fund kept? A In the mill.

Q Whereabouts in the mill? A I just imagine the safe; I have seen them go to the safe for money.

Q And do you know whether or not they had a deposit for petty cash in the mill department? A Yes, they had
40 a cash drawer.

W. Harvey Jones, direct.

Q Has it always been so, so far as you know—this practice of keeping moneys in the safe, separate and apart from the petty cash drawer? A There has always, to my knowledge, been money in reserve to use.

The Master. For how many years back?

The Witness. Since 1908, except for the two or three years that I wasn't there, but I know of no change in the system. 10

Q Why was such a system necessary?

Mr. McDermott. I object to that further on the ground that there is no indication that it was necessary, or this witness knew anything about it, or about the fund, or how much there was in the reserve fund. Mr. Jones hasn't attempted to state that he knew anything about it. 20

The Master. Do you know why moneys in the mill department were handled in the way you have testified? 20

The Witness. Because we had many contracts far away from home, in different States, and it required the services of some representative of our company to go there often and get measurements and in various ways look after the job, and it took money for railroad and other expenses on that job and we had this money in the mill department to utilize for that emergency, rather than to go over into the main office, and simply draw an amount from there, and that was generally understood in the main office. 30

Q It was understood; was it known there?

Mr. McDermott. I object.

Q You were in the main office? A Yes, I was; I know it to be a fact. 40

W. Harvey Jones, direct.

Q Do you know whether George Smock knew it was a fact? A He was right there to know it.

The Master. Did you ever discuss the subject matter with him—Mr. George Smock?

The Witness. No.

10 Q Mr. Jones, at any time prior to the commencement of this suit did Mr. George Smock make any demand for an accounting of the company; you were the financial officer of the company? A Yes.

Q Prior to the commencement of this suit did George Smock make any demand for an accounting on the company?

20 *Mr. McDermott.* There is already in evidence, in the original cause, a letter written by George Smock making a demand for an accounting, which was responded to by Mr. Rhome, as I recollect.

Q Before that letter, which immediately preceded the commencement of the suit was there any demand made by Mr. George Smock for an accounting, on the company? A Not that I know of.

Q Would you have known of it? A Yes, sir, I would.

Mr. McDermott. I move to strike that out.

30 Q If there had been a demand made on the company, would you have known of it? A I naturally would; I was treasurer of the company.

Q And financial officer? A Yes, sir.

Q You had general supervision over the finances of the company? A Yes.

Q You were familiar with the business of the mill department, were you; you knew generally what was being done there? A In a general way.

40 Q Were you familiar with the way the business of the entire company was being conducted, as financial officer? A Yes, sir.

W. Harvey Jones, cross.

Q Did you at any time have any occasion to have your suspicions aroused in regard to the use of the reserve fund or the petty cash account of the mill department?

Mr. McDermott. Objected to.

The Master. Objection sustained.

Q Was there ever at any time any complaint made to you by any officer of the company, or any other person, in reference to the use of the so-called reserve fund or petty cash fund of Mr. Harry Smock's department? A There never was.

Q Up to the time of the commencement of the suit, I mean? A There never was.

Q Did you ever have any occasion to make any complaint in regard to the same matter? A No, sir, before the suit or since.

The Master. Did Mr. George Smock, the complainant, ever make any complaint to you before the commencement of the suit?

The Witness. No, sir.

Cross examination by Mr. McDermott.

Q Mr. Jones, when did you first learn that after Harry Smock placed these large sums in the reserve fund, that there was no record made at all of what became of those large sums so placed, as he claims, in the reserve fund; when did you first learn that? A I don't know just how to answer it.

Q Wasn't it in January, 1918? A I never knew in detail just their way of keeping those records.

Q But when did you first learn that these large sums, hundreds of dollars, aggregating in the whole many thousands of dollars, were kept by Harry Smock and were transferred, as Harry Smock says, to a reserve fund, of which not a single line of record was kept in the

W. Harvey Jones, cross.

office of his department or any other office of the company? A I knew there was a reserve there.

Q I asked you when you first learned of this method of keeping a reserve fund as I have indicated?

10

Mr. Applegate. You asked what he did learn; why don't you ask if he knows? We object to the question.

(Next to the last question repeated.)

Mr. Applegate. I object to the form of the question.

The Master. It is cross examination, I will allow the witness to answer.

A I am not just clear as to what he wants me to answer; I cannot figure out how I can answer it.

20

Q You are a business man; you know whether records are necessary or not. You know now, at least, since this suit began, that Harry Smock handled this petty cash, as he claimed, by transferring it to a reserve fund, and that there is no entry in his books as to what became of the reserve fund; you know that now? A I have known for many years that he kept over there in his safe a reserve fund; as to the details, as to how he made his records, I did not know.

30

Q When did you first learn that he kept no record whatever of any disbursements out of the reserve fund?

A I don't remember the date.

Q Was it before this suit was brought? A No, I don't think so.

Q Didn't you know it in January, 1918? A I cannot answer that.

40

Q Wasn't there a complaint made at least as early as that in January, 1918, that this reserve fund showed no record of disbursements out of it? A I know there was never any complaint until after Mr. George Smock got to wondering—I never knew that there was any complaint

W. Harvey Jones, cross.

made or any objection made by Mr. George Smock until after there were personal differences between Mr. Harry Smock and himself.

The Master. When was that? You mean August, 1918?

The Witness. No, the trouble commenced about December, 1917. 10

Q I don't want to go into that trouble at this moment.
A But it explains the situation.

Q I want to get from you now, if there wasn't a complaint then in January—in December, 1917, or January, 1918, made about this method of keeping books by Harry Smock? A I don't think it was as early as that, Mr. McDermott.

Q You remember that summer very well, the summer of 1918? Do you remember that summer? A Yes. 20

Q You say you came back into the treasurership in January, 1918? A Yes.

Q Did you run the hotel that summer? A Yes.

Q Personally? A General manager.

Q Were you actively engaged in the treasurer's office of the company during that summer? A Not from June until after the first of September, although I was in touch with it.

Q You were running your hotel and who signed the checks during that summer? A I did after some part of August. 30

Q August or September, along there, and what time did you quit signing them; in June, did you say? A I just forget when I did get out; I think it was about the 20th or 25th of May.

Q You were busy in the hotel that summer? A It was when I was beginning to get busy.

Q You came back as treasurer in January, 1918? A I was treasurer already when I ran the hotel in the summer. 40

W. Harvey Jones, cross.

Q You resumed your treasurership in January, 1918?

A Yes.

Q And then you were in the hotel from the latter part of May until some time late in August or rather in September? A Yes.

10 Q You say you knew that Harry Smock kept moneys in the office to use for out of town jobs? A For various jobs, many of them out of town jobs.

Q Did you know that he didn't keep any account of them? A I didn't know just his method of keeping it.

Q Did you know he didn't keep any account of it in a book? You know that it has been demonstrated that there isn't any record of what money he paid out of the so-called reserve, did you know that? A I didn't know that.

20 Q You wouldn't have stood for it for a moment if you had known it? A I would.

Q For a man paying out thousands of dollars without a scratch of the pen? A I have confidence enough in—

Q This gets to be a personal matter; as a business matter? A I think their method was poor.

Q You wouldn't stand it now for a moment in the business with anybody in the office? A I would with the head of the department, like Mr. Harry Smock, if he saw fit to do it.

30 Q You would now? A Yes.

Q Without anything to show at the end of the year what had become of the money of the firm? A No, that is a different question.

Q How could anybody tell under this old system? A I am not defending that system; I only say that Mr. George Smock and myself and he had a general knowledge of that system.

40 Q You don't defend the system, of course? A But all the officials had a general knowledge of that system.

Harry W. Smock, further direct.

HARRY W. SMOCK, recalled for defendants.

Further direct examination by Mr. Applegate.

Q Mr. Smock, you testified upon some previous occasion in this matter that it was your practice to use portions of the reserve fund so-called in paying debts of the company, and that at times you would use your own money in paying bills or debts of the company and afterwards reimburse yourself from the reserve fund, is that so? A Yes. 10

Q I show you several receipts and ask you what they are, or what they purport to be? A They are bills from various concerns for materials that I ordered for use in the mill department of the Buchanon & Smock Lumber Company, which I paid.

Q And out of what moneys? A I paid it out of my own pocket. 20

Q And for the Buchanon & Smock Lumber Company? A Yes.

Q How did you reimburse yourself, if you did at all? A I was reimbursed from the funds of the company, from the mill department.

Q And what particular fund, if any? A Any considerable amount, it would be paid from the reserve fund; some of those I would put in the expense account; I have no means of telling from these bills; I simply brought these; it shows the method of spending money for the company in the mill department. 30

Q In the petty cash books of your mill department, which have been offered in evidence, it appears several items, to which your attention was called by Mr. McDermott on cross examination at the previous hearing, where it appeared that you had paid \$6, \$10, or \$15 or \$25, and so on, were those payments made to reimburse yourself because of payments made by you as represented by the receipts which you hold in your hand? A There might have been; usually were. 40

Harry W. Smock, further direct.

Q What is the total of those receipted bills which you produce? A \$182.39.

Q Where did you find those receipts? A I found them in the drawer of my desk.

Q Did you find any others? A No, that is all I found.

10 Q Are there others? A I don't think so.

The Master. What period do these bills cover?

The Witness. It covers a number of years.

Q The aggregate that you have just given as \$182.39, is the aggregate of those receipts which you have produced? A Yes.

Q The first of these is the American Contractor; that was paid by check or cash? A Paid by cash.

20 Q That appears to be June 19, 1917; was that a case where the solicitor came to the office? A No, my recollection is that I paid it in New York; there is a letter attached saying they have been trying to get it for eight months and couldn't get it, and I paid it.

Q Does the American Contractor item appear upon your books? A No, sir.

Q Anything to indicate that you paid it? Anything on your books to indicate you paid it? A No, not on the book.

30 Q Out of which fund did you pay that, the petty cash or the reserve? A I cannot say.

Q How do you know you paid it? A Because I remember the incident of paying it and the bill is receipted; I remember paying it.

Q The receipt is in the name of the company? A Yes; I remember paying it.

Q Your idea is you went to New York and paid that? A I paid it one day that I was in New York.

40 Q There is another item here of Benjamin Benson & Sons, stationery, \$30; do you remember that one? You remember the incident of paying that? A I cannot ab-

Harry W. Smock, further direct.

solutely make affidavit to remembering the particular incident of that receipt, no.

Q That appears to have been paid December 21, 1914, \$30; will you look and see if you find that on your book?

A There is nothing in the petty cash book in the main cause.

Q Anything on either side to show that you paid it? A 10
No, sir.

Q Or that it was paid to you? A No, sir.

Q Or paid by you? A No, sir.

Q Do you remember whether you paid this by check?
A No, I paid none of those by check.

Q What reason was there that that bill should not have been paid through the main office of the company?

A Mr. McDermott, I will tell you the reason; we had been doing business with Benson & Sons for some time, and they had had considerable trouble getting their money, and they simply took the position that they wanted the cash for their goods. 20

Q Wanted cash? A Yes, and we were using—they had loose-leaf books, etc., by which you have to obtain supplies, leaves, etc., and we are still using them.

Q These came by express? A Yes.

Q Where did you pay it? A In their office.

Q You paid it in advance? A I usually paid for their goods; when I ordered them; I cannot make affidavit of what I did in that case. 30

Q This bill is dated December 17, 1914, and the receipt is December 21; have you looked to see if that was paid through the main office? A No, I haven't.

Q But there is nothing in any book that you have, to indicate that you paid it? A No.

Q Would you pay \$30 and \$10 items like that without keeping anything to show that the corporation owed you for that? A Yes, sir; surely; I have done it a good many times, hundreds of times. 40

Harry W. Smock, further direct.

Q How could the corporation ever know anything about its standing with you, if that kept up? I don't mean you were not willing to trust the corporation for that.

A The corporation wouldn't trust me, is that the idea?

Q No, I mean how, the matter of ordinary accounting between you and the corporation, could you ever tell anything?
10

The Master. How did your company know that the bill was paid?

The Witness. The company would only know that the bill was paid by my say so and my word.

Q The company would want to pay you, wouldn't it?

A Yes.

Q Where did you get these receipts? A I got them from the company from whom I bought goods.

Q For production here today? A They were in the drawer of my desk in the office.
20

Q You hadn't even turned them over to the corporation? A No, sir.

Q Do you think you ever got the money back for these from the company? A I think I have.

Q There is nothing to indicate it; no record to indicate that, is there? A No.

Q There is a receipt here, December 26, 1917, Automatic Sash Holder Manufacturing Company; that bill is made out to you? A Yes.
30

Q You remember about that? A Yes, sir.

Q Where was that ordered? A I ordered it and paid for the goods and carried them down from New York.

Q For the company or yourself? A Sure, for the company.

Q Make any entry of it anywhere? A No.

Q Do you know whether you ever got that \$26.81 back from the company? A I expect I did.

Q You don't know, do you? A Yes, I got it; I got
40 money for all these bills.

Harry W. Smock, further direct.

Q You don't let anybody in your company do that sort of thing since you are president? A If one of my men in an executive position goes away and buys a few dollars' worth of goods and tells me of it, I don't question his doing it.

Q You see that the company pays him? A Surely.

Q You see that there is a record made somewhere, 10
don't you? A In a general way.

Q Here is the New York Society for the Blind, sold to H. W. Smock, Asbury Park, a large quantity of brooms, December, 1915; do you remember about that? A Yes.

Q That was paid by check? A No, sir.

Q How was it paid? A Paid by me.

Q The bill is dated December 9, 1915, and appears to have been paid December 13, the usual time for the sending of a check; what do you say happened to that? A As far as my knowledge goes, Mr. McDermott, every one 20
of those bills were paid by cash.

Q You kept a check book? A Yes.

Q You had a checking account of your own at that time? A Surely.

Q And still have the old books? A Yes.

Q So they are available at any time? A Yes.

Q I understand you to say that not one of these that you have now produced appears in those several items which you say you paid for the company—not one of those items appears in any book of yours so far as you know? 30

A Not to my knowledge, Mr. McDermott.

Mr. McDermott. I ask to have them marked.

Mr. Applegate. We offer them in evidence on the part of the defendant.

Mr. McDermott. I have no objection.

(Bills referred to marked Exhibit D. 5, November 1, 1920.)

Burt W. Reid, direct.

BURTT W. REID, sworn for defendants.

Direct examination by Mr. Applegate.

Q Have you been in the employ of the Buchanan & Smock Lumber Company for some time? A Yes, I think about thirteen years.

10 Q Are you still in the employ of that company? A No.

Q How long since you have been? A Almost six years since I have been away—not quite six years, in April.

Q In what capacity were you employed by the company, what did you do? A Pretty near all parts of it in the mill; when I started I was carrying lumber, and when I left I was in the office.

20 Q How many years were you in the office? A I don't know, I imagine about ten, off-hand; the last ten of the thirteen, maybe not so much.

Q When you say in the office, which office? A The milling office department.

Q Did you have any familiarity with the so-called reserve fund; did you know of its existence? A Yes.

30 Q What was it? A We had a petty cash account there, and if we got more money in the cash drawer than I thought belonged there, I would turn it over to Mr. Smock, and he would turn it over in this reserve fund.

Q How much would your petty cash be before you turned over any sum into the reserve fund? About? A Around \$20 to \$25. If it got over \$20 or \$25, I would turn maybe \$15 or \$10 over to him; when it got to be large, I turned \$10, \$25 or \$20 over to Mr. Smock.

Q Do you know how large the reserve fund was kept? A No, sir.

Q You don't know anything about that? A No.

40 Q All you know is, money was taken from the petty cash and put in the reserve fund? A Yes.

Burt W. Reid, direct.

Q Do you know whether or not any money was taken out of the reserve fund? A Yes.

Q For what purpose? A From my personal experience, most every time I took a trip, Mr. Smock would go over and get me \$10 or \$15; in one particular case it was \$35 or \$40.

Q What was the occasion of your taking trips? A 10
I would go out and figure plans and measure up buildings.

Q At distant places? A Yes.

Q Outside of the State? A Yes.

Q And when you took those trips the money was taken from where and by whom? A I would look in the cash drawer, and if there wasn't enough there to carry me through, I would tell Mr. Smock and he would ask how much I wanted; if I wanted \$10, he would go to the safe and get it, I presume from the reserve fund.

Q It was taken from the safe? A Yes, it might have 20
been out of his pocket sometimes; I cannot swear he always went to the safe.

Q Did that happen often or not; did it happen frequently? A Quite frequently.

Q Do you know whether the same practice prevailed as to persons other than yourself, other employees of the company going away on trips? A Yes, I think it did.

Q Do you know whether it did or not; did you ever see it done as to other men? A I cannot swear I ever 30
actually saw it done, but I—

Q You are swearing as to your own experience? A That is all.

Q Did you make entries in the petty cash books? A No, sir; when I turned it over to Mr. Smock, I did.

Q When you turned what over to Smock? A When we got too much in the petty cash, I turned it over to Mr. Smock.

Q Did you make an entry in the petty cash of turning such money over to him? A I don't know whether 40
I did or not.

Burt W. Reid, direct.

Q Did you keep the books? A No, only the petty cash book.

Q Did you keep the petty cash books? A Yes.

Q Or any part of them? A Yes.

Q What sort of entries did you make in the petty cash books? A If I sold a piece of moulding and got
10 one dollar for it, I entered it in the cash book.

Q You made entries in the petty cash book in the mill department? A Yes.

Q Are they the books that lie on the desk before you, or some of them; see if they are the petty cash books of the mill department. A That is my writing.

Q You are indicating what? A There is an item, "Pine \$5, Oak and Birch \$1.25," on the sixth of May, 1914.

Q And that item you casually opened the book to, did
20 you, when you picked up the book? A Yes.

Q You didn't look for that particular item? A No.

Q How far did you go on these trips that you took? Name some of the places. A One of them was over to Bennington, Vermont, four or five times; I went to Norfolk, Virginia; I was down there three or four times.

Q And the moneys which were given you from the safe by Mr. Smock were used by you for what purpose?

A On these trips, carfare and meals and sleeping quarters and once in awhile I might buy a cigar.
30

Q Did you keep any memorandum of your expenses? A As a rule, yes, sir.

Q Did you always? A I think I did on every trip. I haven't got it, but I kept it at the time.

Q What did you do with the memorandum when you got through with it? A Tore it up, I imagine. Mr. Smock never questioned me what I spent it for, if I spent \$17, whatever it was, I would figure what I spent.

Q When you came back to Mr. Smock, if you had any
40 money left of this money he had given you, for your

Burt W. Reid, cross.

expenses, did you turn back the balance to him? A Not always.

Q What became of the balance? A I sometimes put it in the cash drawer.

Q You turned it back to the company? A Yes, sure.

Q You handed in no memorandum of your expenses or anything of that sort? A I most generally went over it with Mr. Smock and showed him how much I spent, and sometimes he would go over it or glance at it. 10

Q The memorandum itself was not kept by you? A Not to my knowledge; I don't think anything was ever kept.

Cross examination by Mr. McDermott.

Q You say you left there about six years ago? A It will be six years this coming April.

Q April, 1915? A Six years this coming April. 20

Q And you were there for thirteen years? A I think it was thirteen.

Q You knew Mr. Harry Smock a long time, then? A Yes.

Q These petty cash books, one of which you have there, you say a part of that is in your handwriting? A Yes.

Q Did you make any entries in that, that you can find, indicating the carrying of any sum to the reserve, any amount? A (After examining book.) I don't remember about that. 30

Q I thought perhaps you could find one. A Here is one, "Main Office \$16"; sometimes I would give Mr. Smock some money and he would take it to the main office.

Q That is under date of May 13, 1914; you find there two items? A I found one "Main Office \$16."

Q That is in your handwriting? A Yes; this is my handwriting, "Main Office \$5.39."

Q Did you take it over? A I don't know. 40

Burt W. Reid, cross.

Q It was the practice to take small sums over sometimes to the main office? A Yes, sir. \$5.39, an item like that, that must be for a bill or something; why we would take \$5.39 to the main office unless it was some offset, some account in the main office.

10 Q You mean most of the sums taken to the main office were in round figures? A Yes.

Q Here is another, on May 15, \$5; that is in your handwriting? A I think it is.

Q Here is an item "May 19, Reserve \$50"; whose handwriting is that? A That might be mine; it looks like mine.

Q I notice in this book that there are small items of moneys paid out which appear here all the time? A Yes.

20 Q Ten cents, 32 cents, 25 cents, 32 cents; was it the practice there in that office to make a memorandum of the expenditures of very small sums in this way? A Oh, yes.

Q Everything was carried out in even smaller items in the moneys which were paid out? A Yes.

Q Sometimes you went on these trips for the company? A Yes.

Q You say that at such times you had some money handed to you by Mr. Harry Smock? A Yes.

30 Q You used as much of it as was necessary in the trip? A Yes.

Q And brought some back sometimes; generally didn't you bring some back? A I generally tried to take enough; sometimes I would go short; I couldn't get it out of my own pocket; I would get it out of the cash drawer, or from Mr. Harry Smock.

Q You didn't often come back broke? A I tried not to.

40 Q When you came back, the balance you sometimes put in the cash drawer? A I imagine I did. I might have given it to Mr. Smock or put it in the cash drawer;

Burt W. Reid, cross.

I don't remember offhand. If it was a small payment, I would put it in the cash drawer, and a larger amount I would give to him.

Q If you put it in the cash drawer there was some entry of it made on the book? A There would be to make the cash balance.

Q And some place or other you made a memorandum or entry of the amount of your expenses, didn't you? There had to be some entry of the amount expended by you? A I don't know how you would get at it. 10

Q In most offices there is a memorandum of what every one in the concern spends, for instance; that must be so; I want to know about those; do you know how they were charged up, the amount of your expenses? A No.

Q What did you do with your statement; you brought home a memorandum of your expenses, what did you do with it? A I imagine I destroyed it. I don't think it was ever kept. 20

Q You brought it home for a purpose? A I didn't keep it; I figured it up on my way home, to see if I had cash enough left to turn over.

Q And also let some one know how much you spent? A Yes.

Q Did you turn over to Harry Smock a memorandum of it? A Yes. 30

Q You didn't just run free with money? A I don't know that I always turned it over to him.

Q Did you turn it over to any one else? A Not if I had four or five dollars left, I might have put it right in the cash drawer; I cannot swear to that.

Q If you did that, you entered it in the petty cash? A Yes.

Q I understood that from you before, but how did you let some one in the firm know whether you spent \$10 or \$100; some one had to know that? A Yes, sure. 40

Burt W. Reid, cross.

Q Who was the man you communicated that to? A The only man would be Mr. Harry Smock.

Q Whether it was charged up on the books of the company in any way? A I don't know about that.

Q I understood you went up to Bennington, Vermont, four times you think? A I think so.

10 Q Have you any idea when they were; have you a diary? A No.

Q Or anything which will be of any assistance in making up— A Yes, I can find out from Buchanon & Smock's books when the job was running.

Q And somewhere there would be some indication of what you spent? A There ought to be; there ought to be how much money I had and how much I brought back, and that would show.

20 Q You don't remember how much? A No.

Q These four trips to Bennington were the big ones? A Not necessarily; I have spent probably as much in Norfolk.

Q Did you go down there? A Yes.

Q Do you remember how much money you took that time, or how much you brought back? A No, sir.

Q Did you have anything to do with this so-called reserve fund? A No.

30 Q Once it got in there, it was gone as far as you were concerned? A No.

Q From any observation of yours, I mean? A I gave it to Mr. Smock and he always put it in the reserve fund drawer in the safe.

Q What became of it then you don't know? A No.

Q These small amounts that were sent over to the office, weren't they checks? A They might have been.

Q The small uneven amounts? A They might have been; I don't think they were, because I wouldn't enter a check in the cash book.

Joseph H. Laudenslager, direct.

Re-direct examination by Mr. Applegate.

Q You said on your cross examination that after this money was placed in the reserve drawer or in the safe, you didn't know what became of it then? A Only what I spent of it.

Q You know that you spent some of it? A Yes.

10

JOSEPH R. LAUDENSLAGER, sworn for defendants.

Direct examination by Mr. Applegate.

Q You are with the Buchanon & Smock Lumber Company? A Yes.

Q How long have you been with them? A About thirty-two years.

Q Between 1913 and 1919, in what capacity were you employed by the company? A Manager of the hardware department.

20

Q And did that department make any cash sales? A Yes.

Q Mostly cash sales or not? A No, lots of credit, all kinds.

Q What record did you make of the cash sales? A I guess the first part of the time we used to put it on a book in the office. We had a petty cash sale book by the desk, and after we changed the construction of the store, I put a drawer in the store for cash sales.

30

Q When was that, about? A I don't remember that.

Q About how many years ago? A About three or four years ago, five years ago.

Q Since three or four years ago you put your receipts from your petty cash sales into a drawer in the desk in your department? A Yes, in the counter.

Q Prior to that time how did you dispose of your cash? A Brought it to the desk and got the change from the main office.

40

Joseph H. Laudenslager, direct.

Q While you have had charge or did have charge of the hardware department, did you ever at any time find it necessary to use any of the moneys of that department? A Yes.

Q For what purpose? A Going down town to buy merchandise.

10 Q Did you make any record of it? A No, sir, not while I had that drawer, I never took anything out of the main office.

Q But while you had the drawer? A No, sir.

Q What did you do with the cash receipts of each day? A After the day's sales were over, we would take it and put it in the main office, put it on the petty cash book in the main office.

Q Is that the petty cash book shown in evidence and marked Exhibit D. 4 today, which I now show you? A
20 Yes.

Q The total cash sales of the day which you would take into the main department, would you make an entry in that book? A Yes, in this book.

Q Would you make it yourself? A Yes.

Q What would you do with the cash? A Hand it in the window.

Q Would that cash payment that you made at the window represent your total sales? A Total sales for
30 the day.

Q Would there be any memorandum made by you of any of the cash that you had paid out for freight bills? A No, sir.

Q Was there any record kept at all of those cash payments? A No, sir.

Q Do you know whether or not Mr. George Smock knew of that system? A He did.

Q How do you know he did? A Because he told me to do it.

40 *The Master.* When did he tell you to do it?

Joseph H. Laudenslager, direct.

The Witness. When we put the drawer in the store.

Q He told you to do what? A To pay out small sums; if any expense come in, to pay it out of the drawer.

Q Did he tell you to keep any account of that? A No, sir. 10

Q When you turned your day's receipts in to the main department and made your entry in your book, as you have spoken of, would you put in the book any name showing by whom the payment was made? A No, sir; it was just the cash sales; I just put the amount down, and are doing it today.

Q Referring to that book, you have opened it at page what? A 380.

Q That shows the three departments, does it, mill, lumber and hardware? A Yes. 20

Q The hardware column is your column? A Yes.

Q On that page 380 appears the figures in the hardware column \$167.60; was that put there by you? A No, that is a balance over from the other page.

Q The next item is \$3.45? A That is mine.

Q What is that? A Cash sale for that day.

Q There is nothing else which appears in reference to that item? A No, sir.

Q Take the next item, under 1914, 28th of November, where appears the item \$2.28? A That is cash sale. 30

Q That is your handwriting? A Yes.

Q Nothing else appears explanatory of that item? A No, sir.

Q Nor the name of any person paying it? A No.

Q The next item is \$2.05; same answer? A Yes, sir.

Q Next, 80 cents? A That was an item, not in my handwriting—\$3.35 was sold by the lumber department and 80 cents was mine, and they put the 80 cents in my column. 40

Joseph H. Laudenslager, direct.

Q That was done by some one else and not you? A Yes.

Q And so that record is kept throughout the book? A Yes.

10 *The Master.* Who was at the head of the hardware department?

The Witness. Mr. George Smock, he had charge of me; I was under him.

Q I show you page 413 of the same book, are there any items appearing there, under the column hardware; any amounts larger than \$20? A \$49.37.

Q Does that represent cash sales for the day? A Yes.

Q That was when? A May 10.

20 Q Taking for instance that \$49.37, you say that represented the total cash sales for the day in your department? A Yes.

Q If you had paid out of the cash drawer anything for expenses, such as freight or otherwise, then that figure doesn't represent truly the total cash sales? A No, because I might have paid out fifty cents, a quarter or two dollars, I cannot tell; no record was kept of it.

Q You haven't any record whatever of the moneys you spent? A No, sir.

30 Q You didn't keep any? A No, sir.

Mr. McDermott. I move to strike out all the testimony of this witness as having no relation whatever to the subject matter of the accounting before the Master. This, if it serves to prove anything, serves to prove that in some other department there were entries made without a charge, but whatever there may be of that, has already been passed upon by the Vice-Chancellor, who has ordered an accounting by Harry Smock. This doesn't serve any purpose in that connection.

40

Joseph H. Laudenslager, cross.

The Master. The motion will be denied, and the evidence will stand.

Cross examination by Mr. McDermott.

Q I understand that most of the time while you were in the hardware department you took whatever money you collected to the main office and entered it in the book, and whatever was paid out, was paid out in that same way; is that right? A Paid out through the main office, sure; that was before we had a drawer in the store. 10

Q Then you had during a part of this period a drawer? A Yes.

Q Where was that? A That was in the desk back of the counter in the hardware department.

Q Did you have a cash register there? A No, sir.

Q Just this drawer? A Yes.

Q Was there a cash register in the main office? A Yes. 20

Q And this was to facilitate the work you had to do? A It kept us from running from one point to the other.

Q And out of that you paid the small items? A Yes.

Q Did you ever pay as much as \$10 out of that? A Yes.

Q What was that for? A For merchandise bought downtown we had to have for customers.

Q But mostly you were selling merchandise in the store? A Yes. 30

Q This merchandise that was bought for customers, how did that get into the books of the company? A If there was a charge account, if we went downtown to buy anything, that would be charged up.

Q So that you could always trace it? A Trace whatever you bought and sold, but if it was a cash sale, it wouldn't be shown.

Q For a little bit of a thing? A Yes.

Q Did you ever have any considerable bills for freight? A No. 40

Joseph H. Laudenslager, cross.

Q Just small bills? A Yes.

Q Expressage? A No.

Q The bills for freight went into the main office? A Yes.

Q So these payments which you paid out of that, except for merchandise, which you say went on the books,
10 were for small items? A Yes.

Q Any considerable item went to the main office? A I never put in large items.

Q You never paid items of \$50 or \$60? A No.

Q You don't let things go through without some account of what you were doing? A Only when I paid the money out I didn't take any account of it. It came out of the day's sales.

Q Little things that went out of the petty cash drawer?
20 A Yes.

Q If you paid 25 cents for expressage, you didn't make a memorandum of it? A No.

Q Each night you handed it in at the window? A Yes.

Q So you cleared up each night? A Every night.

Q And how did you start in the morning? A We had five dollars change in the drawer at the time.

Q You kept the five dollars? A In the drawer, yes.

30 Q And the rest of it you turned in every night? A Yes.

Q And Mr. George Smock's habit was to have you turn it in every night? A It was the custom.

Q It was one of the things he required of you? A That was always the custom of the firm.

Q Everybody in the lumber department and in the hardware department accounted every night? A I don't know about the lumber department; I know the hardware did.

40 Q You accounted every night? A Yes.

Joseph H. Laudenslager, re-direct.

Re-direct examination by Mr. Applegate.

Q The only accounting that you did, isn't it true, was the turning in of the money? A That is all.

Q You rendered no statement? A No.

Q And if your day's sales had been—of course, you understand I am not imputing anything to you, this is merely an illustration—if your day's sales had been \$50 and turned in \$30, there would have been no way of keeping any check on it? A No, sir; no check. 10

Q What is the largest item you ever paid out of your petty cash? A \$10 or \$12, something like that, not very heavy.

20

30

40

Henry Hall, direct.

IN CHANCERY OF NEW JERSEY.

	<i>Between</i>	
	GEORGE A. SMOCK,	Complainant,
10	<i>and</i>	
	BUCHANON & SMOCK LUMBER Co.,	Defendants.
	<i>et al.,</i>	

Continuation of testimony in the above-entitled cause before Nicholas W. Bindseil, Master in Chancery, at the City Hall, Long Branch, New Jersey, Thursday, January 11, 1923, at 11 A. M.

20 Appearances:

Mr. Ralph E. Lum and Mr. (of the Philadelphia Bar) for complainant.

Mr. Otto H. Rhome and Mr. John S. Applegate, for defendants.

HENRY HALL, sworn for defendants.

Direct examination by Mr. Applegate.

30 Q Mr. Hall, are you now employed by the Buchanan & Smock Lumber Company? A I am.

Q How long have you worked for that company? A Eleven years.

Q You were working for that company in 1916? A Yes.

Q And in 1917? A Yes.

Q You started work when? A 1912.

Q What was the nature of your work? A Since 1914 I have been in charge of the estimating and scheduling and the getting out of the material upon jobs wherever
40 they may be.

Henry Hall, direct.

Q Jobs in different parts of the country you mean?
A Yes, all over the East.

Q And did you travel in relation to those jobs? A Yes.

Q Who paid your expenses? A As a rule, Mr. Smock; meaning Buchanon & Smock, but handed to me by Mr. Smock—Mr. Harry W. Smock.

10

Q How was this handed you, check or cash? A In cash; only once do I recall a check.

Q Where was that money taken from, do you know? A Most of the time from our reserve fund.

Q What was that reserve fund? A It was when we had a surplus of cash that we felt should be in a less prominent position, why I put it in the compartment in our safe which had a separate individual lock. Even when the safe was opened, it couldn't be used or taken from by any stranger coming in the office.

20

Q How do you know that Mr. Smock took this expense money from that fund? A I saw him.

Q What did you see him do? A Take the money for my expenses and hand it to me from that fund.

Q How much was that fund, approximately? A I cannot answer that question exactly, but probably it ranged from \$50 to \$125.

Q What is the largest sum that he ever gave you at one time from that fund? A The largest I ever recall was \$100.

30

Q Do you know whether Mr. George Smock knew of the existence of this so-called reserve fund; and if you do know, how do you know? First, do you know? A I do know.

Q What is your answer; did he know? A He did.

The Master. State how he knew it.

The Witness. One time early in 1918 I was going to Langley's Aviation Field at Hampton, Virginia; we didn't have sufficient money in the

40

Henry Hall, cross.

drawer, in the reserve compartment, to meet any expenses. Mr. George A. Smock furnished that money from the main office.

Q Did he give it to you direct? A Yes. From that, I know that he had a knowledge of that reserve fund, because he was told at that time of it, and made no comment.

Q That was in 1916? A 1918, I think about March, just a few months before he left.

The Master. Who told him about that fund?

The Witness. I didn't mention the fact, particularly; I only knew that he knew it from our conversation at that time.

Cross examination by Mr. Lum.

Q How much did you get on this occasion when you went to Langley Field? A As I recall, \$100.

Q You usually received round sums of money? A Yes.

Q And did you use all of the hundred dollars for expenses? A I don't think so. I think about \$40 was returned, if I recall correctly.

Q To whom did you return it? A Mr. H. W. Smock.

Q Do you know what entry he made of the return, if any? A Only that he told me he would return it to the main office and make the thing straight.

Q Do you know whether he did return it to the main office? A I have no knowledge of that.

Q Do you know of any book in which he made an entry of the return of the forty odd dollars that you gave to him? A He made a note on a slip of paper and laid the money upon it and told me as he went to the front or main office, that he would straighten the thing out there.

Q Listen to my question, please. Do you know, my question is, of any book in which he made any entry showing these forty odd dollars that you returned? A No.

Henry Hall, cross.

Q You are still employed by Mr. Harry Smock's company? A Yes.

Q You are still doing the bookkeeping work? A Yes.

Q What salary are you receiving, what pay? A Up until the first of this year, sixty dollars a week.

Q How much were you getting in 1918, when Mr. George Smock left? A I do not recall. 10

Q Approximately - what? A Probably forty-five or fifty dollars.

Q How much are you getting today; how much are you receiving now? A That has to be answered?

Q Please. A Ninety dollars a week.

Q When did you first know of this so-called reserve fund? A I don't know the year; that was after my employment there.

Q Do you know how that reserve fund was built up, how it was made up? A I don't understand what you mean by "built up." 20

Q How it came there. A As I said before, just took the surplus from the small drawer in the desk which we kept it in.

Q How was it usually kept in the reserve fund? A It ranged from fifty to one hundred dollars or one hundred and twenty-five.

Q Do you know that of your own knowledge? A I have seen it time and again. 30

Q What happened when it became more than one hundred and twenty-five? A If it wasn't handed to me or someone else in the office under me for traveling expenses, it was turned into the main office.

Q Do you know by whom it was turned into the main office? A Mr. H. W. Smock.

Q Do you know what entry he made of it, if any; and if so, in what book? A That will show in our cash book.

Q Do you know? A Yes. 40

Henry Hall, cross.

Q Can you refer to the cash book and show that entry? A I can get it; it is here in our possession somewhere.

Q Refer to it briefly, if you will, one of those entries in which the surplus of reserve was carried over into the book. A Just one entry is sufficient.

10 *Mr. Applegate.* Get the book.

A (Continuing.) I produce the main office cash book, petty cash book, Exhibit D. 4 of November 1, 1920, and on page 336 I find on June 30 an entry of \$125.

Q Simply the figures "125"? A Yes.

Q Without any indication before it as to what it is, or what it refers to? A Except that it refers as coming from our mill cash.

Q I call your attention to those figures; who made them; do you know in whose handwriting they are? A
20 *Mr. H. W. Smock.*

Q Who made the figures after them and the figures in the same column next below them? A *Mr. George Ruding.*

Q Do you know why *Mr. George Ruding* didn't make the entry of \$125 in his handwriting? A *Mr. Smock* made it himself; being an officer of the concern, if he had money over, he naturally entered it in himself.

Q You don't know whether he didn't have the book-
30 keeper who regularly made the entries make that entry?

Mr. Applegate. We object because it assumes something—

Mr. Lum. Strike that out.

Q Who was the bookkeeper? A *Mr. George Ruding.*

Q In whose handwriting are all the other entries on this page and this page (indicating)? A I cannot answer as to any of them. I can answer as to those two
40 which you just showed me.

Henry Hall, cross.

Q Look at them; do you see any entries which indicate any different handwriting on that page? A Yes (page 336), some few small items are different.

Q Do you know in whose handwriting they are? A I do not know the others.

Q And in this book you find different entries by different people, different handwriting? A Not our mill cash, other than Mr. Ruding's or Mr. Smock's. 10

Q Either Mr. Ruding or Mr. Smock made the entries on the mill cash? A Yes, with this cash.

Q Looking down this column of the mill cash, there is no other entry, excepting Mr. Ruding's, except the single one of Mr. Smock's? A That is all.

Q Do you know of any reason why Mr. Ruding didn't make that entry of \$125? A Unquestionably Mr. Smock didn't wish to trouble him.

Q That entry of the \$125 is apparently very much darker than the other entries, isn't it? Can you say whether that figure five has been written over? A It is Mr. Smock's habit to write over his letters several times. 20

Q Do you know what that \$125 represents, or where it came from? A From our mill cash, or if you must put it, reserve fund.

Q What is there to show that? A Nothing only the significance of the figures there.

Q Then all you mean is that finding that figure there, you assume that it came from the mill cash, don't you? 30

A I knew that it came from the mill cash.

Q How do you know it? A Mr. Smock's writing.

Q In other words you know nothing about it, except your assumption of the integrity of the man, is that it? A Yes.

Q The existence of this reserve fund—you say that on one occasion Mr. George Smock gave you the money from this reserve fund? A No, sir.

Q What was your statement in that respect? A My statement was that he once, when we did not have suf- 40

Henry Hall, re-direct.

ficient money in our reserve fund, he gave me money from the front office.

Q You don't mean to say that he knew anything about the method of keeping this reserve fund; had any knowledge of the details, as to what entries were made of it, by whom or where, do you? A Yes, he did.

10 Q Tell me how you know it? A Because at that time he was told by me we did not have it there.

Q Did not have what? A Money in our fund.

Q In the reserve fund? A Yes.

Q And from that you assumed that he knew the method of keeping it, and the fact as to whether entries were made of it in books—cash books and elsewhere? A I do not do the bookkeeping in the front office.

Q And there was nothing from anything that ever happened between you and Mr. George Smock, or nothing that
20 was ever said between you and Mr. George Smock, which let you know that he understood anything, except that there was a reserve fund; that is all you mean, isn't it? A Certainly; that is all I said.

Re-direct examination by Mr. Applegate.

Q What is the nature of your duties now? A The same as then, except enlarged.

Q How long have you been getting ninety dollars a week? A Since January 1 this year.

30 Q And last year you got what? A Up to January 1, this year, sixty dollars a week, plus a certain amount, which will be added to it, which is undetermined as yet.

Q What do you mean by that, a bonus? A In a way; yes, sir.

Q Dependent upon what? A Upon an agreement between myself and the president and treasurer of the concern.

Q What is it that you do in the performance of your duties? A I do all the estimating, or in other words,
40 at least look over all of the estimating.

Henry Hall, re-cross.

Q Estimating on contracts and jobs? A Yes; I also, after we are successful in getting a job, schedule it out to the mill, after measuring it at the operation; if done by others, I look at it. Since three months ago, I have been manager of the mill.

Q State whether or not the profits to be derived from the result of the work upon which you figure and check up estimates, and so forth, depend upon the correctness of your work? A Yes. 10

Re-cross examination by Mr. Lum.

Q These commissions or bonuses were dependent upon what? Tell us something about it. A I said that they were merely the result of an agreement between the president and—

Q Is that agreement in writing? A No.

Q What is the agreement? A As I said, the quantity is undetermined as yet. 20

Q What is it based on? A Upon that agreement.

Q What is the agreement? A That I receive approximately, we will say, thirteen or fourteen dollars a week covering last year, in addition to my regular salary.

Q How is that thirteen or fourteen dollars arrived at? A It is reached to bring my salary to a certain point for that period.

Q How do you measure to get thirteen dollars, rather than thirty? A Last year, January 1, I was given \$350 in addition to my salary; in the agreement reached to bring it to \$80 a week, we deducted the seven dollars a week, which brought it to exactly thirteen. 30

Q Then you got \$80 a week last year? A Yes.

Q And what is your agreement this year in addition to the ninety? A Nothing as yet.

Harry Horace Jones, direct.

HARRY HORACE JONES, sworn for defendants.

Direct examination by Mr. Applegate.

Q Mr. Jones, are you employed by the Buchanan & Smock Lumber Company? A I am.

10 Q And have been for how long? A Since October, 1910.

Q And what is the nature of your employment at present? A General clerical duties.

Q Be a little more specific; are you a bookkeeper? A Not a bookkeeper; clerical duties in the mill office, taking care of customers as they come in, ordering things in the mill, looking after the shipping in general.

Q How long have you performed those duties? A Twelve years.

20 Q Did you have anything to do with the keeping of the petty cash books? A I did, sir.

Q What? A I took in the majority of the cash on cash sales and kept the cash book.

Q Did you keep a record of the cash disbursed as well as that taken in? A I did.

Q All entered in these books that you have referred to? A Yes.

30 *The Court.* What do you mean you took in the majority of the money?

The Witness. The cash drawer was in my desk, and all the cash sales were, as a rule, turned over to me, and I would put the money into the drawer, and enter it on this little, as we call it, petty cash book.

40 Q Did those moneys amount to much in the course of a day or week? A Not very much; they would vary considerably; some days probably six dollars, and another day, it might run fifty-six; it was more usually less than higher.

Harry Horace Jones, direct.

Q Do you know anything about the so-called reserve fund that has been testified to here? A I know that when the money in this cash drawer in my desk would come to be too large, and as Mr. Hall stated, we thought it would be a little too much to have lying around just under an ordinary key—

Q How much? A If it ran over one hundred dollars we would take fifty dollars of that one hundred and give to Mr. Harry Smock and he would put it in the little compartment in our safe. 10

Q Did you see him do that? A I have seen him get it out. He would put it in a little compartment in our safe, where it would be a little safer, under a separate lock and key.

Q Do you know how long that system has been in vogue? A Always as I recall.

Q During all the time you were there? A All the time; yes, sir. 20

Q Is that still done? A No, sir.

Q When was it abolished? A When Mr. Harry Smock went over to the other office.

Q When was that? A I just don't recall the date—1918 about; I might add that hasn't been exactly abolished; there is a small sum still in that fund.

Q And while Mr. Smock was there what were the moneys in the reserve fund used for? A Any expenses, any traveling expenses; any one of us in the office may have to go out on the company's business; any expenses we might incur. 30

Q Were any of your expenses ever paid out of that fund? A Yes, sir.

Q Do you know whether the expenses of Mr. Hall were paid out of that fund? A I do.

The Master. Were they?

The Witness. They were. 40

Harry Horace Jones, direct.

Q The expenses of what other employees were paid out of this fund if you know? A A Mr. Reed, who was then in our employ, myself, Mr. Harry W. Smock and Mr. Howland.

Q What were their duties, these men? A Mr. Reed was at that time estimator and went to jobs that were distant and measured for interior trim, etc.

Q How far distant; what do you mean? A He often went as far as Vermont, Long Island, upper New York State; Mr. Howland did also.

Q And their expenses were given them out of the reserve fund? A Yes, sir.

Q Do you know whether or not at any time when any of these persons returned from their trips they paid back any monys that were unexpended by them? A I don't recall any real incident; I know that they were, but I cannot recite any particular instance.

Q To whom were they paid? A To Mr. Harry Smock.

Q What about your own individual case; did you ever return any moneys? A I don't recall any individual case, but I know that I have had money left over and brought back and returned it to Mr. Smock.

Q Mr. Jones, did you ever have occasion to take any moneys from this reserve fund over to the main office, to Mr. George Smock? A No, sir.

Q Did you ever get any money from Mr. George Smock for the reserve fund?

The Master. Or used in connection with the reserve fund?

A Not that I remember.

Q Do you know whether or not, and if so, tell us, did Mr. George Smock know of the existence of this reserve fund? A He did.

Q How did he know; why do you say that? A There were times—not I personally, but there were times when our reserve fund was not sufficient to carry a man's travel-

Harry Horace Jones, direct.

ing expenses to where he may be going, and he was compelled to go to the main office to get enough to take him to where he might be going, which would have to come through Mr. George Smock, after going to the main office.

Q You are not related in any way to W. Harvey Jones? A No, sir.

Q Were you in the employ of the company all the time while Mr. George Smock was there? A Yes, sir; that is, he preceded me; not all the time he was there.

Q He was there all the time you were there? A Yes, he was there all the time I was there.

Q Did you ever see him in the mill department? A A number of times; yes, sir.

Q Did you ever see him going over any of the books of the mill department? A Yes, sir.

Q And where? A In what was then Mr. Harry Smock's private office.

Q Who was present when he was going over those books? A Mr. George Smock.

Q I mean beside Mr. George Smock who was present? A No one was exactly in that place, except he may walk in and walk out. I have been in the office just adjacent, just separated by a partition.

Q Did Mr. George Smock ever give any explanation or at those times ever make any explanation as to the occasion of his visit? A Never one word to me.

Q Do you know what books he looked over? A I do; our petty cash books.

Q Do you know when; covering what period of time? A I haven't got the dates in my mind.

Q Can you state whether it was a frequent practice or infrequent practice? A For a while it was very frequent.

Q When was that? A That was shortly after—just prior, or shortly before Mr. Smock's leaving the firm.

Q When was it infrequent? A Every day previous to that, it was very infrequent.

Harry Horace Jones, cross.

Q But occasionally? A Occasionally.

Q Do you know whether or not Mr. George Smock knew that money was kept in the safe in the mill department? A I do.

Q How do you know that? A He knew that we were always making cash sales.

10 Q And were the receipts for those cash sales taken to George Smock every day in the main department? A Not every day, no, sir.

Q Were the cash receipts to which you have referred taken to George Smock at stated intervals, or only at the time when moneys from the reserve fund were taken to him, as testified to? A When moneys from the reserve fund were taken to him.

20 Q Why were the cash sales or cash receipts so inconsiderable as six dollars a day, or something of that sort? A Sometimes it would depend on the weather; if the weather was very bad, we had few coming in, and naturally our cash sales would be a little less—the seasons of the year.

Q The business of the Buchanan & Smock Lumber Company in the main was not a cash business, was it? A Very little cash business.

Q Did you sell at retail? A Yes, sir.

Q In your department? A Yes, sir.

30 *Cross examination by Mr. Lum.*

Q When you got money from this reserve account for trips, etc., it always was in round sums, ten dollars or twenty-five? A Yes, sir.

Q And what you didn't expend, you returned to Mr. Harry Smock? A Yes.

Q And do you know whether he made any entry in any book of the amount that you returned? A I do, yes, sir.

Q Did he or not? A He did.

40 Q In what book? A May I correct that?

George A. Smock, direct.

Q If you want to. A I do not recall seeing him make these entries.

Q And the cash books that you say Mr. George Smock went over before 1918, what ones were they? A They were books that had been our petty cash books previous to that.

Q Do you know where they are now? A They are 10 here, I believe.

Q How often in 1916 did you see Mr. George Smock going over the petty cash book? A I don't recall during that year having seen him.

Q You wouldn't say that you saw him on an average of more than once a year looking at a cash book over in the mill department before 1918, would you? A No.

Q And when he did, did you observe what he was looking at? A No.

Q You have no knowledge as to whether he was looking for one certain item for some information, or what he was doing, did you? A I have not. 20

Re-direct examination by Mr. Applegate.

Q Did you ever hear Mr. George Smock take any exception or make any objection to any system employed in the mill department in relation to the bookkeeping or the keeping of cash or otherwise? A I never did.

Mr. Applegate. That is all we have. We rest. 30

GEORGE A. SMOCK, sworn in his own behalf.

Direct examination by Mr. Lum.

Q How long were you connected with the Buchanon & Smock Lumber Company? A From its organization to August, 1918.

Q When was it organized? A It was organized in 1900.

Q Were you an officer during all that time? A Yes, sir. 40

George A. Smock, direct.

Q What officer? A President most of the time; treasurer a good part of the time.

Q What salary as president were you receiving in 1917? A I think at that time \$75 a week.

Q Did that cover all the work that you performed and your services? A Supposed to.

10 Q What were those services? A I had general charge of the business, looking after the buying and selling, and everything connected with it.

Q Did you have knowledge of the system employed by Mr. Harry Smock in connection with the petty cash and so-called reserve fund? A I learned early in 1918 of the reserve fund; in looking over the petty cash book one day I was over at the mill office, I found charges to the reserve fund, and I asked Mr. Harry Jones what it meant, and he told me then that, as has been testified here, that when they had more money in the cash drawer than they thought they ought to keep there, they turned it over to Mr. Harry Smock and marked it reserve fund.

20 Q Had you before that time, in 1918, any knowledge of that system? A I had not.

Q Did you know or do you now know what happened to that reserve fund? A In what way.

Q How it was used; how it was accounted for; in what books it was entered, if any? A I do not; it does not seem to have been entered in any.

30

Mr. Applegate. Objected to.

The Master. I will strike out the last part of the answer.

Q You do not know what the system of dealing with it was? A No, sir.

Q If money was taken in, in a lump sum, a round sum, and given to an employee to go on a trip, after he returned and part of that fund not used, do you know where that balance was entered, if anywhere? A I don't know.

40

George A. Smock, direct.

Q Did you ever approve or ratify that system at any time in any way? A I did not.

Q Did Mr. Harry Smock ever discuss with you his method of carrying on this petty cash and surplus account up until just before you left? A The only time that I ever discussed it with him was shortly after I discovered it, early in 1918; as I recall, I spoke to him about it one time, and asked him what it meant, and he said that he simply took the money and used it for the business, as he has testified, and I said to him that it was not the proper way to do, that he should keep an account of the moneys that he expended and where he spent them, and he said at that time that he would do so. 10

Q Did you yourself keep an account of the moneys that you expended for the business and what you did with it? A Absolutely.

Q Did he know that you were doing it? A I presume so. 20

Q And you have had bookkeeping experience yourself? A Yes, sir.

Q If you had before 1918 had knowledge of this reserve account and this method of dealing with the petty cash, would you have approved of it? A I would not.

Q You recall these two men who have just testified, asking you for money when they were going away on trips on certain occasions? A There has been times when they have come over to the main office for money to go on trips. 30

Q And you have given it to them? A Certainly.

Q And did that act give you any knowledge of Harry Smock's method of dealing with the reserve? A It did not.

The Master. When you gave this money to him, did you enter it in any book?

The Witness. Certainly. 40

George A. Smock, direct.

Q What book? A I charged it in the cash book to the mill department.

Q In every case? A Certainly.

Q And at the time? A Certainly.

Q You heard the testimony of Mr. Harry Smock over a year ago, in November, dealing with his trips to New York and his method of handling the petty cash; did you up until 1918 have any knowledge that he was dealing with the moneys of the company in that casual manner? A No, sir.

Q Would you have ratified it or approved it, if you had? A I would not.

Q Coming now to an item of \$400 referred to as salary, will you tell us in your own way very briefly the history of that item? A The history of that item is this: in I think about the middle of 1918, Mr. W. Harvey Jones, the treasurer, left the company to take charge of his hotel, and he made no provision whatever for doing his work, that is, the work of the treasurer of the company, collections, bank business and all that sort of thing, and it devolved upon me to do it, and I didn't think it was fair to do it without any compensation, and I had the bookkeeper—

Q What bookkeeper? A Mr. Ruding—put forty dollars a week aside for that work, and that is the \$400 in question.

Q Where did you have Mr. Ruding put it? A Put it on the payroll and put it in an envelope and give it to me.

Q What did you do with it at the time? A I took the envelope and kept it.

Q Have you the envelopes? A I have.

Q Where are they? A (Producing same.)

Q I show you ten envelopes; do you recognize them?

A Yes, sir.

George A. Smock, direct.

Q And in whose handwriting is that entry here on this one, January 29, 1918, W. H. J. and G. A. S.? A That is in Mr. George Ruding's handwriting.

Mr. Lum. I ask to have it opened in the presence of the Court.

(Envelope opened and found to contain four ten-dollar bills.) 10

Mr. Lum. I offer this as a sample—exhibit.

(Marked Exhibit C. 50, January 11, 1923.)

Q Did you perform services for these \$40 payments?

A Yes, sir.

Q Was there anyone else to do the work that Mr. Jones had formerly done except you? A There was no one else to take charge of it; no, sir.

Q And you did that work which he had formerly done?

A A good part of it. 20

Q What was he doing in the meantime? A He was taking care of his hotel; he owns a hotel and runs it in the summer time.

Q How long was he away? A He was away until the middle of August; I am not sure whether he came back then or not.

Q The bookkeeper of the company was familiar with these envelopes and with this fact entered on the books these items as coming to you? A Yes. 30

Q Will you refer to the books in which this entry appears? A They are on the payrolls.

Mr. Lum. I have here the envelopes, one each week from May 25, 1918, to July 27, 1918, each containing \$40.

(Payroll produced as requested by complainant's counsel.)

It is admitted that the bookkeeper, if sworn, will testify that the \$40 items just referred to were entered by him on the payroll. 40

George A. Smock, direct.

Q You claim this \$400 is due to you and is your money? A Yes.

Q And that you performed services for it? A I did.

Q Did that have anything to do with your discharge? A It did.

10 Q What, and in what way? A Mr. Jones and Mr. Harry Smock called a meeting and claimed that I had no right to take it and served me with a notice, which you have here, I think, and claimed that it was illegal to rob the company, and for that reason they passed a resolution that I be discharged.

Q Was any other ground assigned for your discharge? A Not that I know of.

20 Q This came, I believe, some months after you had raised this question about Mr. Harry Smock's method of keeping his petty cash account, didn't it? A Yes, sir; the question was raised in January and this came in the last of July or first of August.

Q What had been your relations with Mr. Harry Smock before you raised these questions? A Perfectly friendly.

Q Did they give any other cause whatever for your discharge except the fact of these forty-dollar payments? A I think not.

30 Q If you had not performed this work that Mr. Harry Jones had formerly performed, during the time he was away, would it have been necessary for someone else to have done it? A It certainly would.

Q Could anyone have been employed to have done that work which you did at the time for less than \$40 a week? A He couldn't have been employed for that.

Q So that this is a fair and reasonable amount for you to have taken for that work? A I thought so; yes, sir.

40 Q Why had you left this sum in these envelopes; why hadn't you taken it out from week to week? A I left

George A. Smock, direct.

it there because I considered that that was a just compensation; at the same time my purpose was to keep it, and when Mr. Jones came back in the fall, to take the matter up with the directors and allow them to determine whether that was a just amount or not.

Q And that was the reason you didn't open the envelopes? A That was the reason I didn't open them. 10

Q Did they discuss it with you or give you any chance to be heard on it? A No, sir.

Q Have they ever discussed it with you or taken up with you the question of the reasonableness of that compensation? A No, sir.

Q Where have these envelopes been? A They have been in my possession.

Q And they have none of them been opened until the first one opened by me in court today? A No, sir.

Q Was there any thought or purpose in your mind of stealing this money from the company? A There certainly was not. 20

Q Would you have had the bookkeeper make the entries on the payroll at the time you did, if you had intended to steal it (referring to Exhibit D. 1)? A I certainly would not; if I wanted to steal money, I wouldn't do it that way.

Q Coming now to the item of \$1,850 of January 1, 1915, and January 11, 1918; what have you to say as to the item? A In regard to that item, I haven't anything to do with it; I never had the money, and have nothing to account for. It was an item, a shortage that developed into cash, as I recall it, shortly after Mr. Jones left the company in 1915, and the bookkeepers and myself were never able to locate the discrepancy, so, after trying to find out for a year or two, I simply charged it off. 30

Q Does that represent any money which had been received by you on anything you had anything to do with? A No, sir; in no way. 40

George A. Smock, direct.

Q Before you charged it off, how was it carried? A It wasn't carried at all; it was the difference between what developed in the balance as shown by the cash book and the actual cash that we had on hand and in bank at the time that it was figured up.

10 Q Will any of the books of the company make it clear at all as to what you mean, if they were here? A I don't know whether they would or not.

Q In any event, does the \$1,850 or any part of it represent money, assets or property of any kind whatsoever which you received or which came to you in any way? A No, sir.

20 Q Did you make an effort to locate it? A I certainly did; yes, sir; both myself and the bookkeeper. Mr. Ruding and Mr. Parrisen went over the cash book and checked with the deposits on the check book and the notes that were discounted for some years and they couldn't locate it.

Q I show you a paper; is this a copy of the notice that was served on you at the time of your discharge? A This is the notice that was served on me; yes, sir.

Q And you received this from whom? A Mr. Harry Smock; I don't remember who did serve it on me.

30 Q You must have gotten this paper from some source. Were you present at a meeting when this was handed to you, do you recall? A My impression is it was given to me before the meeting.

Q Give us your best recollection as to who gave it to you.

Mr. Lum. I offer it in evidence.

(Marked Exhibit C. 51.)

It is stipulated that this notice is a copy of the resolution which appears on the minutes of August 5, 1918.

40 Q Mr. Smock, an item of dividend declared by the defendant corporation, on or about February 1, 1919,

George A. Smock, direct.

amounting to—less certain items, and a balance due to you of \$469.30; have you ever received that or any part of it? A No, sir.

Q Do you know of any reason why it should not be paid to you? A I do not.

Q You claim that that \$469.30 is now due and owing?
A Yes. 10

Q The item of salary since August 5, 1918, for the balance of the year; have you received that? A I have not.

Q You claim that it is due and owing to you? A I do.

Q Were you at all times ready and willing to perform the services covered by that year? A I was.

Q That balance would have been \$1,850? A Yes, sir. 20

Q You have received other dividends since? A I have.

Q This item of \$1,850 which was charged off, that difference occurred during a time when who was treasurer of the company? A As near as I can recall, it was while Mr. Jones was treasurer.

Q At that time did you handle the cash of the bank account? A I did not.

Q You were employed by the year, were you not? A Yes, sir. 30

Q Will the books of the company show that? A I think so.

Mr. Lum. Is there any question about that, that Mr. Smock was employed by the year as president?

It is stipulated and agreed that George A. Smock was employed by the year, the year to expire at the annual meeting in January, 1919, and the salary was \$75 a week. 40

George A. Smock, cross.

The Master. What is the date fixed for the annual meeting?

The Witness. The third Wednesday in January of each year.

Cross examination by Mr. Applegate.

10 Q Mr. Smock, you were to receive \$75 a week salary?

A Yes.

Q And that covered what work? A It covered the work of president.

Q What else? A That is all.

Q What were the duties of the president? A The ordinary duties of the president.

Q That isn't an answer; what were your duties as president of the Buchanon & Smock Lumber Company?

20 A My duties as president was to look after the business and purchase the lumber—I cannot explain it any more than to look after the business.

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

Q For what were you to get \$75 a week? A Looking after the business of the company.

Q In what details? A Buying lumber and seeing that the stock was kept up, looking after the work in the yard, seeing that the men did their work, looking after the estimating of lumber, and that sort of work.

30 Q Did you have anything to do with the books? A Not personally; no, sir.

Q Didn't you keep any of the books yourself? A No, sir.

Q Did you supervise the keeping of the books? A More or less.

Q You had supervision over the bookkeeper? A Yes.

Q And over all books of the company? A Yes.

40 Q That was part of your duty, wasn't it? A I took it so.

George A. Smock, cross.

Q You had occasion to go over the books in the mill department? A I did so.

Q Did you ever notice a reference in any of the books of the mill department to a reserve fund? A I discovered it as I went over the petty cash book over there, one day in the early part of 1918.

Q Hadn't you ever seen it before then? A I had not. 10

Q Had you ever been over the books before that time? A No, sir.

Q Never? A Never.

Q Why did you go over them upon that occasion? A I don't recall; my recollection is that I was over there looking for something—I don't recall what—and I saw the petty cash book lying there and I picked it up and I was looking over it, and I saw these charges to the reserve fund, and I asked Mr. Jones what it was. 20

Q The men occasionally came to you for moneys to pay expenses on the trips? A Occasionally.

Q You knew they were going away on trips? A Certainly.

Q You knew what the money was to be expended for, didn't you? A In a general way, yes.

Q You knew it was to pay expenses? A Yes.

Q You say this was done occasionally? A Only occasionally. 30

Q Where did you think that the moneys came from to pay the expenses of these trips, when these men didn't come to you upon these occasional visits? A I suppose that it came from the money that was taken in at the mill.

Q Out of the cash account? A Certainly.

Q You make no distinction between what you have referred to as the cash account and the reserve account, do you? A I don't know anything about any reserve account. 40

George A. Smock, cross.

Q Even now you make no distinction between the two; it is all cash account? A Why, certainly, it was all cash account.

Q And the understanding was in your mind that the expenses of those so-called trips came out of the cash account in the mill department? A Certainly.

10 Q And when these men going away on trips came to you for cash to pay their expenses, did you ever ask them or Harry Smock or anybody else why they didn't go to the cash of the mill department and get their moneys? A No, because they said—

Q Did you ever ask them? You say no? A No.

Q When you gave them money, did you give it in cash or check? A I don't recall now.

Q Then you do, don't you? A I certainly do not.

20 Q What was your practice? A The practice was to give them money if we had it; if we didn't have it, we couldn't give it to them.

Q Where did the money come from when you gave them money? A Out of the drawer.

Q Petty cash? A No, the drawer of the main office.

Q What entry did you make of that? A We charged it to the mill department.

Q Who charged it? A I did, if I gave it to them.

30 Q And if you didn't give it to them, who did? A Mr. Harvey Jones or whoever was there.

Q And when you gave it, you charged it on the books? A Yes.

Q You had access to the books? A Yes.

Q Many of the entries in the books are in your handwriting? A Undoubtedly.

Q Isn't that so? A Yes.

Q Were these sums that you gave, when you did give them, odd sums or round figures? A Usually round figures.

George A. Smock, cross.

Q Did you ask for any detailed account of the expenses? A I did not; they were supposed to give that at the mill.

Q Did you ever go to the mill and ask for an itemized statement? A I did not.

Q Was there ever any itemized statement of expenses presented to you? A There was not. 10

Q And you never asked for any? A No, sir.

Q Did you ever note* in your mind that no itemized expense account was ever given to you? A I did not.

Q It never occurred to you? A No, sir.

Q In 1918 when you say you made your first examination of the petty cash books in the mill department, was there any trouble at that time between you and Harry Smock? A No, sir.

Q Are you sure about that? A I am. 20

The Master. How far is the offices in the mill department from the main office?

The Witness. It is a block away.

Q At that time do you remember the month in 1918 when you were making an examination of the petty cash book? A My impression was it was early in January.

Q After or before the meeting of the board of that year? A My impression is it was before, but I am not sure, though. 30

Q Mr. Harvey Jones had owned this hotel to which you referred in your direct examination, for how long? A I don't know; a number of years.

Q And it had been his practice for a number of years to take charge of it in the summer time, hadn't it? A Not for several years, no, sir.

Q It had been his practice for some time? A I think he did for one or two years when he first came into the business. 40

George A. Smock, cross.

Q Then you say he didn't do it again until 1918? A No, sir.

Q And when he first came into the business and did it, did you perform his work? A I did.

Q Did you charge for it? A No.

10 Q Before the year 1918, when he, as you say, practically left the company to take charge of his hotel, you did charge for your services? A Yes.

Q Which you say you rendered? A Yes.

Q Did you have any authority from the company to make any such charge? A No, only except my own, as president of the company.

Q Did you as president of the company have the right to give yourself a salary without consulting the other members? A I thought so.

Q You still think so? A Yes.

20 Q Where did you get these envelopes from, with the money; in other words, how were you given them? A I was given them at the same time and in the same way that I got the envelopes for my regular salary.

Q How was that? A Put up by the bookkeeper and handed to me.

Q Do you remember an occasion being found at the cash register taking an envelope from the cash register in 1918? A Taking an envelope from the cash register?

30 Q That is what I said. A What kind of an envelope?

Q A pay envelope. A I might have; if the bookkeeper put it in the cash register, I would take it out of the cash register.

Q So that at times you got the pay envelopes which have been offered in evidence, either from the bookkeeper or from the cash register, did you? A Yes, or the desk.

40 Q Who directed the bookkeeper to put up this money in the envelopes, did you? A Yes.

George A. Smock, cross.

Q Nobody else? A Not that I know of.

Q Nobody else knew anything about it but you and him? A I don't know.

Q So far as you know, they didn't? A No.

Q And the initials on the envelopes are in whose handwriting? A Mr. Ruding's.

Q All of them? A Yes. 10

Q And paid over at whose direction? A Mine.

Q He did what you told him to? A Yes.

Q He acted under your orders? A Yes.

Q And if he had refused to do so, would you have discharged him? A I don't know about that.

Q You might have?

Mr. Lum. Objected to.

The Master. Objection sustained. Did you call to any one's attention, except Mr. Ruding, the fact that you were receiving these envelopes containing \$40 a week? 20

The Witness. I did not.

Th Master. Why not?

The Witness. I didn't think it was necessary, and as I said before, I propose to take it up later with the directors.

Q Why didn't you go before the directors and take it up with them before you authorized the bookkeeper to pay you this money? A Because we had no meeting. 30

Q Why didn't you call a meeting; you were the president? A I didn't think it was necessary.

Q Why didn't you think it was necessary? A Mr. Jones was looking after his hotel, and I thought when he came back and got through there it would be time enough.

Q Why didn't you wait, before taking the money, until that time? A I kept the money; what is the difference? 40

George A. Smock, cross.

Q If you were going to keep the money, why didn't you leave the money in the concern? A Because I didn't, that is all.

Q Why didn't you? You were not using the money, were you? A No.

Q Then why didn't you leave it in the company? A
10 I simply took it out.

Q That is the only answer you can give? A Yes.

The Master. Was Mr. Jones receiving any salary during that period?

The Witness. No, sir.

The Master. Was he receiving a salary before that time?

The Witness. He was.

The Master. How much?

20 *The Witness.* The same salary, as I recall it, \$75.

Q At the meeting of the directors at which the resolution which has been offered in evidence was passed, were you present? A Yes.

Q And at that meeting was the question of your having taken this money discussed? A It was.

Q You offered at that meeting to return the money, didn't you? A If they thought my services weren't
30 worth anything, yes, sir.

Q Didn't they tell you that they felt that your services were not worth anything, and didn't they ask for the money back? A They did not.

Q But you say that you did offer to return it if they thought your services were not worth anything? A Yes, and Mr. Jones made the remark that that would compound a felony and he didn't propose to do it.

Q That is the reason why they didn't do it? A Yes.

40 Q What did you say? A I don't recall now.

George A. Smock, cross.

Q The moneys that you claim due you, as I remember, representing dividends \$469.30, were not paid you because the company claimed that you owed them this \$400 which you had taken out as salary? A I presume so.

Q Didn't they tell you so? A No.

Q Don't the books show that? A Show what? It 10
shows a balance due me, yes.

Q A balance due you of \$69.30? A No, \$469.

Q It shows a balance of dividends on that account?
A It shows a balance on the books to my credit for that amount.

Q Didn't the company tell you that the reason why they didn't pay you \$469.30 was because you owed them \$400 which you had taken out for salary? A They did not.

Q Who is Mr. Laudenslager? A He is the hardware clerk, in charge of the hardware department. 20

Q Did you have supervision over him? A Yes.

Q You knew his system? A Yes.

Q You knew he had a petty cash account? A He did not.

Q You heard him testify here at one of the previous hearings? A Yes.

Q Are you correct about that, Mr. Smock, that he had no petty cash account? A I am. 30

Mr. Lum. Petty cash sales book, he testified to.

Q You say he had no petty cash account? A I do; we had a petty cash sales account, that laid on the desk in our office. Our office all the time have the entry of cash sales of lumber or hardware, either from the lumber department or from the hardware department or from the mill department, which was ruled off and kept in that way, and Mr. Laudenslager entered his sales on that book. 40

George A. Smock, cross.

Q You mean to say that all the little sales were entered in that book? A He had a little—

Q Petty cash book, didn't he? A No, he had a little petty cash drawer with a small amount of change in it.

Q Now, we are coming to it; he did have a petty cash account, too? A No.

10

Mr. Lum. The book you refer to is Exhibit D. 4.

Mr. Applegate. I am not referring to any book.

The Witness. He didn't have any book.

Q Didn't he have a petty cash fund? A That ain't a book.

Q Answer yes or no. A I will tell you what he had.

Q Did he have a petty cash fund? A No.

20

Q You testified a moment ago that he did have some money there in the petty cash? A If you will let me tell, I will tell you what he had.

Q Did he have a petty cash fund there? A He had a small amount of money in a small cash drawer, that he used for change.

Q Is that petty cash? A Yes.

Q Is it petty cash? A I don't know; it is cash.

Q Why are you trying to distinguish it so hard? A It is hard.

30

Q Petty, isn't it? A Yes, it is petty cash.

Q So he did have a petty cash account, then? A Yes—not a petty cash account, no.

Q What did he have? A He simply had some petty cash for change.

Q Do you call it petty cash fund, then? A Yes.

Q And out of that fund he paid what? A Nothing.

Q Are you sure about that? A Yes.

Q You heard Mr. Laudenslager testify? A I don't care what he testified to.

40

Q You heard it? A Yes.

George A. Smock, cross.

Q So that there won't be any misunderstanding, do you say that Mr. Laudenslager paid no moneys out of this so-called petty cash fund? A That is what I say.

Q And is it true, to the best of your knowledge and belief? A Yes, sir.

Q You say that he kept that fund there merely for change, do you? A He kept, I think, five dollars for change. 10

Q Is that the only purpose he kept it for? A Yes, for small sales he kept in the drawer, and at the end of the day he entered them on the petty cash sales book.

Q Did you ever take any moneys out of that petty cash? A I certainly did not.

Q Did you take any moneys out of any petty cash fund? A No, sir.

Q For any purpose whatever? A Oh, I may have taken money out of the drawer to pay bills with, or as an occasion required. 20

Q That is what I am asking you; did you take it out to pay bills with, or for any other purpose? A Where?

Q Any petty cash fund. A In our office there was no petty cash fund.

Q Then out of the drawer in which you kept money in your office? A Yes.

Q That you have already testified to a little while ago? A Yes. 30

Q Anybody else take any money out of that drawer for any purpose? A Why, certainly.

Q Who? A Mr. Jones or Mr. Ruding.

Q Which Mr. Jones? A Mr. W. Harvey Jones.

Q And Mr. Ruding? A Mr. Ruding, or the book-keeper that might be there.

Q Or anybody else that had occasion to go to that drawer? A That had authority to.

Q When in 1918, as you say, you first discovered this so-called reserve fund by an examination of the petty cash 40

George A. Smock, cross.

books in the mill department, you say you had a talk with Mr. Harry Smock? A Yes.

Q How long a talk? A Not very long.

Q Two or three minutes? A Yes, or longer.

Q How much longer? A Maybe five minutes.

10 Q Say about five minutes? A Yes.

Q Ten minutes the longest? A Yes.

Q What did you say to him? A I simply asked him what it meant and why he kept it that way and what he did with it.

Q What did he say? A He said he kept it and used it in paying the expenses of the business, and I told him that was not the right and proper thing to do; he should keep a record of what he used the money for, and he said, "I will; I will do it."

20 Q Was that practically all that passed between you?
A At that time.

Q Did you bring it up at any meeting of the directors? A Yes; I am not sure that that was at a meeting of the directors.

Q You said a little while ago it was in Mr. Smock's office in the mill department? A I did not.

Q At the time that you were examining the books?
A No, sir.

30 Q Where did you say it was? A I say that was in my main office when I spoke to him about it.

Q The same day that you had been examining the books? A No.

Q How long after? A Shortly after; I don't remember just the time.

Q Within a few days? A Yes, sir.

Q Who were there? A As I recall, Mr. Harvey Jones and myself and Harry Smock.

40 Q You say it was a meeting of the directors? A I didn't say it was; I say it might have been; I know we three were together.

George A. Smock, cross.

Q Who was the secretary at that time? A Harry Smock.

Q Was it your practice to read the minutes over after a meeting? A Yes.

Q If it had taken place at the meeting of the directors, there would have been a record of it in the minutes? A Oh, I don't think it was a matter of record at all. 10

Q It wasn't a matter of sufficient importance to put in the minutes, if it took place at a meeting of the board? A Not at that time, no.

Q After you had this talk with Mr. Smock, either at a meeting of the directors or at some other, do you know whether or not that practice in relation to the reserve fund was discontinued? A It was not.

Q Did you ever make complaint about it being continued after your objection to it? A I didn't find out that it was continued until after the action was taken putting me out of the business. 20

Q Did you ever make any effort to find out whether it had been discontinued? A I certainly did; I went over there and went over the books again, to find out.

Q That is after the trouble took place? A Yes.

Q I mean between the time you had your talk with Smock and the time you found it hadn't been discontinued, had you made any other effort to find out whether it had been or not? A No. 30

Q So that, as far as you know, the practice continued right along, notwithstanding the fact that Harry Smock, in the presence of you and Mr. Harvey Jones, said that he would discontinue it? A Yes.

Q You say that you kept an accurate account of the moneys you spent? A I surely did.

Q In what form? A On the books.

Q What books? A Cash books.

Q Made in your handwriting? A Yes, or the book-keeper, one or the other. 40

George A. Smock, cross.

Q And this shortage which you charge up to profit and loss, of some \$1,850, when did you first discover that? A I cannot recall the date; it was shortly after Mr. Jones had left the business in 1915, as I recall it.

Q He left the business in that year and came back when? A He came back—I think it was January 1,
10 1918.

Q What was the matter, was he ill? A No, he wasn't ill.

Q Why did he leave the business? A Because he made an agreement early in 1915 to sell out his stock to Mr. Harry Smock and myself, and went out and took charge of his hotel.

Q Then he returned to the business in 1918, and he didn't sell out his stock? A No, sir.

Q The agreement wasn't performed to carry it out?
20 A The contract was afterwards cancelled.

Q By consent? A Yes.

Q Mutually? A Yes, in the latter part of 1917.

Q Did you ever go to Mr. Harvey Jones and ask him about this so-called shortage? A I am not sure about that, but my impression is that I did.

Q Mr. Smock, do you realize, at least you are trying to create the impression that you realized that this was a shortage; you realize that this item was a shortage?

30 A Yes.

Q You say that that was a shortage that occurred through no fault of yours? A I do.

Q You have also stated that the man who had charge of the funds at that time as treasurer was Mr. Harvey Jones? A Yes.

Q Are you trying to indicate that if there was a shortage, it was due to some neglect or fault on the part of Mr. Harvey Jones? A I cannot say as to that.

Q Are you trying to give that impression?

40

Mr. Lum. I object.

George A. Smock, cross.

Q Is that what you believe?

Mr. Lum. I object to what he believes.

The Master. I will sustain the objection.

Q Whom do you charge with this shortage?

Mr. Lum. I object.

The Master. I will take the evidence.

10

A I don't charge it to anybody; this is developed in figuring up the general cash after several years.

The Master. It may be a bookkeeper's error?

The Witness. It may be a bookkeeper's error; it may be a juggling of figures or something of that kind. We were not able to locate it.

Q Did you ever ask Mr. Harvey Jones about it? A I did not.

20

Q Did you ever bring the matter to the attention of the board of directors in formal meeting? A I don't think I did.

Q The charging of it off on the books was in your handwriting? A My impression is it was.

Q Did you ever ask permission of the company to charge it off? A No.

Q You followed the same course in relation to that as you did in paying yourself the \$40 a week salary? A Yes.

30

Q In other words, you were the whole show of the Buchanon & Smock Company? A Yes. I don't say that.

Q You don't say you were? A No.

Q Mr. Smock, you say you were discharged because you took this \$40 a week? A Yes, that is as I understand it.

Q At the meeting of the directors, at which you were present, as you stated, and at which time the resolution was passed which was offered in evidence, was there any

40

George A. Smock, cross.

other reason given you? A I don't recall any other reason; the minutes ought to show it.

Q Outside of the minutes, was any other reason given? A No.

Q Wasn't it a fact that you were using the credit of the company for your own individual purposes? A No.

10 Q Did you use the credit of the company in regard to purchasing coal for yourself? A No—well, I will modify that; I think there was one small matter of five or six hundred—a bill of that amount at least—that I gave the company's guarantee for the payment of.

Q By whose authority did you give that guarantee?

A By my own authority.

Q You had no authority from the company? A No.

Q You say that is one instance when you used the company's credit for your own individual purposes?

20 A To the best of my knowledge.

Q You remember a house you built on Asbury avenue?

A Yes.

Q Did you use the credit of the company in any way in relation to that? A I charged material to the owner of the property, the same as I would any other material.

Q I didn't ask you that; I asked you did you use the credit of the company in relation to your interest in that house that you were building? A No further than I have stated.

30 Q You had the material which you used in that building charged to yourself as an individual, didn't you? A I did not.

Q You remember an account of I. R. Taylor? A Yes.

Q He is the man who built the house? A He did the work.

Q He had an account with the company? A Yes.

Q In the arrangement that you had with Taylor in the construction of this house, it was part of your

George A. Smock, cross.

agreement with him that you should pay him ten per cent. commission? A For the work that he did, yes.

Q As a matter of fact, you yourself never paid that ten per cent. commission, did you? A I certainly did.

Q Wasn't that credited to Taylor's account with the Buchanan & Smock Lumber Company? A No, sir; it had nothing to do with it. 10

Q And labor charges, wasn't that done the same way? A My recollection is that the bills of Mr. Taylor for the work done on that house, say for two or three months, was credited to his account on the books of the company, and charged to my stepdaughter, in whose name the property stood; it had nothing to do with any ten per cent. or anything about it.

Q That wasn't done until after objection had been made to you by the company, was it? A Yes, sir, it was done at the time. 20

Q Was any objection made to you by the company or any members of it, in relation to this transaction? A Afterwards, yes.

Q What was said?

Mr. Lum. What do you mean by "afterwards"?

The Witness. In August, 1918.

Q After you left the company, do you mean? A Yes. 30

Q What was said? A Mr. Jones objected to my charging the material or deducting the material from Taylor's bill, and charging it against his daughter-in-law or stepdaughter; I arranged with him and gave him my settlement for it.

Q Arranged with whom? A Mr. Jones, and gave him a settlement for the account.

Q What do you mean by arrangement; in what form? A I gave them a note with security for it.

Q Is the note paid? A Yes. 40

George A. Smock, cross.

Q So that in giving the note you realized that the transaction had been irregular? A No, I didn't realize anything of the kind.

10 Q Then why did you give the note? A Because I wanted to settle the account. The plan was to let the account run that way, and when the house was finished, to get a building and loan mortgage and pay the money, but they were not satisfied with that, so I gave them a settlement that was satisfactory.

Q Your company had a letter of credit with the New York and Long Branch Railroad; do you remember that? A Yes.

Q That was cancelled, was it not? A I don't recall.

Q Was it or wasn't it, to the best of your recollection? A Not so far as I know.

20 Q Don't you remember that that matter was brought up before the meeting of the directors—the cancellation of your letter of credit with the railroad company and why it was cancelled? A No, sir.

Q Do you say it wasn't, in your presence? A I don't recall it now.

Q Weren't you charged at the time with neglect in relation to that letter of credit, and that was the reason why the railroad company cancelled it? A No, sir, I don't recall that now; that may have been true; I don't know. If it was, that wasn't any fault of mine.

30 Q Were there overdrafts in the bank during the years between 1913 and 1918, August? A I cannot recall that now.

Q You wouldn't say there weren't; but you simply don't recall it? A I don't recall it.

Q Wasn't that matter also brought to your attention at a meeting of the directors? A I don't recall it now.

Q And was the line of discount of the company taken away by the bank? A Not that I ever heard of.

40 Q And wasn't that matter also brought to your attention? A Not that I recall.

George A. Smock, cross.

Q Do you know whether or not there were bills for collection against the company placed in the hands of lawyers who made claims against the company?

Mr. Lum. I object; he said he was discharged for taking the \$40 a week.

Mr. Applegate. We propose to show he was discharged for incompetency. 10

The Master. I will receive it.

A I don't recall it now; there may have been.

Q That was part of your duty, to see that those bills were paid? A I didn't have the money; I couldn't pay them.

Q Mr. Smock, did you give a note to a man by the name of DeBoe, for \$800, your own personal note? A Not that I recall.

Q You say you didn't? A I don't say I didn't; I don't recall it now. 20

Q And it was a note that the company finally had to pay? A Not that I know of. For what?

Q Was such a note given, to your recollection? A Not that I recall at all.

Q And was the payment of that note charged to profit and loss, or loss and gain, or whatever you call that? A I don't recall any such transaction.

Q You don't even recall the name DeBoe; that means nothing to you? A I think there was a man named DeBoe that was a builder down there at one time. 30

Q Let us put it another way; did you ever give the company's note to this man DeBoe for his own use, and he discount the note and had the money on it, and then the company finally had to pay it, and received no benefit from the note at all? A I don't recall the transaction.

Mr. Lum. I object unless the time is fixed.

Q At any time?

George A. Smock, cross.

Mr. Lum. I object.

Q Between 1913 and August, 1918?

10 *Mr. Lum.* I object; it hasn't anything to do with it; he was elected president in January, 1918, by these men; anything that they had knowledge of before that certainly cannot be set up.

Mr. Applegate. That is a matter of argument.

The Master. I will receive the evidence.

A I recollect we had some dealings with Mr. DeBoe, but what they were, I don't recall. My recollection is now that Mr. Sterner had charge of that matter at that time.

The Master. When was that?

The Witness. I cannot tell that.

20 *Mr. Lum.* About when; how long back?

The Witness. My impression was it was around 1916 or 1917.

Q Did you give a note of the company to DeBoe for his personal use; did you or didn't you? A I don't think so.

Q You don't say you didn't? A Yes, I will say I didn't..

30 Q And that same note, if you did give it, as I have stated, was paid by the company and was such a note paid to the company? A Not that I know of.

Q Did you ever see such a transaction on the books of the company? A I don't recall.

Q You are familiar with the books? A Yes.

Q And been over them since this suit started? A No.

Q You have not? A No, I have not.

40 Q There was an agreement, was there not, between you and the other directors of the company or stock-

George A. Smock, cross.

holders, namely, you and Harry Smock and W. Harvey Jones, that no funds or credits of the company would be used for the purpose of personal advantage of any of the stockholders? A No.

Q There wasn't such an agreement? A No, there was not. My impression was that there was an understanding along about the first of January, 1918, that neither one of the three would draw more than \$25 above his salary, because we were—all of us had overdrawn our accounts with the company. 10

The Master. \$25 a week?

The Witness. \$25 a week in excess of our salary.

Q That is the only agreement you can recollect? A Yes.

Q Did you without the authority or consent of the stockholders or directors of the company use materials of the lumber yard and mill of the company in the construction of a house for a member of your family, and that the contractors who erected the house, their labor was paid from the funds of the company? A Only as stated before. 20

Q You refer now to the testimony you gave in relation to your stepdaughter? A Yes, sir.

Q Did you ever endorse the name of the company on a note for a thousand dollars made by one Herbert Gardner? A I am not sure about that; my impression is that we did endorse a note for Gardner at one time for a thousand dollars. 30

Q But did you do it without the consent or authority of the board? A No.

Q You mean to say you had their consent? A If it was done, it was done with their consent and knowledge; my impression is—I don't know that I did it at all, although I may have done it.

Q Let us get a direct answer. Did you do so without the consent or authority of the board of directors or 40

George A. Smock, cross.

the officials of the company—endorse the company's name upon a note for one thousand dollars made to one Herbert Gardner? A I will say no.

Q You say that there is \$1,650 still due you for salary? A Yes.

10 Q Is that on the theory that you were wrongfully discharged? A Yes.

Q You were not permitted to perform any services for the company after your discharge, were you? A No.

Q And did you get other employment? A Not for two years.

Q Did you try to? A Yes.

Q What efforts did you make? A I looked around for something else to do.

20 Q What did you try to do? A I don't recall now, but different things; I made application to different places for something to do.

Q Tell us some of the places. A For instance, I made application for a position with the gas company at Belmar.

Q What is the name of it? A Coast Gas Company.

Q How long after you left the company? A I don't recall that.

Q No idea at all? A No.

30 Q Whether it was a year or two years? A It was within the two years; I don't recall just what date.

Q What are you doing now? A I am with Mr. Hurley.

Q Where? A At Asbury Park.

Q What is his business? A Plumber.

Q And in what capacity? A Keeping the books for him.

40 Q What other effort did you make than this gas company at Belmar to seek employment? A I have answered different advertisements and things of that kind, where I thought the position would suit me.

George A. Smock, cross.

Q Where you thought the position would suit you?
A Yes.

Q Different advertisements from whom; name some of them. A I don't recall them now.

Q Did you keep copies of your letters? A I don't recall that now; I don't think so.

Q When did you first go to work after you left the company? A I think it was in September, 1921. 10

Q And you left the company in August, 1918? A Yes. 1920 maybe it was; it was two years afterwards, I know.

Q Didn't you continue to go to the company's place of business after you had been discharged for some six, seven or eight months? A I was there off and on for some time.

Q For what purpose? A Simply up there, that is all. 20

Q Why, you had been discharged and were suing for it. A I had my desk there and all my papers were there, and all that sort of thing. No, I hadn't brought suit then.

Q I didn't say you had. Is that the only reason why you returned there? A Yes.

Q And you discontinued going there for what reason? A Because I was notified to take my desk out and get out.

Q Had you been notified more than once to do that? 30
A I think so.

Q But you had refused to do so? A No, I hadn't refused.

Q But you didn't? A No.

Q You still own stock in this company? A Yes.

Q In your own name? A Yes.

Q Where is it?

Mr. Lum. I object.

Q Is it in your possession? 40

George A. Smock, re-direct.

Mr. Lum. I object.

The Master. I will receive it.

A I have got the stock; it is in the Asbury Park and Ocean Grove Bank, most of it.

Q Put up as collateral? A Yes.

10 Q Are you willing at this time to return to the company the \$400 represented by these envelopes which you took as salary?

Mr. Lum. I object.

The Master. I will receive the answer.

A No.

Q You are not willing to? A No.

Q Why have you kept it, then? A Because I am entitled to it.

20 Q Why did you keep it intact in its present form?

A Just because I wanted to.

Q That is the only reason you can give? A Yes.

Q And the only reason you can give? A Yes.

Q And you refuse to give any other reason? A Yes.

Re-direct examination by Mr. Lum.

Q Do the books show that in 1918 Mr. Jones and Mr. Harry Smock both owed the company money? A Yes.

30 *Mr. Applegate.* We object to that; the books will speak for themselves.

Mr. Lum. The books are in evidence?

Mr. Applegate. Yes, I think so.

Q Was there any objection to your using the company's credit, if you did so, and the way you did, by any of the other stockholders and officers up to the time the difficulty arose? A No, sir.

40 Q Did they at this meeting when they gave you this notice, the meeting of January 5, refer to any of these

George A. Smock, re-cross.

details that have been gone over at such length? A Not that I recall.

Q Did you in your department have any method of bookkeeping similar to that adopted by Mr. Harry Smock with reference to petty cash? A No, sir.

Q And did any member of the company, any of the directors, so far as you knew? A No, not to my knowledge; I wouldn't have anybody do business for me and not keep a record. I don't care who they are. 10

Q As to any funds that you had for petty cash purposes at any time, did you always have an entry made in the books, showing it? A Yes.

Q When did the matter of the superintending of the books become a part of your duty? A I have always done it for forty years.

Q When men came over to you from the mill department for cash, did you ask them why they came to you; if not, why? A No, sir; I supposed if they had the money they wouldn't have come. 20

Q You did not ask, in any event? A No.

Q When Mr. Jones went back to his hotel work first, in the early years—you say there was a year or two when he did— A In 1915, I think so.

Q —why didn't you get extra pay for doing his work then? A Because there was another man employed to do his work at that time.

Q And that other man got his pay? A Yes. 30

Re-cross examination by Mr. Applegate.

Q That other man was employed by the company? A Yes.

Q You as president employed yourself? A I did.

Q And fixed your own salary? A Surely.

Q Without taking the matter up at all with the board of directors? A Yes.

Q What salary did the other man get? A I think it was \$55 a week. 40

Willard J. Sterner, direct.

Q Who was it? A Mr. Sterner.

Q Where is he? A He is here.

WILLARD J. STERNER, sworn.

Direct examination by Mr. Lum.

10 Q Where do you live? A Belmar, New Jersey.

Q By whom are you now employed? A We are conducting, my son and I, a lumber business at Belmar.

Q Were you ever employed by the Buchanan & Smock Lumber Company? A Yes, between 1915 and about the first of April, 1917, the last of December.

Q Was Harvey Jones employed there when you were? A Yes.

Q When you first came? A Yes, he was a member of the company.

20 Q Was he actively employed there all the time you were there? A No, he was not.

Q During what part of the time was he not there? A About the time I first went there he went to his hotel and spent almost all his time in his own business.

Q And do you know who did the work that he had formerly done while he was in the hotel business? A I did a great deal of it.

30 Q What compensation did you receive at that time for that work? A I think \$55 a week; from \$50 to \$55.

Q What, briefly, did that work consist of? A I had largely to do with the collecting of the accounts and some little work in selling goods, but mostly with the account.

Q What would you say as to whether a charge of \$40 a week for doing the work which Mr. Jones had formerly done, while he was with the hotel, was fair and reasonable? A I thought, of course, from the bargain that I made, it was worth about \$55.

40

Willard J. Sterner, direct.

Q Do you recall anything about a DeBoe account or item? A Yes, I do.

Q Just, briefly, tell us the history of that. A I am not certain about the exact date, but DeBoe was a director in the Bradley Beach Bank, and once or twice he asked Mr. Smock—

Mr. Applegate. Were you present, and heard this? 10

The Witness. Yes, I was.

Q Which Mr. Smock? A George Smock—for a note of the company; that he did not want to have his note discounted in the Asbury Park and Ocean Grove Bank, where the Buchanon & Smock Lumber Company did their business, but wanted to discount it in the Bradley Beach Bank; I think the same day, or about the same day, he returned with the proceeds of the note and paid his account. The last note—if there was more than one—was not paid when it came due, and was protested. 20

Q The note, then, merely took the place of the account? A Yes, sir.

Q And in no way changed the debit or credit? A Not the note to which I referred.

Q Did you have a conversation with Mr. DeBoe regarding it? A I think not. I think I was present when he talked it over with Mr. Smock. 30

Q You were in charge of the credits at that time? A Not exclusively, but that was part of my work.

Q And you approved of the transaction, so far as the company's interests were concerned? A I didn't pass upon it at all; that was reached with George A. Smock.

Q While you were there and Mr. Jones was there, who kept the books and balanced up the cash? A I think the cash was almost always balanced up by either Mr. Ruding or Mr. Parrisen, who were the bookkeepers. 40

Willard J. Sterner, cross.

Q Was it part of your duties to supervise, to see whether it did balance or not? A No, my duty was to attend to the note account, the bills receivable.

Q An item of \$1,850 shortage, did you ever hear of that while you were there? A Mr. George Smock, in talking about their balance sheet one day, once or twice—

10 Q About when, as near as you can place it? A I could only place it between the dates that I gave you, 1915 and 1918; he called my attention to this discrepancy; as I recall it, it was about \$2,000. He said that he felt sure it was a bookkeeper's mistake, and that for a long time they have been trying to locate it, and could not.

Q You don't know what was done with it? A No, sir; I don't know anything about it.

Q Did you have charge of the check book, in checking up the bank balance? A Yes, sir; I did.

20 Q Do you know whether they did balance while you were there? A The bank balance was always balanced entirely independent of the cash. So far as the checks were concerned, that was always accounted for.

Q And you know of this loose end of \$1,850, or approximately \$2,000? A Yes, but that did not show any check account. If I may make this explanation—when I first went there, Mr. Jones showed me on the bank balance, that there was a very slight discrepancy, as is apt to happen, and then showed me what caused it. The amount that they could not account for was very slight; from memory, I should say it was less than ten dollars. The other accounts were simply by checks that had not been used or that could easily be accounted for by Mr. Jones, but that was entirely independent of the cash account.

30

Cross examination by Mr. Applegate.

Q Mr. Sterner, you went to work for the company in 1915 and left in 1917? A I think it was the last of December, 1917; the books would show that.

40

Willard J. Sterner, cross.

Q During that time, Mr. Jones was not with the company at all? A You mean by that, that he did no work in the office? I understood that he was still a member of the company and was a director, and did everything but the actual physical work in the office.

Q He did no work in the office? A Not that I know of. 10

Q What work did he do before you came? A I cannot very well tell that.

Q You don't know, do you? A No, sir; I do not.

Q And not knowing what work he did before you came, you don't know whether you did all his work after you came or not, do you? A No. Can I qualify that statement?

Q Yes. A I know that he did the work that I was doing. I don't know how much more he did. When I first came there, he told me what my duties were, took me down to the bank and introduced me, and gave me power of attorney to endorse the notes that were renewed, and work of that kind, but I don't know what work he did before that. I know he did the work that I did; I could tell by his handwriting. 20

Q There were two DeBoe notes? A I am not certain; I can only recall one.

Q You spoke of two a little while ago? A I said I thought there were more than one, but I am not certain. 30

Q But there may have been? A There may have been.

Q You are not prepared to say whether the company lost money through the DeBoe transaction or not, are you? A I think that DeBoe gave them the proceeds of the last note that was discounted; in fact, I knew that.

Q That doesn't answer my question. A Possibly not; it answers the fact.

Q Answer my question. You are not prepared to say whether the company lost money through the DeBoe 40

Willard J. Sterner, cross.

transaction or not, are you? A I must know what he means by the DeBoe transaction.

Q Whatever notes the DeBoes gave the company, I am referring to now. A The note that I am sure about, they didn't lose anything by.

10 Q But you don't know whether there were any other notes? A No, sir; I do not.

Q Did it strike you as at all irregular that the company's note should be given DeBoe? A No, it did not.

Q It didn't strike you as irregular that the company should permit a note bearing its name as maker, to be given to an individual? A No, not—

Q It is a fact that it was possible for DeBoe to take that note and not pay the proceeds back to the company? A Yes, sir.

20 Q So that the company, through Mr. Smock, was trusting entirely to Mr. DeBoe's honesty? A Yes, that is right.

Q Is that regular? A It would be only regular under rare cases.

Q Why did you leave the company finally? A I wanted to go south, and intended to terminate my services with the company at that date. They were not formally terminated.

30 Q You never worked for the company again? A No, sir.

Q Who was in active charge of the company at that time? A George A. Smock.

Q Did you take orders from him? A Yes.

Q What was the financial condition of the company at that time? A Well, I think it was perfectly solvent, but they were hard up.

Q Creditors pressing them? A Some.

40 Q Banks declined to discount their notes? A Up to a certain line.

George W. Ruding, direct.

Q What line was that? A I cannot recall now. I knew Mr. Windsor, and occasionally he would say that we had gone the limit.

Q What was the limit, do you know? A No, sir, I don't remember; the limit was what they thought they were entitled to.

Q Were there claims against the company being presented at that time? A There were a few. 10

The Master. In the hands of lawyers, you mean?

The Witness. Yes.

Q Do you know whether or not the credit of the company was denied by any of their old customers? A Yes, I know of one or two.

Q Do you know anything about the letter of credit of the New York and Long Branch Railroad Company, why it was cancelled? A No, I am not certain. 20

Re-direct examination by Mr. Lum.

Q The time when the bank spoke about these notes and the time when lawyers had some claims in their hands was when, 1917? A It was about that time. It was toward the end of my stay there, I think.

Q And you left when? A In December, 1917—about that time.

Q It was about the time of these things you are referring to? A Yes. 30

GEORGE W. RUDING, called by complainant, heretofore sworn.

Direct examination by Mr. Lum.

Q Mr. Ruding, you are the bookkeeper employed by Buchanon & Smock? A No, sir.

Q You are employed by Buchanon & Smock? A I am employed by Buchanon & Smock. 40

George W. Ruding, direct.

Q What is your business there? A I am billing clerk.

Q Have you anything to do with the books? A Yes, I have occasionally more or less to do with them.

Q Tell us very briefly how much you have to do with them and how much you did have to do with them in
10 1917 and 1918? A All I had to do with them was taking care of the petty cash.

Q And you did take care of that? A Yes.

Q You also made up the payrolls? A Yes.

Q Do you recall receiving direction from Mr. George Smock to put \$40 in an envelope for him? A I did.

Q Did you conceal that fact, or did you enter it on the payroll just as you did all other payments? A It shows on the payroll.

Q No attempt made at concealment or deception with
20 reference to it? A No, not as far as I know.

Q Did you make any different entry or enter this in any different way from the other payroll items? A These envelopes were marked "W. H. J.-G. A. S."

Q You did that by direction of Mr. Smock? A I did.

Q Indicating that this represented money which he claimed as a result of doing work formerly done by Mr. Jones? A I don't know what it indicated.

Q Didn't he speak of that to you? A No, not that
30 I remember.

Q Did you ask him why you were to put those initials on? A No.

Q You didn't raise any question about it? A No.

Q Do you know what happened to these envelopes after they were given? A I generally put them in the cash register and Mr. Smock went there and looked for them.

Q You sometimes handed them to him direct? A I hardly think I ever handed them to him; I think I always put them in the cash register.
40

George W. Ruding, direct.

Q And you put them on the desk? A If he might pick them off of the desk before I got them in the register, but that is where they are supposed to be.

The Master. Why did you put them in the register?

The Witness. I will tell you; I did that always with all the larger envelopes; for instance, Mr. Harry Smock and Mr. Jones, I put their envelopes up first, as I do yet, and get them out of my way and put them in the cash register; then I go on with my payroll.

10

Q In other words, this proceeding was apparently, on the face of it, entirely regular, so far as you were concerned?

Mr. Applegate. Objected to as a conclusion.

20

A Why, yes.

The Master. Weren't they also put there for safe keeping?

The Witness. That was my motive, yes. I didn't want to get them mixed up with the other envelopes.

Q Did you make any distinction in your treatment of these \$40 items from the \$75 items which went to Mr. Smock regularly? A No.

30

Q The item of \$1,850, can you recall when you first heard of that? A Yes.

Q About when? A I can show you if you would like to see it.

Q Please. (Witness producing from his pocket certain statements.) What is this to which you are referring? A This is the shortage in the cash account.

Q What are the papers you have in your hand? A This is the making up of the general cash.

Q Original memoranda? A Yes.

40

George W. Ruding, direct.

Q Make by whom? A Me.

Q At the time of the date? A Yes.

Q What is the date? A This is September 1, 1915.

Q What do you find there? A I find a shortage of \$848.72.

Q Did you attempt to locate that shortage? A Mr. Parrisen and I both together.

10 Q You both attempted to locate it? A Yes.

Q Were you able to locate it? A No.

Q Are you now able to locate it? A No.

Q Have you any idea where it went or what it represents? A I have not.

Q May it be simply a bookkeeping entry, an error? A It might be any old thing.

Q Is there anything that you know of, or ever have seen on the books or heard of, to indicate that Mr. Smock had taken it? A No.

20 Q Any reason you know of why he should account for it any more than you or Mr. Harry Smock or any one else? A Well, no; he is more accountable for it than I.

Q Whom do you mean by "he"? A Mr. George A. Smock.

Q Do you consider yourself accountable for it in the slightest? A No.

30 Q Did he go over the books with you, attempting to locate it? A I think he did assist us at different times.

Q And was there an honest, conscientious effort made to locate it by all of you, so far as you know? A Yes.

Q Were you able to locate any part of this \$1,850? A No.

Q Mr. Ruding, you were over in what department?

A I am in the main office.

Q That is where Mr. George Smock was? A Yes.

Q When cash was used or taken by anybody for any purpose, was there an entry of that made in the book of your department? A Yes.

George D. Ruding, cross.

Q Always, of every one? A Yes.

Q Did you ever have any knowledge of any different system employed in any part of the business? A I had no knowledge of anything but that office.

Cross examination by Mr. Applegate.

Q Mr. Ruding, you say that there was an entry made in the books whenever any one took any cash out of the cash drawer; how do you know that? A I say it was supposed to be. 10

Q There is a good deal of difference between doing it and— A Yes.

Q And Mr. George Smock was the man who told you to put up \$40 in an envelope for him, wasn't he? A Yes.

Q Anybody else ever tell you to do it? A No.

Q You never told anybody you were doing it? A No. 20

Q All the other envelopes contained the names in full for the persons for whom they were intended? A Yes, all except the mill hands, they go by numbers.

Q But the others, the names were written out in full? A Yes.

Q Why did you merely put initials on George Smock's? A I don't know; that is the way I was instructed by Mr. Smock.

The Master. Did Mr. Smock take these envelopes every week, or did they accumulate there, and then he took them all at once? 30

The Witness. He took them every week.

Q You say that these entries were made on the payroll? A Yes.

Q And the payrolls were used in making up the books—the entries from the payrolls were put in the books? A Yes.

Q Who had charge of the payrolls; you? A I did.

Q Always in your possession? A Yes. 40

George D. Ruding, cross.

Q Did you transfer the entries from the payrolls to the books? A Yes.

Q Including the \$40 paid to George Smock? A I did.

Q You didn't make all these, did you? A What do you mean?

10 Q All the entries in relation to the \$40 payment to George Smock; did you make all these entries in the cash book? A I didn't make any entries in regard to the \$40; that was added in what we call general expense, so much money.

Q What about the other envelopes, the amounts of those in the payrolls; were they added in the books in the same way? A They were in the general expense.

20 Q There wasn't any way of distinguishing, showing the salaries paid to each person through the payroll? A By looking at the payroll.

Q But when you transferred to the books, there was generally some entry? A Yes.

Q A similar entry was made in regard to the \$40 to Mr. Smock, as the other salaries paid? A Yes.

Q All entered the same way in the books? A Yes, all entered under general expense.

Q No difference whatever, then, you say? A No.

30 Q Do you remember who made the first entry on the payroll in regard to the \$40 payment? A Mr. George A. Smock.

Q You didn't do it yourself? A No.

Q If Mr. Smock had told you to put in these envelopes \$200, you would have done it? A I think I should.

Q Simply because he told you to do it, and he was the boss? A That is what I considered him, boss.

40 Q He was boss of the works? A He was.

Joseph H. Parisen, direct.

JOSEPH H. PARISEN, sworn for complainant.

Direct examination by Mr. Lum.

Q By whom are you employed now? A Employed by the Central Railroad of New Jersey.

Q Were you formerly employed by the Buchanan & Smock Lumber Company? A Yes. 10

Q In what capacity? A As bookkeeper.

Q From what time to what time? A For about seventeen years, I think, from 1900 to the latter part of 1917.

Q And do you recall an item of \$1,850 being referred to on the books in connection with a discrepancy? A Yes, a shortage of about that amount.

Q When did you first hear of it? A Probably around about—whatever date that general cash is figured up; I don't happen to know the date, but it was when Mr. George A. Smock discovered the shortage, he said that we are short according to this figuring, we are short eighteen or nineteen hundred dollars. 20

Q And that was about how many years ago? A I think it was around 1915 or 1916.

Q Was an effort made to locate that? A Yes.

Q Did you yourself make an effort to locate it? A I did. Mr. Ruding and I checked the books back thoroughly. 30

Q Were you able to place it? A No, sir.

Q Could you get any idea at all as to how it could be found? A We had certain ideas where it was, but wasn't able to locate it from any source that we thought it might happen.

Q Was there anything to show that it had anything to do with Mr. George Smock's account, or anything to do with him? A No, sir.

Q Did he make an attempt to assist you in locating it? A Yes. 40

W. Harvey Jones, direct.

Q Was that attempt made in entire good faith? A Yes, any items that were anyway doubtful were referred to him, and any item that we thought might cover it, were referred to him.

Q Do you know of anything that you could have done that you didn't do to locate where that difference
10 arose? A No, sir, we checked it thoroughly through the books; we were probably three weeks or a month checking back.

Q Will you tell us whether as a bookkeeper, anything could be done with it, except charge it off? A No, there was nothing that I could do.

Mr. Applegate. No cross examination.

Mr. Lum. We rest.

20 W. HARVEY JONES, heretofore sworn, recalled for defendants.

Direct examination by Mr. Applegate.

Q Mr. Jones, it has been testified to that you own a hotel; at certain times during the year you gave up the work, in fact, of the Buchanon & Smock Lumber Company and took charge of your hotel during the summer seasons?
A Yes.

Q State whether or not that was done with the per-
30 mission of the Buchanon & Smock Company? A It was thoroughly understood and agreed between George Smock and Mr. Harry Smock before I ever entered the company, as an official, that I would have that privilege.

Q Did you ever know that Mr. George Smock was charging for performing certain duties which you had been accustomed to perform, in your absence? A I didn't know it until Mr. Harry Smock told me.

Q That was when? A That was after ten weeks had elapsed of the taking of these moneys.

40 Q Mr. Smock was discharged, was he? A Yes.

W. Harvey Jones, direct.

Q In August, 1918? A Yes, sir.

Q Why? A Well, for a number of reasons; he was president of the company, and the finances of the company had gotten into a very precarious condition; for instance, I jotted down a few things—

Q Go ahead, without referring to that. A He used the credit of the company to the amount of \$600 in buying coal, and the people to whom this bill was owing, came down and threatened to bring suit against us, and I called Mr. Smock— 10

Q What Smock? A Mr. George Smock, and it was shown that he had used the credit of the company, and he finally, I understood, that afternoon said that the bill was paid, but that he used the credit of the company to the amount of \$600, without any permission from the company.

Q When was that? A I cannot give you the date. 20

Q About when? How long before he was discharged?

A I cannot answer that.

Q Do you know whether it was one year or ten years; can you give us any idea? A I think it was about a year, but I am not positive.

Q Any other incident in relation to where he used the company's credit? A There were some improvements made at 511 Asbury avenue, and the money was furnished by the Buchanon & Smock Lumber Company; Mr. I. R. Taylor & Company were doing the work, and in the settlement, the monthly settlement of I. R. Taylor & Company, Mr. George A. Smock allowed them to deduct their payroll and their ten per cent. profit for operating from their bill, saying that the Buchanon & Smock Company were really financing not only for the material, but for the labor, but their profit as well; and when I found that out, as treasurer of the company, I objected to Mr. George A. Smock and demanded settlement, and threatened legal action unless settlement was made, and finally, 30 40

W. Harvey Jones, direct.

by that threat he gave the company a note, secured by a mortgage, and the note was finally paid.

The Master. Who gave the note?

The Witness. Mr. George A. Smock.

The Master. When was that?

10 *The Witness.* I think that was about that same time.

Q About a year before? A Yes, whenever that improvement was made there.

Q Any other instance? A The DeBoe note is simply hearsay, that I am not familiar with; I understood—

Q You heard the version given by Mr. Sterner? A Yes, that is the way I heard it at that time, and the company was compelled to pay the note which had been protested in the Bradley Beach Bank.

20 Q You know that as a fact? A Yes.

Q Was there more than one note given? A I cannot answer.

Q But one DeBoe's note was protested and the company paid it? A Yes.

Q Any other incident where he used the company's credit? A What are you referring to?

Mr. Lum. I object to your using that paper.

30 *The Master.* No, you cannot use that memorandum.

Q Is that made up by you? A Yes.

Mr. Lum. When; this morning?

The Witness. This morning.

Mr. Lum. I object to it.

The Master. You will have to put it away.

40 Q Any other instance? A Mr. George A. Smock told me that he gave the company's note to Mr. Herbert Gardner one day for a thousand dollars, because he was short of his payroll.

W. Harvey Jones, direct.

Q Because who was short? A Because Mr. Gardner was short. He did it to accommodate them, which I considered out of order.

Q What happened to that? A I cannot answer. I cannot say.

Mr. Lum. When was it?

The Witness. During the operation of the Ocean Hotel. 10

The Master. What year was it? When, with reference to Mr. Smock's discharge?

The Witness. Previous.

Mr. Lum. A year or two years before?

The Witness. Two or three years before. Not as to his using the credit, that I remember of; on my assuming charge of the treasuryship of the company, I found that the letter of credit to the railroad had been cancelled, which was very serious, as we were— 20

Q When was that? A That was sometime previous to January, 1918; I think it was 1917—so much so, that the company had to send down their check or money each time before they could get a car placed on the track to be unloaded.

Q This letter gave you a credit, and gave you the privilege of paying in installments? A At stated intervals, yes. 30

Q Give us any other reason why he was discharged. A The financial credit of the company had been very much impaired; there were claims against the company, on which suit was threatened, and in fact our attorney had accepted the company's note for a small amount and had them discounted, and paid these small claims, rather than to have suit brought against us.

Q When was that? A That was during the period that I was out of the company, the active interest, between May, 1915, and January, 1918, sometime. 40

W. Harvey Jones, direct.

Q Go ahead. The Belmar Bank—I am not sure whether it was the Belmar or Lakewood Bank—one of those banks—demanded each time we had a note due, we should take them up, and the Asbury Park and Ocean Grove Bank, where we had most of our loan credit, they refused to discount a note for less than \$500 of the company. I happened to be a director of the Asbury Park and Ocean Grove Bank, and it was understood that I was not to pass on the credits when the notes came up.

Q Of your own company? A Yes; so I took no action, and they, in my presence, absolutely refused to discount a note for less than \$500, for the Buchanan & Smock Lumber Company.

Q Any other instance? A The taking of the \$400 seemed to be the last straw.

Q Tell us about that. A Mr. Harry Smock came to me and wanted to know if I was drawing \$40 from the Buchanan & Smock Lumber Company a week for services not rendered; I told him no; he said the records seemed to show—

Mr. Lum. Was Mr. George Smock present when you had this talk with Mr. Harry?

The Witness. Not the first time, no.

Mr. Lum. I object to it.

The Master. I will strike it out.

Q As a result of what Mr. Harry Smock told you, what did you do? A I got busy in reference to having him discharged.

Q What did you do? A We discharged him from the company; we called a meeting.

Q Was he present? A Yes.

Q Did you give your reasons why he was discharged? Were the reasons given to him for his discharge? A I think the principal reason, or the only reason, as far as I remember now, was that he had taken these moneys.

W. Harvey Jones, direct.

The Master. Which moneys?

The Witness. The \$400.

Q Was that the only reason why he was discharged?

A Well—do you mean the written reasons?

Q The only reason, whether written or otherwise. A
My reasons as treasurer of the company, were these— 10

Mr. Lum. I object unless they were stated.

Q Were they stated to Mr. Smock, the reasons why
he was discharged? A A general discussion of them
was made.

Q What, in fact, were the reasons?

Mr. Lum. What was said?

The Witness. I cannot give the exact words.

The Master. Give the substance of what was
said at the meeting. 20

The Witness. The \$400 that was taken.

The Master. What was said about that?

The Witness. He had no right to take it; he had
no authority to take it.

Q What did he say? A I cannot answer just his
words.

Q Did he say that he did have a right, or he didn't
have a right; did he say he did take it or didn't take it? 30

A He didn't deny taking it.

Q Did he say he had a right to take it? Or what did
he say in relation to it? A I cannot remember, only
a general defense he made.

Q Did you give any other reason to Mr. Smock for
discharging him? A I think that was enough.

Q Did you state these things to Mr. Smock? A
They were discussed in a general way.

Q Was there any offer made by Mr. Smock at that
time to return the money? A Yes. 40

W. Harvey Jones, direct.

The Master. What did he say in relation to it?

The Witness. He offered to return it.

Q What did he say; did he say "I offer to return it"?

A If I remember, he put it down on the table and wanted to know if I wanted it; my answer was that I wouldn't take it, because I thought that it was compound-
10 ing a felony.

Q Your company subsequently brought suit against Mr. Smock to recover it? A Yes, I made a demand on Mr. Smock after that for the money and he refused to give it.

Q And then you brought suit? A Yes.

Q When did you get out of the company? A May, 1915, I resigned from the company.

Q Is that the time that you had an agreement with Mr. George Smock to sell the stock to him and Harry
20 Smock? A Yes.

Q And that agreement was not carried out? A It was finally cancelled; it was not carried out.

Q Cancelled by mutual consent? A Yes.

Q Why? A Simply because Mr. Windsor demanded—

Mr. Lum. I object.

Q Was this in the presence of Mr. George Smock?

A Yes. Mr. Windsor called us three together and de-
30 manded that Mr. Smock cancel that agreement, so I could get back into the company and manage it, because he was afraid of the financial condition of the company.

Q Because of the notes the company had in the bank?

A Yes, and the general management.

Q You went back as a result of that? A Yes.

Q And you are still in there? A Yes.

Q Is the company financially sound now? A Yes.

Q Has it been so since 1918? A It has been getting better; we are discounting our bills; we never did that
40 at that time.

W. Harvey Jones, cross.

Cross examination by Mr. Lum.

Q Mr. Jones, who prepared this resolution discharging Mr. George Smock, Exhibit C. 51? A I imagine our attorney did.

Q Who was that? A If it were our attorney, Mr. Otto Rhome.

Q Who gave him the information for preparing this? A From Mr. Smock or myself, I imagine; I don't remember.

Q At any rate, your attorney prepared this as a result of instructions given by you or Mr. Harry Smock? A Yes.

Q And you gave him the facts on which this was based? A Yes.

Q And you gave him all the facts at the time on which you relied for the discharge? A We took his advice as to the drawing of this paper.

Q You gave him all the facts on which you relied for the discharge? A The general facts.

Q And these were the facts that you gave him? A That was the paper he prepared.

Q And these were the facts referred to in this paper that you gave him? A That was the paper that he prepared from the facts that we gave him.

Q And these were the only facts that you gave him at that conference? A That was the paper that was prepared from the facts we gave him.

Q And those were the only facts you gave him? Will you answer it? A I don't say that.

Q I am asking you. A I don't think it was.

Q What other facts did you give your counsel? A I think he had general knowledge of these affairs.

Q What other facts beside those referred to in this resolution did you give your counsel at that meeting? A My counsel wasn't at that meeting.

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W. Harvey Jones, cross.

Q At the meeting you had with your counsel? A I cannot answer any other way, only the general facts.

Q What other facts did you give your counsel? A Facts to prepare that paper.

Q What were they? A The taking of this money; the reference to our credits.

10 Q Did you give those facts to your counsel—Mr. Rhome, at that meeting? A At that meeting?

Q When you met with your counsel for the purpose of having the resolution drafted, did you at that meeting with your counsel refer to any matter of credits? Yes or no. A Yes.

Q You referred to them with Mr. Rhome? A Yes.

Q Tell us what words you used with Mr. Rhome; what did you say about credits? A Mr. Rhome had paid some of these accounts himself.

20 Q I don't care about that; I want you to answer my question; what did you say to Mr. Rhome about credits at that meeting? A I don't know.

Q What else did you say to him? A I cannot answer, except in a general way, that we discussed the situation as I have given it here, and this was a paper that he prepared from that knowledge.

Q Did you ask him why he didn't put in any other minutes than these? A No, sir, I don't ask my attorney why he doesn't do it; he knows better than I what to do. We give him the information and he draws the paper.

30 Q But did you give him any information beside the information in this paper, at that time? A We gave him the general information.

Q Did you give him any other information except the information contained in this paper? A We gave him general information.

Q What was the general information you gave him; 40 just what did you say, as near as you can recall your

W. Harvey Jones, cross.

words? What did you say to Mr. Rhome? A I have told you half a dozen times.

Q You haven't told me a word that you said to Mr. Rhome. A I told him in reference to the credits.

Q What did you say about the credits? A That the finances of the company were getting into a deplorable condition, for one thing. 10

Q You told that to Mr. Rhome at that time? A Yes.

Q What else? A That he had used the credit of the company.

Q You told Mr. Rhome that? A Yes.

Q And you didn't ask Mr. Rhome why he didn't refer to that in the resolution? A No.

Q He had used the credit of the company for this coal, and in connection with this item of lumber or labor about a year before his discharge? A I think about that time. 20

Q That was in 1917? A Yes; I cannot exactly say when.

Q Sometime before that? A Yes.

Q And thereafter, in January, 1918, you, with knowledge of all these facts, again re-elected him president, didn't you? A Yes.

Q And you yourself voted for him as president in 1918, didn't you? A Yes.

Q At this meeting where the \$400 was discussed in August, 1918, Mr. George Smock claimed to have done work which you formerly did, didn't he? A He claimed to. 30

Q When you were employed there, you did some work, didn't you? A When I was employed there—yes.

Q And how much were you paid for that work you did? A When I was there?

Q How much? A Various salaries.

Q How much in 1918? A I think when I resigned I received a salary of \$7,000 a year. 40

W. Harvey Jones, cross.

Q In 1918 when you left to go into the hotel business?
A 1915.

Q I asked you in 1918. A I beg your pardon.

Q In 1918 when you left to take up the hotel work, what was your salary? A \$75 a week.

Q You were doing work that was reasonably worth that? A I thought so.

Q Who came to take your place after you left? A No one definite, except a collector was engaged afterwards, so I understood.

Q Did you know of anyone coming to do your work? A Not necessarily.

Q But you knew that that work had to be done? A Yes.

Q And did you know that Mr. George Smock had to do a considerable portion of that work which you had formerly done? A Some part of it.

Q Didn't you expect that he would receive compensation for it? A No, sir; because it was agreed before I went with the company that that was part of the contract. Before I ever went with the company, it was understood that I was to have that privilege, to go to my hotel in the summer time, and perform the duties there, and I was taken in with that understanding.

Q Conceding that, nothing was said about who would do your work when you were gone? A In the summer time we are supposed to be slack in the lumber business.

Q The question is this, was anything said about who was going to do your work when you went away? A Not especially.

Q You knew that someone had to do it? A Yes, sir.

Q You knew it was reasonable that whoever did your work should be paid for it? A He was getting paid for it.

W. Harvey Jones, cross.

Q You knew it was reasonable that whoever did your work in addition to his own, should be paid for it? A No, sir; not without the directors giving him the right to receive the extra salary; he had no business to—

Q That is your view? A That is law.

Q Mr. Jones, at this meeting in August, Mr. George Smock offered to return this money and allow the reasonable amount to which he was entitled to be fixed in any way— A He agreed to return the money without any condition. 10

Q Didn't he say that the amount to which he was entitled could be later fixed? A I don't remember that he said it.

Q Did you know at that time that these amounts appeared on the regular payrolls of the company? A At the time of the meeting? 20

Q Yes. A Yes.

Q You did know that? A At the time of the meeting, yes.

Q Then you knew that there couldn't be any conceivable question of compounding a felony, didn't you? A No, I didn't know.

Q Mr. Jones, you for the last three or four years from 1918 back were a debtor to the company for various amounts, were you not? A From when? 30

Q 1918, for a few years before that. A No, sir, I was charged with it, but I wasn't a debtor, simply because the agreement was that they should pay my building and loan. I want to make this clear, that they should pay my building and loan.

Q Who is "they"? A Mr. George Smock and Mr. Harry Smock should pay my building and loan from the interest due me on the sale of my stock, and when they paid that building and loan, Mr. George Smock had it charged up to me personally, instead of to him and Mr. Harry Smock, and I made a protest in writing to them 40

W. Harvey Jones, re-direct.

that that should not appear on the books against me, and I have a copy of that in my safe deposit vault.

Q In other respects, did you not also appear as a debtor to the company? A Not without it was a nominal sum, as the hotel.

Q The company gave you credit for the item, if you wanted it for lumber for the hotel? A Yes.

Q There was no objection to that? A No.

Q You never had any doubt that Mr. George Smock was financially responsible for anything that he owed the company? A I had some doubt; I got to having some doubt.

Q Did you know whether he owned any real estate? A I supposed he did.

Q Of course, you didn't have a board of directors' meeting to sanction credits extended for lumber or anything else? A No, because I had that authority.

Q And so did the other officers have extensions of credit? A In a general way.

Q At this meeting of August 8, just tell us, as near as you can give the words, as to what was said by Mr. George Smock as to the reasons for his discharge; anything said in addition to the resolution? A I cannot remember at this time of anything definite that was said.

Re-direct examination by Mr. Applegate.

Q When you say that, what do you mean you cannot remember? A Outside of the fact the moneys were taken.

The Master. The \$40 a week?

The Witness. Yes.

Q Do you know whether or not Mr. George Smock had title to property of the company, and took it in his own name at a foreclosure sale? A Yes.

Q Do you know whether or not afterwards, after he had gotten the title in his own name, he kept the title

Harry W. Smock, further direct.

in his own name, and if so, how long? A Yes, for quite a while.

Q And then were judgments entered against him as an individual? A Yes.

Q And when was that? A I think about somewhere between 1915 and 1917.

Q Did the company finally get that property? A 10
Yes.

Q And how? A By foreclosure, I think.

Re-cross examination by Mr. Lum.

Q You knew about that item at the annual meeting of 1918? A Yes.

Q And with that knowledge you voted for the re-election of Mr. George Smock as president? A Yes.

Re-direct examination by Mr. Applegate. 20

Q Why did you?

Mr. Lum. I object.

The Master. I will receive the evidence.

A Mr. George Smock agreed to vote for me as treasurer if I would vote for him as president.

Q Who made the request first? A I made the statement to him.

Q Was Mr. Harry Smock a party to this? A Yes, 30
he wanted me to come in, and Mr. George Smock didn't want me to come back, as treasurer.

HARRY SMOCK, recalled for

Further direct examination by Mr. Applegate.

Q Mr. Smock, did you ever as an officer and individual or a director of the Buchanon & Smock Corporation authorize the payment to Mr. George Smock of \$40 a week? A I did not.

Harry W. Smock, further direct.

Q Did you know that he was drawing \$40 a week at the time? A No.

Q When did you first learn about it? A I cannot give you the exact date.

Q About when? A First of August, 1918.

Q And how did you learn it, and how did you know
10 it; what was the first knowledge you had? A I obtained it from the payroll sheet.

Q Any other way? A That is where I got it.

Q Any other way that you derived any knowledge?
A No, that was the only way I could obtain it. The payroll sheet showed that some one was drawing \$40 a week.

Q At or about that time did you see Mr. George Smock at the cash register? A Yes.

Q Tell us about that. A I went in there one Satur-
20 day noon, just before twelve o'clock, and saw him pick two envelopes out of the cash register, and he passed me, and later I went to the drawer, in Mr. Ruding's desk, and picked up the payroll sheet, and saw that there was a charge under "general expense" "W. H. J. \$40."

Q That was the first you knew of it? A Yes.

Q That was the first you knew of it? A Yes.

Q And seeing him at the cash register with the two envelopes is what excited your curiosity to look up the payroll? A Yes.
30

Q Were you present at the first meeting in regard to an agreement concerning which Mr. Jones testified? A I was.

Q What was that agreement? A Mr. Jones came to us—

Q Was George Smock there? A Yes—and said that he was about to acquire the Buchanon interest, and asked if the bargain was consummated, if we would agree to his coming into the concern in an official capacity, and the matter was talked over. He said he still wished to
40 continue his hotel, and we agreed.

Harry W. Smock, further direct.

Q When was that? A I cannot remember the year.

Q About? A It was back in about 1907.

Q Any objection ever made by either you or Mr. George Smock, as to Mr. Jones devoting his time in the summer time to his hotel business; any objection ever made by either you or George Smock? A Officially?

Q In any way. A Mr. George Smock, in conversation with me, objected to it. 10

Q When? A On several occasions.

Q At that time did you say anything to George Smock? A Yes, I carried on a conversation with him.

Q Was George Smock ever paid any salary for looking after Jones' work prior to 1918? A Never, to my knowledge.

Q Did he ever demand any salary? A Not to my knowledge.

Q For doing that work? A No. 20

Q Did he ever ask for any salary in reference to doing Jones' work? A No, not to my knowledge.

Q Mr. George Smock was discharged, as already testified to, in 1918? A Yes.

Q Why was he discharged?

Mr. Lum. I object to that.

The Master. What was said about his discharge?

The Witness. At the meeting at which he was discharged? 30

The Master. Yes.

The Witness. There was a great deal said.

The Master. What was it?

The Witness. The matter, of course, of \$400 was the principal thing at issue at the time. I told Mr. George Smock my reasons for agreeing to the action.

Q The action taken in discharging him? A Yes. 40

Harry W. Smock, further direct.

Q What did you say to him? A I told him it was not only this matter which I considered was a breach of faith and confidence, for the simple reason that it appeared from this \$400—when I first saw that Mr. Smock was getting the \$40, I was in the office there every day with Mr. George Smock, and he should have at least told me about that.

Q You told him that? A Yes, I told him, moreover, that my reason for voting for the action was the attitude in which he had treated me for the several years past. Do you wish me to specify?

Q You can, if you want to.

Mr. Lum. I will ask for it on my cross examination.

Q Tell me all you told him; everything that was said at this meeting. A I will as near as I can recall. I told him that—I referred him to more than a year or about a year previous, I think March, 1917, Mr. Smock had been South, and while he was away—

Mr. Lum. What was said at the meeting is what you are telling us; tell us what you told Mr. Smock.

A (Continuing.) I told Mr. Smock, in addition to the \$400, that my principal reason for voting to discharge him was the attitude that he had assumed toward me in the past several years.

Q What else did you say? Did he ask you what the attitude was? A No; he knew.

Q Did you tell him what that attitude was? A No, not that day.

Q What else did you tell him as your reason for discharging him? A Nothing at that time.

Q What was the condition of the company at that time? A It was in pretty hard financial straits.

Harry W. Smock, further direct.

Q Due to whom?

The Master. What was the cause of it?

The Witness. I considered that it—

Q What was the cause of the company's condition?

A Improper management.

10

Q On whose part? A Mr. George Smock.

Q What was the nature of that improper management? A Lack of attention in carrying on the business. They were purchasing materials far beyond any possibility of selling them; concerns with whom we had been doing business for almost a generation, refused to take an order, or ship us a bill of material; there were thousands of dollars that we owed that had not been arranged in any way; our credit had become impaired; they were suing us for our bills.

20

Q Did you ever tell all this to Mr. George Smock? A I did.

Q Before he was discharged? A Yes, several times. I was told to attend to my own affairs and run the mill itself and he would take care of the rest, as he had always done, and I resented it.

Q Was Mr. George Smock engaged in any other business at that time to which he was devoting any time?

A I am not sure. He was interested in several—just what participation he had in them, I cannot say.

30

Q Was he interested in any gravel business at that time? A I am not sure. I know that he had been interested in several.

Q After Mr. Smock left the company state whether or not the financial condition of the company improved?

A It did.

Q What is its condition now? A In very good condition.

40

Harry W. Smock, cross.

Cross examination by Mr. Lum.

Q Mr. Smock, this matter of the ordering of lumber beyond the needs of the company, as you figured it, all these various things were matters relating to 1916, 1917 and 1915? A Yes, particularly to 1917.

10 Q And thereafter, and with knowledge of all this, you voted your stock for the election of Mr. George Smock as president of that corporation, did you not? A I did.

Q You know of no reason why this resolution, Exhibit C. 51, failed to state any reason excepting the \$400 for discharging Mr. Smock? A I do not.

Q You didn't ask your counsel any question about it? A No, I left it to him.

Q You have at various times been indebted to this company in various sums? A Yes.

20 Q And you had an account with it and have owed the company as high as much? A I really cannot say.

Q Give us an estimate as to the highest amount you ever owed the company. A Several hundred dollars.

Q It ran into a few thousand? A I cannot say.

Q Would you say that you never owed this company as much as a few thousand dollars at one time? A A few?

Q As high as seven or eight at one time? A I don't think so.

30 Q Would you be surprised to know that it showed that you owed nearly \$9,000 at one time? A Yes, I would be surprised.

Mr. Applegate. When?

Mr. Lum. Four or five years ago.

The Witness. I cannot say.

Q The payrolls were always open to you for your inspection? A Yes, if I had so desired.

40 Q How often were you in the habit of looking over the payroll? A Very rarely.

Harry W. Smock, cross.

Q But they were always open there for your inspection at any time you wished? A Yes.

Q You knew that Mr. George Smock was ready to return this money and permit the amount to which he was entitled, if any, to be submitted for determination, didn't you? A I knew that he was ready to return the money; I don't recall any other stipulation.

10

Q Do you recall that something was said about whatever was fair for the extra work he had done should be fixed? A I do not.

Q You did know that some one was doing the work that Jones had formerly done? A Yes.

Q You knew you were not doing it, at any rate? A Yes.

Q You knew Mr. George Smock was doing it mainly, didn't you? A I really didn't know that.

Q As an interested person and officer of this company, why didn't you know who was doing it? A Because he was in the position, and I knew that the work in the office was in the hands—under the direction of Mr. Smock.

20

Q Suppose it was done by one of the other employees over there in the office, the work formerly done by Mr. Jones, in addition to his regular work, you would consider it both fair and legal and equitable that he should be paid, wouldn't you? A It has been done many times without payment. It was customary in the summer time for us to use the employees where we could spare them during the dull time, making collections and doing work the treasurer usually did.

30

Q Do you remember the employment of Mr. Sterner? A I do.

Q He was employed to do the work that formerly had been done by Mr. Jones? A Oh, Mr. Jones was with the company.

Q He wasn't any more effectually out of the company, then, than he was when he left in May, 1918, was

40

Harry W. Smock, cross.

he, so far as any result of his work was concerned? A No, not as a result of his work.

Q And the work had grown—the business had grown between 1918 and 1915, hadn't it? A No.

Q You mean you were not doing more business? A We were not doing over half as much.

10 Q Then in 1918 you were suffering from the general business depression that followed throughout the country at that time? A Yes.

Q And of course, that doesn't obtain now; general business conditions are good? A Fairly so.

Q You find credit very much better now than then? A What do you mean?

Q I mean people are able to pay you better. A I can scarcely say that.

20 Q Don't you find the general business conditions are better than they were in 1918? A There is more of it.

Q Quantity and quality are both better? A No, I don't think the quality is any better; we have trouble getting our bills collected.

BOTH SIDES REST.

30

40

*Exhibit C. 1.***EXHIBIT C. 1.****IN CHANCERY OF NEW JERSEY.**

GEORGE A. SMOCK,

*Complainant,**and*BUCHANON & SMOCK LUMBER COM-
PANY and HARRY W. SMOCK,*Defendants.**On Bill, &c.*

10

SCHEDULE A.

Statement of items in the petty cash books kept by Harry W. Smock in the mill department of Buchanon & Smock Lumber Company between February 6, 1914, and December 25, 1918, for which said Harry W. Smock should account to Buchanon & Smock Lumber Company. 20

Hereto attached is Schedule B, being statement of items taken from said books between February 2, 1914, and December 27, 1918, which complainant admits are to be credited to said Harry W. Smock against the amount shown in Schedule A.

SCHEDULE A.

30

1914

Exhibit C. 4.

February	6.	H. W. Smock	\$ 7.00
"	13.	" " "	1.00
March	11.	" " "	5.00
"	16.	Reserve	25.00
"	18.	"	25.00
"	24.	H. W. Smock	6.75
"	31.	Reserve	15.00
"	31.	H. W. Smock	10.00

40

Exhibit C. 1.

	April	18.	Reserve	25.00	
	"	22.	"	25.00	
	"	27.	"	25.00	
	"	29.	"	25.00	
	"	30.	"	25.00	
	May	15.	H. W. Smock	20.00	
10	"	19.	Reserve	50.00	
	"	23.	"	25.00	
	"	28.	"	50.00	
	June	5.	"	25.00	
	"	11.	"	25.00	
	"	11.	H. W. Smock	25.00	
	"	19.	Reserve	50.00	
	"	26.	"	50.00	
	July	1.	"	50.00	
	"	8.	"	25.00	
	"	11.	"	50.00	
20	"	14.	"	25.00	
	"	17.	H. W. Smock	10.00	
	"	27.	Reserve	50.00	\$ 749.75

Exhibit C. 5.

	August	1.	Reserve	25.00	
	"	10.	"	25.00	
	"	11.	"	75.00	
30	"	21.	"	25.00	
	"	22.	"	25.00	
	"	28.	"	25.00	
	September	9.	H. W. Smock	10.00	
	"	14.	Reserve	25.00	
	"	16.	"	25.00	
	"	23.	"	25.00	
	"	26.	"	25.00	
	"	28.	"	50.00	
	October	3.	"	25.00	

Exhibit C. 1.

October	9.	Reserve	30.00	
"	10.	"	25.00	
"	17.	"	25.00	
"	29.	"	50.00	
"	29.	H. W. Smock	5.00	
November	2.	Reserve	25.00	
"	6.	"	25.00	10
"	7.	H. F. Smock	10.00	
"	7.	Reserve	25.00	
"	11.	"	50.00	
"	13.	H. W. Smock	10.00	
"	14.	Reserve	25.00	
"	17.	H. W. Smock	15.00	
"	20.	" " "	5.00	
December	7.	" " "	10.00	
"	11.	Reserve	25.00	
"	12.	"	25.00	20
"	24.	H. W. Smock	10.00	
1915.				
January	2.	Reserve	25.00	
"	16.	"	25.00	
"	19.	"	25.00	
"	27.	" " "	25.00	880.00

Exhibit C. 6.

February	5.	Reserve	25.00	30
"	9.	H. W. Smock	10.00	
"	13.	" " "	5.00	
"	17.	Reserve	25.00	
"	18.	H. W. Smock	6.00	
"	19.	" " "	5.00	
"	24.	Reserve	25.00	
March	4.	H. W. Smock	25.00	
"	8.	Reserve	25.00	
"	11.	"	25.00	
"	18.	"	50.00	40

Exhibit C. 1.

March	29.	Reserve	25.00	
April	1.	H. W. Smock	15.00	
"	7.	Reserve	35.00	
"	13.	H. W. Smock	10.00	311.00

Book April 17 to June 10th missing.

10

Exhibit C. 7.

June	15.	Reserve	40.00	
"	23.	"	80.00	
"	30.	H. W. Smock	20.00	
July	2.	Reserve	25.00	
"	17.	"	50.00	215.00

Exhibit C. 8.

20	"	26.	H. W. Smock	5.00	
	"	26.	Reserve	25.00	
	August	3.	H. W. Smock	10.00	
	"	7.	" " "	7.00	
	"	7.	Reserve	40.00	
	"	23.	"	40.00	
	"	30.	"	25.00	
	"	30.	H. W. Smock	10.00	
	September	8.	" " "	25.00	
30	"	9.	Reserve	40.00	
	"	21.	"	30.00	257.00

Exhibit C. 9.

	"	30.	Reserve	10.00	
	"	30.	H. W. Smock	5.00	
	October	4.	" " "	5.00	
	"	15.	" " "	10.00	
	"	23.	Reserve	50.00	
40	"	26.	"	30.00	

Exhibit C. 1.

October	30.	H. W. Smock	15.00	
November	3.	" " "	10.00	
"	6.	Reserve	80.00	
"	8.	H. W. Smock	10.00	
"	11.	" " "	5.00	
"	19.	Reserve	30.00	
"	23.	"	50.00	10
"	27.	"	30.00	
December	1.	H. W. Smock	5.00	345.00

Exhibit C. 10.

"	23.	H. W. Smock	15.00	
"	30.	" " "	10.00	
1916.				
January	11.	Reserve	60.00	
"	13.	H. W. Smock	5.00	20
February	25.	Reserve	35.00	
March	1.	H. W. Smock	25.00	
"	13.	Reserve	25.00	
"	14.	"	25.00	200.00

Exhibit C. 11.

April	14.	H. W. Smock	10.00	
May	1.	" " "	10.00	30
"	6.	" " "	10.00	
"	8.	Reserve	30.00	
"	13.	"	50.00	
"	20.	"	40.00	
"	23.	H. W. Smock	15.00	
"	27.	Reserve	55.00	
June	8.	"	40.00	260.00

*Exhibit C. 1.**Exhibit C. 12.*

	June	22.	Reserve	35.00	
	"	22.	H. W. Smock	10.00	
	July	3.	" " "	11.50	
	"	5.	Reserve	40.00	
	"	6.	H. W. Smock	10.00	
10	"	11.	" " "	15.00	
	"	14.	Reserve	60.00	
	"	19.	H. W. Smock	20.00	
	"	24.	Reserve	50.00	
	August	1.	H. W. Smock	10.00	
	"	9.	Reserve	40.00	
	"	18.	H. W. Smock	10.00	
	"	29.	Reserve	25.00	
	September	10.	"	30.00	
	"	13.	H. W. Smock	10.00	376.50
20					

Exhibit C. 13

	"	19.	H. W. Smock	15.00	
	October	9.	" " "	15.00	
	"	23.	Reserve	25.00	
	November	8.	H. W. Smock	20.00	
	"	21.	" " "	5.59	
	"	27.	Reserve	25.00	
30	"	"	"	25.00	
	December	9.	"	35.00	165.59

Exhibit C. 14.

	1917.				
	January	12.	H. W. Smock	5.00	
	"	19.	" " "	10.00	
	February	6.	" " "	10.00	
	"	21.	" " "	20.00	
40	"	26.	" " "	10.00	

Exhibit C. 1.

February	27.	H. W. Smock	19.71	
March	9.	" " "	2.55	
"	13.	Reserve	20.00	
"	24.	"	20.00	
April	2.	H. W. Smock	10.00	
"	11.	" " "	5.00	
"	14.	Reserve	20.00	10
"	26.	H. W. Smock	25.00	
"	28.	Reserve	40.00	
May	3.	H. W. Smock	10.00	
"	3.	Reserve	30.00	
"	5.	"	25.00	
"	17.	"	25.00	
"	18.	"	20.00	327.26

Exhibit C. 15.

"	28.	Reserve	50.00	20
June	5.	"	15.00	
"	9.	"	45.00	
"	23.	"	25.00	
July	9.	"	25.00	
"	12.	"	25.00	
"	16.	"	25.00	
"	20.	H. W. Smock	5.00	
"	30.	Reserve	15.00	
August	13.	H. W. Smock	20.00	30
"	15.	Reserve	40.00	
"	28.	"	20.00	
"	31.	"	25.00	
September	6.	"	30.00	
"	11.	H. W. Smock	10.00	
"	15.	Reserve	50.00	
"	25.	"	25.00	
"	26.	"	25.00	

Exhibit C. 1.

10	October	4.	Reserve	20.00	
	"	11.	H. W. Smock	10.00	505.00
	"	18.	Reserve	30.00	
	"	"	H. W. Smock	20.00	
	November	2.	Reserve	50.00	100.00

Exhibit C. 16.

	"	3.	"	35.00	
	"	8.	"	60.00	
	"	22.	H. W. Smock	10.00	
	"	27.	Reserve	25.00	
	"	"	"	30.00	
	December	18.	"	35.00	
	1918.				
20	January	12.	H. W. Smock	10.00	205.00

Exhibit C. 17.

30	February	7.	H. W. Smock	2.00	
	"	8.	" " "	3.00	
	April	2.	" " "	15.00	
	"	6.	" " "	10.00	
	"	9.	" " "	15.00	
	"	11.	" " "	5.00	
	"	16.	" " "	10.00	
	"	19.	" " "	5.00	
	"	25.	" " "	15.00	
	May	21.	Cash Balance Difference	100.00	
	June	2.	H. W. Smock	25.00	
	July	11.	" " "	35.00	
	"	18.	" " "	5.00	
	August	9.	" " "	5.00	250.00

*Exhibit C. 1.**Exhibit C. 18.*

August	24.	Henry Hall			
		(see Aug. 30)	100.00		
September	17.	H. W. Smock	95.00		
October	17.	" " "	30.00		
November	16.	" " "	50.00		10
"	23.	" " "	5.00		
December	24.	" " "	10.00	290.00	
				\$5437.10	

SCHEDULE B.

Exhibit C. 4.

1914.					
February	23.	H. W. Smock	\$10.00		20
March	16.	" " "	8.00		
April	2.	" " "	2.40		
"	7.	Reserve	15.00		
May	23.	H. W. Smock	3.25	\$ 38.65	

Exhibit C. 5.

September	10.	H. W. Smock	10.00		
October	31.	" " "	5.00		30
November	7.	" " "	10.00		
"	23.	H. W. Smock	25.00		
"	24.	" " "	5.00		
December	12.	H. W. Smock	10.00		
"	16.	Reserve	5.00		
1915.					
January	26.	H. W. Smock	5.00	75.00	

*Exhibit C. 1.**Exhibit C. 6.*

	February	13.	H. W. Smock	15.30	
	"	19.	" " "	6.00	
	March	29.	" " "	25.00	
	April	10.	Reserve	10.00	
10	"	11.	"	10.00	66.30

Exhibit C. 8.

	July	28.	H. W. Smock	5.00	
	August	7.	" " "	17.00	
	September	1.	" " "	10.00	32.00

Exhibit C. 9.

20	October	23.	H. W. Smock	20.00	
	November	1.	" " "	15.00	
	"	6.	" " "	10.00	
	"	18.	" " "	15.00	
	December	6.	" " "	5.00	
	"	14.	Reserve	20.00	85.00

Exhibit C. 10.

30	"	17.	Reserve	25.00	
1916.					
	January	3.	H. W. Smock	25.00	
	"	24.	Reserve	20.00	
	"	29.	H. W. Smock	5.00	
	March	1.	Reserve	10.00	
	"	3.	"	25.00	
	"	13.	H. W. Smock	19.30	129.30

*Exhibit C. 1.**Exhibit C. 11.*

March	29.	Reserve	25.00	
April	29.	"	25.00	
"	"	H. W. Smock	10.23	
May	4.	" " "	5.00	
"	8.	" " "	15.00	
"	20.	" " "	3.42	10
June	10.	" " "	15.00	98.65

Exhibit C. 12.

"	28.	H. W. Smock	10.00	
July	10.	" " "	10.00	
"	17.	" " "	15.00	
August	12.	" " "	30.00	
"	30.	" " "	10.00	
September	11.	Reserve	10.00	20
"	15.	H. W. Smock	10.00	95.00

Exhibit C. 13

October	6.	H. W. Smock	15.00	
November	17.	" " "	15.00	
"	"	Reserve	25.00	
December	7.	"	20.00	
"	13.	"	5.00	<u>30</u>
"	18.	"	15.00	
"	27.	H. W. Smock	5.00	
"	28.	" "	2.00	102.00

*Exhibit C. 1.**Exhibit C. 14.*

1917.					
10	January	15.	H. W. Smock	10.00	
	"	27.	" " "	15.00	
	February	8.	" " "	10.00	
	March	13.	Reserve	20.00	
	April	18.	"	30.00	
	"	"	H. W. Smock	15.00	100.00

Exhibit C. 15.

	June	14.	Reserve	25.00	
	July	23.	H. W. Smock	5.00	
	August	9.	Reserve	25.00	
	September	13.	H. W. Smock	10.00	
	"	22.	" " "	20.00	
20	October	16.	Reserve	25.00	110.00

Exhibit C. 16.

	November	26.	H. W. Smock	10.00	10.00
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Exhibit C. 17.

1918.					
30	April	15.	H. W. Smock	20.00	
	"	20.	" " "	5.00	
	June	6.	" " "	40.00	
	August	7.	" " "	40.00	105.00

Exhibit C. 18.

	October	25.	H. W. Smock	10.00	
	November	23.	" " "	50.00	
	December	26.	" " "	10.00	70.00

40.

\$1116.90

*Exhibit C. 2.***EXHIBIT C. 2.****IN CHANCERY OF NEW JERSEY.***Between*

GEORGE A. SMOCK,

*Complainant,**and*BUCHANON & SMOCK LUMBER COM-
PANY and HARRY W. SMOCK,*Defendants.**On Bill, &c.*

10

STATEMENT of moneys claimed by complainant from the defendant corporation and to be taken into account by the Master to whom the accounting in this cause was referred:

20

(1) Dividends declared by said defendant corporation or or about February 1, 1919, on the stock of complainant, for the year 1918, \$3560, less cash and merchandise charged the complainant on the books of the defendant corporation, which exhibit a balance due complainant as of January 1, 1920, of..... \$469.30

(2) Services, outside of regular duties, rendered by complainant to Company between May 25, 1918 and July 27, 1918..... 400.00

30

(3) Salary due from defendant corporation to complainant as President of same from August 8, 1918, to date of annual meeting in January, 1919 1650.00

(4) Dividends on the stock of complainant for the year 1919 when and as declared or earned by the defendant corporation. It is admitted, however, that inasmuch as no dividend has been declared for said year 1919, that

40

Exhibit C. 2.

claim for such dividend cannot be adjudicated in this action. Claim therefor, however, is not waived or to be considered as waived by failure to prosecute same in this accounting proceeding, but is expressly reserved.

McDERMOTT & ENRIGHT,
Solicitors of Complainant.

10

Dated June 4, 1920.

20

30

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*Exhibit D. 1.***EXHIBIT D. 1.****IN CHANCERY OF NEW JERSEY.***Between*

GEORGE A. SMOCK,

*Complainant,**and*BUCHANON & SMOCK LUMBER COM-
PANY and HARRY W. SMOCK,*Defendants.**On Bill, &c.
Statement.*

10

Statement of amounts for which said George A. Smock should account to Buchanan & Smock Lumber Co. as insisted on the part of the defendants.

20

SCHEDULE A.

Amount of moneys in the sum of \$400.00 abstracted by said George A. Smock from the funds of the Company without authority or permission, under pretense that it was due him as salary between May 25th, 1918 and July 27th, 1918.

SCHEDULE B.

Sum of \$1850.00 charged off the books of the Buchanan & Smock Lumber Co. by the said George A. Smock while he was acting both as president and treasurer of said company, without authority, permission or explanation. The items so stricken off are within the following period of time, namely: June 1st, 1915 and January 1st, 1918, aggregating the said sum of \$1850.00 or thereabouts.

30

PATTERSON & RHOME,
Solicitors of Defendants.

40

*Master's Report.***MASTER'S REPORT.**

Filed.

10 In pursuance of an order of reference made in the
above-entitled cause, by the Honorable John E. Foster,
Vice-Chancellor, bearing date the twenty-eighth day of
February, 1920, whereby it was referred to the subscriber,
one of the Masters in Chancery of New Jersey, to take
and state an account of the moneys received by the de-
fendant, Harry W. Smock, while in charge of the mill
department of the defendant, Buchanon & Smock Lumber
Company, since July 9, 1913, and of the disbursements
made by him out of said moneys so received during
said period, and also to take and state an account of the
moneys received and expended by the complainant during
the same period as treasurer of said defendant, Buchanon
20 & Smock Lumber Company, or while acting or purporting
to act in any capacity in relation to the business of said
Buchanon & Smock Lumber Company, and all moneys
due or claimed by the defendant corporation to be due
from said complainant, and all moneys due or claimed to
be due by said complainant from the defendant corpora-
tion, including said complainant's claim for wages or sal-
ary up to the date of the accounting to be made herein,
the intent of this decree being to avoid a multiplicity of
suits at law or in equity, and to embrace in this account-
30 ing all claims and demands of whatsoever character ex-
isting between said defendant corporation and said Harry
W. Smock and between said complainant and said de-
fendant corporation, and the determination of such claims
and the amount due thereon, by the said Master, under
and by virtue thereof:

I do respectfully report that I have been attended
by Mr. Frank P. McDermott, of McDermott & Enright,
Mr. Ralph E. Lum and Mr. Edward J. Kirchner (of the
Philadelphia Bar), representing complainant, and Mr. Otto
40

Master's Report.

H. Rhome and Mr. John S. Applegate representing defendants, and in their presence have considered of the matters referred to me.

I do therefore respectfully report, as follows:

It appears from the evidence that the business of the Buchanan & Smock Lumber Company comprises three departments: the lumber department, under the management of the complainant; the financial department, under the management of W. Harvey Jones, and the mill department, under the management of the defendant, Harry W. Smock. It also has a hardware department, under the management of Joseph R. Laudenslager. 10

George A. Smock was president of the company from 1913 to the time of his discharge in August, 1918. He was also an experienced bookkeeper and accountant, and had charge of the bookkeeping department of the company.

W. Harvey Jones was elected treasurer of the defendant company January 1, 1918. 20

As manager of the mill department, the defendant, Harry W. Smock, from 1913 to 1918, kept the petty cash, representing receipts from small cash sales, in a drawer in his desk. An account of the petty cash sales was kept in small books, about six inches in length and three or four inches wide, which were produced on this hearing. Usually only about \$50 was kept in this fund, and anything over \$50 was placed in the safe and called a "Reserve Fund." When the reserve fund reached more than \$100 the excess was taken over to the main office of the company and left with the bookkeeper or person in charge. 30

No objection is raised by complainant to the record of receipts in the mill department, but he does object because no record was kept of all disbursements from the reserve fund.

The so-called reserve fund was used by the defendant, Harry W. Smock, for the purpose of paying the expenses 40

Master's Report.

of employees in his department, who made trips to Vermont, Virginia, New York and other States, to estimate on jobs for the company, the expense of such trips being included in the estimate. When these men returned they would hand to Harry W. Smock a memorandum of their expenses, and the difference would be replaced by him in the reserve or petty cash fund. No itemized account was kept by the defendant, Harry W. Smock, of the money given to the employees for these trips, taken from the reserve fund. The only entries made were moneys that came in, in cash, to the mill department. The itemized statement of the men who made the various trips, after being gone over by the defendant, Harry W. Smock, were kept for a few days and then destroyed.

Harry W. Smock swears that the complainant knew of the method of keeping said accounts by him, and asked the complainant if it was necessary to keep an itemized account, and was told that it was not necessary. That the reason no entries were made in the books of moneys taken from the reserve fund was because he had on numerous occasions between 1913 and 1918 talked to complainant, who told him that they were legitimate expenses of the company, and that to keep a record meant double entry bookkeeping, and it was not necessary to keep an itemized account.

Harry W. Smock further testified that the complainant, in January, 1918, in the presence of W. Harvey Jones, told him that considerable money was being spent in the mill; that at that time everything was harmonious and no objection was made by complainant of Harry W. Smock's method of keeping the petty cash and reserve fund in the mill department, until the commencement of this suit.

W. Harvey Jones testified that complainant had charge of the bookkeeping department of the company and that he knew that Harry W. Smock had a reserve fund in the mill department ever since 1908, which was used to pay

Master's Report.

the expenses of the men on various jobs out of town, for the purposes of making measurements and estimates; that to his knowledge complainant never demanded an accounting of the petty cash and reserve fund in the mill department from Harry W. Smock until the commencement of this suit. He also swears that complainant had general knowledge of the petty cash and reserve fund in the mill department. 10

Burt W. Reid, for thirteen years employed in the mill department, testified that he was familiar with the reserve fund; that whenever there was more than \$25 in the petty cash he would turn it over to the reserve fund.

The witnesses, Joseph R. Laudenslager, manager of the hardware department, from 1913 to 1919; Henry Hall, employed by the company for eleven years, and Harry Horace Jones, clerk in the mill department since 1911, all testify that the complainant knew that cash sales were made in the mill department, and that there was a petty cash and reserve fund in the mill department. 20

The complainant testified that in 1918 he learned of the reserve fund by looking over the petty cash in the mill department and was told that when they had more money in the cash drawer than they thought ought to be kept there, it was turned over to Harry Smock, and marked "Reserve Fund," and that he had no knowledge of it until that time; that the defendant Harry W. Smock never discussed the method of carrying the petty cash and reserve fund with complainant, until his discovery in 1918, when he told defendant that he ought to keep a record of the moneys expended. 30

The complainant also knew that when the reserve fund in the mill department reached \$100, all money over that sum was sent to the main office of the company.

In order for the complainant to recover, he must show conclusively that the money has been wrongfully used or appropriated by the defendant, Harry W. Smock, to his own use. 40

Master's Report.

From the evidence it is impossible to determine what amount, if any, was used or appropriated by the defendant, Harry W. Smock. I am satisfied that every dollar which passed through the hands of the defendant, Harry W. Smock, as manager of the mill department was expended in the interest of the company and that no recovery should be had by the complainant against said defendant.

I further find and report that the evidence shows, and it is admitted by the defendants, that the complainant was entitled to dividends declared on his stock in the corporation on February 1, 1919, amounting to \$3,560; that complainant's indebtedness to defendant corporation for cash and merchandise amounted to \$3,090.70, leaving a balance due complainant on January 1, 1920, of \$469.30, and to which he is now entitled, together with interest thereon.

The next item complainant claims is that there is due him from the defendant corporation salary from the time of his discharge on August 8, 1918, to January 1, 1919.

The evidence shows that in May, 1918, W. Harvey Jones, the treasurer of the company and one of the three directors, with the consent of the other directors, left his position as treasurer, to resume the management of his hotel business in Asbury Park. His salary as treasurer was \$75 a week. In his absence his work was done for ten weeks by the complainant, who fixed his own salary at \$40 a week, or a total of \$400.

The defendants contend that this sum should not be allowed to complainant. The evidence shows that complainant, in addition to performing his duties as president of the company and manager of its business, did the work of the treasurer, in his absence; that he instructed George W. Ruding, the bookkeeper, and who was also in charge of making up the payroll, to put \$40 a week in pay envelopes, for ten weeks, which were marked on the outside "W. H. J.-G. A. S." The ten envelopes, containing

Master's Report.

\$400, were produced by complainant and opened at the hearing on January 11, 1923.

Complainant testified that he did not open the envelopes, because he intended on the return of the treasurer, at the end of the hotel season, to have the directors fix the value of his services during said period. In the meantime, and before the return of the treasurer, Mr. Harry W. Smock—a director and one of the defendants—accidentally discovered the complainant taking some envelopes from the cash register, and then, for the first time, learned that complainant was receiving \$40 a week in addition to his regular salary of \$75 a week as president. The evidence further shows that after the return of Mr. W. Harvey Jones, the treasurer, and at a meeting in August, 1918, the complainant offered to return the \$400 and leave the amount to which he was entitled for his additional work, to be determined by the directors. This was refused, and at a meeting of the directors, held the following day, he was discharged. 10 20

During the period of ten weeks that Mr. Jones was away from the office of the company, complainant did not consult the one remaining co-director, Harry W. Smock, regarding the additional salary. Mr. Ruding testified that he was directed by complainant to place \$40 a week in pay envelopes and enter it upon the payroll book. Complainant is corroborated by his co-directors, Harry W. Smock and W. Harvey Jones, as to his offer to return the money and have his additional compensation fixed by them. Harry W. Smock also admits that complainant offered to return the \$400, and that the payrolls were always open to his inspection, but that he very rarely looked at them. 30

The evidence shows that on a former occasion, between 1915, and April 1, 1917, when W. Harvey Jones left his position as treasurer of the company, to attend to his hotel business, the witness, Willard J. Sterner, was em- 40

Master's Report.

employed to do a great part of his work and received therefor a salary of \$55 a week.

I therefore find and report that in my opinion complainant is entitled to said sum of \$40 a week for ten weeks, or a total of \$400, together with interest thereon.

10 The next item is the item of \$1,850 charged off the books of the Buchanon & Smock Lumber Company by the complainant.

This sum represents the discrepancy between the company's books and the bank balance, and was discovered shortly after Mr. Jones left the company, in 1915, and which defendants claim was charged off by complainant without authority.

No mention is made in the brief of counsel for defendants of this item.

20 The proofs, however, show that every effort was made by Mr. Ruding and Mr. Parrisen, the bookkeepers, and the complainant to locate the discrepancy. There is not the slightest evidence in the case to show that complainant either took or received said sum of \$1,850, or was in any way responsible for the discrepancy. There was, apparently, a difference between the balance as shown by the cash book and the actual cash on hand and in bank, and after endeavoring for three months to locate the difference, it was charged off on the company's books by the complainant.

30 I therefore find and report that the claim of the defendants against the complainant for said sum of \$1,850 should be disallowed.

The next item is the question of the complainant's discharge as an officer and employee of the company.

The defendants' contention is that complainant was legally discharged as an employee of the company, notwithstanding the fact that he was employed by the year.

40 The discovery by Harry W. Smock that complainant was drawing \$40 a week additional salary for doing the work of W. Harvey Jones during his absence, led to a

Master's Report.

meeting between complainant and his co-directors early in August, 1918. At that meeting, and again at the meeting held the next day, complainant offered to return the \$400, which was still intact and in the pay envelopes; laid the envelopes on the table and asked his co-directors to fix his additional salary.

Mr. Jones testified that complainant offered to return the \$400 without any condition whatsoever, but that he refused to take it, on the ground that by so doing he would be compounding a felony, and the result was the passage of the resolution removing the complainant and discontinuing his salary (Exhibit C. 51), which resolution was prepared by Mr. Otto H. Rhome, counsel of the defendant company, and of which the following is a true copy: 10

“WHEREAS, It has come to the attention of this Board that George A. Smock, President of this company, has heretofore at various times during the past ten weeks misappropriated and used the funds of this company without the knowledge or consent of this Board; and 20

WHEREAS, the said George A. Smock admits of such wrongful acts but claims that he was justified in doing so by reason of extra work having been placed upon him; and

WHEREAS, this Board is of the opinion that by reason of such wrongful acts it is for the best interests of this company that the said George A. Smock be removed as such President and that his salary as such be discontinued. 30

THEREFORE, BE IT RESOLVED that the said George A. Smock be, and he hereby is, removed and dismissed as President of this Company and that his salary as such be, and the same is hereby discontinued.”

Complainant for eight months after his discharge continued to go to the office of the company and at the end of that period was told to remove his desk and effects from the office of the company. He was ready and willing at all times to perform his duties as president and 40

Master's Report.

treasurer of the company, and was unable to secure other employment for over two years after his discharge.

It is admitted by defendant (p. 222) that complainant was employed by the year; that the year expired at the annual meeting held on the third Wednesday in January.

- 10 W. Harvey Jones testified that until informed by Harry W. Smock, he was not aware that complainant was doing his work in his absence.

- 20 The reason given by Mr. Jones in his testimony for voting for the discharge of the complainant was that the finances of the company between 1915 and 1917 were in a precarious condition, and that during the same period complainant used the credit of the company, on one occasion, to buy coal; that on another occasion the credit of the defendant company was used by complainant, in financing material and labor used in the erection of a building at 511 Asbury avenue, Asbury Park, owned by his stepdaughter, and for which settlement was afterwards made by complainant, by the giving of a note and mortgage resulting in full satisfaction to the defendant company; and the Asbury Park and Ocean Grove Bank, where the defendant company had its account, refused to discount its note for more than \$500.

- 30 It appears by the resolution (Exhibit C. 51), and it is also admitted by W. Harvey Jones and Harry W. Smock, that the principal reason for discharging complainant was the appropriation of the \$400 additional compensation, without the knowledge and consent of the Board, to which complainant claimed he was entitled.

Complainant's discharge followed very shortly after his objection to the failure of the defendant, Harry W. Smock, to keep full and complete records of the petty cash and reserve fund in the mill department.

- 40 Some of the acts of mismanagement testified to by W. Harvey Jones and Harry W. Smock occurred as far

Complainant's Exceptions to Master's Report.

back as 1915; they all occurred at least a year before January 1, 1918, and yet at the annual meeting of the company in January, 1918, they both voted for the re-election of the complainant as president for one year; W. Harvey Jones, before the meeting, having promised to vote for complainant as president (p. 290), if complainant would vote for him as treasurer.

10

I therefore find and report that in my opinion complainant was discharged without good cause, and under the proofs he is entitled to his salary of \$75 a week from August 8, 1918, to the date of the annual meeting on the third Wednesday in January, 1919, amounting to the sum of \$5400 together with interest thereon from January 15, 1919.

All of which is respectfully submitted this fifteenth day of March, A. D. nineteen hundred and twenty-three.

NICHOLAS W. BINDSEIL,
Master in Chancery of New Jersey.

20

EXCEPTIONS TO MASTER'S REPORT.

Filed.

Exceptions taken by the complainant in this cause to the report made therein on the fifteenth day of March, 1923, by Nicholas W. Bindseil, Esquire, one of the Masters of this Court, made in pursuance of an order of reference by Honorable John E. Foster, Vice-Chancellor, bearing date the twenty-eighth day of February, 1920.

30

FIRST EXCEPTION.

For that the said Master has reported as follows:

"In order for the complainant to recover he must show conclusively that the money has been wrongfully used or appropriated by the defendant Harry W. Smock to his own use."

40

Complainant's Exceptions to Master's Report.

10 “From the evidence, it is impossible to determine what amount, if any, was used or appropriated by the defendant Harry W. Smock. I am satisfied that every dollar which passed through the hands of the defendant Harry W. Smock as manager of the mill department was expended in the interest of the company and that no recovery should be had by the complainant against said defendant.”

And the complainant insists that the order made by the Court in this cause required the defendant Harry W. Smock to account herein and had determined thereby that this complainant was entitled to such accounting and that the said Master was without jurisdiction to consider any equitable defenses interposed by said defendants against said accounting.

20 And the complainant further insists that the evidence and proofs offered in this cause and before the said Master showed that there were moneys which passed through the hands of the said defendant Harry W. Smock as manager of the said mill department which were not expended in the interests of the company, and for which he should be required to account.

Whereas the said Nicholas W. Bindseil, Esquire, Master as aforesaid, has not reported properly or in accordance with the terms of the said order of reference, or with the principles of equity.

30 In which said several matters and respects this exceptant prays the judgment of this Court.

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

Defendants' Exceptions to Master's Report.

**EXCEPTIONS ON PART OF DEFENDANTS TO
MASTER'S REPORT.**

Filed.

IN CHANCERY OF NEW JERSEY.

Between

GEORGE A. SMOCK,

Complainant,

and

BUCHANON & SMOCK LUMBER COM-
PANY and HARRY W. SMOCK,

Defendants.

On Bill, &c.

10

Exceptions taken by the defendants jointly in this cause to the report made therein on the fifteenth day of March, 1923, by Nicholas W. Bindseil, Special Master, made in pursuance of an order of reference dated February 28th, 1920. 20

FIRST EXCEPTION.

For that the said Master has reported that the complainant was not rightfully discharged by the defendant corporation as president thereof, and is consequently entitled to salary for his unexpired term. 30

The defendants insist that the said complainant was rightfully discharged as president of said corporation, because of his wrongful conduct, the same authorizing a termination of his employment as appears by the great weight of the evidence.

SECOND EXCEPTION.

For that the Master has reported that there is due the complainant representing back salary the sum of \$5400 which is clearly a miscalculation. 40

Defendants' Exceptions to Master's Report.

THIRD EXCEPTION.

For that the Master has reported that the complainant is entitled to compensation for extra work and services performed by him for Harvey W. Jones, the treasurer of said corporation, during the latter's absence in the sum of \$400.

- 10 The complainant insists that said finding is erroneous because it clearly appears that there was no agreement between complainant and the corporation authorizing any compensation for the services alleged to have been rendered; that said services were volunteered and without any promise of consideration, nor was there any subsequent promise or agreement to recompense said complainant. On his own authority alone and without the knowledge and consent of the defendant corporation he caused to be paid to himself the moneys in question.

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FOURTH EXCEPTION.

For that the said Master has reported that the defendant Buchanon & Smock Lumber Company is not entitled to deduct from the dividends on the stock of the corporation due complainant the amount alleged to be due and owing said corporation from said complainant, representing moneys taken by said complainant in payment of compensation alleged to be due him for services rendered in performing the duties of Harvey W. Jones, treasurer of said corporation, in his absence.

30

Whereas the said Master has not reported properly or in accordance with the evidence, these exceptants pray the judgment of the Court as to the said several matters so erroneously reported.

JOHN S. APPLGATE & SON,
Solicitors for and of Counsel with Defendants.

Conclusions of Vice-Chancellor.

CONCLUSIONS OF VICE-CHANCELLOR.

Filed.

IN CHANCERY OF NEW JERSEY.

<i>Between</i>	<i>Complainant,</i>	<i>Submitted July</i> <i>10, 1923.</i>	10
GEORGE A. SMOCK,		<i>Decided July</i> <i>25, 1923.</i>	
<i>and</i>		<i>On Bill, &c.</i>	
BUCHANON & SMOCK LUMBER COM- PANY and HARRY W. SMOCK, <i>Defendants.</i>		<i>On Exceptions</i> <i>to Master's</i> <i>Report.</i>	

Messrs. Lum, Tambllyn & Colyer, for complainant.

Messrs. John S. Applegate & Son, for defendants.

20

FOSTER, V.-C.

This is a bill for an accounting. By consent of counsel the matter was referred to a Special Master to take and state an account of all matters between the parties, as well as on all the subjects mentioned and referred to in complainant's bill.

The report of the Special Master has been filed and to it complainant has filed one exception and defendants have filed two.

30

Complainant's exception is addressed to that part of the Master's report which finds, in effect, that the defendant Harry W. Smock has not misappropriated nor failed to account for money belonging to the defendant lumber company.

For the proper consideration of the merits of the exceptions it may be well to state that complainant was president and general manager of the defendant lumber company from 1913 to about August, 1918; that the other principals, and in fact only stockholders and officers of

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Conclusions of Vice-Chancellor.

the company, were his brother, the defendant Harry W. Smock, and W. Harvey Jones.

The business of the company was divided into three departments, viz.: mill department, in charge of Harry W. Smock; the finance department, in charge of Jones, and the lumber department, in charge of complainant.

- 10 The defendant Smock had in his department a petty cash account produced from daily cash sales of small amounts; from this account Smock paid the expenses of trips of employees to estimate on contracts, etc.; the funds were kept in a desk and when they amounted to any considerable sum, not often over \$100, they were placed in a box in the safe, known as the reserve fund, and when this fund amounted to \$100 or over it was transferred to the main department in charge of complainant. The petty account was kept in small books, and the only entry of
20 money transferred from the reserve fund to the main department was made in the books of the latter department.

- 30 This system was in force for years, in both the mill and to some extent in the main department, and I am satisfied was known to complainant and was acquiesced in by him, if not expressly sanctioned, and apparently during all the years of its existence, he never questioned its accuracy until his brother and Jones attempted to oust him from his position in the company, and so far as the nature of this system shows, all moneys in the petty cash and reserve fund have been accounted for by the defendant Smock.

The proofs fully justify the findings of the Master and show that this exception should be overruled.

- 40 Defendants' first exception relates to the allowance by the Master of salary at the rate of \$75 weekly, claimed to be due complainant as president from August 8, 1918, the date of his so-called discharge, to the date of the annual meeting, January 9, 1919.

Conclusions of Vice-Chancellor.

The proofs show complainant was duly elected and employed as president of the company for the year of 1918; that defendants became dissatisfied with his services and management; they claimed he was using the credit of the company for his own benefit, by endorsing notes, etc., and by arbitrarily drawing, without authority, \$40 weekly, as salary, for performing the duties of Mr. Jones while the latter was devoting his time and attention to his personal hotel business. 10

The proofs clearly warrant the finding of the Master that complainant was entitled to his weekly salary until the annual meeting of 1919, and this exception will therefore be overruled.

Connected with the foregoing exception is the claim of complainant for \$469.30 for dividends due him for the year 1918. Defendants admit this claim but insist they should be permitted to off-set against it \$400, taken by complainant for ten weeks, at the rate of \$40 per week, to compensate him for performing additional service in managing the financial department during the period Mr. Jones was devoting his time and attention to his personal hotel business. 20

The proofs show complainant actually performed this additional necessary work, and for the time required and from its nature, the charge of \$40 weekly, which complainant made for these additional services, was not unreasonable, and the request to set-off the amount of \$400 thus withdrawn against the amount of dividends admittedly due complainant, should not be allowed, and that the exception taken thereto should be overruled. 30

*Final Decree.***FINAL DECREE.**

Filed September 11, 1923.

10 This cause coming on to be heard before the Court in the presence of Ralph E. Lum, Esq., of counsel with complainant, and Messrs. John S. Applegate & Son, of counsel with the defendants; and it now appearing to the Court that the said complainant and the said defendants have heretofore filed exceptions to the report of Nicholas W. Bindseil, Esquire, Special Master, bearing date the fifteenth day of March, 1923, and filed in this cause; and the said exceptions coming on to be heard before the Court and the arguments of the respective counsel having been heard and considered and it appearing to the Court that the said exceptions should be overruled and the report of the said Special Master confirmed;

20 It is on this eleventh day September, A. D. nineteen hundred and twenty-three, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED and the said Chancellor by virtue of the power and authority of this Court, does hereby order, adjudge and decree:

30 1. That the exceptions filed by the complainant and the defendants to the report of the said Special Master be and the same are hereby overruled.

2. That the report of Nicholas W. Bindseil, Esq., Special Master, be and the same is hereby in all respects ratified and confirmed.

3. That the defendant, Harry W. Smock, is not indebted or accountable to the defendant corporation for moneys received by him while in charge of the mill department of the said defendant corporation.

40 4. That the defendant corporation is indebted to the complainant herein in the sum of four hundred sixty-nine

Final Decree.

dollars and thirty cents (\$469.30) with lawful interest thereon from January 1, 1920, representing the balance of dividends declared on his stock in said corporation on February 1, 1919.

5. That the complainant is entitled to retain the sum of four hundred dollars (\$400) received by him from the defendant corporation as salary while performing the duties of the treasurer of the defendant corporation, during a period of ten weeks. 10

6. That the complainant herein is not accountable or indebted to the defendant corporation with respect to an item of eighteen hundred and fifty dollars (\$1,850) charged off the books of the defendant corporation.

7. That the said defendant corporation is indebted to the complainant herein for salary in the sum of sixteen hundred and ninety-three dollars (\$1,693) together with interest thereon on January 15th, 1919. 20

8. That the defendants pay to the complainant herein his costs of this suit to be taxed and a counsel fee of three hundred and fifty dollars to be included in the said bill of costs and collected with the other items of said bill.

9. That the said defendant corporation shall, within ten days after service upon it of a copy of this decree and of the taxed bill of costs in this cause, pay to the complainant said sum of money hereinabove awarded to it together with interest thereon as aforesaid and taxed costs of this suit, and that in default, thereof, an execution issue therefor according to the practice of this Court. 30

And it is further ordered, adjudged and decreed that Nicholas W. Bindseil, Esq., Special Master, be allowed the sum of one hundred dollars (\$100) in addition to his fees as allowed by law making in all the sum of three hundred and seventy dollars and sixty cents (\$370.60) and

Final Decree.

that the same be included in the complainant's bill of costs and collected with the other items of said bill.

E. R. WALKER,
C.

Respectfully advised,

10 JOHN E. FOSTER,
 V.-C.

A true copy.

JESSE R. SALMON,
Clerk.

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Notice of Appeal of George A. Smock.

NOTICE OF APPEAL.

Filed.

IN CHANCERY OF NEW JERSEY.

Between

GEORGE A. SMOCK,

Complainant,

and

BUCHANON & SMOCK LUMBER CO.

and HARRY W. SMOCK,

Defendants.

*Notice of
Appeal.*

10

The complainant, George A. Smock, hereby appeals from so much of the final decree made in the above-entitled cause on the 11th day September, nineteen hundred and twenty-three, as declares that the defendant, Harry W. Smock, is not indebted or accountable to the defendant corporation for moneys received by him while in charge of the mill department of the said defendant corporation, to the Court of Errors and Appeals in the last resort in all causes.

20

Dated September 12, 1923.

LUM, TAMBLYN & COLYER,

Solicitors for Complainant.

30

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

RALPH E. LUM,

Of Counsel with Complainant.

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Petition of Appeal of George A. Smock.

PETITION OF APPEAL.

Filed.

New Jersey Court of Errors and Appeals

10

Between

GEORGE A. SMOCK,
Complainant-Appellant,

and

BUCHANON & SMOCK LUMBER COM-
PANY and HARRY W. SMOCK,
Defendants-Respondents.

On Bill, &c.

*Petition of
Appeal.*

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The petition of George A. Smock, the appellant in the above-stated cause, respectfully shows:

30

That your petitioner finds himself aggrieved by the final decree made in the Court of Chancery, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 11th day of September, 1923, in a cause wherein George A. Smock is complainant and Buchanon & Smock Lumber Company and Harry W. Smock are defendants, in this respect, to wit: that the said decree adjudges that "the defendant, Harry W. Smock, is not indebted or accountable to the defendant company for moneys received by him while in charge of the mill department of the said defendant corporation."

40

And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous for that the evidence and proofs offered in this cause showed that there were moneys which passed through the hands of the said defendant, Harry W. Smock, as manager of said mill department, which were not expended in the interests of

Petition of Appeal of George A. Smock.

the said defendant company and for which he should be required to account.

Your petitioner therefore prays that the said decree of the Chancellor may in the particular aforesaid be reversed, set aside and for nothing holden; and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

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

RALPH E. LUM,
Of Counsel.

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Answer to Petition of Appeal.

ANSWER TO PETITION OF APPEAL.

Filed.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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Between

GEORGE A. SMOCK,

Complainant-Appellant,

and

BUCHANON & SMOCK LUMBER COM-
PANY and HARRY W. SMOCK,

Defendants-Respondents.

On Bill, etc.

*Answer to
Petition of
Appeal.*

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The answer of the above-named respondents to the petition of appeal of the above-named appellant.

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These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit, that a decree was, on the 11th day of September last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe, that the said decree so far as relates to petitioner's appeal is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

JOHN S. APPLEGATE & SON,

Solicitors and of Counsel with Defendants-Respondents.

Notice of Appeal of Buchanon & Smock Lumber Co.

NOTICE OF APPEAL.

Filed.

In Chancery of New Jersey

Between

GEORGE A. SMOCK,

Complainant,

and

BUCHANON & SMOCK LUMBER COM-
PANY and HARRY W. SMOCK,

Defendants.

*Notice of
Appeal.*

10

The defendants, Buchanon & Smock Lumber Company and Harry W. Smock, hereby appeal from so much of the final decree made in the above-entitled cause on the 11th day of September, nineteen hundred and twenty-three, as declares that the defendant Buchanon & Smock Lumber Company should pay to the complainant moneys representing salary as President from August 8, 1918, to January 15, 1919, amounting to \$1,650, alleged to be due him subsequent to his discharge from said company's employ, and from so much of said decree as declares that the said defendant should pay to the said complainant moneys representing services rendered by him in the performance of duties of one W. Harvey Jones amounting to \$400, and from so much of said decree as provides that the said defendants are not entitled to set-off against said complainant upon his claim for dividends alleged to be due him from the defendant corporation.

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Dated September 14, 1923.

JOHN S. APPLGATE & SON,

Solicitors for Defendants.

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Notice of Appeal of Buchanon & Smock Lumber Co.

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

LEON REUSSILLE, JR.,
Of Counsel with Defendants.

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Petition of Appeal of Buchanan & Smock Lumber Co.

PETITION OF APPEAL.

Filed.

New Jersey Court of Errors and Appeals

Between

GEORGE A. SMOCK,
Complainant-Respondent,

and

BUCHANON & SMOCK LUMBER COM-
PANY and HARRY W. SMOCK,
Defendants-Appellants.

On Bill, &c.

*Petition of
Appeal.*

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The petition of Buchanan & Smock Lumber Company and Harry W. Smock, the appellants in the above-stated cause, respectfully shows:

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That your petitioners find themselves aggrieved by the final decree made in the Court of Chancery, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 11th day of September, 1923, in a cause wherein George A. Smock is complainant and Buchanan & Smock Lumber Company and Harry W. Smock are defendants, in this respect, to wit: that the said decree adjudged that the defendant, Buchanan & Smock Lumber Company should pay to the complainant moneys representing salary alleged to be due him as president of said defendant company from August 8, 1918, to January 15, 1919, amounting to \$1,650, and alleged to be due him because of his alleged wrongful discharge from said company's employ, and because the said decree further provides that these defendants should pay to the complainant moneys representing services rendered by him in the performance of duties of one W. Harvey Jones amounting to \$400, and further in this, because the

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Petition of Appeal of Buchanon & Smock Lumber Co.

said decree adjudges that the said defendants are not entitled to set-off against said complainant upon his claim for dividends alleged to be due him from the defendant corporation the said sum of \$400.

10 And your petitioners humbly appeal from that part of the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous for that the evidence and proofs offered in this cause show that the said complainant was rightfully discharged as president and as an employee of said defendant corporation because of his wrongful conduct, and therefore was not entitled to compensation, and said evidence and proofs further show that the said complainant without request, expressed or implied, and without authority and without ratification performed the services for which he demands compensation, and the said evidence and proofs show conclusively that the moneys appropriated by the
20 said complainant amounting to \$400 were not due and owing him, but were the moneys of the defendant corporation, and that the defendants therefore were legally entitled to set-off said sum of \$400 against any moneys due said complainant.

Your petitioner therefore prays that the said decree of the Chancellor may in the particulars aforesaid be reversed, set aside and for nothing holden; and that your petitioners may have such relief in the premises as to
30 this Honorable Court shall seem meet.

JOHN S. APPLGATE & SON,
Solicitors for and of Counsel with
Defendants-Appellants.

LEON REUSSILLE, JR.,
Of Counsel.

Service of the within petition of appeal is hereby acknowledged this 19th day of September, 1923.

40 LUM, TAMBLYN & COLYER,
Solicitors of Complainant-Appellant.

Answer to Petition of Appeal.

**ANSWER TO PETITION OF APPEAL OF BUCHANON
& SMOCK LUMBER COMPANY AND
HARRY W. SMOCK.**

Filed.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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Between

GEORGE A. SMOCK,
Complainant-Respondent,
and

BUCHANON & SMOCK LUMBER COM-
PANY and HARRY W. SMOCK,
Defendants-Appellants.

On Bill, &c.

*Answer to
Petition of
Appeal of
Buchanon and
Smock Lumber
Company and
Harry W.
Smock.*

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The answer of George A. Smock to the petition of appeal of Buchanon and Smock Lumber Company and Harry W. Smock:

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was on the 11th day of September last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree so far as relates to petitioners' appeal, is agreeable to equity and he prays that the same in so far as relates to petitioners' appeal, may be affirmed, with costs to be adjudged to this respondent.

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LUM, TAMBLYN & COLYER,
*Solicitors for and of Counsel with
George A. Smock, Respondent.*

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New Jersey Court of Errors and Appeals

Between

GEORGE A. SMOCK,
Complainant-Appellant,
and

BUCHANON & SMOCK LUMBER COM-
PANY and HARRY W. SMOCK,
Defendants-Respondents.

On Bill, etc.

BRIEF OF GEORGE A. SMOCK, Complainant-Appellant,

Facts.

George A. Smock, Harry W. Smock and W. Harvey Jones constituted the Buchanon & Smock Lumber Company. For convenient operation the work was divided into departments. We are concerned in this case with the mill department conducted by Harry W. Smock, and the lumber department conducted by George A. Smock.

The bill was filed for an accounting and after testimony taken before Vice-Chancellor Foster, pages 1 to 84, a decree for an accounting was made, see page 87, and to avoid a multiplicity of suit at law or in equity all matters in dispute between the parties were drawn in for decision. The reference was to Mr. Nicholas W. Bindseil who, took the testimony from pages 89 to 286. He reported page 302. Exceptions to the report were taken by both parties. The report was sustained and the exceptions dismissed. Opinion of Vice-Chancellor Foster, page 315, and a decree was entered accordingly, page 318. From this decree both complainant and defendant appealed.

Complainant-appellant, George A. Smock, insists that Harry W. Smock, who was in charge of the mill department, should account for moneys taken from the defendant corporation and of which no record was kept. The specific items involved are set forth in Schedule A which was marked Exhibit C. 1, page 287. Credits to which he may be properly entitled are listed under Schedule B, page 295. The difference shows an indebtedness of \$4,320.20, for which Mr. Harry W. Smock should be held accountable. The exception to the Master's Report is found on page 311, line 40, and page 312. The petition of appeal which is to the same effect is on page 322.

There is on record undisturbed and unappealed from a definite decree for accounting, see page 87. The reference was to Mr. Bindseil:

"to take and state an account of the moneys received by the defendant, Harry W. Smock, while in charge of the mill department of the defendant, Buchanon & Smock Lumber Company, since July 9, 1913, and of the disbursements made by him out of said moneys so received during said period,"

After eighty odd pages of testimony had been taken, Mr. Applegate, who represented the defendant, Harry W. Smock, and the defendant company, said that it would be a waste of time for him to go on with the witnesses for the purpose of showing that the complainant was not entitled to an account, page 84, line 12, etc.

Much time elapsed, however, before the testimony went forward and during the passing months the Master seemed to forget that there had been a decree for accounting and he took a mass of testimony dealing with equitable defenses and various reasons why Mr. Harry W. Smock should not account and although we have a decree for an accounting we have no account at this time. We find Harry W. Smock testifying that, while he used the company's money occasionally for his own purposes and failed to make entries of substantial amounts, that, never-

theless, the complainant was denied relief, although it had been previously decreed to him.

It appears that Mr. Harry W. Smock was in charge of the mill department, kept books in which he made entries of petty cash, page 21, line 20, and pages following. They were kept under the supervision of Mr. Harry W. Smock, page 25, line 10, etc. The three separate departments were conducted *exclusively* by the three executives above mentioned, page 25, line 40; page 26, line 2, etc.

Apparently Mr. Harry W. Smock was very careful to make entries in these petty cash books as to every petty payment that was made. Apparently he must have considered the keeping of a record of cash then as of some importance. When this petty cash amounted to the sum of upwards of \$100 it was taken from the drawer and placed in a box in the safe to which Mr. Harry W. Smock alone had access and occasionally when the reserve account was larger than seemed essential, money was taken from the reserve account over to the main office where the books of the company were kept. It appears, however, that frequently Mr. Harry W. Smock resorted to this so-called reserve fund for money to pay, as he claimed, the expenses of salesmen and other incidentals. This was always taken in round sums and although salesmen to whom such sums were given upon returning from trips, paid back balances to Mr. Harry W. Smock and rendered statements of their expenses, Mr. Smock made no entry whatever of these items, destroyed the slips on which the expense was outlined and the record was in the same shape as that relating to the money taken by Mr. Harry W. Smock from the reserve account and used for his own ends and aims. This very definitely and accurately appears from the testimony. See pages 28-30-45, l. 1; 48-59-63, l. 20; 68, l. 30; 69-80, l. 20; 81, l. 1; 82, l. 15; 83, l. 30; 93, l. 10.

It seems rather absurd that one with any rudiment of business acumen should with care and precision have the

trifling items of petty cash entered in books for the purpose but should consider of no moment or importance the matter of a record of the dollars taken from the reserve account. A pressure of time and lack of opportunity might excuse the failure to make detailed entries of little items of petty cash received but nothing whatever can excuse gross carelessness and negligence involved in the failure to record transactions having to do with substantial sums taken from the reserve account.

Although a mass of testimony has been taken in this case the real issues lie within a small compass and may be dealt with with brevity.

Harry W. Smock, having failed to account, should be decreed to return to the company and the difference shown between the Exhibit A and Exhibit B above referred to.

A decree that Mr. Smock should account having been made after pages of testimony and his having failed to account for his stewardship he should not under any circumstances be relieved because he kept his records in so loose, inaccurate and incomplete a manner that the Master could not determine the amount he had used for the company and that which he had used for his own uses and purposes. To relieve Mr. Harry W. Smock from making good on any such ground would be indeed a perversion of equity. The law is settled beyond question to the effect that one who commingles his own funds with those of another inextricably must make good *in toto* and it has never yet been held in this State at least that an officer of a corporation who uses funds taken from a fund of the company partly for his own purposes and partly for those of the company, keeping no record by which a separation may be made, should escape scot-free from any liability.

Under the decree and under the state of the record the defendant Smock was clearly chargeable with all that he had been shown to have received and he is en-

titled to credit only for funds expended and proved to have been expended for the benefit of the company.

The question as to whether or not the defendant Smock should account is *res adjudicata* for there is no appeal from the decree ordering the account and that decree may not now be disregarded.

Moreover, the evidence clearly shows liability on behalf of Harry W. Smock under this head. On page 82, line 15, in reply to questions by the Court, in the middle of the page, Mr. Harry W. Smock admitted that there were items which he may have used for his own purposes or he may have used a portion on business for the firm and then he said that items since January 1, 1918, marked H. W. Smock may have been for his own personal use. He said, on page 82, line 40, that the only way in which it could be determined what amount was for expense incident to the corporation, was by his own expense account, referring to C. 19 for identification, and he repeated, page 83, that his expense account would show the absolute amount of money which he had used for the uses of the lumber company and in reply to further questions from the Court, he stated that his book or the slip or both combined would show how much he took and what he did with it.

But when we came to the actual taking of the account, there was a complete change of front and evidently realizing that an attempt to abide by his own books and records would leave him chargeable for a very substantial sum, Mr. Harry Smock failed entirely to account and sought by several witnesses to set up equitable defense of laches or estoppel and to give reasons why the complainant was not entitled to an accounting.

But even this effort, illogical, illegal and unjustifiable as it was, was wholly unsuccessful. An effort was made to show Mr. H. W. Smock's highly irregular, unbusiness-like and improper manner of conducting the petty cash

end of the mill department was known to the complainant, who ratified or acquiesced in the method of business.

As we have said, this is not a defense at the present time but even if it were to be considered as a defense, it is in no way established or sustained, pages 71, 116. Such a defense must, of course, be fully proved and the only evidence under this head was a statement of Harry W. Smock that his brother knew the way he was handling the petty cash end of the mill department. This is met by the unqualified complete denial of the complainant who said he had never looked at the petty cash books of the mill department until by chance he glanced through one in the early part of 1918, page 222, line 13; page 223. He then immediately pointed out to his brother the impropriety of this method of procedure and was promised that it would be changed and rectified.

A labored attempt was made to show, first, that other departments were conducted in a similar way and, second, to bring home notice to the complainant through other witnesses. This failed, page 74, line 1.

The proof very clearly shows that no other department of the company was conducted in any such way and that on the other hand, all the employees and officers handled the money end of the affairs of the company in a proper and businesslike way and that when cash was taken for any purpose, a proper entry was immediately made on the books. So far as other witnesses are concerned, none of them even though now employed by the defendant lumber company, made any attempt to bring home to the complainant any knowledge of how the petty cash affairs of the mill end of the business had been conducted. Two of them testified that when they needed money, they had occasionally gone to the complainant and asked for it. He at once gave it to them and charged it against the mill department making a proper entry in the appropriate book. That this is evidence to prove knowledge of the irregular method of

conducting the petty cash end of the mill department is, of course, both illegal and absurd. This would be evidence to show that the complainant realized that at certain times there might not be on hand all the petty cash needed in the mill end but it could hardly be supposed that from just that, the complainant would be expected to assume that Harry W. Smock was treating the petty cash of the mill department exactly as he would his own independent funds as to which he owned no trust or duty to anyone.

We assume that the defendant would hesitate to suggest that when employees came to the president now and then for additional cash, it should have been notice to him that his brother had dissipated the petty cash from the mill end of the business. But certainly the call of the employees could not have suggested that, for in the normal course of events, the mill end might often have needed petty cash for proper purposes when none was in hand at that department.

But in no event, could notice that the mill department needed additional petty cash be held to bring knowledge of or ratification of or approval of the highly irregular and improper method in which Harry W. Smock conducted the cash end of the mill department. No further possible effect than is argued above can be given to the testimony offered by the defendant under this head.

Clearly, any officer of any company who deals with the affairs and money of the company in the casual, irregular and careless manner pursued by Harry W. Smock must surely expect to account in the end for every cent which he cannot show by clear and satisfactory evidence was expended by him for the benefit of the company.

In a word, the defendant's method was this: petty cash was left to accumulate in a drawer until it amounted to upwards of \$100 when it was put in a separate compartment of the safe and labeled "reserve." Mr. H. W.

Smock then dealt with this reserve as one might deal with his own money in his own pocket. He has not accounted for the balance; he has not proved his defense of acquiescence, etc., nor is that defense now open to him and this exception should be sustained and a decree should go against him for the balance which he has not shown to have been used for the benefit of the company.

With reference to testimony, we refer particularly to that of Mr. H. W. Smock on a preliminary hearing before the Court, record, pages 20 to 80. Mr. Harry W. Smock testified that he used the money in question to pay the expense of employees going to distant points to take measurements, etc., and that he alone had the keys to the compartment in the safe where the reserve fund was kept so that he alone was responsible, pages 41-44. At this time on this preliminary testimony before he had been ordered to account, he was on record as having stated that he made no record of these expenditures because the complainant had told him it was not necessary. The complainant denies any such conversation, and the development of affairs which brought matters to a climax resulting in the unlawful discharge of the complainant, overwhelmingly support him in such denial.

When in January, 1918, the complainant discovered the so-called reserve fund, he called H. W. Smock to account for it and asked its meaning.

Harry W. Smock admits that after January, 1918, following a conference in the main office at which Mr. Jones was also present, after explaining the origin of the fund, he, the defendant, agreed in the future to keep the account straight and to keep a complete record of all the expenses paid, pages 44-99.

Now, there were marked in evidence, certain schedules, A, and B, marked Exhibit 1 in the Case. These schedules purport to be a list of all moneys put in the reserve fund and returned out of said fund. From this it appears that during 1918, the defendant took from the

mill cash, the sum of \$550 and put back \$175 leaving in that year a balance of \$375 unaccounted for. Yet he testified on the original hearing at great length that he entered all the payments made after January 1, 1918.

Both the defendant and his counsel admit that Schedules A and B showed the exact amount taken and returned, see page 90. Schedule A shows the amount taken as \$5,437.10, and Schedule B shows the amount returned at \$1,116.90 or a difference of \$4,320.20. These schedules are in evidence. Book, page 287, etc.

In the testimony before the Master, Book, page 82, line 15, Mr. Harry W. Smock admitted the application of company funds to his own personal use and although claiming that he put it back, he made no effort whatever to account for it, page 94, line 40.

Having been found inaccurate and incorrect in his handling of the affairs in this connection after his attention was expressly called to his dereliction and after his promise to change the method in 1918, it is readily perceived that he was unquestionably mistaken about the rest of the account.

We defy the defendant to point to any place in the testimony before Mr. Bindseil where the defendant has made any effort whatever really to account for the money taken, pages 118-121, except Book, page 150, line 33, indicates that approximately \$1,032 was turned into the main office out of the reserve fund and the storage account. As to this storage account, no accounting has been asked or called for and it has no bearing upon the matters now in question.

One who in relatively the position of a trustee, deals negligently or carelessly with the funds of another in such a way as to be unable to present an accurate accounting, is always by law charged with the full amount shown to have come into his hands.

On various dates, such as February 19, 1915, March 29, 1915, April 10, 1915, Exhibit C. 6; July 28 and

September 1, 1915, Exhibit 8; October 23, November 1, November 6, November 18, December 6 and December 14, 1915, Exhibit 9; January 3 and 29, 1916, Exhibit 10; March 29, May 4 and 20, 1916, Exhibit 11; June 28, July 10 and 17, August 12 and 30, September 11 and 15, 1916, Exhibit 12; January 15, April 18, August 9, 1917, Exhibit 14; September 22, 1917, Exhibit 15, the defendant gives himself credit for cash returned on the dates indicated. When he made these records for expenses paid from the reserve fund or cash in his hand, why did he not make a record of the other expenses which he said he paid from the fund. This picture exhibits the unsatisfactory efforts of the defendant to escape.

Certainly there must be a reversal in this case because the defendant himself admits that at the end of 1917 or first of 1918 when his attention was called to the improper method of keeping his accounts he promised to make proper entries thereafter as to everything, page 136, line 2. This, his own testimony, and the exhibit proves conclusively that he failed even as to 1918, see page 294, line 20, etc., to 295, line 12, as to the round sums taken and page 298, line 25, etc., as to the small items accounted for.

There is no law to support the opinion of the Court of Chancery that the complainant acquiesced in the failure of defendant Smock to make proper entries of moneys used nor that that course was ever sanctioned and certainly there can be nothing to support that portion of the opinion which recites that the defendant Smock had accounted for all moneys in the petty cash and reserve fund, page 316, line 30. From the time the decree of accounting was made no effort was made to account and there is nothing whatever in this record to show the amount of money which Harry W. Smock used for his own personal ends, what he did with the sums returned from salesmen and others and not one word of evidence to show that from anything the complainant knew or could have known as to the method of keeping petty cash or

reserve, that the complainant understood that the defendant Smock while keeping accurately the pennies of the petty cash was dealing with them as his own funds after they had grown into larger amounts and were transferred to the safe which was under his keeping and direction and his alone.

The decree should be reversed as to this item. Said Harry W. Smock should be found accountable for the difference between Schedules A and B which amounts to \$4,320.20.

Defendants' Exceptions. First Exception.

This deals with the Master's report to the effect that complainant was wrongfully discharged as president of the corporation and was entitled to salary for his unexpired term.

This is purely a question of fact on which the evidence is overwhelmingly in favor of the complainant. In dealing with this, we will treat also of the third exception for that is inter-related. The third exception deals with the Master's report to the effect that the complainant was entitled to \$400 as compensation for extra work and services performed by him during the time the treasurer of the corporation was absent about his own concerns. The \$400 item appears in Schedule A. It represents money taken by the complainant as salary between the dates of May 25, 1918, and July 27, 1918.

The proof shows that previous to this time in May, one J. Harvey Jones, one of the three stockholders of the company and one of its directors, left his position and abandoned the work for which he had been previously receiving \$75 a week.

There was no conflict whatever and the testimony so far as it goes shows that previously one Willard J. Sterner when Mr. Jones went to take care of his summer hotel, did a part at least of his work and received therefor a weekly wage of \$55, page 254,

line 30. It is admitted that just prior to the time of his leaving in May, 1918, Mr. Jones was receiving a wage of \$75 a week, page 276, line 4.

Apparently no provision was made for anyone to take up the work which his absence cast upon the business and the president very apparently feeling that this was both an impropriety and a wrong, instructed the book-keeper to place what he considered as a fair value for the additional work he was to do, namely \$40 a week in an envelope; to enter it on the regular weekly payroll and to initial on the envelope the initials of Mr. Jones and his, the complainant's initials and to put the envelope with the complainant's regular weekly envelope and treat it in the same way, page 224.

The complainant stated that he did not open the envelopes because he intended his procedure as a gesture that should effectively present the situation to the consideration of the directors on the return of Mr. Jones to his office at the end of the hotel season, page 225.

In January of this same year, it appears that the complainant had discovered that the defendant, Harry W. Smock, was conducting the cash end of the mill business of which he had charge, in a highly irregular and improper manner, page 222, and he, the defendant, apparently resented Mr. George A. Smock's insistence on a more businesslike method. It also appears on the closing testimony of Mr. Harry W. Smock that he had for family or other reasons, considerable personal feeling against the elder brother, page 282, line 10. It is probably a fact that this elder brother, the complainant, who had taken Mr. Harry W. Smock into the business, had established him and had enabled him to become a man of some means, instead of reaping the gratitude which was due him as a benefactor, was felt to be in the way. In any event the discovery of the \$400 item led to a meeting between Jones and the two Smocks. The complainant very clearly stated his position which was a strong one both legally

and equitably and he says that he offered to return the money and to leave the amount to which he was entitled for his additional work to be determined in any fair and reasonable way, page 227. Apparently, however, the defendant and Jones felt that they had found the opportunity for which they were seeking. Mr. Jones made some silly remark about compounding a felony and the majority of the directors then passed a resolution in evidence as C. 21. This was not the haphazard work of a layman but was a paper drawn by a careful lawyer after a consultation with Mr. Jones and Harry W. Smock. It recites the claim of the complainant, that having done extra work he was entitled to be paid for it but the board "by reason of such wrongful acts" removed the president and discontinued his salary, page 309, line 18. The whole performance was not only unwise but was legally unjustified and unjustifiable.

The sole question before the Court at this time in this connection is the value of the services performed. The evidence unchallenged and uncontradicted shows that Mr. Sterner some time before received \$55 for a portion of the work; that Mr. Jones himself was paid at the rate of \$75 a week. Mr. Sterner himself testified that \$40 was a very reasonable sum for the additional work made necessary by the absence of Mr. Jones, page 254, line 35. From the mere performance of service performed and received in good faith a promise to pay is implied, and the only evidence now in this case establishes conclusively the amount of \$40 a week as extremely reasonable.

The Master before whom all the witnesses appeared very properly found that the great weight of the evidence was in favor of the complainant both as to his improper discharge and as to his having earned the \$400 in question and exceptions one and three should be overruled.

The fourth exception deals merely in another way with the \$400 item and the complainant being clearly entitled to the amount in question, this exception was properly overruled.

We have dealt before with the item of \$400, combining it with the consideration of the salary item of \$1,693, but this phase of the matter is of such principal importance to the complainant that we desire to deal with it a bit more at length. The evidence showed conclusively that the complainant attended frequently at the complainant's office, tendered himself ready to perform his services and secured no other employment during the year that he had a complete loss of \$1,693.

On the wind up of this case, apparently counsel for the defendants realized the extreme weakness of his position with reference to this \$400 item. The overwhelming good faith of the complainant was shown by his having the item of \$40 a week entered in on the payroll in the regular way and his evidence of his desire to leave the final amount to be determined at the meeting of the directors after Mr. Jones returned was conclusively proved by his production in court of the original ten envelopes with the bookkeeper's marks thereon sealed and untampered with.

Had the other directors of the company been actuated by any sense of moderation or fairness, had their minds been in the least bit open, the situation would all have been different. They apparently made up their mind to blackjack the complainant out of the company and with a resolution already drawn, a copy of which was at the meeting handed to him, they tried to accomplish that purpose.

Of course it could never be legally held that for the president of a corporation during the absence of one of the officers to have allocated to himself temporarily a portion of the salary of the absenting officer, was a

ground for the removal of the president. Cases dealing with this situation will be hereinafter referred to.

On the final hearing, counsel for the defendants seemed to desire to get away from this weak and futile resolution as far and as fast as possible and a mass of irrelevant, tinkering, trifling, foreign details were lugged in. Reference was made to coal that had been purchased on the credit of the company, to a building built by the president's daughter-in-law, to a note on which there was a loss to the company and other such affairs.

On cross examination it developed that each and every one of the things referred to were far previous to the annual meeting of the stockholders and directors in January, 1918. And that at that meeting with knowledge of every one of these facts, George A. Smock was unanimously elected president of the corporation for the ensuing year. It, with knowledge of everything, Mr. Jones and Harry W. Smock elected the complainant president, how absurd it is when faced by the weak resolution, C. 51, page 309, to attempt to justify that act by the pre-existing situation. Clearly under the authorities and under the common sense of the situation, the complainant is entitled to the salary of \$1,693.

The fixing or not fixing in advance, of salary by directors of the company, works no magic. *Davis v. Thomas & Davis Company*, 63 N. J. Eq. 572, holds that though directors of a corporation may fix their salaries for services, they are entitled not to any arbitrary sum fixed but merely to the actual value of such services. This case has been followed to date and is a clear justification of the recovery by the complainant on the *quantum meruit* and the value of the services performed. It is of no concern or importance whether or not directors or officers fix their own salaries in advance for they are entitled in any possible event merely to the actual value of services rendered. This has become a very familiar principle in connection with income tax features of corporations.

When Mr. George Smock offered to return any amount that he had received for doing the work formerly done by Mr. Jones and to leave to the Board of Directors the determination as to the fair amount due, he did all that was fair and reasonable and there was left no shred of an excuse for his discharge.

Moreover an agreement between incorporators of a company that in consideration of their respective services to each other and the company and in consideration of \$1.00 paid by each to the other of them certain of the company's stock should be divided between them, did not preclude a recovery for services rendered by one of the parties to the agreement as an employee of the company. *Wiltbank v. Automatic Amusement Co.*, 69 N. J. Law 236.

If nothing whatever has been said or done with reference to the vacancy left by Mr. Jones when he went to attend to his own hotel business, and Mr. George Smock had performed additional labor and services for the company as he was proven to have done he could thereafter have brought suit against the corporation and recovered the fair value of those services.

On the question as to what would justify discharge of an officer of a corporation the decision in *Hexter v. Day Elder Motors Co.*, affirmed by this court, 92 N. J. Eq. 258, is the last and most significant word. That case turned on the question of an independent contractor but the law in this State is quite fully set out.

To suggest that the president of a corporation did not have the right to take temporarily compensation for the doing of additional work would be to suggest a legal absurdity. Moreover when the question as to the propriety of the course was raised, nothing could have been more sensible, fair and reasonable than Mr. George Smock's offer to have the directors fix a reasonable amount just as nothing could have been more senseless and puerile than Mr. Jones' observation as to compounding a felony.

On the question of the power of the court of equity to review the question of the reasonableness of salaries for the personal services of directors the very able and lucid discussion by Vice-Chancellor Emery in *Lillard v. The Oil Paint & Drug Company*, 70 N. J. Eq. 197, is perhaps the most complete.

Further multiplication of decisions could prove of little help for there are no legal difficulties in this case.

In the hope that it may be of some assistance, we add a brief resume of the testimony.

Mr. Hall, page 209, endeavored to establish Mr. George Smock's knowledge of his brother's irregular handling of the cash in the mill end of the business. At page 213, however, at the bottom of the page, it appears clearly that he knew nothing about the matter and his assumption was based upon his view of the integrity of Mr. Harry Smock. This is completely disposed of, page 214. Mr. Jones also attempted to bring home knowledge to Mr. George Smock, 219, and also that Mr. George Smock was familiar with the petty cash book in the mill department. It appeared, however, that Mr. George Smock's looking at the petty cash books in the mill department was very infrequent until shortly before his leaving the firm, page 219, line 36. On page 221 he admitted that before 1918 he never saw Mr. George Smock looking at a cash book over at the mill more than once a year.

Mr. George Smock testified that for the first time in 1918 in looking over the petty cash book he found charges to the reserve fund and asked what it meant, bottom of page 222. He had no previous knowledge of the system. He never approved or ratified the system at any time in any way, page 223, line 1. This witness explained that his giving needed cash to employees coming over from the mill department could give him no knowledge of Harry Smock's irregular dealing with the cash, page 223, line 35.

At page 224 this witness explains the item of \$400 which he very properly felt he was entitled to. There was no one else to do the work which Mr. Jones formerly did, page 225, line 18. The witness performed services for \$400 claimed it and is entitled to it. If he had not performed this work of Mr. Jones it would have been necessary for someone else to have done it and no one else could have been employed to do it for \$40 a week.

This witness was employed by the year. This was proved, also stipulated, p. 229, l. 35.

On cross examination, the witness testified that he first discovered the reserve fund secret in early 1918, page 231. He insisted that his brother keep a record of what the money was being used for and his brother said: "I will, I will do it," page 240, line 18. The witness did not find out that the irregular method was not corrected until after he was put out of the business, page 241, line 20. This witness kept an accurate account of all moneys kept by him in connection with the business, page 241. The witness claimed his salary as he was wrongfully discharged. The witness always made an entry of funds which he took for petty cash purposes, page 253. In 1915, he did not get extra pay for doing Mr. Jones' work because another man was employed to do it at that time, page 253, line 30.

Mr. Sterner was the man. He did Mr. Jones' work; formerly received \$55 a week for it and thought it was worth it, page 254. This witness disposed of a note item which was lugged in when the defendant realized there was no justification for the discharge of Mr. George Smock, page 255.

Mr. Ruding was in the department where Mr. George Smock was and he swore that when cash was used or taken by anybody for any purpose, there was an entry of that make in the book in the department, page 262, line 37.

W. Harvey Jones, recalled, attempted the eleventh hour bolstering up of the discharge. Even when testifying he couldn't rememeber what they were. "I jotted down a few things," page 267, line 2. Finally he says: "I think the principal reason, or the only reason, as far as I can remember now, was that he had taken these moneys." "Did you give any other reason to Mr. Smock for discharging him?" A "I think that was enough," page 270, line 34. Unfortunately for the witness, the law does not support him.

In January, 1918, with full knowledge of every previous dereliction of Mr. George A. Smock, Mr. Jones and Mr. Harry Smock re-elected him president, page 275, line 22; page 279, line 12. Nothing was said about who was to do Mr. Jones' work when he went away, page 276. He knew that someone had to do it.

Mr. Harry Smock voted to discharge his brother because he assumed to take pay for doing Mr. Jones' work and because of the way in which he had been treated for the several years last past, page 282, line 30. Certainly, the \$400 item cannot legally justify the discharge and certainly the "attitude which the president had assumed to Mr. Harry Smock" could not legally justify it. "What else did you tell him as your reason for discharging him?" A "Nothing at that time," page 282, line 37. This witness also, with full knowledge of every dereliction and shortcoming, voted to elect Mr. George Smock as president, page 248, line 10.

These questions of fact here involved must be regarded as far as possible from a jury standpoint. Many of the questions now before us should properly have been in a court of law. Based upon all the evidence now before this court, a Judge at law would be compelled to direct a verdict in favor of the complainant on every issue involved or a verdict if one had been returned by a jury in favor of the defendant on any of the issues here, would as a matter of course, be set aside as contrary to the weight of evidence.

It might be contended that as Mr. Harry Smock probably used some of the cash taken from the reserve fund for purposes of the company that it is a hardship to compel him to return it or to reimburse the company. No man, however, who as a result of his own negligence, remissness, carelessness or lack of business methods, is unable to or incapable of accurately accounting for trust funds has any just ground to complain. An officer of a corporation is a trustee bound by the law which has been wisely laid down in this State covering such a relationship.

On the other hand there is no legal authority for the proposition that an officer of a corporation must be legally held to have knowledge of negligent, careless or dishonest transactions of another officer in another department a block away.

Clearly, while in matters of charge against an accountant, the burden of proof is upon the complainant (who has established it), yet in matters of discharge, the burden is surely upon the accountant. *Kirby v. Cole*, 3 Green 441. *Brewster v. Demarest*, 3 Dick 559.

We respectfully contend then that under the proof and under the law Mr. Harry W. Smock is indebted to and accountable to the defendant corporation for the money received by him while in charge of the mill department, and that the decree of the Court of Chancery to the contrary should be reversed and a decree directed against said Harry W. Smock in the amount of \$4,320.20 and that the cross appeal of Harry W. Smock and Buchanon & Smock Lumber Company should be dismissed as the complainant was entitled to his salary amounting to \$1,693 and to the \$400 representing money received for work done in the performance of the duties of W. Harvey Jones.

Respectfully submitted,

LUM, TAMBLYN & COLYER,
Solicitors for Complainant-Appellant.

RALPH E. LUM,

Of Counsel.

New Jersey Court of Errors and Appeals.

BETWEEN	}	On Bill, &c.
GEORGE A. SMOCK,		On Appeal from Chancery.
Complainant-Appellant,		
and		
BUCHANON & SMOCK	}	Brief on Part of Defendants- Respondents.
LUMBER COMPANY, and		
HARRY W. SMOCK, Defendants-Respondents.		

Statement of the Nature of the Action.

Complainant filed his bill in the Court of Chancery to compel defendants to account for moneys received and disbursed by defendant Harry W. Smock while in charge of the mill department of the defendant Buchanon & Smock Lumber Company. Answers were filed by said defendants denying the allegations contained in said bill of complaint and denying complainant's alleged right to an accounting. Subsequently, by leave of the court, defendants were permitted to amend their answers by setting up a counterclaim against the complainant in the nature of a cross-action demanding an accounting from said complainant for moneys received and expended by him as an officer of said Buchanon & Smock Lumber Company.

The cause was finally referred to Vice Chancellor John E. Foster and upon the conclusion of first hearing before said Vice Chancellor held November 28th, 1919, by consent of all parties interested, decree for accounting was directed as between all the parties, the intent being as stated in said

decree to avoid a multiplicity of suits at law or in equity, and for that purpose said accounting to embrace all claims and demands of whatsoever character existing between said defendant corporation and Harry W. Smock, and between said complainant and said defendant corporation. (See printed case, page 87).

The dispute between the several parties was finally limited by stipulation to the following matters: (See case page 287, Exhibit C-1, C-2, and Exhibit D-1).

(1) Moneys received and disbursed by defendant Harry W. Smock while in charge of mill department of the defendant Buchanan & Smock Lumber Company between February 6th, 1914 and December 26th, 1918.

(2) Dividends declared by said defendant corporation on or about February 1, 1919, on the stock of complainant, for the year 1918, \$3,560., less cash and merchandise charged the complainant on the books of the defendant corporation, which exhibit a balance due complainant as of January 1, 1920, of...\$ 469.30

(3) Services, outside of regular duties, rendered by complainant to Company between May 25, 1918 and July 27, 1918\$ 400.00

(4) Salary due from defendant corporation to complainant as President of same from August 8, 1918, to date of annual meeting in January, 1919\$1,650.00

(5) Dividends on the stock of complainant for the year 1919 when and as declared or earned by the defendant corporation. It is admitted, however, that inasmuch as no dividend has been declared for said year 1919, that claim for such dividend cannot be adjudicated in this action. Claim therefor, however, is not waived or to be considered as waived by failure to prosecute same

in this accounting proceeding, but is expressly reserved.

(6) Amount of moneys in the sum of \$400.00 abstracted by said George A. Smock from the funds of the Company without authority or permission, under pretense that it was due him as salary between May 25th, 1918 and July 27th, 1918.

(7) Sum of \$1,850.00 charged off the books of the Buchanan & Smock Lumber Co. by the said George A. Smock while he was acting both as president and treasurer of said company, without authority, permission or explanation. The items so stricken off are within the following period of time, namely: June 1st, 1915 and January 1st, 1918, aggregating the said sum of \$1,850.00 or thereabouts.

The order of reference was to Nicholas W. Bindseil, Esq., and after considerable testimony taken (See case pages 20-286), the said Master filed his report finding that no recovery should be had by the complainant against the defendant Harry W. Smock as to the former's claim that the said defendant had misappropriated funds of the defendant corporation while in charge of the mill department; that complainant was entitled to recover as to his claim for dividends on stock of the defendant corporation the amount due being \$469.30; that complainant was entitled to recover his claim for salary for services performed by him outside of his regular duties amounting to \$400.00; that complainant was entitled to recover on his claim for salary accruing subsequent to his alleged wrongful discharge, namely, from August 8th, 1918 to January 15th, 1919, amounting to \$1,650.

The Master declined to permit defendant corporation to deduct from complainant's claim for dividends on stock of the corporation the amount claimed and taken by complainant, namely, \$400.-

00, representing salary for additional services claimed to have been rendered by him.

Exception was taken on the part of the complainant to the finding of the Master denying any recovery to complainant for alleged misappropriations on the part of defendant Harry W. Smock. (See case page 311).

On the part of the defendants exceptions were taken to the Master's report to all his findings other than that complainant was not entitled to recover for alleged misappropriations on the part of the defendant Harry W. Smock. (See case page 313).

Argument on said exceptions was heard before Vice Chancellor John E. Foster July 10th, 1923, and conclusions of the Vice Chancellor were filed July 25th, 1923 overruling all exceptions and confirming the Master's Report. (Case page 315). Final Decree was signed September 11th, 1923 (case page 318) from which Decree complainant and defendants have appealed.

I.

COMPLAINANT'S APPEAL.

The complainant insists that he is entitled to an accounting on the theory that defendant Harry W. Smock in charge of the mill department of defendant's Company had wrongfully used the funds of said Company for his personal benefit and from which the Company derived no advantage.

It appears from the proofs that defendant Company was engaged in the lumber and mill business at Asbury Park and had been for many years. It was re-organized in 1900 and from that date until 1918 complainant was president and from 1914 to 1918 treasurer, excepting a period of about one year. (Case 91). Complainant and defendant Harry W. Smock were brothers. The

stockholders were complainant, defendant Harry W. Smock and W. Harvey Jones, each owning one-third of the stock. In August 1918 complainant, by vote of the directors, was ousted as an officer of the Company (case page 267) the result of alleged mismanagement on his part of the affairs of the corporation, using the Company's credit in furtherance of his private interests (case page 267) and appropriating moneys of the Company in the form of salary for extra services rendered by him without authority of the Company or the knowledge of his fellow officers. (Case pages 266-276). After Complainant's discharge W. Harvey Jones was elected Treasurer and financial man of the Company (case page 181) and Harry W. Smock president.

Some time in the year 1918 complainant, as he testifies, in a conversation with Harry W. Smock, his brother, objected to the system of bookkeeping employed by the latter in his department (case page 222, 223, 240), although defendants contend that it was known to complainant for years before that time. Nothing further was said or done by complainant nor any request made for an accounting until after his discharge from the Company and just prior to the commencement of this suit. (Case page 241, lines 10-30). The system complained of had been in use since the re-organization of the Company in 1900 (case page 101, lines 1-25; page 101, lines 2-30).

The business of the defendant Company was divided into three departments, the hardware or lumber department in charge of complainant, who was also general manager, the finance department in charge of W. Harvey Jones, and the mill department in charge of defendant Harry W. Smock. (Case page 25, line 30; page 35, line 20; page 33, line 1). The latter department was not in the same building with the others, but a block away. (Page 33, line 10; page 233, line 20).

The defendant Smock in the conduct of his de-

partment had a petty cash account representing the receipts of cash payments made to his department daily, which were inconsiderable in amount. (Page 37, lines 25-30; page 38, lines 15-40). The moneys representing this account were kept in a drawer of a desk. Entries of its receipts were made in the so-called petty cash book (page 39, lines 10-20). When there had accumulated in this account \$25.00 or \$50.00 a greater part of it was transferred to a box kept in a safe in the mill department, which fund was known as the reserve fund and which as a rule was not in excess of \$100.00. (Case page 40, lines 1-40; pages 27 and 28; page 100, line 11). When it did reach more than that sum the excess was taken over into the so-called "main department" presided over by the complainant, and there left with the bookkeeper or cashier, and an entry made in the cash book of the main department. (Page 42, lines 10-40). An account of the petty cash received in the mill department was kept in so-called petty cash books, namely, small books some five or six inches in length and three or four inches wide, and an account was kept of the amount taken from the petty cash account and placed in the reserve fund, and the only record of the moneys taken from the reserve fund and deposited with the main department was that of an entry in the cash book of the main department usually made by the party making such deposit. The so-called reserve fund was kept by defendant Smock as a cash supply ready at hand out of which were paid expenses of his department, mainly represented by trips of the Company's employes made necessary in estimating contracts and jobs and upon which the Company was preparing estimates for bids. Sometimes these journeys required long trips, e. g. New York, Vermont, Pennsylvania, Virginia and other states. (Case page 36, line 25). Defendant Smock would hand the employe cash from the reserve fund sufficient to meet his ex-

penses (case page 40, line 25), and these moneys were expended by said employe as aforesaid, and if upon his return there was a balance remaining he repaid it to defendant Smock who returned it to either the reserve fund or the petty cash drawer. When moneys were taken from the reserve fund and given to employes to meet their expenses no record was made of it. (Case page 41, line 22).

The origin of the system apparently arose from the fact that the mill department was a block away from the main department and cash being required to meet the travelling expenses of employes it was more convenient to have a cash balance at hand in the mill department. (Case page 72). This petty cash and reserve fund system had been in force since 1900, was known by complainant, and no exception to it had ever been taken by any person until 1918, when according to the evidence the complainant says he first discovered it and talked with defendant Smock concerning it and objected to it.

The proof shows that during the several hearings before the Master to whom the accounting had been referred, the defendant Harry Smock as well as the Company itself produced all books used in the mill department with the exception of the period between April 16th, 1915 and June 11th, 1915, which books could not be found. (Case page 25, lines 1-10). In all, these books covered the period from October 20th, 1913 to November 25th, 1919 (Case pages 22, 23, 24) and are represented by Exhibits C-1 and C-18 inclusive. (Case pages 287 to 298). As already intimated the books showed no disbursements from the so-called reserve fund. They did show daily cash receipts in the mill department and expenditures from the cash drawer including moneys taken therefrom and placed in the reserve fund kept in the safe and moneys paid from the reserve fund to the main department.

The principal ground of complaint made by the complainant was that no record was kept of the payments out of the reserve fund. The system concededly was imperfect. The explanation of its existence as well as its excuse was the fact that it had been in vogue since the re-organization of the Company in 1900 (Case page 101, lines 2-30), and no complaint or objection had ever been made on the part of any person to its continuance, notwithstanding the officers of the Company as well as its employees had actual knowledge thereof.

Complainant's appeal should be dismissed. The proof shows that complainant actually and tacitly acquiesced in the bookkeeping system of which he now complains, and defendants have accounted so far as is possible under such system.

We submit that the preponderance of the evidence shows that complainant Smock acquiesced in and accepted the system of bookkeeping employed in the mill department, and that defendants so far as is possible under such system at this late day have accounted for all moneys received and disbursed through the mill department. Complainant was fully cognizant of the existing system and in part employed the same in his own department, nor did he ever make any complaint until a personal difference had arisen between him and defendant Smock and W. Harvey Jones, the other director of the Company, resulting finally in the ousting of complainant as president and as a member of the board of directors, and in the severance of complainant's business relations with the Company.

The complainant had charge of the bookkeeping department of the corporation (Case page 37, line 22). On numerous occasions during the 18 or 19 years prior to the commencement of the suit defendant had talked with his brother, the complainant, concerning the system in question, and particularly as to making entries in the cash

books of the mill department of the moneys taken out of the so-called reserve fund in the safe, and defendant testified—"It was his instruction that it was not necessary; they were legitimate expenses of the concern, and that it meant double bookkeeping, and was not necessary to itemize those accounts and keep them. (Case page 41, line 35; page 42, lines 1-10).

Again at pages 70 and 71 defendant testified the complainant knew of the system of bookkeeping in the mill department.

Again at page 77—"I asked him in reference to these amounts. He knew perfectly well, and has known for years, that I was using the moneys received from there for the expenses—the legitimate expenses of the Buchanon & Smock Lumber Company; he knew also that we didn't keep all the moneys we had there; he knew we kept a portion of it in the safe; whether that was referred to by him or me, either one, as a 'reserve,' I cannot say, because I really want to tell the truth, but he knew that I was carrying these amounts." * * *

"The Court: How do you know it? You say 'he did know it. Tell us how you think he knew 'it.

"The Witness: Because he knew we were spending this, that my men were making trips that cost—he knew, \$50, \$75 or \$100 at a time, and he knew that I took the money from there to pay their expenses and to give them that money, and he never asked an accounting of me as to how much I gave them, nor as to how much they spent, and when I asked him, as I stated before, whether it was necessary for me to keep that separate, he said, no, it necessitated additional bookkeeping, which was unnecessary.

"The Court: Was he in close touch with your department and its operation, to know what was going on there all the time that these expenses were being incurred?

"The Witness: Yes, sir."

Complainant knew that employes of the Company representing the mill department were going about the country making estimates on contracts. He knew that the expenses of these employes had to be paid them and he knew that if they were not paid out of the funds of the mill department they would have to be paid through the main department, and the latter rarely happened, if ever. (Case pages 78, 79).

No audit of the mill department was ever made.

"The Court: Were these books ever audited in connection with the general books of the Company?"

"The Witness: Not to my knowledge.

"The Court: Did you actually render a statement of these books or the transactions connected with the petty cash and reserve fund to the corporation?"

"The Witness: No, sir.

"The Court: At no time?"

"The Witness: No, sir; I was never asked to." (Case pages 48 and 49).

"No report at any time during the year of the operation of the mill department was made to the Company. (Case page 79).

"By the Court: Was anything ever said about this financial statement, as to the result shown by your department, or any dissatisfaction expressed with it, or the receipts or disbursements of money in connection with it?"

"The Witness: No, that was never complained of. There were years when the department didn't make a good showing, and naturally we all felt it.

"The Court: I am speaking now about the manner of the receipt and disbursement of money and the manner in which the department was conducted.

"The Witness: None whatever. (Case, pages 79 and 80).

No complaint whatever was ever made before

1918. (Case page 44, line 21; page 72, line 10).

Again at page 98, line 20—

“How do you know he knew it? A. Because
“not once but many times, in conversation with
“him, I asked him if he thought it was necessary
“to keep a detailed itemized account.

“Q. Of what? A. Of the moneys handled
“there at the mill department.

“Q. Are you including the petty cash fund and
“the reserve fund, so called? A. I am including
all the cash.”

Again at page 99, line 3—

“Q. Did he ever, prior to the commencement
“of this suit, ask you to render or keep any such
detailed account?

“A. Never but once.

“Q. When was that?

“A. That was in December, 1917.

“Q. What was the occasion? A. I was over
“at the office one day and he had some figures
“that he had evidently compiled, and he said,
“‘You are spending a lot of money over there
“‘at the mill,’ and he said, ‘What do these items
“‘mean?’ He referred to the reserve so marked
“in this exhibit, and I explained them to him.

“Mr. McDermott. I understand this line of
“testimony is all subject to my objection.

“Q. What did he say? A. I asked him if he
“thought there was any question about it, the
“way they were handled, and he said no, he just
“wanted to know what they were, and he said it
“seems to be a lot of money for expense over at
“the mill.

“Q. You told him what they were? A. I did,
“as near as I could.

“Q. Did he ask you at any time to keep any
“different account?

“A. He did not ask me; I told him if it was
“best to keep an itemized account, I would be only
too glad to do it.

“Q. What did he say? A. I don’t recall whether he did say to or not.

“Q. Did you? A. I did.

“Q. From that time you kept them? A. I tried to keep an accurate account from that time.

“Q. Does that include your petty cash as well as your reserve fund? A. Yes.

“Q. So that you kept as accurate account as you could, according to your statement, from December, 1917, on?

“A. Yes.” (Case page 99, lines 10-40).

Burt W. Reid testified in behalf of defendants, (See case page 194) that he was in the employ of the defendant company for some thirteen years, leaving its employ about six years before the commencement of the suit. He was in the office of the mill department for some ten years. He was familiar with the so-called reserve fund and explained it in detail. (See page 194, line 30). He explained the manner of disbursing funds from the reserve fund, that is, payments to employes taking trips in various states for the purpose of making estimates. Witness was one of such persons. (Page 195). Practice had prevailed for a long time.

Joseph R. Laudenslager, likewise a witness for the defendants, testified he had been in the employ of the defendant Company for 32 years. (Page 201). He was manager of the hardware department. (This was the department of complainant). That cash sales were made in that department and at first an entry was made in a book kept for that purpose known as a petty cash sale book, but later a drawer was used in which receipts of cash sales were placed. This must have been four or five years ago. Moneys from this fund were used by witness, namely, purchase of merchandise which Company did not have on hand at the time, payment of freight &c. No record was made of the disbursement of moneys

from that drawer fund. (Page 202, line 12). (See also pages 204 and 205).

“Q. Do you know whether George Smock knew of that system?

“A. He did.

“Q. How do you know he did? A. Because he told me to do it.

“Q. He told you to do what? A. To pay out “small sums; if any expense came in to pay it out “of the drawer.

“Q. Did he tell you to keep any account of “that?

“A. No, sir.” (Case page 203, line 10).

Largest item ever paid out by witness of the petty cash fund was \$10. to \$12. (Case page 207, line 12).

Henry Hall, for the defendants, testified, he had worked for the defendant Company 11 years, starting in 1912 and since 1914 had been in charge of the estimating and scheduling and getting out of materials upon jobs. (Page 208). He traveled all over the east in relation thereto. He was familiar with the system of bookkeeping kept in the mill department. He described the reserve fund in detail. (Page 209). That the complainant knew of such system and witness referred to it in a conversation he had with complainant when he made application to him for expense moneys, there not being sufficient in the reserve fund to accommodate him. (Case pages 210, 214).

Witness on cross examination at request of complainant's counsel turned to a cash book of the Company and showed to counsel an item of \$125.00 made in the hand-writing of defendant Harry W. Smock showing payment from the reserve fund to the main department. The words “Reserve Fund” did not appear, but the entry showed that the moneys came from the mill cash. (Case page 211, 212, and 213).

Horace Jones testified for defendants he had been in the employ of the defendant Company

since 1910. His duties were in general clerical duties in the mill department. (Case page 216). He was familiar with keeping the petty cash books, taking in the majority of the cash on cash sales. That he kept a record of the cash disbursed as well as that received. It amounted on the average to \$5. or \$6. a day. He also testified as to the reserve fund and its uses. (Page 217). That the system was in vogue all the time he was there. The travelling expenses of employes were paid out of that fund. (Page 217). Sometimes they were required to go as far as Vermont; that complainant knew of the system.

Witness had often seen complainant in the mill department, had seen him going over the books of that department. Saw him looking over the petty cash books just before Mr. Smock left the firm; had seen him very frequently examining the mill department's books. Previous to that had been in frequently. (Page 219, lines 20-40). Complainant knew that the mill department was making cash sales and that moneys were not daily taken from the mill department. (Page 220).

W. Harvey Jones, stockholder and treasurer of the Company, (page 18) testified for the defendants. He was familiar with with the system of bookkeeping of the Company. (Page 181). That the complainant had the oversight and supervision of the bookkeeping department and his business was that of bookkeeper. Complainant was familiar with the system of bookkeeping of the Company and never made any suggestions as to change in it. (Page 182, line 15).

Witness was familiar with the system of bookkeeping of the mill department as maintained by defendant Harry Smock. Knew of the reserve fund and its uses. (Page 182, lines 30-40). The practice has been maintained for a great many years, certainly since 1908. (Page 183, lines 10-20). Its origin was due to the necessity of the mill department having moneys on hand to meet

the expenses of sending out representatives of the Company in making measurements and getting estimates, and saved the time and trouble of going over to the main office to get cash which was a block away. (Page 184, line 25). That complainant must have known of the system. (Page 184, line 1). No demand for an accounting had ever been made by complainant prior to the commencement of the suit until after his discharge from the Company. (Page 184, line 20). Witness never heard of any complaint being made by any person in reference to the system maintained in the mill department. (Page 185, line 10).

No corroborative evidence was offered on the part of the complainant to contradict defendants' proof as to the system of bookkeeping maintained in the mill department and complainant's knowledge thereof. Complainant testified that he had no knowledge thereof until 1918 when he called Harry Smock's attention to it and objected. (Page 222). But he admitted that upon occasions men from the mill department applied to him in the main department for moneys to meet traveling expenses (page 223, line 30), and he knew that the expenses of such trips were met from the mill department moneys out of the cash account. He never made any request of the mill department for itemized statement. None was ever presented to him. (Page 233, line 10).

Petty cash books in the office of defendant Smock refer in terms to reserve fund which in itself was sufficient to put complainant upon inquiry as he had at different times examined the books, and being an expert bookkeeper could not have helped but observe the designation of the fund. (Page 102, line 25). Also he must have known that a fund of that nature was in existence in the mill department by reason of the fact that moneys were brought at intervals from that department to complainant and there deposited. He

knew that there were no cash sales in the mill department amounting anywhere near to the amounts so deposited, and also being brought to him at intervals only he must have known that said deposits did not represent daily cash sales. He himself says he never complained, but because he never knew until 1917 or 18, and upon learning immediately objected. (Page 240, lines 1-30). That while he thinks he made known his objections at a meeting of the directors (page 240, line 20), yet he didn't think it of sufficient importance to have noted in the minutes (page 241, line 10), nor did he make any effort to ascertain if the system he objected to was discontinued. (Page 241, lines 25-40).

Complainant was the head of the Company. He virtually conducted it as he saw fit and most arbitrarily. He used the credit of the Company for his personal advantage. See his own testimony on cross examination (Case page 244, line 10). See also the testimony of Jones (Case pages 267, 268, 269, 270, 271), and Harry W. Smock (Case pages 280, 281, 282 and 283). Gave the Company's guaranty for the payment of his coal bill of some \$500. without authority. He was interested in building a house for his stepdaughter and some of the bills of the contractor were credited on the account of the contractor with defendant Company and charged to the stepdaughter, (Case page 245, line 10), and after objection by the treasurer of the Company complainant gave his note to the Company in settlement. (Case page 245, line 30). A shortage on the books of the Company which had been running for some time amounting to \$1850.00, the origin of which could not be ascertained, was charged off the books of the Company by complainant without authority of the Company, nor was the matter brought to the attention of the directors. (Case page 243).

Complainant assumed to perform services of the treasurer W. Harvey Jones in the latter's ab-

sence in the year 1918 and without authority from the Company and without its knowledge caused its name to be placed on the Company's pay roll and directed the employe in charge thereof to pay him \$40.00 a week for extra services. (Case pages 224, 234, 235).

In such absolute control of the affairs of the Company as the above incidents indicate, is it unfair to conclude that complainant must have known of the system which he now attacks?

The conclusion from all the evidence is unavoidable that complainant Smock knew of the petty cash and reserve fund system and its inaccuracies of which he now complains.

Knowledge on his part is material because if he did know, or through ordinary diligence should have known, and without objection permitted such practice, he is now estopped from holding defendants to a strict accounting—that is to say, from requiring them to show by a preponderance of the evidence where every dollar of the money paid out of the reserve fund went, and holding them strictly responsible and liable for expenditures which they cannot to his satisfaction at this late day explain.

The bookkeeping system of all the departments, as clearly appears from the proofs was not what it should have been, and particularly that of the mill department, but it is inequitable and unfair at this late day, after the system complained of had been in vogue for many years to the knowledge of all persons interested, including the complainant, to undertake to hold the defendants or either of them responsible, not only for moneys which have not been proven to have been mis-spent or misappropriated, but for their inability, through the inaccurate bookkeeping system employed, to accurately account for all expenditures.

But whether complainant had knowledge or not, the proof shows that defendants have honestly and to their best endeavors made a complete

and exhaustive account so far as they were able. There were no records kept of the moneys paid out of the reserve fund to any extent other than the moneys that were paid into the main department. It is an utter impossibility for the defendants to account further than they have. They have told of the system in vogue, they have told how the money was spent and for what, they have furnished all the records in their possession, and their evidence has been corroborated by their employes familiar with the subject, some of whom actually expended the moneys in question. What more can they do? The complainant must, as part of his affirmative proof, show that some moneys have been wrongfully used or misappropriated. The proof falls far short of this. In fact, we submit it shows affirmatively that the defendants were honest, whatever may have been their system of bookkeeping, and that every dollar expended by them was expended in the interest of the Company.

The Master reported "From the evidence it is impossible to determine what amount, if any, was used or appropriated by the defendant Harry W. Smock. I am satisfied that every dollar which passed through the hands of the defendant Harry W. Smock as manager of the mill department was expended in the interest of the company and that no recovery should be had by the complainant against said defendant."

The Vice Chancellor in his conclusions, comments—"This system was in force for years, in "both the mill and to some extent in the main department, and I am satisfied was known to complainant and was acquiesced in by him, if not "expressly sanctioned, and apparently during all "the years of its existence, he never questioned "its accuracy until his brother and Jones attempted to oust him from his position in the "company, and so far as the nature of this system "shows, all moneys in the petty cash and reserve

“fund have been accounted for by the defendant Smock.

“The proofs fully justify the findings of the Master and show that this exception should be “overruled.” (Case page 316).

II.

FIRST GROUND OF APPEAL ON PART OF DEFENDANTS.

Complainant claimed from the defendant corporation salary, \$1650.00, due him as President from August 8th, 1918 to the date of annual meeting, January 15th, 1919, and the Master reported in favor thereof. Exception to said report was overruled, from which finding defendants appeal.

It appears from the proofs that complainant was elected president of the Buchanon & Smock Lumber Company for one year at a salary of \$75.00 a week, his term of office expiring January 15th, 1919. He was discharged August 8th, 1918. The reasons for his discharge according to said proofs were as follows: (See complainant's own testimony on cross examination, page 245, line 10).

He gave the Company's guarantee for the payment of his coal bill of some \$500.00, without authority.

He was interested in building a house for his stepdaughter, and some of the bills of the contractor were credited on the contractor's account with the Company and charged to the stepdaughter (Case 245, line 10), and after objection by Mr. Jones, the Treasurer of the Company, complainant gave his note to the Company in settlement of said bill (Case page 245, line 30).

A shortage on the books of the Company which had been running for some time amounting to \$1850.00, the cause of which could not be ascertained, was charged off the Company's books by

complainant without authority of the Company, and without its knowledge, nor was the matter brought to the attention of the directors. (Page 243).

Complainant assumed to perform services of the treasurer, W. Harvey Jones, during the latter's absence in the year 1918, and without authority from the Company, and without its knowledge caused his name to be placed on the Company's pay roll, and directed the employe in charge thereof to pay him \$40.00 a week as extra services. (Case 224, 234 and 235).

See also the testimony of W. Harvey Jones, at pages 267, 268, 269, 270 and 271, giving the above incidents as a ground for complainant's discharge. To the same effect is the testimony of Harry W. Smock. (Pages 280, 281, 282 and 283).

In addition to the foregoing grounds of discharge defendants' witnesses testified that under complainant's management the business of the Company had fallen off. Its line of credit had been greatly reduced and its letter of credit with the New York & Long Branch Railroad Company had been cancelled. Creditors of the Company were unpaid and threatening suits.

At a meeting of the Board of Directors held on or about August 5th, 1918, a resolution was passed discharging complainant. The resolution stated as the ground for complainant's discharge his alleged misappropriation of the Company's funds, namely, without authority of the Company complainant placed his name upon the Company's pay rolls as entitled to receipt of \$40.00 a week for services rendered by him during the absence from the office of the Treasurer.

It is submitted on the part of the defendants that the Company was justified in discharging complainant from its employ assuming the truth of the charges made against him. If complainant failed in his duties, misconducted himself, exceeded his authority in the manner set forth, it

was such a wrong-doing on his part as warranted his discharge, and of course if rightfully discharged he was no longer entitled to salary. Whether the facts given as the reasons for complainant's discharge were true is to be determined from the proofs, and we submit that the defendants have sustained the burden of proof in that respect. The proofs are ample on that question, and in part corroborated by complainant himself.

Some point was made at the taking of proofs that under the resolution passed by the Board of Directors directing complainant's discharge, the only cause alleged was the misappropriation of the Company's funds whereas at the hearings evidence was offered to prove other grounds.

Defendants were not precluded in their endeavors to justify said discharge by the reason set forth in the resolution. (See *Allen v. Aylesworth*, 58 N. J. Eq. 349, the syllabus reading—"The fact that employers when discharging an employe gave certain reasons therefor at the time, does not prevent them from assigning additional reasons in an action for such discharge.")

"The motives which actuate a master in discharging a servant are wholly immaterial if any legal ground exists for such discharge, and it is immaterial whether or not all or any of the grounds were known to the master when he discharged the servant, neither is it necessary for him to assign a reason for the discharge, nor is he estopped to rely upon some other or different reason whether known to him at the time of the discharge or not."

"Any act of a servant which injures or has a tendency to injure his master's business, interests or reputation will justify his dismissal. Actual loss is however unnecessary, but it is sufficient if from the circumstances it appears that the master has been or is likely to be damaged by the act complained of."

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Considering the evidence, it is submitted that complainant was rightfully discharged and not entitled to salary from and after the date thereof.

III.

SECOND GROUND OF APPEAL ON THE PART OF DEFENDANTS.

There is also included in complainant's demand for accounting an item of \$469.30 which the complainant says is due him as dividends declared by the defendant corporation on complainant's stock for the year 1918, after having deducted the amount of complainant's indebtedness to the Company. This item is admitted by the defendants, but it contends that it should be permitted to offset against said sum of \$469.30 the sum of \$400.00 for which it brought suit against complainant in the Monmouth Common Pleas, and representing moneys taken by complainant from the Company's treasury as salary due him for extra services rendered the Company made necessary by the absence of W. Harvey Jones, Treasurer. This claim was included in defendants' counterclaim (Case page 16) and in the reference for accounting (Case page 87).

It appears by the proofs that in 1918 W. Harvey Jones, Treasurer of defendant Company, with the consent of the board of directors and the officers of the Company, left active supervision of the affairs of the Company to take care of certain hotel interests of his own during that summer. (Page 224, line 15). That he might do so was agreed to at the time he became associated with the Company. (Page 266, lines 20-40; 233, line 35). That complainant during Mr. Jones' absence performed in part some of Mr. Jones' duties, and he conceived the idea that he was entitled to remuneration in addition to what he was already receiving as president of the Company which was \$75.00 a week, so he gave himself a salary of

\$40.00 a week additional, and he says he thought he had the right to do this as president of the Company. (Page 234, line 18). Complainant had performed Mr. Jones' work at other times when the latter was absent under similar circumstances with ^{out} compensation. (Page 234, line 5). He never mentioned it to the directors, nor did they ever give him permission so to do. (Page 234, line 15; 235, line 25). Complainant admits that he did it on his own authority only.

"The Master: Did you call to any one's attention, except Mr. Ruding, the fact that you were receiving these envelopes containing \$40. a week?

"The Witness: I did not.

"The Master: Why not?

"The Witness: I didn't think it was necessary, and as I said before, I propose to take it up later with the directors.

"Q. Why didn't you go before the directors and take it up with them before you authorized the bookkeeper to pay you this money? A. Because we had no meeting.

"Q. Why didn't you call a meeting; you were the president?

"A. I didn't think it was necessary.

"Q. Why didn't you think it was necessary?

"A. Mr. Jones was looking after his hotel, and I thought when he came back and got through there it would be time enough.

"Q. Why didn't you wait, before taking the money, until that time? A. I kept the money; what is the difference?

"Q. If you were going to keep the money, why didn't you leave the money in the concern? A. Because I didn't, that is all?

"Q. Why didn't you? You were not using the money, were you?

"A. No.

"Q. Then why didn't you leave it in the company?



