is that plaintiffs were unable to pay the amount at the time he says he became entitled to it. But they were not in any better position in 1893; on the contrary, their liabilities were steadily growing if I read the records rightly. It was argued that defendant's statements and his belief in this claim as expressed in his evidence are corroborated by the evidence of the person who was vice-president of the company during several years. To my mind the credibility of the latter is seriously affected by his lack of candour and what I believe was untruthfulness in his answers to enquiring shareholders, when, in reply to enquiries about the affairs of the company after the turning over of the mortgaged assets to the mortgagees, he declared he had years before severed his connection with the company, whereas the records shew that he attended meetings of the directors and of the so-called finance committee down to March, 1900, and as vice-president signed the minutes of the meetings, and further that some time after the company's assets had disappeared he was one of the signers of a circular letter setting forth that the company's assets had been wiped out by its liabilities. This circular is said to have been sent to the shareholders in 1902.

In view of all the circumstances, I do not think this credit taken by the defendant can be upheld as against the plaintiff company; the latter having paid the amount are entitled to recover it.

The next item of claim is based on the allegation that defendant unlawfully credited his account with items of commission and interest to the extent of about $3,000 and that such credits were paid him by plaintiffs. By by-law No. 7, passed on July 26th, 1882, defendant's compensation as manager was fixed at $2,000 per annum commencing on April 1st, 1882, and 5 per cent. upon the net profits of the company from year to year during the term of service.

By-law 22, passed on March 9th, 1886, which repealed by-law No. 7, fixed his salary at $2,000 per year, and in consideration of his special services performed and to be performed and in lieu of the commission provided by by-law 7, there was to be paid to him a commission, at rates therein set forth, on the gross sales of the company's property and transfers of property to shareholders, the minimum amount of such commission annually (over and above the salary of $2,000) to be $3,000. Then came by-law 26 (May 4th, 1887), which after reciting that defendant had expressed his willingness to waive any right to commission under by-law