

which I think should be disallowed altogether, and to the Hamilton Cataract Power, Light & Traction Co.'s account which, agreeing with the learned Chief Justice of the Common Pleas, I think should be reduced to \$50, thus making a deduction of \$128.81 from the amount allowed on this account by the learned trial Judge.

As to the Martin & Andrew account, the testimony is not very clear or satisfactory. It appears, however, to have been an account for plumbing incurred before the 31st of August, and it was not shewn among the liabilities on stock-taking. The learned trial Judge is reported as saying in his judgment that this was paid on the 29th September. But the evidence of Miss Carroll, the then secretary-treasurer of the company, who was examined as a witness on behalf of the plaintiffs, is that a cheque was issued for this account on the 29th August, and, since the argument of the appeal, the learned trial Judge has at my request been good enough to refer to his notes of the evidence. It there appears that he noted that the account was paid on the 29th of August. The amount does not appear to have been charged up until the 29th of September. It appears in the building account under that date. There is no explanation why it was not entered before. The defendant's statements with regard to it shed no light. Miss Carroll's statement stands as to the issue of the cheque on the 29th of August, and doubtless it was presented and paid before the 31st. That being so it was properly omitted from the liabilities on the stock-taking. And the mistake of charging it to the building account on the 29th of September, instead of on the 29th of August, should not prejudice the defendant.

As to the other item, it was for the plaintiffs to establish that the sum (\$224.42), claimed by them in respect of the account paid to the Hamilton Cataract Power, Light & Traction Co. was clearly attributable to the period before the 31st of August.

And I agree with the learned Chief Justice of the Common Pleas that this was not established. The account covered a period commencing in 1905 and extending until after the defendant left the company's employ. No person was called to shew that as a matter of fact the amount claimed for up to 31st August was actually supplied before that date.

The defendant's testimony is that the meter was not properly set when placed in the company's building, that the account was always disputed, and that not more than \$50 was properly chargeable for the period before the 31st of August. Upon this I think the defendant ought not to have been charged with more than \$50.