

of the net profits of the trade, calling, business, or employment upon which he declares and appropriates the share of profits payable under such agreement shall be final and conclusive between the parties and all persons claiming under them, and shall not be impeachable upon any ground whatever, except fraud." The agreement provides that the net profits actually realized from month to month shall be divided monthly. To carry out this provision and comply with the statute the defendant would have to make a full statement or return of the net profits of the business down to the end of first month, and so from month to month, and appropriate Washburn his share of the profits upon that basis. This was never done. It may be that, not having been done in the lifetime of Washburn in the way contemplated by the agreement, that the defendant could yet invoke this statutory immunity from full disclosure by furnishing a statement of the kind prescribed by the statute before the matter comes to be dealt with by the Court, but if he has failed to do this, I think it is my duty even aside from the question of fraud to direct that the true state of accounts between the parties according to the actual facts shall now be ascertained. First, then, I find that the defendant never has furnished a statement of the net profits of the business carried on as "Washburn & Co." The net profits of this business are whatever it was worth at the time of Washburn's death over and above all sums of money properly paid out and all liabilities incurred on account of it and this sum less any stock added after the death of Washburn is the sum for which the business was sold. There has been no pretense of furnishing a statement of profits or appropriating one-half thereof to the Washburn estate upon this basis, but on the contrary, while the defendant charges up the total freight and express charges and all improvements, alterations and repairs and all expenses for fixtures to the business, and although the good will of the business, which was brought in by Washburn as late as July, 1911, produced a net profit upon the entire stock of 20 per cent., all this is eliminated from what purports to be statutory statement "of the net profits of the trade, calling, business or employment" and his appropriation of the estate's share thereof. The test of the profit to the defendant, if it was his business alone, is how much he was better off by going into it—and this is what Washburn was to get one-half of for turning over the good-will of his