

2000

# J.R. Walker v. Tracy Loan & Trust, a corporation as receiver for Walker Brothers Dry Goods Company, a corporation : Abstract of Record

Utah Supreme Court

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Riter & Cowan; Wilson McCarthy; Attorneys for Defendant and Appellant.

Henry D. Moyle; Attorney for Plaintiff and Respondent.

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# In the Supreme Court of the State of Utah

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J. R. WALKER,  
*Plaintiff and Respondent,*

vs.

TRACY LOAN & TRUST COM-  
PANY, a corporation as re-  
ceiver for WALKER BROTH-  
ERS DRY GOODS COM-  
PANY, a corporation,  
*Defendant and Appellant.*

No. 5338

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## ABSTRACT OF RECORD

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### APPEAL FROM THIRD JUDICIAL DISTRICT

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Transcript  
Page

The plaintiff on the 19th day of September, 1931, filed in the District Court of the Third Judicial District of the State of Utah in and for Salt Lake County, the following complaint:

*(Title of Court and Cause):*

- 1 Plaintiff complains of defendant, and for cause of action alleges:

1. That Tracy Loan & Trust Company, a corporation organized and existing under and by

virtue of the laws of the State of Utah, is the duly appointed, qualified and acting receiver of Walker Brothers Dry Goods Company, an insolvent corporation organized and existing under and by virtue of the laws of the State of Utah.

2. That the Tracy Loan & Trust Company was appointed receiver, as aforesaid, by the above entitled court, in an action therein pending entitled "Real Estate Finance Company, a corporation, Plaintiff, v. Walker Brothers Dry Goods Company, a Corporation, Defendant", said case being Case No. 45883.

3. That on the 20th day of August, 1931, in said action No. 45883, an order was duly made and entered, wherein and whereby this plaintiff, among others, was ordered and required to institute an action against the defendant for the purpose of adjudicating the rights of the plaintiff under his claim to a priority and preference in the payment of plaintiff's claim against the defendant, in the sum of \$2,909.85, which said claim the defendant has allowed to plaintiff as a common creditor of the said Walker Brothers Dry Goods Company, the defendant having denied and rejected plaintiff's claim to a priority and preference in the payment thereof.

1

4. That by said order of court, the sum of \$11,268.33 was ordered held out of and from the funds of the receivership estate for the purpose

- 2 of insuring full payment of the aforesaid claim of the plaintiff, together with the claims of other persons likewise claiming a preference, in the event it should be adjudged that plaintiff, or any of said claimants, were entitled to priority and preference in the payment of their said claims.

5. That plaintiff brings this action against the defendant by and with the consent of the Court first had and obtained, as in said order of August 20, 1931, provided, and for the express purpose of having his said claim against the defendant paid in full out of the said \$11,268.33 held out of and from the funds of the receivership estate, as aforesaid.

- 2 6. That prior to the appointment of the defendant as receiver of Walker Brothers Dry Goods Company, as aforesaid, the plaintiff delivered to and deposited with the said Walker Brothers Dry Goods Company the sum of \$2,909.-85, to be retained and held by the said Walker Brothers Dry Goods Company for the sole and specific and special purpose, and that only, of securing the payment and of paying for the future goods, wares and merchandise to be purchased by the wife of plaintiff from Walker Brothers Dry Goods store; that the said deposit so made by plaintiff to Walker Brothers Dry Goods Company, as aforesaid, was accepted and held by Walker Brothers Dry Goods store as a special

fund or deposit in trust for the specific use and purpose for which it was delivered, received, accepted and held, to-wit: the satisfaction and payment of future advances and sales of goods, wares and merchandise by Walker Brothers Dry Goods store to the wife of plaintiff, as aforesaid, and not otherwise.

2           7. That after the deposit of said \$2,909.85, as aforesaid, and prior to the appointment of the defendant herein as receiver of said Walker Brothers Dry Goods store, the wife of plaintiff purchased and Walker Brothers Dry Goods store sold to her, merchandise of the agreed value of \$329.98; that since the appointment of said receiver, the wife of plaintiff has purchased from  
3 the defendant out of the assets of the Walker Brothers Dry Goods stock, goods, wares and merchandise of the agreed value of \$2,006.03, and after paying for the goods, wares and merchandise so purchased by and delivered to the wife of the plaintiff, there remains out of said fund of \$2,909.85, the sum of \$573.84 due and owing to the plaintiff from the defendant.

8. That at the time of the appointment of defendant as receiver, as aforesaid, there came into the hands of defendant sums of money in excess of the amount of plaintiff's claim.

9. That the assets of Walker Brothers Dry Goods store coming into the hands of defendant

were augmented by and to the extent of the balance of plaintiff's said deposit then remaining in the hands of Walker Brothers Dry Goods store.

10. That no part of said claim has been paid by defendant.

3        11. That the assets of Walker Brothers Dry Goods store now held by defendant are insufficient to pay the general creditors of the Walker Brothers Dry Goods store more than approximately fifty-five per cent. of the amount of the claims of general creditors heretofore presented and allowed.

12. That except the claim of the plaintiff against the defendant be decreed and adjudged a preferred claim, and that the plaintiff is entitled to the payment thereof in full, prior and in preference to the payment of the claims of common creditors, and out of the \$11,268.33 set aside for the payment thereof, as aforesaid, plaintiff will suffer an irreparable loss.

3        13. That plaintiff has no plain, speedy or adequate remedy at law.

3        WHEREFORE plaintiff prays judgment against the defendant in the sum of \$573.84, and that said indebtedness of defendant to plaintiff be adjudged and decreed a preferred claim, entitled to be paid in full out of said sum of \$11,-  
4    268.33, and that the claim of plaintiff heretofore



filed with the defendant approved and allowed and the defendant ordered and directed to pay the same in full; and for his costs of court herein incurred, and for such other and further relief as may be proper.

HENRY D. MOYLE,  
ROBERT C. WILSON,  
*Attorneys for Plaintiff.*

(Duly verified).

Thereafter the defendant and appellant served and filed on the second day of October, 1931, its

### ANSWER.

*(Title of Court and Cause):*

5 Comes now the defendant above named and for answer to plaintiff's complaint admits, denies and alleges as follows, to-wit:

1. Admits each and every allegation contained in paragraph 1 of plaintiff's complaint.

2. Admits each and every allegation contained in paragraph 2 of plaintiff's complaint.

3. Admits each and every allegation contained in paragraph 3 of plaintiff's complaint.

4. Admits each and every allegation contained in paragraph 4 of plaintiff's complaint.

5. Admits each and every allegation contained in paragraph 5 of plaintiff's complaint.

- 5        6. Answering paragraph 6 of plaintiff's complaint, this defendant admits that at the time of its appointment and qualification as receiver of Walker Brothers Dry Goods Company, a corporation of Utah, that said Walker Brothers Dry Goods Company was indebted unto plaintiff in the sum of \$2,909.85, but denies each and every other allegation in said paragraph contained.

7. Answering paragraph 7 of plaintiff's complaint, this defendant admits that prior to the appointment of the defendant herein as receiver of said Walker Brothers Dry Goods Company, the wife of plaintiff purchased and Walker Brothers Dry Goods Company sold to her merchandise to the accrued value of \$329.98; admits that since the appointment of this defendant as receiver aforesaid, the wife of plaintiff purchased from the defendant out of and from the assets of the receivership estate goods, wares and merchandise to the accrued value of \$2006.03 but denies each and every other allegation in said paragraph contained.

- 5        8. Answering paragraph 8 of plaintiff's complaint this defendant admits each and every allegation contained in paragraph 8 of plaintiff's complaint.

9. Denies each and every allegation contained in paragraph 9 of plaintiff's complaint.

- 6        10. Admits that no part of plaintiff's claim has been paid by defendant in its capacity as receiver but this defendant does hereby signify and indicate that the said claim of plaintiff's will be approved by this defendant in its capacity as receiver as a common claim without preference and with the approval to participate in the same manner and in the same degree in the receivership estate as other common claims and liabilities of said Walker Brothers Dry Goods Co. Defendant particularly denies the right of plaintiff to assert an offset of the indebtedness due from the wife of said plaintiff unto said Walker Brothers Dry Goods Company and/or unto the said defendant in its capacity as receiver.

11. Admits each and every allegation contained in paragraph 11 of plaintiff's complaint.

- 6        12. Denies each and every allegation contained in paragraph 12 of plaintiff's complaint.

- 6        13. Denies each and every allegation contained in paragraph 13 of plaintiff's complaint.

Defendant specifically denies each and every allegation contained in plaintiff's complaint not hereinbefore specifically admitted.

- 6       As a further answer and defense to plaintiff's complaint this defendant alleges that at the time of its appointment as receiver of the said Walker Brothers Dry Goods Company, a corporation of Utah, that the said Walker Brothers Dry Goods Company was indebted unto the plaintiff in the sum of \$2909.85; that said indebtedness in favor of plaintiff is a common claim without preference or security and that this defendant in its capacity as receiver now signifies and indicates that the said indebtedness is approved as a common claim without preference and without priority and admits that the said claim on said basis should participate in distributions from the receivership estate in the same degree as other common claims and obligations of said Walker Brothers Dry Goods Co. This defendant specifically denies that the said plaintiff has any right to preference or priority in the distribution of the assets of the receivership estate and further alleges that no right of offset exists in favor of this plaintiff whereby he may apply the obligations due and owing from his wife, Mrs. J. R. Walker, unto Walker Brothers Dry Goods Co. in the sum of \$329.98 and/or the obligation due and owing from his said wife unto this defendant as aforesaid in the sum of \$2006.03 against the obligation due from
- 6       said Walker Brothers Dry Goods Company unto the plaintiff, whether said obligation be adjudged

to be a common claim or a claim with preference and priority.

Further this defendant alleges that at all times set forth and described in plaintiff's complaint the said plaintiff was an officer of Walker Brothers Dry Goods Company, to-wit; a regularly elected, qualified and acting director of said corporation.

- 6       Wherefore, plaintiff prays that the court make and enter its judgment adjudicating and determining that plaintiff is not entitled to any preference or priority in the payment of his claim; that the obligation due from said Walker Brothers Dry Goods Co. unto the plaintiff in the sum of \$2909.85 is but a common claim without preference or priority of any kind and that the said plaintiff is entitled to participate in the distribution of receivership only as a common creditor without preference or priority of any kind and
- 7       that defendant have its costs herein incurred.

FRANKLIN RITER,  
WILSON McCARTHY,

*Attorneys for Receiver, Suite  
312 Kearns Bldg., Salt Lake  
City, Utah.*

(Duly verified).

Upon the foregoing pleading and the issues thus formed the foregoing action came on for

## TRIAL

Before the Honorable William H. Bramel, judge of the Third Judicial District Court of the State of Utah in and for Salt Lake County without a jury. The trial commenced on the 4th day of December, 1931 and thereafter such proceedings were had as shown by the

## BILL OF EXCEPTIONS.

19 MR. MOYLE: It may be stipulated in the case of Walker against Tracy Loan & Trust Company that the evidence produced in the case of Renshaw versus Tracy Loan & Trust Company, which has just been tried before your Honor, shall be considered in this case?

MR. RITER: Miss Chase's testimony?

MR. MOYLE: I don't care about Renshaw.

MR. RITER: Miss Chase's testimony. I object to the further examination of either party and subject to the objection made by the defendant in the original examination.

19

THE COURT: The record may so state.

AMY B. CHASE, a witness for plaintiff, testified as follows:

## DIRECT EXAMINATION

By Henry D. Moyle.

I am the witness who testified in the prior case of Renshaw vs. Tracy Loan & Trust Company.

Q. Now, Mrs. Chase, calling your attention to June of 1930, I will ask you to state whether or not you had a conversation with J. R. Walker concerning the account of a Mrs. Frye, who had had some dealings with Walker Brothers Dry Goods store prior to that time?

MR. RITER: I ask for the privilege at this point of making this witness my own. I want to lay the foundation for a question.

20 MR. MOYLE: Yes, go ahead. I will withdraw the first question.

By MR. MOYLE:

Q. What date was it as near as you can recall, Mrs. Chase, that you had a conversation with Mr. Walker concerning Mrs. Frye's account?

A. I think it was in May.

Q. Of what year?

A. 19—, I don't know.

MR. RITER: The receiver was appointed June 25th, 1930.

A. It was 1931.

MR. MOYLE: The receiver was appointed in June of 1930?

MR. RITER: Yes.

MR. MOYLE: June 25th, 1931.

Q. Was this conversation with Mr. Walker before the receivership?

A. I can't remember that.

Q. You were still there as an employee of the company?

A. I am mixed up on the years. I think I  
20 could get the exact date from the account.

Q. It was before the receivership?

MR. RITER: Was Richmond (sic, Dreyfous) manager of the store at that time?

A. Yes sir.

21 MR. MOYLE: Then I am going to object.

A. I don't remember the date, the books will show the date.

MR. RITER: Whether it is before or after the receivership, I am going to object to the question, any conversation she had with regard to the account of a third person is entirely incompetent, irrelevant and immaterial, and is secondary and self-serving testimony on the part



of the plaintiff himself. It is not admissible at all.

THE COURT: Of course, it depends on the point of time.

MR. MOYLE: If it was after the receivership it wouldn't be admissible at all.

THE COURT: Or if another set of interests had taken charge of the store. If Walker had severed connection with the store and ceased to be a manager giving orders.

MR. MOYLE: Now, that would be assuming what the conversation would be. J. R. Walker was president up to the time of the receivership.

MR. RITER: That at all times during the deposits which are involved in the Walker case and up to the date of the appointment of the receiver, this plaintiff, J. R. Walker, was director and president of Walker Brothers?

MR. MOYLE: Yes, there is no dispute on that.

Q. While he was director you had this conversation.

A. Yes sir.

Questions by MR. RITER:

Q. And prior to the appointment of the receiver?

22       A. I don't know. I think we better get the correct date from the books.

MR. RITER: I can't see the relevancy of it, Mr. Walker in this case appeared in a private capacity. He also occupied another position, was president and director of this corporation for years and years. It was during his administration that this whole plan was conceived. Mr. Dreyfous carried it forward.

THE COURT: As I understand this complaint, Mr. Walker's statement of his case is that he deposited with the corporation—

MR. MOYLE: A sum of money.

22       THE COURT: To be held by the company as a fund wherewith to pay for such things as his wife ordered.

MR. RITER: That is it.

THE COURT: Now, the conversation that he had with an official of the company that handled that fund, wherein he was giving directions as to what that fund would be used for and limits on its use, would be something that would be inadmissible, wouldn't it?

MR. MOYLE: It would have to be.

MR. RITER: If the Court please, this whole thing is inadmissible. Here is a man, an executive officer, here is a director and president of a cor-

poration, and against the receiver representing these creditors, this is absolutely inadmissible.

### ARGUMENT.

23       THE COURT: Then you take the stand that when he put his money up there as against the subsequent receiver, he virtually made a gift of that money?

MR. RITER: No sir, he took his chance as to whether or not his wife would draw merchandise up to that amount.

23       THE COURT: Now, Mr. Riter, I must say, I can't at present, think of any fundamental principle of law that would force the court to that conclusion. I will let it in subject to your objection.

MR. RITER: May, at this time, the receiver object to the testimony or any testimony on Mr. Walker's complaint on the ground that it does not state a cause of action for a preference. It at all times recognizes Mr. Walker as simply a common creditor without preference. There was no trust created, no priority established and no cause of action set forth that gives a right to a priority. May the record so show?

THE COURT: The record may so show, that you object to any testimony being admitted and also to the validity of the complaint. The

court will overrule it pro forma and that objection may stand to all evidence given in the case.

23 MR. RITER: With proper exception noted.

THE COURT: Your exception may be noted.

MR. McCARTHY: Also that it is incompetent, irrelevant and immaterial.

THE COURT: Very well. The Court overrules that objection too, to which you are given your exception.

24 MR. MOYLE: As far as Mr. McCarthy's objection on the ground of incompetency is concerned, if there is anything incompetent about it on technical grounds, we will call for him to state it at this time.

THE COURT: They objected to it on about every legal grounds to evidence that I am acquainted with. I suppose they objected on the ground that it is incompetent, no such contract as  
24 you are talking about could be made.

MR. MOYLE: If it is that general ground, I am willing to stand on the court's ruling.

THE COURT: You may proceed.

By MR. MOYLE:

Q. Just what was this conversation, Mrs. Chase?

A. At this time Mr. Walker asked me to transfer the account of Alice Young Frye from her savings account to pay the account of Mrs. J. R. Walker and it left a balance of two thousand dollars, somewhere around that. He said Mrs. Walker would be charging more merchandise and we would use that to pay the account, use this two thousand to pay the account when her account was that amount.

24 Q. As I understand it this Frye account was applied first to the payment of the indebtedness then owing the company by Mrs. Walker.

A. Yes sir.

Q. That was some three odd thousand dollars?

A. Yes sir.

25 Q. And that left a balance?

A. Left a balance of somewhere around two thousand dollars.

Q. It was with reference to that balance Mr. Walker told you to hold it and apply it on the future purchases of Mrs. Walker, was it?

A. Yes sir.

MR. MOYLE: You may cross examine.

## CROSS EXAMINATION

By Mr. Riter.

MR. MOYLE: I will stipulate that Mrs. Frye's account is one similar to the Renshaw and Salisbury account.

25 MR. RITER: Say that again.

MR. MOYLE: I will say the Frye account was an account built up in a similar manner as the Renshaw and Salisbury account.

MR. RITER: I am going to put the whole history of that in the record.

MR. MOYLE: All right.

Q. Do you know, Mrs. Chase, when this Alice Frye account was opened?

A. It must have been before I had the books, I never received any deposits.

25 Q. Alice Frye and Alice Young are the same person?

A. Yes sir.

Q. Do you know who that lady was?

A. I never seen her.

Q. Do you know who she was?

26 A. I know there was such a person.

Q. She was employed in the home of Mr. Walker?

A. Yes sir.

Q. As a domestic servant?

A. Yes sir.

Q. Did you ever accept any money direct from Miss Frye?

A. No.

Q. How was money brought there to the credit of her account?

A. Mr. Walker always brought it to the store, I don't think I ever did receive any money on it myself. I used to figure the interest.

Q. You never saw Miss Frye or Mrs. Young?

26 A. I never saw her.

Q. Now, can you fix the date when you had this conversation with Mr. Walker?

26 A. I can't. I know it seemed to me like it was in 1931 but the books would show when Mrs. Walker's account was paid and the transfer was made.

Q. Did you know at the time this transfer was made how much Mrs. Walker's personal account was?

A. It was the exact amount that was transferred, somewhere about three thousand dollars.

Q. The personal account that was due the Walker Brothers Dry Goods Company?

26       A. Yes, it was about this amount. I transferred enough to pay the account in full.

Q. At the time this occurred did Mr. Walker present to you any assignment from Mrs. Young or just tell you to transfer it?

27       A. Just told me.

Q. No written assignment?

A. No.

Q. This was during Dreyfous' administration?

A. I think it was.

Q. Did Mr. Walker maintain an office at the company's place of business at that time.

A. Mr. Walker was always the president of the company.

Q. Did he maintain an office there?

A. No.

Q. Did he just come in the store and tell you to transfer it?

A. Yes sir.

Q. Didn't bring any assignment from Mrs. Young at all?

27       A. No.

Q. Did you ever see an assignment from Mrs. Young?

A. No.



27       Q. Was there ever presented to you, Mrs. Chase, any written authority from Mrs. Young to transfer this account to J. R. Walker?

MR. MOYLE: We object to that, they have admitted the account as a common claim, admitted it absolutely. They raised no issue as to whether there was an assignment.

THE COURT: It is admitted in the pleadings in this case?

MR. RITER: Yes.

THE COURT: You are not trying to deny that?

28       MR. RITER: No, just trying to get a background.

MR. MOYLE: I object to it on the grounds that it is incompetent, irrelevant and immaterial.

THE COURT: What was the question?

(Question read by the reporter).

MR. RITER: That is what I want.

A. I answered no.

Q. The amount at the time of this conversation was about fifty-five hundred dollars?

A. Yes sir.

Q. Of that fifty-five hundred you say you drew three thousand and paid off Mrs. Walker's personal account?

A. Yes sir.

Q. Leaving a balance of about twenty-six hundred?

A. Yes sir.

28 MR. MOYLE: She hasn't pretended to testify to that.

A. I don't know the exact amount.

Q. You say that is the time you had this conversation with Mr. Walker?

A. Yes sir.

Q. What was it he said?

28 A. He asked me to transfer enough from this account of Alice Frye to pay Mrs. Walker's account and transfer the balance to him.

THE COURT: To what?

A. Transfer the balance to his account in the savings account. In the "cash due President" account.

29 Q. And you did that by bookkeeping entries?

A. Yes sir.

Q. When you say transferred to his account in the savings account, you put it in the same classification as Mr. Renshaw's and Miss Salper (sic, Salisbury).

A. Yes sir.

Q. And it was there standing at the time of the receivership?

A. Yes sir.

Q. You didn't open up any special account to differentiate Mrs. Walker's balance from the Renshaw and the Salper (sic, Salisbury) account?

A. No sir.

Q. Was the Walker balance there you say, about twenty-six hundred dollars represented in the total under the account of cash to employees?

A. Yes sir.

MR. RITER: That is all.

29

## RE-DIRECT EXAMINATION

By Mr. Moyle.

Q. You had Mrs. Young's book with the account in it, in your possession.

A. Yes sir.

Q. That is the same as Mrs. Frye?

A. Yes sir.

Q. You had that at the time Mr. Walker told you to make this transfer?

A. Yes sir.

30

Q. And there was this difference, was there not, between Mr. Walker's account and Mr. Renshaw's, that he had instructed you at that time,

as you have testified, to apply the balance on his wife's future accounts?

A. He told me to do that but I didn't make any special book entry on that.

J. R. WALKER, the plaintiff herein, testified as follows:

30

## DIRECT EXAMINATION

By Mr. Moyle.

Q. Your name is J. R. Walker?

A. Yes sir.

Q. And you are the plaintiff in this action?

A. Yes sir.

Q. You were connected with Walker Brothers Dry Goods Company for how many years?

A. I was president from 1903 when we bought M. H. Walker's interests, I was president prior to that time.

Q. You were associated with the store prior to that time.

A. Yes, secretary.

Q. You are familiar with the account of Miss Frye with Walker Brothers Dry Goods Company, prior to 1930?

31

A. I put the account there. I was trustee for her. I held that fund in trust for her.

Q. And what arrangement did you make with Walker Brothers Dry Goods Company at the time you opened that account, with reference to it?

MR. RITER: If the Court please, my objection will run to Mr. Walker's testimony, particularly on the fact, by his own testimony, that he was a director.

31 By MR. RITER:

Q. Were you president?

A. I was president when I put the money there.

MR. RITER: I object on behalf of the receiver to any testimony by Mr. Walker as to why he put the money there or how he put it there. His statement that it was put there for Miss Frye was admissible. Any other explanation of it, the receiver objects to on the ground that it establishes a secret trust against other creditors, a director of the company participated in it. It is incompetent, irrelevant and immaterial in the issues of this case.

THE COURT: Objection overruled.

MR. RITER: May I have an exception?

31 THE COURT: Your objection will go to each question and answer pertaining to that subject.

MR. MOYLE: Read the question please.

(Question read by the reporter).

A. I just put it on deposit for Alice Young.

Q. And on what kind of a deposit, how was that carried on your books?

32 A. It was one of those special accounts.

Q. The same as with employees of your company?

A. Just the same.

Q. And the amount of that deposit showed on each of your trial balances?

32 A. Every trial balance and general statement that was made, all of these savings accounts, cash due employes, were listed on the trial balances. Those trial balances came to us once a month and they were recorded in the record books that we haven't been able to find. They were the only liabilities that were itemized that way in the trial balance. All liabilities for purchases were bulk. They weren't itemized the same as these special accounts.

THE COURT: In those books you were not able to find were what books?

MR. MOYLE: There were the minute books and they contained the trial balances.

THE COURT: The minute books of the proceedings of the directors of the corporation?

MR. MOYLE: Yes, and they were in the habit and custom of putting in every trial balance in their directors' minutes. That is a fact?

32       A. Yes, they went back forty years.

Q. I show you what is marked Exhibit "A" for identification and I will ask you to state whether or not that is an audit by Haskins and Sells made in 1924?

33       A. Yes sir.

Q. Of the business of the Walker Brothers Dry Goods Company?

A. Yes sir.

MR. MOYLE: We offer this in evidence.

MR. RITER: For what purpose do you offer this, Mr. Moyle?

MR. MOYLE: A good many purposes. To show there was nothing secret about these special deposits, that they were put, not only on their balance sheets, but on their audits that were made and at the time this particular account was in the company, the company was solvent and had special deposits to cover and protect these special deposits, and for any other purpose it might be kept for.

33       MR. RITER: What does it show as to special accounts?

MR. MOYLE: We may disagree as to what it shows, but I offer it in evidence at this time.

MR. RITER: The defendant is going to object to the admission of this certified audit of the Walker Brothers Dry Goods Company, first on the ground that it is hearsay evidence pure and simple and not binding on the defendant in any respect. Second, it is incompetent and irrelevant as to the issues in this case and then upon the ground that it has heretofore been inserted in the record by the defendant.

MR. MOYLE: As to the first ground, I will withdraw the exhibit for the moment, as far as the first ground for objection is concerned.

34 By MR. MOYLE:

Q. This audit was prepared by Haskins and Sells at your request.

A. Yes sir.

Q. And was taken from the books and records of your company?

A. Yes sir.

Q. Just as it states on the face of this report?

A. Yes sir.

Q. And the company paid for this audit?

A. Yes sir.



Q. And after the audit was obtained there were copies of this audit distributed among the banks and merchandise houses with whom your company did business?

34 A. Not with merchandise houses, only placed with the banks, the banks that requested the copy.

Q. And with the wholesale houses?

A. No, I don't think only the banks and note brokers with whom we were doing business, principally the note brokers.

34 Q. This audit, from the time it was made, remained as one of the records of your company?

A. Yes sir.

Q. On file in your office?

A. Yes sir.

MR. MOYLE: We renew the offer.

34 MR. RITER: Defendant renews the objection.

THE COURT: Objection overruled.

MR. RITER: Note an exception.

Q. Now, I call your attention especially, Mr. Walker, with respect to Exhibit "A". It was an audit for the first half of 1924. Calling your attention particularly to what appears on page six  
35 of Exhibit "A", Mr. Walker, under the head of employees saving accounts, \$60,514.55, I will ask

you to state if, in that figure, was included the amounts which Mrs. Young or Frye had on deposit at that time?

A. Yes sir.

Q. And now, Mr. Walker, you know of your own knowledge, do you not, as officer and director of this company, that at the time this audit was made and from then on up until November of 1928, Walker Brothers Dry Goods Company was solvent?

A. Yes sir.

Q. And it was at that time Mr. Dreyfous went in, as I understand?

A. Yes sir.

Q. And took charge of the store. Were there any deposits made on this Mrs. Fyre account or the Young Account after Mr. Dreyfous went in, as far as you know?

35 A. No sir.

35 Q. I notice in Exhibit "A", listed under clerk (sic, quick) assets, on the third page of the audit—

THE COURT: Listed under what?

Q. Clerk (sic, quick) assets, a certificate of deposit on the Columbia Trust Company, Salt Lake City, for \$12,476.00, Continental National Bank, Salt Lake City, \$30,000.00, cashier's check,

Walker Brothers Bank, Salt Lake City \$10,000.-00. What is the last item or what was that held for?

- 36       A. I couldn't say as to that cashier's check, I don't know right now but the other accounts were special deposits.

Q. You have here also a special account at the Continental National Bank Salt Lake City, of \$17,083.35. For what purpose was that special account there?

A. I think that was practically the same as the others.

Q. As your time deposits?

A. I don't remember now.

Q. What were these time deposits kept for, Mr. Walker?

A. Well—

- 36       MR. RITER: My objection, I assume will run particularly to this question, just propounded to Mr. Walker.

THE COURT: Just read the question.

(Question read by the reporter).

THE COURT: He may answer.

MR. RITER: Note an exception.

A. They were a reserve account to take care of anything in an emergency, the only—

Q. Go ahead.

A. The only obligation that we had that didn't have a due date were these special accounts.

36 An employee could put money in today and draw it out tomorrow or next week and get six percent interest without notice. All of the other liabilities had stated dates. Our invoices for merchandise purchased had dating as had any other account, all had certain dating, and money from the bank, all due on a certain date. These special accounts had no date whatever, all due on demand.

37 Q. What relation did these special deposits bear to these special accounts?

MR. RITER: I am going to renew my objection and urge and stress it on the ground heretofore alleged and on the further ground that such evidence is absolutely incompetent, coming from Mr. Walker, as establishing a special trust fund in his favor, in his individual capacity and let the record show the objection to that question and any similar question.

THE COURT: I am aware of the fact that a trust in real property can't be established in (sic, by oral agreement) except in a very exceptional instance and I know certain statutory disqualifications of witnesses, but I don't see where this falls within any of those principals. Objection overruled.

37 MR. RITER: Note an exception.

MR. MOYLE: Read the question.

(Question read by the reporter).

A. Well, we had those special deposits there to take care of the special accounts and other items as I stated before, those special accounts were the only liability we had that was due on demand.

Q. Now, I will ask you to state whether or not this account of Mrs. Young's or Miss Frye's was transferred to you?

37 A. I had for years and years back, she was  
our old nurse girl, and I had the handling of this  
fund, had it long before I put it in the store. I put  
38 it in there, I was trustee, and in my last year I  
had Mrs. Chase transfer it to my account. I didn't  
want to involve her in any receivership proceedings.  
I was taking care of this fund for her. I  
told Mrs. Chase to transfer it to my account and  
apply enough to clean up Mrs. Walker's account  
and I would leave the balance there for her account.  
She was in the habit of running an account of two or three thousand dollars a year. I  
could have drawn it out if I wanted to.

Q. Mrs. Chase told you at that time she did do that?

A. Yes, she did that.

Q. You left it there upon the reliance of that statement?

A. Left it there expecting it to be paid on my wife's future purchases.

Q. That is the way you want to apply it now?

A. Yes sir.

MR. MOYLE: Cross examine.

### CROSS EXAMINATION

38

By Mr. Riter.

Q. At the time, Mr. Walker, you had this conversation with Mrs. Chase, in May, 1930, you were still president and director of Walker Brothers Dry Goods Company?

39 A. I was only a figure head. I was president but from the time we sold that, and before (sic, after) I sold, they consulted me not in any way at all. For that period of time I believe there were only two meetings I was called to and I was called simply because I was president of the company. He never consulted me on anything, went to work remodeling the store, took three hundred and twenty thousand dollars quick assets and remodeled the building, put it in frozen assets. That was the cause of the trouble. I was only a figure head up to (sic after) the time I

sold out. Prior to that time I had full say subject to the approval of the Board of Directors.

39 Q. Necessarily, at the time, because you were president, you were also a director of the corporation?

A. Yes, president and director. I was only a figure head from the time he bought in.

Q. You remained president and director from 1903 down to the date of the appointment of the receiver?

39 A. Yes sir.

Q. And technically today you are president and director?

A. As far as I know, I left my name there with them, after I sold out. He never consulted me. On the other hand, any suggestion I would offer he would never listen to in the way of expenditures.

MR. RITER: In order to make my record, I would like to make a motion for a non-suit upon the grounds heretofore read into the record in my objection to the admission of any testimony in this case.

40 THE COURT: The record may so state. May show you are making such a motion.

MR. RITER: Will it show the court's action on the motion. Will the record also show the court's action on my motion for a non-suit?

THE COURT: Yes, the motion is denied.

MR. RITER: With proper exceptions necessarily.

On the 12th day of May, 1932 plaintiff and defendant entered into a written stipulation providing among other things:

- 47        That the bill of exceptions heretofore settled and filed in that certain action wherein C. G. Renshaw is plaintiff and Tracy Loan & Trust Company, as receiver of Walker Brothers Dry Goods Company, is defendant, now pending in the above entitled court and cause and designated as Action No. 48304, is hereby adopted as an additional record in this cause and as part and parcel of the bill of exceptions herein and that the testimony and evidence adduced in said cause shall be taken as part of the evidence in this action and that all objections and exceptions set forth in the aforesaid bill of exceptions in Action No. 48304 are hereby adopted as part of the record in this cause. Further on the 12th day of May, 1932 the
- 48    Honorable William H. Bramel, a judge of the Third Judicial District Court in and for Salt Lake County, State of Utah, did make, enter and file



in the above entitled cause the following order settling the bill of exceptions in the above entitled cause:

*(Title of Court and Cause):*

48       AND BECAUSE, the foregoing evidence, rulings, exceptions and matters complained of do not appear of record otherwise than by bill of exceptions, therefore, I, William H. Bramel, the undersigned, the judge who tried said action, have on the request of defendant and by its attorney and on due stipulation, allowed, settled and signed this bill of exceptions according to the statute, to the end that the same be made a part of the record herein and now order it filed as such.

And I further certify that on the 1st day of March, 1932 there was signed, entered and filed in this action the order of this court allowing the defendant to and including the 26th day of May, 1932 within which to settle, sign and file its bill of exceptions in the above entitled action.

I do hereby certify that said bill of exceptions contains all of the evidence in said cause and that said exhibits attached thereto are exhibits introduced in the trial of said action.

And I do hereby further certify and declare that by stipulation of counsel in open court at the trial of the above entitled action the evidence

therefore introduced at the trial of that certain action wherein C. G. Renshaw is plaintiff and Tracy Loan & Trust Company as receiver of  
 48 Walker Brothers Dry Goods Company is defendant, now pending in the above entitled court and designated Case No. 48304, was adopted and made a part of the testimony and evidence in this cause, subject to all objections and exceptions thereto. I further certify that by virtue of stipulation of counsel that the bill of exceptions heretofore settled and filed in the aforesaid action wherein C. G. Renshaw is plaintiff and said Tracy Loan & Trust Company, as receiver aforesaid, is defendant, is incorporated in and made a part of this bill of exceptions and the same is now hereby settled and declared to be part of the bill of exceptions in this action.

DONE IN OPEN COURT THIS 12TH DAY  
 OF MAY, 1932.

BY THE COURT:

WM. H. BRAMEL,  
*District Judge.*

Pursuant to the aforesaid stipulation and order of court, the following proceedings were had:

Renshaw  
 26

MR. RITTER: Defendant objects to the admission of any testimony in this case, on the following grounds and for the following reasons:

1. By the allegations of the complaint, the relation of debtor and creditor is clearly shown, and when that relation is clearly shown, it simply places the plaintiff and his assignor in the position of a common creditor, which the defendant has always admitted they were. The gravamen of the complaint is claiming a practice (sic, preference).

2. There are no allegations of the complaint sufficient to establish a constructive trust, or any other kind of a trust and on that ground there is no cause of action stated against this defendant, sufficient to allow the court to hold that this creditor and this plaintiff is entitled to any priority or any preference in participating in the distribution of the receivership of the estate, and on that ground we resist the admission of any evidence on the part of the plaintiff, and would like to submit authorities, and argue the same to your Honor, if you desire.

Renshaw  
27

THE COURT: Well, this matter came up once before and the court heard some argument on it, and looked it up more or less.

MR. RITER: But I have gone into the matter more thoroughly, if your Honor please, and am better prepared to elucidate the matter, if your Honor desires.

THE COURT: You may proceed.

Renshaw  
27

JUDGE LEWIS: May I suggest to your Honor that not having been raised on demurrer, wouldn't it be better to overrule it pro forma and receive the evidence, and then argue the question as to whether there is a cause of action, and then your Honor can make the findings, and if you find as a conclusion of law that we are not entitled to any preference, then the record is complete, but if your Honor sustains this motion, then there is no record, except to proceed and then send it back for a new trial. It seems to me it would be in the interest of economy to proceed with the hearing, and then argue it on its merits.

Renshaw  
28

THE COURT: Then the court will overrule the objection pro forma.

MR. RITER: May the defendant have an exception to the court's ruling, in the record?

THE COURT: Yes. Of course you may present the same matters again and argue them later on, and you may have an exception to the ruling of the court.

Renshaw  
28

JUDGE LEWIS: Your Honor having heard the evidence before, I shall not go into the details in my statement, except to call your Honor's attention that the first cause of action is the Renshaw claim.

MR. RITER: Counsel for defendant admits that the receiver will not be able to pay to the

general creditors of Walker Brothers Dry Goods Company more than substantially 55% of the amount of such claims due such general creditors.

Pursuant to the foregoing stipulation and order, AMY B. CHASE, a witness for the plaintiff, testified as follows:

### DIRECT EXAMINATION

By T. D. Lewis.

Renshaw  
29

My name is Amy Chase. I was in the employ of Walker Brothers Dry Goods Company for about twenty years prior to its going into the hands of the receiver. I was head bookkeeper and assistant office manager for about fifteen years. During that time I received from various employees of the company certain deposits. I received these deposits for about fourteen or fifteen years. I remember receiving deposits from the plaintiff, C. G. Renshaw and from Miss May Salisbury and continued to receive them right up to the time or shortly before the appointment of the receiver for Walker Brothers Dry Goods Company.

Q. Now, during the time you were receiving these deposits what if anything did you tell Mr. Renshaw and Miss Salisbury?

MR. RITER: We object to that question and to the implications of it on the ground that

it does not bind Walker Brothers Dry Goods Company, of what Miss Chase informed these depositors at the time she received the money. The second question is not specific what deposits were made when she made these statements.

Renshaw

30

THE COURT: The purpose for which the deposits were made, of course, is manifest by the declaration of the man who gives the money over and for the purpose of receiving the deposits when she had received them for 14 years. I should think her authority to receive them for some purpose or other would appear presumptive anyway. The objection is it does not point to any specific deposit.

Renshaw

30

MR. RITER: And further there is no indication in there as to the scope of her authority to make these statements.

THE COURT: You admit the deposits were made.

MR. RITER: Certainly.

THE COURT: And she says she is the one that received them. You may connect it up. It is preliminary. The objection is overruled.

Exception noted.

Question read as follows:

Q. "Now during the time you were receiving these deposits, what if anything did you tell

Mr. Renshaw and Miss Salisbury with reference to the security of their deposits?"

A. I told them their money was absolutely safe, that they could draw it out at any time. We paid them six per cent. interest twice a year, and if their money was in for one day, they got their six per cent. just the same, and if anything ever happened to the store, they would be paid in preference to anyone.

Renshaw

31

MR. RITER: We move to strike out the last statement, that is a legal conclusion; it is a statement not binding either on Walker Brothers Dry Goods Company, or upon the receiver.

THE COURT: The motion is overruled pro forma. It is preliminary to something else. If they fail to prove authority on her part to say that, that might mean that the evidence should be stricken out. The motion is overruled.

Renshaw

31

Exception noted.

Q. Up to what time did you make that, or similar statements to the depositors, including Miss Salisbury and Mr. Renshaw?

A. I made them in the first week in June, 1931.

MR. RITER: I move to strike that out. I will give Miss Chase a chance to correct that.

A. Mr. Renshaw and Miss Salisbury wanted to draw money out, and I asked Mr. Dreyfous the first of June, 1931.

MR. RITER: You mean 1930, don't you?

A. Yes, that's right, I am glad you told me, 1930 is right.

Q. You were saying what Mr. Dreyfous said, you may continue that, what he said to you?

A. Well, Miss Salisbury wanted to draw some money, and Mr. Dreyfous told me to tell her not to worry, her money was perfectly safe, and she would receive it—

MR. RITER: I ask that my objection go to all Miss Chase's testimony, where it pertains to this plaintiff.

A. —and I was being informed that they were entitled to a preference and their money would be perfectly safe.

Renshaw

32

THE COURT: Your objection may be overruled to that question every time it is asked, and exception noted.

Q. Now did Mr. Dreyfous say anything else to you with reference to these deposits at that time, or about that time as to whether they took preference or not, or anything of the kind, or with reference to that subject?



A. Well, every time they asked for any money I would go to him to see if I should make a check, and it was the same answer, to tell them they could have it.

Q. You mean, they could have it at some future time?

A. Yes, they could have it when they wanted it. I think Miss Salisbury told me she wanted it on Monday following the day I asked him, and he told me to tell her she could have it that day.

Renshaw  
32

Q. Were they paid anything along as late as June, 1930?

A. Mr. Renshaw was paid something out of his savings, but I don't remember what month, it was in 1930, but I don't remember what month, it might have been May or June, I don't remember.

Q. Now Mr. Dreyfous was General Manager of the Walker Dry Goods Company at the time you have referred to him as talking to you, was he?

A. Yes sir.

Q. Was Mr. J. R. Walker, prior to Mr. Dreyfous—was he General Manager of the Walker Brothers Dry Goods Company?

A. He was President of the company.

Q. He was President and active in the management, was he?

Renshaw  
33

A. Yes.

Q. Now did you ever hear Mr. Walker say anything about these deposits of the employees?

A. Yes sir.

MR. RITER: We make the same objection.

THE COURT: The same ruling.

Q. Yes, I heard Mr. Walker, at the time when we were having the books audited, and Mr. Casella was auditor, he spoke something about us running a banking system, and Mr. Walker told him it was as a trust fund for the employees, and at that time we changed the name of the account to "Cash due Employees".

MR. RITER: I am going to make another motion to strike that testimony, not on the grounds stated before, but on the further ground that it is irrelevant and immaterial.

THE COURT: The motion is overruled.

Exception noted.

Renshaw  
33

Q. What was the account designated in the books, prior to that time?

A. It was just on deposit.

Q. And Mr. Casella called Mr. Walker's attention to the matter, that it was in the nature of a banking business, did he?

A. Yes sir.

Q. Did he say anything that it was probably unlawful, or anything of that kind?

MR. RITER: We object to that as inadmissible and irrelevant, what the auditor said to the General Manager of the company. It cannot be binding on the corporation.

Renshaw

34

THE COURT: The fact that on suggestion of some one it was changed, may stand as an explanation of it. And what Mr. Casella said, here and there, is irrelevant.

MR. RITER: What did you say you changed the name of the account to?

A. We changed it to "Cash due Employees."

Q. Now do you know whether or not, Miss Chase, at that time Walker Brothers Dry Goods Company carried in the banks of the city, one or more of them, time deposits?

A. Yes, they did.

Q. And was the amount of these time deposits more than sufficient to pay all the deposits made by employees with the Dry Goods Company?

A. Yes sir.

MR. RITER: We make a further objection absolutely to that on the ground that it is irrelevant and immaterial; that can have no bearing on the relation between these parties and the defendant corporation.

Renshaw

34

THE COURT: The objection is overruled.

Exception noted.

Q. Did you hear Mr. Walker, at that time, or prior to that time say anything with reference to these time deposits in the banks as related in any way to these deposits by employees?

MR. RITER: We object; that is not within the issues of the complaint. It is absolutely outside the issues of the case.

Renshaw

35

THE COURT: The court couldn't tell whether it was a deed, gift or donation, unless it heard evidence concerning the circumstances of the fund, and the evidence concerning what was said when the fund was made up. The objection is overruled.

Exception noted.

(Question read): "Did you hear Mr. Walker at that time, or prior to that time say anything with reference to these time deposits in the banks as related in any way to these deposits by employees?"

A. Walker Bros. told us they were to cover any emergency that we needed.

MR. RITER: I move to strike out, and object to the whole question again because the answer is not responsive to the question, and shows an absolute immateriality to the time account, and the issues in this case.

THE COURT: That answer may go out.

Q. Now the things you have stated today as having been told you by Mr. Dreyfous and Mr. J. R. Walker did you in turn tell Mr. Renshaw and Miss Salisbury those facts?

A. Yes.

Renshaw  
35

Q. During the time they were depositing the money with Walker Brothers Dry Goods Company?

A. Yes sir.

Q. And was it done by you under directions from Mr. Walker while he was President and engaged in the management of the store, and by Mr. Dreyfous, while he was Manager?

A. Yes sir.

Renshaw  
36

JUDGE LEWIS: The answer that was stricken out, I don't know whether I can connect it up more definitely or not, but I would like to ask the privilege of doing it.

Renshaw  
36

THE COURT: Her answer was that that time deposit money was for emergencies?

JUDGE LEWIS: Yes, I admit that isn't going far enough to meet anything. May I proceed and see whether there was anything more definite stated?

THE COURT: Oh yes, you may.

Q. Now Miss Chase, you testified, which was stricken out, that Mr. Walker stated these time deposits in the bank, one or more of the banks, was made to meet any emergency; now do you recollect anything that was said with reference to the deposits of the employees made with Walker Brothers Dry Goods Company, connecting them in any way with these time deposits, in emergency?

Renshaw  
36

A. This was what I meant by "emergency"; we had some employees that had, say as high as ten thousand dollars deposited, if they should want to draw that ten thousand out, but we didn't have that money in our checking account, or in the till, we could draw it out of this emergency account to pay them, this special account, if we had to do that.

JUDGE LEWIS: I now desire your Honor vacate the order striking her first answer out. With this connection, I think it is proper.

Renshaw  
37

THE COURT: Very well. It may stand.

MR. RITER: We accept.

THE COURT: The court rules now that the answer, as supplemented by what the witness just stated, may stand.

Exception noted.

### CROSS EXAMINATION

By Mr. Riter.

My duties as head bookkeeper and office manager of Walker Brothers Dry Goods Com-

Renshaw  
37

pany involved the handling of the general funds of Walker Brothers Dry Goods Company. Not only these employee savings accounts but all funds of the corporation. I kept the bank account but I didn't make out checks for merchandise. I was the control accountant and all the accounting system centered on me. I had direct and immediate knowledge of the method of use of the funds. I made up the bank account; I had subordinate employees that did the actual computing and accounting of the money but it was my

Renshaw  
38

responsibility. I was under bond and any shortage would have been my shortage. Subordinate employees were really my right and left hands. Sometimes the employees came to a particular window in the store to deposit money and some-

times they brought it to my desk. Payments on account by customers I received at the cashier's window. The funds which were brought to me at my desk by these employees or which had been paid into the window were assembled into all other funds of the company. Walker Brothers Dry Goods Company had a number of bank accounts; Utah State National, Deseret National, the National Copper. We divided the daily deposits between these banks. When it came to making de-

Renshaw

39 posits no distinction as to funds representing employee savings and funds representing the sales was made. They were all put together.

Q. You didn't have one bank account where you put the employees savings, a special account, did you?

A. No.

Q. So that in the National Copper or Deseret or Utah State or Continental, whatever it may be, in making up say a deposit of \$10,000.00 you might we will say in that \$10,000.00 have \$500.00 of Mr. Renshaw's money, the other representing the sale on account?

Renshaw

39 A. Yes, but that \$500.00 would be in that special account.

Q. But when you say special account, you refer to what account?



Renshaw  
40

A. I was referring to the certificates.

Q. I want to trace Miss Salisbury's money and Mr. Renshaw's money; when it came in in species, would they bring it in in checks or greenbacks, or gold coin?

A. Well, they would bring it in in different ways, but never in checks, always in cash.

Q. You didn't ear mark that money so it would go right over to the Continental to pay a time certificate, did you?

A. No.

Q. You didn't ear mark it so it would be Mr. Renshaw's to buy a certificate of deposit, did you?

A. No.

Q. But that went into the general account indiscriminately?

A. Yes.

Q. And at a given time, when the balances would pile up, and accounts payable would permit, you would go and buy a time certificate?

Q. What was the practice in buying time certificates of deposit?

Renshaw  
40

A. Those time certificates—I don't know that they always had them, I can't remember just how they were purchased.

Q. Going back into the history of the transaction, you say you came on the job about 18 years, or 14 or 15 years before the receiver was appointed?

A. I started to work in 1911.

Q. And Mr. Renshaw was employed, your trusted employee at that time, and Miss Salisbury also?

A. Yes sir.

Renshaw  
41

Q. At that time the record showed they had deposited their money with this company?

A. Yes sir.

Q. As a matter of fact Mr. Renshaw commenced there as a boy, didn't he?

A. Yes sir.

Q. Of course he did. You followed those accounts there when you came on the job?

A. Yes.

Q. Were you employed in some other department before you came into the accounting department?

A. No, I was always in the accounting department.

Q. For those 14 or 15 years you were always charged with the responsibility as control accountant?

A. Yes, I had the general ledger.

Renshaw

41

Q. Now at that time, these employees' accounts existed, did they?

A. Yes.

Q. Do you recall at that time how much they amounted to in total?

A. I can't state, but in 1929 they were over \$41,000.

Q. What would you say the peak of the amounts was?

A. Well, I can't remember, they might reach up to \$60,000, but I can't remember definitely.

Q. As just what were they designated on the general ledger?

A. Just as "on deposit".

Q. The first account was "on deposit"?

A. Yes.

Renshaw

42

Q. And you say it was the time of the general audit that you changed the name of the account to "Cash due Employees"?

A. Yes sir.

Renshaw

42

Q. Now during this entire period of time was there ever an instance of where you took Mr. Renshaw's or Miss Salisbury's money, or Miss

Smith's money, and only offered to buy a specific certificate of deposit?

A. No.

Q. Have you any recollection of that money, at any time ever being put in a specific bank account in which was contained only the funds of these employees?

A. No.

Q. Does your memory serve you that during this entire period of years, that the funds received from the employees were carried into your general bank deposits?

A. Yes.

Q. At any time was there any special bank account of it?

A. No.

Renshaw

42

Q. Now can you tell me, Miss Chase, about how much in amount did these time certificate deposits amount to?

A. I can't remember the amount.

Q. Can you make any comparison between the amount of the employees' deposits, as appearing in the books, and the amount of T. D.'s owned by the company. What is your recollection of that?

A. I can't remember the figures, but I know they were a great deal more.

Renshaw

43

Q. That is, the time certificates were a great deal more than the credit standing to the employees?

A. Yes sir.

Q. What was the practice in buying these time certificates of deposits, how often would you buy them?

A. I don't remember.

Q. Would you do the actual purchasing of them, or would Walker or Dreyfous, or who attended to that?

Renshaw

43

A. Well, the Manager of the store would tell us when to get them.

Q. And then would you draw a check on your general account?

A. Yes sir.

Q. Depending, one time if the National Copper Bank had a surplus balance, you would buy the certificate of deposit at that bank?

A. Yes.

Q. Were those six or 12 months' deposits, or T. D.'s do you remember?

A. I don't remember.

Q. Did you have authority to sign checks, or check vouchers for the company?

A. Well, I signed them, but they were countersigned.

Q. One of your subordinate employees would actually draft the check, and put it through?

A. Yes.

Q. What is your recollection at the time the receiver was appointed, were there any time certificate deposits in existence?

Tenshaw  
44

A. Yes.

Q. How much were they?

A. I don't remember the amount.

Q. Do you remember what banks they were in?

A. Oh not at the time of the receiver, I was thinking of the time the Dreyfous administration came in.

Q. You want your evidence to stand that at the time the receiver was appointed, there were no time certificates?

A. No, none then.

Q. Do you know what period of time elapsed between the cashing of the last time certificates and the appointment of the receiver? To refresh

your memory, the receiver was appointed on the 25th of June, 1930, a year ago this last June.

Renshaw

44

A. No, I don't remember.

Q. Would you say several weeks or several months, or would you make any statement at all?

A. I wouldn't want to make a statement because I don't remember.

Q. But you know there were none in existence at that time?

A. Not at the time of the receiver.

Q. Now you have, of course, a general control set of books?

A. Yes.

Q. And did you have subsidiary sets?

A. Yes.

Q. Just describe what they were, and how they correlated with your control set?

A. You mean like the accounts receivable?

Renshaw

45

Q. I would like the record to show that, and you are the best person to give that information.

A. Well, there was the accounts receivable.

Q. That is, your accounts receivable for your general customers?

A. Yes, and the accounts payable.

Q. Were the totals of these each day, or each semi-monthly, carried into your control set?

A. Yes sir.

Q. And debits on your bills for your accounts payable, were carried over into the control set, and credit on your accounts receivable were carried?

A. Yes.

Q. Did you have any subsidiary books carrying the names and accounts of the employees, creditors?

A. I did have until Mr. Dreyfous became Manager and then it was all transferred into the general ledger, each name separately in the general ledger.

Q. Now on the control, balance of the control set, beside your ledger control accounts, after Mr. Dreyfous administration commenced, I take it, on the control balance accounts, Mr. Renshaw's and Miss Salisbury's names would appear, would they?

A. No.

Q. Now during the Walker administration these employees' savings accounts appeared in your subsidiary ledger along with any other customers of the store, did they?



Renshaw  
46

A. No, it was always in the general ledger.

Q. During all these years of your administration?

A. Yes.

Q. Then what change occurred in the Dreyfous administration?

A. We used to show on the trial balance each name, and the amount, but during the previous administration, it just showed one amount.

Q. Where did you keep the Renshaw and Miss Salisbury's separate account?

Renshaw  
47

A. We kept them in the general ledger.

Q. On your balance sheets of the company, you showed these as liabilities accounts, payable, from the very beginning, did you?

A. Yes sir.

Q. You didn't ever show them as trust funds?

A. No.

Q. So that anyone reading the trial balance would judge that was a liability of the company?

A. Yes.

Q. And there was no preference of any kind or priority indicated?

A. No.

Q. Now, Mrs. Chase, of a given morning, say that Miss Salisbury brought you \$500, or any one of these depositors, just describe for us, how you would handle that deposit? Undoubtedly Mr. Renshaw's account shows that he brought you \$100, 150, or \$200 at a time, and you say you have no recollection of his bringing you any checks?

A. No.

Q. Well, describe for us, at the time that money was received how you handled the actual money, what you did?

JUDGE LEWIS: I can't admit that Mr. Renshaw ever brought in two or three hundred dollars, I don't think he got salary enough for that.

Renshaw

48

THE COURT: Mr. Riter, didn't you go into that quite fully, and didn't she say that they mingled the money all together in one bag or satchel, and took it out and deposited it?

Renshaw

48

When you come to pay bills of the company, your invoice or your pay roll, did you ever make any discrimination between the money you received from the employees, and the money you received from sales?

A. All the money that was received in the store at all went in together.

Q. And the obligations of the company, were paid out of the common fund, at the various banks?

A. Yes.

Q. When you repaid these funds to the employee creditors, would you write a check on one bank at one time, and on another bank at another time?

A. Yes.

Q. You didn't select one bank account to repay the employees creditors?

A. No.

Q. You would look at your bank balance, and see which was running the highest balance, and pay from that bank, would you?

A. Yes.

Q. Did you ever have any instruction at any time from any officers of the company, as to the accounts to be used in the repayment of these funds, to the employees' creditors?

Renshaw

49

A. No.

Q. Was that left to your discretion.

A. Yes.

Q. During your entire administration, in setting up your balance sheet, your statement of

the condition and status of the business, have you any recollection of a discrimination being made particularizing these obligations to the employee creditors, to the distinguishing of them from the other accounts payable?

Renshaw

49

A. I don't know how to answer that, I don't know what you mean.

Q. Well, on your balance sheet they appeared as accounts payable, did they?

A. Yes.

Q. Was there one item of that alone?

A. It was during Mr. Dreyfous' administration, while he was manager, it just showed as one amount, to the employees, but before that time, on the balance sheet, it had every name and cash due to each employee, that was on the balance sheet.

Q. Have you any knowledge of Mr. Dreyfous at any time issuing financial statements to the commercial agencies, Dun or Bradstreets, or to its stockholders, or to any banks here in the city?

A. They were just made up statements to Mr. Walker, I don't know whether he gave them out or not.

Q. You have no knowledge what was done with them?

A. No.

Q. And couldn't testify?

Renshaw  
50

A. No. After Mr. Dreyfous took it I think the statements were given to them, but before that, I don't know what Mr. Walker did with them.

Q. You made the statements up to Mr. Walker, and also to Mr. Dreyfous, these financial statements?

A. No, I didn't make up the financial statement, I made up the trial balances and the financial statements were made from them.

Q. Do you know who made those?

A. During Mr. Dreyfous' time, Mr. Campbell made them.

Q. And during the Walker administration?

A. Before that time we didn't make them up every month. We gave Mr. Walker the trial balance, but we used to make them up at the end of the year. Different auditors would come in and help.

Renshaw  
50

Q. Do you recollect the period covered by the Renshaw account, how many years it was?

Renshaw  
50

A. Well, he had an account there before I went to the store.

Q. What was your answer as to Miss Salisbury?

JUDGE LEWIS: I think we have the books here to show that.

Q. Have you any knowledge of the cashing of these certificates of deposit that you have described?

A. No, I don't remember about them. I think Mr. Dreyfous took care of them when he came in.

Q. You would know from your bookkeeping transactions whether they were cashed or not?

A. Yes, the books would show, but I don't remember.

Renshaw  
51

Q. Do you have any recollection of these time certificates being cashed to meet payrolls or invoices?

A. No, they were never cashed to meet payrolls.

Q. But when you were making the heavy spring purchases, or autumn purchases, to take your discounts, you would call in that reserve for that purpose, would you not?

A. I don't remember.

Q. You wouldn't say the company didn't do that, would you?

A. I don't remember.

## RE-DIRECT EXAMINATION

By T. D. Lewis.

JUDGE LEWIS: It is stipulated that the last book used by Mr. Renshaw, which is now

in the possession of the Clerk as an exhibit in the receivership proceedings, may be admitted in evidence in these proceedings and I have the one of Miss Salisbury and I offer that in evidence and I ask the clerk to mark it Exhibit "A".

THE COURT: The same may be admitted.

JUDGE LEWIS: Mr. Riter, will you stipulate the total amount due on the deposit at the time the receiver was appointed?

Renshaw

52

MR. RITER: Yes, it is desirable that be done, excluding the J. R. Walker?

—It is stipulated and agreed between counsel that at the time of the appointment of the receiver of the Walker Bros. Dry Goods Company, to-wit, on June 25, 1930, that the employees' Creditors Account showed the credits to the respective employees as follows:

Effie Blaine .....	\$ 188.76
E. Bowen .....	144.50
Muriel Gates .....	33.76
Sarah Giles .....	49.02
C. G. Renshaw .....	8370.52
Jack Ronnebeck .....	40.00
May Salisbury .....	2852.22
Sarah Wightman .....	100.00
<hr/>	
Total .....	\$11,778.78

In addition to this total, there was the sum of \$2909.85 to the credit of J. R. Walker, which is the subject of a separate plenary action before your Honor.

Those figures as to Mr. Renshaw and Miss Salisbury are correct, and it is so stipulated, Judge Lewis?

JUDGE LEWIS: Yes.

JUDGE LEWIS: Continuing his examination.

Q. Exhibit "A", being the deposit book of Miss Salisbury, I think shows the last deposit made by her to have been in June, 1912, doesn't it?

Renshaw  
53

A. No, it was March, 1912.

Q. Now in March, 1912, were those time certificates that you have spoken of in the banks, was there sufficient then, as far back as 1912, to cover the total amount of deposits by the employees?

Renshaw  
53

A. I don't remember about those.

Q. I show you Exhibit "B", being the deposit book of Mr. Renshaw, that I just obtained from the possession of the clerk; the last deposit made by Mr. Renshaw, according to this book, was November 20th, 1928, was it not?

A. Yes, that is correct.



Q. I will ask you whether there were time certificates such as you have spoken of, owned by Walker Bros. Dry Goods Company at that time?

A. Yes sir.

Q. And for some considerable time after that?

A. Yes sir.

THE COURT: What date did Mr. Dreyfous take possession?

Renshaw

53

A. In 1929. Maybe that is wrong. Maybe it was December, 1928. Maybe some one else could answer that.

—It is stipulated that the Dreyfous administration commenced the latter part of November, 1928—

Q. You have spoken of various things Mr. Dreyfous told you with reference to these deposits; now what was the occasion of Mr. Dreyfous making those remarks to you about them?

MR. RITER: We object to all this.

THE COURT: The same ruling and exceptions.

Renshaw

54

Q. I will ask you whether it was on occasions when either Mr. Renshaw or Miss Salisbury desired to withdraw part of their deposits?

A. Yes. And then we did receive deposits during Mr. Dreyfous' time, but not from these people.

Q. That was from other depositors?

A. Yes sir.

Q. I show you a list of depositors who had claims at the time of the appointment of the receiver, as read by Mr. Riter a short time ago, and I will ask you if some of these persons named by Mr. Riter, at that time deposited money, after Mr. Dreyfous was General Manager?

A. Mr. Ronnebeck deposited this the first of June, and the receiver was appointed the 25th of June, and this was before that.

Renshaw  
54

Q. It was in the same year, was it?

A. Yes. I am quite sure Miss Gates deposited during Mr. Dreyfous' administration, but I am not positive of that.

## RE-CROSS EXAMINATION

By Franklin Riter.

Q. Mrs. Chase, do I understand you, referring to plaintiff's Exhibit "A", the May Salisbury account, that it was clear back in 1912 that Miss Salisbury made her last deposit?

A. I don't remember when she made her last deposit. That book tells that, but I forget.

Q. Will you look at this Exhibit "A", and make that statement for us, when she actually brought money there?

Renshaw  
55

A. That would be 18 years before the appointment of the receiver.

Q. That is your own handwriting, Mrs. Chase, is it?

A. Not all of it.

JUDGE LEWIS: The subsequent entries are of interest only?

A. Yes sir.

Q. That would be 18 years before the appointment of the receiver, that Miss Salisbury made the last deposit?

A. Yes sir.

Q. And the rest are interest accumulations?

A. Yes.

Q. Now when we come to the Renshaw account, as revealed by plaintiff's Exhibit "B"; please examine this and tell us when he made his last deposit?

A. November 20, 1928.

Renshaw  
55

C. G. RENSRAW, a witness for plaintiff, testified as follows:

Renshaw  
56

I am the plaintiff in this case. I am 49 years years old and worked for Walker Brothers Dry

Goods Company for 38 years. I started when I was 11 years old. I was there until the receivership and worked all that time except 8 months while I was in Chicago. During that time up to November, 1928, I made various deposits of money with Walker Brothers Dry Goods Company.

Q. Now at that time that you were depositing, making those deposits, that is, during the time, I don't mean just at the time of delivering the money over, but during the time you were making these deposits, what if anything was said by either the officers of the Dry Goods Company, or by an employee of the Dry Goods Company, that was charged with receiving your deposits?

Renshaw  
56

A. Well, as I said before—

MR. RITER: We make the same formal objection to each and every one of the questions.

THE COURT: The objection is overruled.

Exception noted.

A. I often talked to Mrs. Chase, in fact I did to her more than the others about our savings. Mrs. Chase always mentioned that our savings was absolutely safe, and if anything ever happened to the store we would get our money in preference to everyone else, in fact, towards the last, as I walked through the office, and going upstairs I had to go through her office quite often, and I often spoke to her about it, she says "you've

got nothing to worry about, your money is absolutely safe”.

Renshaw  
57

Q. Now during all that time did you rely on these statements made to you, with reference to the security of your deposits and to the manner of their preference?

A. By all means.

Q. Did you rely on those statements, including those that you would be preferred to all other creditors?

A. Yes sir.

Q. And was it by reason of these statements that you continued to make your deposits with the company?

A. Yes sir.

Q. And allowed your money to remain there?

A. Yes.

Q. Did you believe the representations made to you in that regard?

A. Yes sir.

Renshaw  
57

JUDGE LEWIS: It is admitted that Miss Salisbury would testify the same as this witness with reference to her deposits?

MR. RITER: Yes sir, with the same objections and exceptions.

Renshaw  
61

MR. MOYLE: The record may show that we withdraw in open court, and with the consent of counsel on the opposite side, the right of set-off heretofore claimed in our pleadings, without in any wise affecting our claim to the right of preference for the full amount.

Renshaw  
61

Thereafter on the 26th day of February, 1932 the court made, entered and filed its Findings of Fact and Conclusions of Law as follows:

*(Title of Court and Cause):*

8        This case coming on regularly for hearing the 4th day of December, 1931, before the Honorable William H. Bramel, Judge, plaintiff appearing in person and by his attorney, Henry D. Moyle, Esq., and the defendant appearing by its attorneys, Messrs. Franklin Riter and Wilson McCarthy, whereupon the issues presented by plaintiff's complaint and defendant's answer thereto, were tried before the Court sitting without a jury, and the respective parties having adduced their evidence in support of the allegations of their pleadings, and the case having been fully argued and submitted to the Court for its determination, and the Court having found all of the issues in favor of the plaintiff and against the defendant, now makes, enters and files the following Findings of Fact, to-wit;

## FINDINGS OF FACT.

## I.

That the Tracy Loan & Trust Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, is the duly appointed, qualified and acting receiver of Walker Brothers Dry Goods Company, an insolvent corporation organized and existing under and by virtue of the laws of the State of Utah.

## II.

That the Tracy Loan & Trust Company was appointed receiver as aforesaid, by the above entitled Court in an action therein pending entitled "Real Estate Finance Company, a corporation, plaintiff, v. Walker Brothers Dry Goods Company, a corporation, Defendant", said case being Case No. 45883.

## III.

- 9        That on the 20th day of August, 1931, in said  
Action No. 45883, an order was duly made and en-  
9    tered, wherein and whereby this plaintiff, among  
others, was ordered and required to institute an  
action against the defendant for the purpose of  
adjudicating the rights of the plaintiff under his  
claim to a priority and preference in the payment  
of plaintiff's claim against the defendant in the  
sum of \$2,909.85, which said claim the defendant

has allowed to plaintiff as a common creditor of the said Walker Brothers Dry Goods Company, an insolvent corporation, as aforesaid; that the defendant denied and rejected plaintiff's claim to a priority and a preference in the payment thereof.

#### IV.

That by said order of court the sum of \$11,268.33 was ordered held out of and from the funds of the receivership estate for the purpose of insuring full payment of the aforesaid claim of the plaintiff, together with the claims of other persons likewise claiming a preference, in the event it should be adjudged that plaintiff or any of said claimants were entitled to priority and preference in the payment of their said claims.

#### V.

- 9        That plaintiff brought this action against the defendant by and with the consent of the Court first had and obtained, as in said order of August 20, 1931, provided, and for the express purpose of having his said claim against the defendant paid in full out of the said \$11,268.33, held out of and from the funds of the receivership estate, as aforesaid.

#### VI.

That prior to the appointment of the defendant, as receiver of Walker Brothers Dry Goods



Company, as aforesaid, the plaintiff delivered to and deposited with the said Walker Brothers Dry Goods Company the sum of \$2,909.85, upon an express trust, to-wit: that said sum be held and retained by the said Walker Brothers Dry Goods Company for the sole, specific and special purpose, and that only, of securing the payment of  
 10 and paying for the future goods, wares and merchandise to be purchased by the wife of plaintiff from Walker Brothers Dry Goods store.

#### VII.

10 That the said deposit so made by the plaintiff to Walker Brothers Dry Goods Company under the express trust, as aforesaid, was accepted and held by Walker Brothers Dry Goods Company in trust as a special fund or deposit for the specific use and purpose for which it was entrusted to the said Walker Brothers Dry Goods Company, to-wit: for the security, satisfaction and payment of future advances and sales of goods, wares and merchandise by Walker Brothers Dry Goods store to the wife of plaintiff, and not otherwise.

#### VIII.

That after the deposit of said \$2,909.85, in trust as aforesaid, and prior to the appointment of the defendant as receiver of said Walker Brothers Dry Goods store, the wife of plaintiff

purchased and Walker Brothers Dry Goods store sold to her, merchandise of the agreed value of \$329.98.

### IX.

- 10        That since the appointment of said receiver, the wife of plaintiff purchased from the defendant, out of the assets of the Walker Brothers Dry Goods Company stock in the hands of the defendant, and the defendant sold to her, goods, wares and merchandise of the agreed value of \$2,006.03.

### X.

That at the time of the appointment of the defendant as receiver, as aforesaid, there came into the hands of the defendant, sums of money in excess of the amount of plaintiff's said claim of \$2,909.85; that the assets of the Walker Brothers Dry Goods store which came into the hands of defendant, as receiver, as aforesaid, were augmented by and to the extent of plaintiff's said deposit of \$2,909.85.

### XI.

That no part of said claim has been paid by defendant to plaintiff.

### XII.

- 11        That the right of the defendant to offset the sum of \$329.98, referred to in Finding of Fact No. 8, and the sum of \$2,006.03, set forth in the

- 11 foregoing Finding of Fact No. 9, was by stipulation made by counsel in open court waived, the said sums of \$329.98 and \$2,006.03 having been sold and assigned by the defendant prior to the hearing herein; that the defendant has no right, title or interest in or to either of said accounts.

### XIII.

That the assets of Walker Brothers Dry Goods store are insufficient to pay the general creditors of Walker Brothers Dry Goods store more than approximately fifty-five per cent of the amount of the claims of general creditors heretofore presented and allowed.

### XIV.

That the plaintiff was an officer of Walker Brothers Dry Goods Company at all times set forth and described in plaintiff's complaint prior to the appointment of defendant as receiver, to-wit: a regularly elected, qualified and acting director of said corporation.

WHEREFORE, from the foregoing Findings, the Court concludes:

### CONCLUSIONS OF LAW.

11

1.

That the plaintiff is entitled to recover from the defendant the sum of \$2,909.85, to be paid to

the plaintiff out of the \$11,268.33 heretofore set aside for the payment thereof, as more particularly appears in the foregoing Findings of Fact, and for his costs of court herein expended.

WM. H. BRAMEL,  
*District Judge.*

And thereupon on the 26th day of February, 1932 the Court made, entered and filed its Judgment in the above entitled cause as follows:

*(Title of Court and Cause):*

- 12        This case coming on regularly for hearing the  
4th day of December, 1931, before the Honorable  
William H. Bramel, Judge, plaintiff appearing in  
person and by his attorney, Henry D. Moyle,  
12 Esquire, and the defendant appearing by its at-  
torneys, Messrs. Franklin Riter and Wilson Mc-  
Carthy, whereupon the issues presented by plain-  
tiff's complaint and defendant's answer thereto,  
were tried before the Court sitting without a jury,  
and the respective parties having adduced their  
evidence in support of the allegations of their  
pleadings, and the case having been fully argued  
and submitted to the Court for its determination,  
and the Court having found all of the issues in  
favor of the plaintiff and against the defendant,  
and the Court having heretofore made and filed  
its Findings of Fact and Conclusions of Law in  
writing,

12        NOW, THEREFORE, in consideration of the law and the premises, IT IS NOW ORDERED, ADJUDGED AND DECREED that the defendant, as receiver of Walker Brothers Dry Goods Company, a corporation, be and it is hereby ordered and directed to pay to the plaintiff the sum of \$2,909.85, the same to be paid out of that certain fund of \$11,268.33, set aside by order of the above entitled court on the 20th day of August, 1931, in action No. 45883, entitled "Real Estate Finance Company, a Corporation, Plaintiff, v. Walker Brothers Dry Goods Company, a Corporation, Defendant," said sum having been set aside, as ordered, for the express purpose of paying the claim of the plaintiff, as aforesaid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover from the defendant his costs of court herein incurred, in the sum of \$15.20.

WM. H. BRAMEL,  
*District Judge.*

13        Thereafter on the 1st day of March, 1932 the plaintiff and respondent and defendant and appellant entered into a written stipulation extending the time within which defendant and appellant should prepare, serve, settle and file its bill of exceptions to and including the 26th day of May,  
14        1932, and on said 1st day of March, 1932 the said

14 Honorable William H. Bramel, judge as aforesaid, did make and enter his order allowing the defendant and appellant to and including the 26th day of May, 1932 within which to settle and file its bill of exceptions in the above entitled action.

Thereafter said bill of exceptions was upon stipulation settled and signed by the Honorable William H. Bramel, judge as aforesaid, on the 48 12th day of May 1932 and was filed on the 12th day of May, 1932.

And thereafter on the 9th day of July, 1932 the defendant and appellant did serve on counsel for plaintiff and respondent the following:

15 NOTICE OF APPEAL

*(Title of Court and Cause):*

TO THE CLERK OF THE ABOVE ENTITLED COURT AND TO THE ABOVE NAMED PLAINTIFF, J. R. WALKER, AND TO HENRY D. MOYLE, ESQ., HIS ATTORNEY:

You and each of you will please take notice that the defendant, Tracy Loan & Trust Company, a corporation, as the regularly appointed, qualified and acting receiver of Walker Brothers Dry Goods Company, a corporation, the defendant above named, hereby appeals to the Supreme

Court of the State of Utah from the final judgment of the Third Judicial District Court of the State of Utah in and for Salt Lake County, made and given in favor of said plaintiff and against the said defendant, Tracy Loan & Trust Company, a corporation, as the regularly appointed, qualified and acting receiver of Walker Brothers Dry Goods Company, a corporation, on the 26th day of February, 1932, and from the whole of said judgment and decree so made, given and filed  
 15 against the said defendant, Tracy Loan & Trust Company, a corporation, as the regularly appointed, qualified and acting receiver of Walker Brothers Dry Goods Company, a corporation.

Dated at Salt Lake City, Utah this 9th day of July, 1932.

RITER & COWAN,  
 WILSON Mc CARTHY,

*Attorneys for Tracy Loan &  
 Trust Company, a corporation,  
 as receiver of Walker Brothers  
 Dry Goods Company, a corporation,  
 Defendant and Appellant.*

Received copy of the foregoing notice at Salt Lake City, Utah, this 9th day of July 1922.

(Signed) HENRY D. MOYLE,  
*Attorney for Plaintiff  
 and Respondent.*

- 15        Thereafter on the 9th day of July, 1932 the  
          said Notice of Appeal was filed with the Clerk of  
          the Third Judicial District Court of the State of  
          Utah in and for Salt Lake County and on said  
 16    9th day of July, 1932 the defendant and appellant  
          did file with the Clerk of said court its Undertak-  
          ing for Costs on Appeal.

# CLERK'S CERTIFICATE ON TRANSCRIPT

*(Title of Court and Cause):*

I, ALONZO MACKAY, Clerk of the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, do hereby certify that the above and foregoing and hereto attached files contain all the original papers filed in this Court in the above entitled case, including the original Bill of Exceptions and Notice of Appeal and all other papers designated in the Praecipe made herein by the appellant. The whole constituting the Judgment Roll therein. And that the same is a full, true and correct transcript of the record as it appears in my office.

And I further certify that an Undertaking on Appeal, in due form, has been properly filed, and that the same was filed on the 9th day of July, A. D. 1932.

And I further certify that said Transcript



is this date transmitted to the Supreme Court of the State of Utah, pursuant to such appeal.

WITNESS my hand and the seal of said Court at Salt Lake City, Utah, this 26th day of July, A. D. 1932.

ALONZO MACKAY,

*Clerk, Third District Court.*

(SEAL)

On the 26th day of July, 1932 said transcript on appeal was filed with the Clerk of the Supreme Court.

- 17      And thereafter defendant and appellant did on the 27th day of July, 1932 serve on counsel for plaintiff and respondent and did on the 28th day of July, 1932 file with the Clerk of the Supreme Court of the State of Utah the following

#### ASSIGNMENT OF ERRORS:

*(Title of Court and Cause):*

The Appellant, Tracy Loan & Trust Company, a corporation, as the regularly appointed, qualified and acting receiver of Walker Brothers Dry Goods Company, a corporation, assigns errors as follows:

1. The Court erred in its Conclusions of Law and Judgment that plaintiff is entitled to re-

cover the sum of \$2,909.85, to be paid the plaintiff out of and from the sum of \$11,268.33, which the defendant Receiver, by order of court dated August 20, 1931 in the action wherein Real Estate Finance Company is plaintiff and Walker Brothers Dry Goods Company is defendant, being District Court Action No. 45883 (also known as "In the matter of the receivership of Walker Brothers Dry Goods Company, a corporation") was ordered to hold out of the funds of the receivership estate for the purpose of insuring the full payment of plaintiff's claim together with claims of other persons, likewise claiming a preference, in the event it should be adjudged that plaintiff or any of said claimants were entitled to priority or preference. (Transcript page 11, Ab. 80, 81 and 82).

2. The Court erred in its Finding No. VI that prior to the appointment of defendant as receiver of said Walker Brothers Dry Goods Company, that plaintiff delivered to and deposited with said Walker Brothers Dry Goods Company the sum of \$2,909.85 upon an expressed trust; to-wit; that said sum be held and retained by said Walker Brothers Dry Goods Company for the sole, specific and special purpose that only, of securing the payment of and paying for the future goods, wares and merchandise to be purchased by the wife of plaintiff from Walker Brothers Dry

Goods Store. (Transcript pages 9 and 10, Ab. 79 and 80).

3. That the evidence in this case is insufficient to sustain the Court's Finding No. VI that an expressed trust of the sum of \$2,909.85 had been created by plaintiff and said Walker Brothers Dry Goods Company prior to the appointment of the defendant receiver. In support of this assignment of error Appellant specifies that the evidence:

a. Fails to show any expressed trust but negatively shows that the relation of debtor and creditor only was created or existed between plaintiff and said Walker Brothers Dry Goods Company; (Transcript pages 28, 29, 37 and 38, Ab. 23, 24, 33, 34, 35 and 36).

b. Shows that a simple debtor and creditor relationship existed between plaintiff's assignor and the said Walker Brothers Dry Goods Company and that plaintiff succeeded only to the rights of his assignor; (Transcript pages 28, 29, 37 and 38, Ab. 23, 24, 33, 34, 35 and 36).

c. Shows that at the time of the appointment of the defendant Receiver of Walker Brothers Dry Goods Company, there was on the books of the company a mere credit balance in favor of plaintiff and that such credit balance was not a special fund charged with a trust for a specific

purpose; (Transcript pages 24, 28 and 29, Ab. 17, 18, 23 and 24).

d. Fails to show that plaintiff ever delivered to and deposited with said Walker Brothers Dry Goods Company the sum of \$2,909.85 upon an expressed trust but affirmatively shows that plaintiff was the assignee of a credit balance in favor of his assignor and against said Walker Brothers Dry Goods Company; that no funds were withdrawn by plaintiff from said Walker Brothers Dry Goods Company, nor did said company pay over any funds to plaintiff which he returned or delivered to said company upon an expressed trust or for any other purpose, and that plaintiff became and was a simple contract creditor of said company in place of his assignor; (Transcript pages 24, 28 and 29, Ab. 17, 18, 23 and 24).

4. The Court erred in its Finding of Fact No. VII that said deposit so made by plaintiff to Walker Brothers Dry Goods Company was accepted and held by said company in trust as a special fund or deposit for the specific use and purpose of security, satisfaction and payment of future advances and sales of goods, wares and merchandise to plaintiff's wife;

5. That the evidence in this case is insufficient to sustain the Court's Finding No. VII that said Walker Brothers Dry Goods Company ac-

cepted and held said deposit made by plaintiff in trust as a special fund or deposit for the specific use and purpose of security, satisfaction and payment of future advances and sales of goods, wares and merchandise by said company to plaintiff's wife. In support of this assignment of error Appellant specifies that the evidence:

a. Fails to show that Walker Brothers Dry Goods Company ever took or held any deposit or special fund from plaintiff; (Transcript pages 24, 28, 29 and 38, Ab. 17, 18, 23, 24, 34 and 35).

b. Fails to show that plaintiff ever deposited with or paid to Walker Brothers Dry Goods Company any special fund to be held in trust by the company for a specific and agreed purpose; (Transcript pages 24, 28, 29 and 38, Ab. 17, 18, 23, 24, 34 and 35).

c. Fails to show that Walker Brothers Dry Goods Company ever agreed with plaintiff to take and hold any deposit or fund in trust for the specific purpose of security, satisfaction and payment of future advances and sales of goods, wares and merchandise to plaintiff's wife;

d. On the contrary, shows that the relation of simple debtor and creditor existed between plaintiff's assignor and Walker Brothers Dry Goods Company; that plaintiff succeeded to his assignor's rights and no more; that the plaintiff

as assignee did not demand nor receive payment of his assignor's account, nor did he withdraw said credit balance and re-deposit same with or pay same to said company in trust for a specific purpose; (Transcript pages 24, 28, 29, 37 and 38, Ab. 17, 18, 23, 24, 33, 34 and 35).

6. The Court erred in its Finding No. X that at the time of the appointment of the defendant as Receiver of Walker Brothers Dry Goods Company there came into the hands of the defendant Receiver sums of money in excess of amount of plaintiff's claim of \$2,909.85 and that the assets of Walker Brothers Dry Goods Company which came into the hands of the defendant as Receiver were augmented by and to the extent of plaintiff's said deposit of \$2,909.85; (Transcript page 10, Ab. 79).

7. That the evidence in this case is insufficient to sustain the Court's Finding No. X that at the time of the appointment of the defendant as Receiver of Walker Brothers Dry Goods Company, there came into the hands of the defendant as Receiver sums of money in excess of amount of plaintiff's claim of \$2,909.85, and that the assets of Walker Brothers Dry Goods Company which came into the hands of defendant as Receiver were augmented by and to the extent of plaintiff's said deposit of \$2,909.85. In sup-

port of this assignment of error Appellant specifies that the evidence;

a. Fails to show that plaintiff's claim was a special deposit but on the contrary that plaintiff's claim was based upon a bookkeeping credit balance only; (Transcript pages 24, 28, 29, 37 and 38, Ab. 17, 18, 23, 24, 33, 34 and 35).

b. Fails to show that any cash funds which had been paid by plaintiff or his assignor, to Walker Brothers Dry Goods Company, ever came into the hands of defendant as Receiver;

c. Affirmatively shows that even though plaintiff made a special arrangement with Walker Brothers Dry Goods Company concerning the handling of the credit bookkeeping balance in favor of plaintiff's assignor and which was assigned to him, that no actual cash funds paid by plaintiff nor by his assignor came into the hands of the defendant as Receiver; (Transcript pages 24, 25, 26, 27 and 29, Ab. 17, 18, 19, 20, 21 and 24).

8. The court erred in its Conclusion of Law that the plaintiff is entitled to recover from defendant the sum of \$2,909.85, to be paid to the plaintiff out of the \$11,268.33 heretofore set aside for the payment thereof. In support of this assignment the Appellant specifies the following particulars:

a. The evidence conclusively shows that even if there might have been a special arrangement between plaintiff and said Walker Brothers Dry Goods Company concerning the taking and holding of the credit balance appearing upon the books of Walker Brothers Dry Goods Company in favor of plaintiff's assignor and which was assigned to plaintiff, that it is impossible to trace or identify the funds paid by plaintiff's assignor to said company, either in its original or substituted form; (Transcript Renshaw case D. C. No. 48304 pages 37, 38, 39, 40, 41, 42, 43, 48 and 49, Ab. 52, 53, 54, 55, 56, 57, 58, 63, 64 and 65).

b. That the funds paid to or deposited with said Walker Brothers Dry Goods Company by plaintiff's assignor became so intermingled with the individual and corporate funds of Walker Brothers Dry Goods Company that it is impossible to trace and identify the funds of plaintiff's assignor as entering into some specific property or funds and that it is impossible to trace the funds deposited by or paid to Walker Brothers Dry Goods Company by plaintiff's assignor into any specific property or fund; (Transcript Renshaw case D. C. No. 48304 pages 37, 38, 39, 40, 41, 42, 43, 48 and 49, Ab. 52, 53, 54, 55, 56, 57, 58, 63, 64 and 65).



9. The court erred in its Finding No. VI that plaintiff delivered to and deposited with said Walker Brothers Dry Goods Company the sum of \$2,909.58 upon an expressed trust. In support of this assignment the Appellant specifies that the evidence proves:

a. That at no time did the plaintiff deliver to and deposit with said Walker Brothers Dry Goods Company the sum of \$2,909.85 or any other sum upon an expressed trust or for any other purpose or use but instead the evidence shows that plaintiff was an assignor of a credit book-keeping balance; that he did not withdraw or receive payment of said balance and re-deliver the funds so paid to said Walker Brothers Dry Goods Company; (Transcript pages 26, 28, 29, Ab. 20, 21, 22, 23 and 24).

b. That plaintiff's assignor was a common creditor of Walker Brothers Dry Goods Company and that plaintiff as her assignee succeeded only to the rights of said assignor; (Transcript pages 36, 37 and 38, Ab. 32, 33, and 34).

10. That the court erred in its entry and filing of judgment which adjudicated and declared that plaintiff's claim for the sum of \$2,909.85 was a preferred claim, to be paid in full out of the assets and funds of Walker Brothers

Dry Goods Company. In support of this assignment the Appellant specifies:

a. The evidence conclusively shows that the relation between plaintiff and said Walker Brothers Dry Goods Company was that of debtor and creditor and not that of trustee and cestui que trust; (Transcript pages 36, 37 and 38, Ab. 32, 33, 34 and 35). (Renshaw case No. 48304 pages 40, 41, 42, 43, 44, Ab. 54, 55, 56, 57, 58, 59 and 60).

c. That no trust res ever existed as between said Walker Brothers Dry Goods Company and plaintiff or plaintiff's assignor, but that plaintiff and his assignor were at all times simply common contract creditors; (Transcript pages 24, 28, 29, 37 and 38, Ab. 17, 18, 23, 24, 33, 34 and 35).

d. That the funds of plaintiff's assignor paid to or deposited with Walker Brothers Dry Goods Company were not held in any special deposit or fund but became so intermingled with the individual and corporate funds of Walker Brothers Dry Goods Company that it is impossible to trace and identify the funds of plaintiff's assignor as entering into some specific property or into any special deposit or fund held by Walker Brothers Dry Goods Company for the purpose of re-payment of the deposits or payments of plaintiff's

assignor; (Transcript Renshaw case D. C. No. 48304, pages 40, 41, 42, 43 and 44, Ab. 54, 55, 56, 57, 58, 59 and 60).

e. That the evidence conclusively shows that at no time did Walker Brothers Dry Goods Company set up, keep or maintain a special deposit or reserve fund to underwrite or protect the funds paid by plaintiff's assignor to said company but on the contrary the evidence shows that the funds of plaintiff's assignor were completely intermingled with the general corporate funds of the company and were used indiscriminately in the transaction of its corporate business. (Transcript Renshaw case D. C. No. 48304, pages 40, 41, 42, 43 and 44, Ab. 54, 55, 56, 57, 58, 59 and 60).

11. The court erred in overruling defendant's objection to the admission of evidence on plaintiff's behalf made on the grounds that plaintiff's complaint: (a) Does not state facts constituting a cause of action for preference; (b) Does not state facts raising a trust in plaintiff's favor and/or (c) Does not state facts entitling plaintiff to a priority in the payment of his claim against the receivership estate. (Transcript pages 23 and 24, Ab. 16 and 17).

12. The court erred in overruling defendant's objection to plaintiff's own testimony as to

arrangements made by him with relation to the handling or disposition of his assignor's account with Walker Brothers Dry Goods Company; (Transcript pages 31 and 37, Ab. 26 and 33).

13. The court erred in overruling defendant's objections to testimony of the witness, Chase, of conversations between the witness and plaintiff relating to the handling of the account of plaintiff's assignor against Walker Brothers Dry Goods Company and the disposition of same; (Transcript, pages 20, 21, 22, 23, 24 and 25, Ab. 12, 13, 14, 15, 16, 17, 18 and 19).

14. The court erred in overruling defendant's objections to the testimony of the witness Chase, relating to statements made to her by officers of Walker Brothers Dry Goods Company concerning time deposits or certificates of deposit and their relation to employee deposits. (Transcript Renshaw case D. C. No. 48304 pages 34, 35, 36 and 37, Ab. 49, 50, 51 and 52).

15. The court erred in overruling defendant's objection to the question propounded to the witness Chase, by plaintiff's counsel, to-wit: "And was the amount of these time deposits more than sufficient to pay all of the deposits made by

employees with the Dry Goods Company?"  
(Transcript Renshaw case D. C. No. 48304 page  
34, Ab. 48).

Dated at Salt Lake City, Utah this 27th day  
of July, 1932.

RITER & COWAN,  
WILSON McCARTHY,

*Attorneys for Tracy Loan &  
Trust Company, a corporation,  
as Receiver of Walker Brothers  
Dry Goods Company, a corpora-  
tion, Appellant.*

Received copy of foregoing and service of same  
is acknowledged this 27th day of July, 1932.

HENRY D. MOYLE,  
*Attorney for Respondent.*

The foregoing abstract of record is respect-  
fully submitted.

RITER & COWAN,  
WILSON McCARTHY,

*Attorneys for Defendant  
and Respondent.*