

United States
Circuit Court of Appeals

For the Ninth Circuit.

GEORGE B. BURKE, as Trustee in Bankruptcy,
for the WENATCHEE-STRATFORD OR-
CHARD COMPANY,

Appellant,

vs.

LYMAN H. WOOLFOLK,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Western District of Washington,
Southern Division.

FILED

SEP 2 - 1913

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

WINFIELD R. SMITH, Esquire, #1019-21 Alaska
Bldg., Seattle, Washington,
Attorney for Trustee for the purposes of
this appeal.

WALTER M. HARVEY, Esquire, National Realty
Building, Tacoma, Washington,
Attorney for Appellee, L. H. Woolfolk.
[1*]

*In the District Court of the United States, Western
District of Washington, Southern Division.*

No. 1296.

In the Matter of the WENATCHEE-STRAT-
FORD ORCHARD COMPANY,
Bankrupt.

Stipulation [as to Preparation of Transcript].

It is hereby stipulated that the caption of all in-
struments, other than the first prepared, may be
omitted in preparing the transcript on appeal herein,
and said transcript of instruments without the cap-
tion shall be with like effect as though they were
shown properly captioned in the court and cause.

Dated June 27, 1913.

WINFIELD R. SMITH,
Attorney for Creditors W. R. Prowell and F. W.
Hoffman.

WALTER M. HARVEY,
Attorney for L. H. Woolfolk.

*Page-number appearing at foot of page of original certified Record.

[Endorsed]: Stipulation. Filed U. S. District Court, Western District of Washington. Jun. 27, 1913. Frank L. Crosby, Clerk. F. M. Harshberger, Deputy. [2]

Praeipce [for Transcript on Appeal].

To the Clerk of the Above-entitled Court:

You will please prepare transcript on appeal in above matter including following: Stipulation as to omitting captions; Claim of L. H. Woolfolk with Judgment in State Court on which it is based; Confession of Judgment in Woolfolk v. Wenatchee-Stratford Orchard Co. in State Court; Minutes of First Creditors' Meeting; Objections to Claim of L. H. Woolfolk, filed April 28, 1913; Order Appointing Burke Trustee; Transcript of Evidence, except pp. 2, 3, 4, 5, 6, 37, 38, 39, 57 and 58, and first 18 lines of 59; Petition for Review; Referee's Certificate on Review; Opinion of District Judge; Order Entered Modifying Referee's Decision by District Judge; Order Permitting Appeal in Trustee's Name; Petition for Appeal, with allowance indorsed; Assignment of Errors; Bond on Appeal; Citation, Exhibit No. 1.

WINFIELD R. SMITH,

Attorney for Appellants F. W. Hoffman and W. R. Prowell in Trustee's Name.

[Endorsed]: Praeipce for Record on Appeal. Filed U. S. District Court, Western District of Washington, June 27, 1913. Frank L. Crosby, Clerk. F. M. Harshberger, Deputy. [3]

Claim of W. H. Woolfolk and Payment on Which It is Based.

At Seattle, in said District of Washington, on the 19th day of March, A. D. 1913, came L. H. Woolfolk of Seattle, of the County of King and State of Washington, and made oath and says that Wenatchee-Stratford Orchard Company, a corporation, against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of \$46,138.84; that the consideration of said debt is as follows:

A judgment duly and regularly entered by the Superior Court of the State of Washington for Pierce County in cause No. 34,267, pending in the said Superior Court, wherein L. H. Woolfolk is plaintiff and Wenatchee-Stratford Orchard Company, a corporation, is the defendant, which said judgment was entered on the 13th day of February, 1913, and was rendered upon promissory notes made, executed and delivered by said Bankrupt and assigned to the deponent, and a copy of which said judgment is hereto annexed and made a part hereof; that no part of said debt or judgment has been paid and there are no set-offs or counterclaims to the same; that said deponent, L. H. Woolfolk, by virtue of his judgment aforesaid, has no lien upon any real estate or personal property of the above-named bankrupt, and has no prior claim over the other creditors of said bankrupt corporation by virtue of said judgment, and said deponent and claimant L. H. Woolfolk hereby offers to and does

waive and surrender any preference or priority which could or might be claimed by him against the assets of property [4] of said corporation or as against other creditors of said bankrupt corporation, and hereby disclaims any preference, right or priority against the property, assets and effects of said corporation or otherwise, and that said deponent has not, nor has any person by his order or to his knowledge or belief for his use, had or received any manner of security for said debt whatever.

[Seal]

L. H. WOOLFOLK,
Creditor.

Subscribed and sworn to before me this 19th day of March, 1913.

JASPER MAYO,
Notary Public for the State of Washington, Residing
at Seattle, King County, in Said State. [5]

Judgment [of Superior Court].

This cause coming on regularly for hearing and trial on this 13th day of February, 1913, upon plaintiff's complaint on file herein, and it appearing to the Court that the defendant has been duly and regularly personally served with summons and a copy of the complaint herein, on the 6th day of February, 1913, and has appeared in this cause and filed a confession of judgment in all respects as provided by the laws of the State of Washington, the Court having considered said complaint and confession of judgment, and having heard the testimony presented in support thereof, and having this day made and entered find-

ings of fact and conclusions of law in favor of the plaintiff and against the defendant, now on motion of Walter M. Harvey, counsel for the plaintiff;

It is hereby ordered and adjudged, that the plaintiff, L. H. Woolfolk, do have and recover of and from the defendant Wenatchee-Stratford Orchard Company, a corporation, the sum of \$46,138.84, together with the costs of this action expended and hereafter to be taxed.

Done in open court this 13th day of February, 1913.

ERNEST M. CARD,
Judge of the Superior Court.

[Endorsed]: Filed this 21st day of Mch., 1913, 11 A. M. R. F. Laffoon, Referee in Bankruptcy. [6]

*In the Superior Court of the State of Washington,
for Pearce County.*

No. 34,267.

L. H. WOOLFOLK,

Plaintiff,

vs.

WENATCHEE-STRATFORD ORCHARD COM-
PANY, a Corporation,

Defendant. [7]

Concession of Judgment [in Superior Court].

Comes now the defendant in the above-entitled action, Wenatchee-Stratford Orchard Company, a corporation, and admits that it is indebted to the plaintiff in manner and form and for the amount set

forth in plaintiff's complaint, and hereby authorizes judgment to be entered against said defendant for the sum of \$46,138.84, the same being principal, interest and reasonable attorney's fees as provided in the promissory notes set forth in plaintiff's complaint described as follows:

Upon a promissory note dated the 8th day of January, 1912, payable ninety days after date to the Scandinavian-American Bank, for the sum of \$5,000.00, with interest from Jan. 2, '13, at the rate of seven (7) per cent per annum.

Upon a promissory note dated the 30th day of April, 1912, payable ninety days after date, to the Scandinavian-American Bank, for the sum of \$5,000.00, with interest from Jan. 25, '13, at the rate of seven (7) per cent per annum.

Upon a promissory note dated the 3d day of July, 1912, payable ninety days after date to the Scandinavian-American Bank, for the sum of \$5,000.00, with interest from Dec. 30, '13, at the rate of seven per cent per annum.

Upon a promissory note dated the 13th day of April, 1911, payable on demand to D. W. King, for the sum of \$570.00, with interest from date at the rate of eight per cent per annum.

Upon a promissory note dated the 1st day of May, 1911, payable on or before six months after date to D. W. King, for the sum of \$380.00 with interest from date at the rate of eight per cent per annum.

Upon a promissory note dated the 1st day of June, 1911, payable on or before six months after date to Dennis W. King, for the sum of \$190.00, with inter-

est from date at the rate of [8] seven per cent per annum.

Upon a promissory note dated the 15th day of July, 1911, payable on or before ninety days after date, to Dennis W. King, for the sum of \$380.00, with interest from date at the rate of eight per cent per annum.

Upon a promissory note dated the 8th day of August, 1911, payable on demand to Dennis W. King, for the sum of \$570.00, with interest from date at the rate of eight per cent per annum.

Upon a promissory note dated the 13th day of April, 1911, payable on demand to George M. Brasfield, for the sum of \$1,500.00, with interest from date at the rate of eight per cent per annum.

Upon a promissory note dated the 1st day of May, 1911, payable on or before six months after date, to George M. Brasfield, for the sum of \$1,000.00, with interest from date at the rate of eight per cent per annum.

Upon a promissory note dated the 1st day of June, 1911, payable on or before six months after date to George M. Brasfield, for the sum of \$500.00, with interest from date at the rate of eight per cent per annum.

Upon a promissory note dated the 21st day of June, 1911, payable on or before six months after date to George M. Brasfield, for the sum of \$1,000.00, with interest from date at the rate of eight per cent per annum.

Upon a promissory note dated the 1st day of July, 1911, payable on or before ninety days after date,

to George M. Brasfield, for the sum of \$1,500.00, with interest at the rate of eight per cent per annum from date.

Upon a promissory note dated the 27th day of Sept., 1911, payable on demand after date to George M. Brasfield for the sum of \$1,000.00 with interest from date at the rate of eight per cent per annum. [9]

Upon a promissory note dated the 10th day of October, 1911, payable on demand after date to George M. Brasfield, for the sum of \$1,000.00, with interest at the rate of eight per cent per annum.

Upon a promissory note dated the 3d day of November, 1911, payable on demand after date to George M. Brasfield, for the sum of \$2,000.00, with interest at the rate of eight per cent per annum.

Upon a promissory note dated the 10th day of November, 1911, payable on demand after date to George M. Brasfield, for the sum of \$2,000.00, with interest at the rate of eight per cent per annum.

Upon a promissory note dated the 1st day of January, 1912, payable on demand after date to George M. Brasfield, for the sum of \$1,682.57, with interest at the rate of eight per cent per annum.

Upon a promissory note dated the 25th day of January, 1913, payable on demand after date to George M. Brasfield, for the sum of \$1,023.94, with interest at the rate of eight per cent per annum.

Upon a promissory note dated the 1st day of February, 1913, payable on demand after date to George M. Brasfield, for the sum of \$9,840.00, with interest at the rate of eight per cent per annum.

The notes aforesaid given to the Scandinavian-

American Bank having been assigned to the plaintiff, the notes to D. W. King and Dennis W. King, having been assigned and transferred to George M. Brasfield and by George M. Brasfield assigned and transferred to the plaintiff; the notes executed and delivered to George M. Brasfield having been assigned and transferred to the plaintiff. [10]

That the amount set forth in the plaintiff's complaint hereinbefore specified as the amount for which judgment is hereby confessed is now justly due and owing from the defendant to the plaintiff and no part of the same has ever been paid, and the defendant hereby authorizes the entry of judgment for costs against it upon said indebtedness.

Dated February 13, 1913.

WENATCHEE-STRATFORD ORCHARD
COMPANY,

By GEO. M. BRASFIELD,

President. [11]

State of Washington,
County of Pierce,—ss.

This is to certify that on this 13th day of February, 1913, personally appeared before me George M. Brasfield, to me personally known to be the individual described in and who on behalf of the defendant corporation executed the foregoing Confession of Judgment, and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated to me that he has read the fore-

going Confession of Judgment, knows the contents thereof, and that the same is true as he verily believes, and stated to me that he had authority from said corporation to execute the same and that the attached seal is the corporate seal of said corporation.

Given under my hand and official seal the day and year in this certificate first above written.

[Notary Public Seal]

CHARLES O. BATES,
Notary Public for the State of Washington, Residing at Tacoma.

Filed in Superior Court. Feb. 13, 1913. R. E. McFarland, Clerk. By B. C. O., Deputy. [12]

*In the Superior Court of the State of Washington,
for Pierce County.*

No. 34,267.

L. H. WOOLFOLK,

Plaintiff,

vs.

WENATCHEE-STRATFORD ORCHARD COMPANY, a Corporation,

Defendant.

CERTIFICATE.

I, R. E. McFarland, County Clerk, and by virtue of the Laws of the State of Washington, *ex-officio* Clerk of the Superior Court of the State of Washington, for Pierce County, do hereby certify that the annexed is a true and correct copy of the Confession of Judgment in the above-entitled action, now on file

and of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the said Superior Court, at my office, in the city of Tacoma, this 27th day of February, 1913.

[Seal]

R. E. McFARLAND,
Clerk.

By B. W. Cagley,
Deputy.

[Endorsed]: Filed U. S. District Court, Western District of Washington. May 1, 1913. Frank L. Crosby, Clerk. F. M. Harshberger, Deputy. [13]

First Meeting of Creditors.

March 21, 1913, 11 A. M.

F. G. REMANN, Attorney for Bankrupt.

WALTER M. HARVEY, Attorney for Various Creditors.

WHITNEY & HUGHES, of Wenatchee, Atty. for Various Creditors.

W. R. SMITH, Seattle, Atty. for Various Creditors.

J. D. BENNER, Atty. for Various Creditors.

R. C. BELT, Alaska Bldg., Seattle, Atty. for Various Creditors.

J. R. DALLY, Atty. for Various Creditors.

Meeting called to order by the Referee, and object stated, and opportunity given for submitting objections to claims on question of voting for trustee.

Mr. W. R. Smith, representing Creditors F. W. Hoffman and others, objected to claim of L. H. Wool-

folk, stating his objections at length (transcript attached) to the effect that the judgment of the Superior Court of Pierce County which constituted the claim, was improperly and fraudulently procured through the unauthorized acts of G. W. Brasfield, as president of the bankrupt corporation.

Mr. Hughes of Whitney & Hughes, joined in the objections.

Whereupon the Referee determined to hear proof upon the objections as affecting the right of the claim of L. H. Woolfolk to vote on question of election of trustee.

Whereupon testimony of witnesses F. W. Hoffman and W. R. Prowell was taken in behalf of objectors and G. M. Brasfield in behalf of the claim, an adjournment being taken to the 22d March to complete the testimony. [14]

After the close of the testimony, and the matter being fully argued at length by respective counsel, the Referee overruled the objections and exceptions offered to the claim, and that the claim should be allowed for purpose of voting. Exception allowed to objectors.

On motion, the meeting then proceeded to the election of Trustee in Bankruptcy.

Claims represented as follows:

By Mr. W. M. Harvey, Attorney:

J. H. Gordon, Assignee of claim of Shurle	51.30
H. Cromwell, Assignee, claim of James Strouf	103.73
Washington Pipe & Foundry Co.	2,198.55

W. M. Harvey, Assignee, claim of Pac. Pipe Co.....	1,185.79
R. K. Dericksen, Assignee Plough Hrdwr. Co.	2.50
L. W. Pratt, Assignee, Sunset Tel. & Tel. Co.....	4.00
Shorett, Mc— & Shorett.....	430.00
A. O. Burmeister, Assignee, Wilson Cr. L. & H. Co.....	24.15
P. L. Pendleton, Assignee Maltby & Freund	17.50
I. Strenki, Assignee, Western Union Tel. Co.	2.31
Van Dyke & Thomas.....	50.00
Morgan Wood, Assignee Bessie Creelman..	3.15
G. M. Brasfield.....	11.35
L. H. Woolfolk.....	46,138.84
J. D. Benner:	
Standard Oil Co.....	1,035.07
R. C. Belt:	
Wright & Day L. Co., C. F. Bishop and G. Hunter.....	11,847.84
E. R. York.....	100.80
Whitney & Hughes:	
C. G. Hoffman... ..	49.70
H. D. Foster.....	8.20
Carl Middleton.....	283.62
[15]	
W. R. Smith, Attorney, Seattle:	
W. R. Prowell.....	400.00
C. L. Moses.....	1,320.00
F. W. Hoffman.....	12,499.20

A. G. Douthitt.....	377.50
Geo. H. Blood.....	870.00

J. R. Dally, Attorney:

Geo. Adamson.....	2,240.00
Harry L. Bras.....	558.50

The roll being called by the Referee on the motion to proceed to election of Trustee, responses were made as follows: Yeas, Harvey and Dally. Noes, Benner and Belt. No voting, York, Whitney & Hughes and W. R. Smith.

The Referee declared the motion duly carried. Thereupon Mr. Harvey nominated as candidate for Trustee, Mr. George B. Burke, of the Bankers' Trust Co., Tacoma.

Mr. W. R. Smith put in nomination for said office, Mr. Fred Wright of Seattle.

Nominations being closed, roll-call resulted as follows, by the representatives of claims as above listed.

For Mr. Burke,—

Mr. Harvey	13 claims	\$50,211.82
Mr. York	1	“	100.80

14	50,312.62
----	-----------

For Mr. Wright,—

J. E. Benner
 R. C. Belt
 Whitney & Hughes (By Hughes)
 W. R. Smith
 J. R. Dally

The Referee announced that Mr. George B. Burke had received the majority, both as to number of claims and [16] amount, and thereupon declared

him duly elected as Trustee in Bankruptcy of said estate.

Mr. Harvey moved that the bond of the Trustee be fixed at Five thousand dollars; motion seconded and carried unanimously.

On motion, meeting adjourned *sine die*.

R. F. LAFFOON,
Referee.

[Endorsed]: Filed the 24th day of March, 1913, 12
M. R. F. Laffoon, Referee in Bankruptcy. [17]

Objections to Claim of L. H. Woolfolk.

Upon the filing of the claim of L. H. Woolfolk and prior to proceedings to elect a Trustee, at the first meeting of the creditors held on March 21, 1913, Winfield R. Smith, as attorney for F. W. Hoffman and W. R. Prowell, made the following objections to the claim, and therefore to its voting at the election of Trustee, namely:

1. The claim is based upon the judgment of the Superior Court of Pierce County, Washington, entered upon confession by G. M. Brasfield, as President, in the name of the bankrupt. This confession of judgment was wholly unauthorized in fact or in law, and moreover, the larger part of the claim on which the judgment is based is Brasfield's own, assigned to Woolfolk, but without transfer of beneficial ownership. Therefore, the judgment is void.

2. Without admitting that the claim can be treated other than as an entirety but clearly to maintain the objectors' rights, it is objected that the

note of NINE THOUSAND EIGHT HUNDRED FORTY (\$9840.00) DOLLARS principal, was issued by Brasfield, as President, to himself as salary for alleged past services in managing the company. There was no contract or other sufficient foundation to sustain this note, and moreover, this salary was voted solely by Brasfield and his wife as two of the three trustees, and therefore it is not good. Also, the final meeting at which the amount of the salary was fixed and the note issued was attended only by Brasfield and his wife, without any notice at all to Hoffman, the third member of the Board.

WINFIELD R. SMITH,

Attorney for Hoffman and Prowell. [18]

[Endorsed]: Filed U. S. District Court, Western District of Washington. Apr. 28, 1913. Frank L. Crosby, Clerk. F. M. Harshberger, Deputy. [19]

Order Appointing Burke Trustee.

At Tacoma, Washington, in said District, on the — day of March, A. D. 1913, before R. F. Laffoon, Esq., Referee in Bankruptcy.

On the 21st day of March, 1913, the day appointed by the Court for the first meeting of creditors in the above Bankruptcy and of which due notice has been given in "The Tacoma Daily Ledger" as required by the order of this Court, this matter coming on regularly to be heard and the hearing thereon having been continued until the 22d day of March, 1913, and the majority in number and amount of claims of the creditors of said bankrupt whose claims have been

allowed and who were present at said meeting having appointed by a vote duly taken, George B. Burke, of the city of Tacoma, and county of Pierce, and State of Washington, to be the trustee of said bankrupt's estate and effects, the Court having considered said selection of trustee and being fully advised in the premises;

It is hereby ordered that the above appointment of trustee be and the same is hereby approved, ratified and confirmed.

R. F. LAFFOON,
Referee in Bankruptcy.

[Endorsed]: Filed this 24th day of Mch., 1913. 4
P. M. R. F. Laffoon, Referee in Bankruptcy. [20]

**Transcript of Testimony and Proceedings at First
Meeting of Creditors.**

[Testimony of F. W. Hoffman.]

Mr. F. W. HOFFMAN, being called and sworn, testified as follows:

Direct Examination.

(By Mr. SMITH.)

Q. Your full name?

A. Fred W. Hoffman.

Q. You are a member of the Board of Trustees of the alleged bankrupt here, the Wenatchee-Stratford Orchard Company? A. Yes, sir.

Q. How long have you been such trustee?

A. Well, I have been on the Board ever since it started.

Q. Since the Company was formed?

(Testimony of F. W. Hoffman.)

A. Yes, sir.

Q. About when was that?

A. Oh, about three years ago.

Q. How many members are there on the Board of Trustees? A. Three.

Q. Who are the other members?

A. Mr. and Mrs. Brasfield.

Q. That is you mean Mr. Brasfield and his wife?

A. Yes, sir.

Q. Who are the officers of the corporation?

A. The three of us are the officers.

Q. What officers? A. I am secretary.

Q. And who is president and treasurer?

A. Mr. Brasfield is president.

Q. And have you attended all the recent meetings of the Board of Trustees, do you know?

A. I do not know. [21]

Q. Have you attended all the meetings of the Board of which you had notice?

A. Notice by mail?

Q. Yes, by any notice; the prescribed notice?

A. I think I have.

Q. Did the question ever come up at a meeting of the Board of Trustees as to this suit that was instituted by Mr. Woolfolk on these notes, the foundation of this claim of Mr. Woolfolk in this matter?

A. Not at any meeting that I was at.

Q. Then did the question of confessing the judgment ever come up? A. No, sir.

Q. Did any question authorizing any officer to confess any judgment ever come up before the Board?

(Testimony of F. W. Hoffman.)

A. No, sir.

Q. When, if ever, did you first learn of the confession of judgment by Mr. Brasfield?

A. I had an appointment with Mr. Brasfield,—(interrupted).

Q. Never mind the details.

A. When did I first learn?

Q. Yes, sir.

A. On the 26th or 27th of February.

Q. This last February?

A. Yes, about that time; I am not positive as to the exact time.

Q. Was it before or after judgment had been confessed and in fact entered? A. After.

Q. Has the matter of these bankruptcy proceedings ever come up at any of the meetings of the Board of Trustees? [22]

A. Not while I was there.

Q. You have attended all the meetings?

A. That I had notice of lately.

Q. Do you know of any meeting of the Board of Trustees that you did not attend, whether regularly called or not? A. I do not.

Q. Then was there ever any authorization at any meeting of the Board of Trustees to Mr. Brasfield to admit in the name of the Company, by answer or otherwise, the allegations of the petition of the creditors here, for bankruptcy

A. Not to my knowledge.

Q. When did you first hear in fact of such an answer having been put into the bankruptcy court by Mr. Brasfield?

(Testimony of F. W. Hoffman.)

A. About the 27th day of February.

Q. Was it at this same time you have already spoken of? A. Yes, sir.

Q. Did Mr. Brasfield tell you of these things then?

A. No, sir.

Q. Has he ever told you of them?

A. Only that we talked of it a few days ago.

Q. Subsequent to the 27th or 28th of February?

A. Yes, sir.

Mr. SMITH.—Now, it would facilitate matters very much if we could have the record-book at this time.

Mr. HARVEY.—I have sent for it and it will be here in a minute.

Mr. SMITH.—That is all I have to examine the witness on, on this particular branch. [23]

Cross-examination.

(By Mr. HARVEY.)

Q. Do you know what Mr. Brasfield's powers were as president of the company? A. Yes, sir.

Q. What were they?

Mr. SMITH.—I would suggest that it would be very much more satisfactory if we could start out with the record-book, by-laws, and so forth, before us.

The COURT.—I suppose they will be here shortly.

Q. Do you know what Mr. Brasfield's powers were?

A. Well, I doubt if I can name them right off-hand.

Q. Well, what is your idea of his powers?

(Testimony of F. W. Hoffman.)

A. He had the power to go ahead and do business, full power.

Q. Full power? A. Yes.

Q. To do anything in any connection with the corporation that he wanted to do?

A. Well, I did not understand that it was anything, but anything that was necessary and should be done in the way of looking after the property.

Q. Anything in connection with the business of the corporation, giving notes and obligations, taking care of the debts and the whole management of the corporation was vested in him; you knew that, didn't you?

A. Yes.

Q. You live at Wenatchee? A. Yes.

Q. And Mr. Brasfield lived here in Tacoma?

A. Yes, sir. [24]

Q. Who actually conducted the operation of the company?

A. Mr. Brasfield has for two years and a half.

Q. He purchased supplies for the company, raised money for the company, didn't he? A. Yes.

Q. And advanced the money himself for the company; do you know of those things?

A. He told me he had advanced money.

The COURT.—You don't know it of your own knowledge?

A. Only what he told me; that is all.

Q. (By Mr. HARVEY.) Do you remember being present at the meeting of the Board held in the office of E. R. York, attorney of Tacoma, on the 24th of February, 1912?

(Testimony of F. W. Hoffman.)

A. I remember of being at a meeting; I am not positive as to the date.

Q. I call your attention to this book, and ask you if on page 21 this is your signature over the word "Secretary." A. Yes, sir.

Q. Can you identify this as the minute-book of the corporation? A. Yes, sir.

Mr. HARVEY.—We offer in evidence the minutes of the meeting of the Board of Trustees of the Wenatchee-Stratford Orchard Company, held February 24, 1912, as contained in this book.

Mr. SMITH.—Of course, if this were a Court trial, I would reserve objections, but it makes no difference as it encumbers the record. I think it is not material, either in law or in fact.

The COURT.—It may be admitted.

Mr. HARVEY.—I will read into the record, that part of it. [25]

(Reads record as follows:)

"Tacoma, Washington, February 24, 1912.

A special meeting of the Board of Trustees of the Wenatchee-Stratford Orchard Company was called and held at the office of E. R. York, Fidelity Building, in the City of Tacoma, Washington, on this date, at 11 A. M., at which there were present all of the Trustees of the Company, and by unanimous consent any other notice of the meeting was waived and all consented to the holding of the meeting at this time or place.

The president then submitted to the meeting certain proposed amendments to the by-laws of the

(Testimony of F. W. Hoffman.)

Company, which were severally read, and each and all of them having been fully discussed and considered, thereupon the said amendments, upon motion duly carried, were approved and adopted, as follows:

‘To strike out all of Section 1, Article 3, and substitute in lieu thereof the following: The president shall preside at the meetings of the stockholders and trustees, and shall call the trustees together whenever he may deem necessary. He shall sign with the secretary all certificates of stock; he shall have the general charge, control and management of the property, business and affairs of the company; he shall have power to incur any liabilities and indebtedness of the company which may be necessary in carrying out the business operations of the company, and he shall have power to sign, acknowledge and deliver in the name of the company all deeds, contracts, leases, mortgages and other obligations and instruments in writing of the company.’ ” [26]

There are other matters following, but I will not read those matters which are immaterial. The minutes are signed, F. W. Hoffman, Secretary; George M. Brasfield, President.

Q. Do you remember, Mr. Hoffman, being present at the meeting in the National Realty Building on the 30th of January, 1913, at which you and Mr. Brasfield and Mrs. Brasfield constituting the Board of Trustees were present?

A. Yes, sir, although I am not positive as to the date; but there was a meeting about that time.

Q. Do you remember the following resolution being

(Testimony of F. W. Hoffman.)

presented and unanimously passed:

“Resolved that the action of the president of the corporation in incurring the indebtedness hereinafter set forth and in giving the notes herein mentioned, be and the same is hereby in all respects approved, ratified and confirmed, and said indebtedness is hereby accepted as the indebtedness of this corporation, and said notes are hereby recognized and sanctioned as the legal and just debts and obligations of this company. The notes and indebtedness hereby ratified and confirmed, covered by this resolution, are as follows:

F. W. Hoffman, September 1st, 1911.....	\$1694.80
F. W. Hoffman, October 5th, 1911.....	633.00
F. W. Hoffman, June 15th, 1912.....	3999.50

Total.....	6327.30
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Interest at eight per cent. from above dates.

W. R. Prowell, September 18th, 1911.....	400.00
--	--------

Interest on above at eight per cent. from
above date. [27]

Scandinavian-American Bank, January 8, 1912	\$5,000.00
--	------------

Scandinavian-American Bank, April 30th 1912.....	5,000.00
---	----------

Scandinavian-American Bank, July 5th, 1912.....	5,000.00
--	----------

Overdrawn \$75.77. Total, \$15,075.77

Interest on above at seven per cent. from
last date of maturity.

George M. Brasfield, September 27, 1911..	1,000.00
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George M. Brasfield, October 10.....	1,000.00
--------------------------------------	----------

(Testimony of F. W. Hoffman.)

George M. Brasfield, October 3d.....	2,000.00
“ November, 10, 1911..	2,000.00
“ January 1st, 1912..	1,682.57
“ January 25th.....	1,023.94
	<hr/>
Total.....	8,706.51

Interest at eight per cent. on above from above dates.”

Q. Do you remember that resolution carrying unanimously and you and Mrs. Brasfield and Mr. Brasfield all voting in the affirmative?

A. I would like to look at the amounts there.

Q. I am referring to pages 20 to 23 of the minute-book. A. I do.

Q. I call your attention to this waiver of notice on page 22 of the minute-book. That is your signature to that waiver of notice, isn't it?

A. Yes, sir, that is my signature.

Q. You remember that waiver being signed there by all the trustees? A. Yes, sir.

Mr. HARVEY.—We offer in evidence this waiver of notice on page 22 as follows:

“WAIVER OF NOTICE.”

“We, the undersigned trustees of [28] the Wenatchee-Stratford Orchard Company, a corporation, duly organized and existing under and by virtue of the laws of the State of Washington, do hereby waive notice of the time and place of holding the special trustees' meeting, and waive notice of the object for which the meeting was called, and hereby consent that the meeting of the trustees of said corpora-

(Testimony of F. W. Hoffman.)

tion be held on the 30th day of January, 1913, at 11:30 A. M., at 1307 National Realty Building in the City of Tacoma, Washington, and that any business affecting the interest of said corporation may be discussed and acted upon at said meeting.

(Signed) GEORGE M. BRASFIELD,
F. W. HOFFMAN,
VIRGIE E. BRASFIELD,
Trustees."

Q. Do you remember of the following resolution being presented at that meeting:

"Resolved, that the salary of George M. Brasfield, president of this Company, from the date when he became president, to be fixed at the sum of one thousand dollars per month, the same to include all his services as president of the company, not only in managing and directing its affairs, but also in the matter of securing moneys to be advanced by the Scandinavian-American Bank of Seattle, and other persons, including himself, and the president is authorized and directed to pay himself out of any funds of the company which may come into his possession, his salary aforesaid."

Do you remember that resolution being presented and two trustees voting affirmatively and you voting in the [29] negative? A. Yes, sir.

Q. That is correct, isn't it? A. Yes.

Q. That is on page 24 of the record. And not only was Mr. Brasfield given the full power to manage the concerns of the company, but, as a matter of fact, he actually did so, didn't he?

(Testimony of F. W. Hoffman.)

A. Yes, sir; he managed it.

Q. And you knew comparatively little about the details of the management of the business; isn't that correct? A. Yes, sir.

Q. The only thing that you knew about the conduct of the business was through such letters as Mr. Brasfield might write you, or when you were over here and you would talk some matters over?

A. Yes, sir.

Q. The responsibility for the conduct of things was left to him? A. Yes, sir.

Q. If a note was to be given in connection with the operations of the company, it was not customary to consult with you in regard to it?

A. He never did.

Q. If it was a matter of buying some pipe or things of that kind, unless you happened to be here, that would not be discussed?

A. I never heard anything about it.

Q. If it became a matter of the company needing money and he had to go to the bank to borrow money, that would not be [30] discussed with you? A. No, sir; it was not discussed.

Q. If it became necessary for Mr. Brasfield to go down into his private funds and advance money to carry on the business of the company, it was not usual or customary to advise with you in regard to it?

A. I never heard of it.

Q. Did he repeatedly write to you asking you to contribute toward maintaining the company?

Mr. SMITH.—I think even in such a proceeding as

(Testimony of F. W. Hoffman.)

this, we should not prove the contents of letters in that way.

Q. Have you the letters which you have received from time to time from Mr. Brasfield?

A. I have, yes.

Q. Are they here?

A. No, sir; part of them are here.

Q. You brought part, and left part of them home? A. Part of them are in Seattle.

Q. Are all that you received either here or in Seattle?

A. I don't know; I think some are in the Wenatchee office.

Q. You are not sure about that?

A. I am not sure about that.

Q. Do you remember being called upon repeatedly by Mr. Brasfield to aid and join in meeting the obligations of the company *where* were due and pressing?

Mr. SMITH.—I object to the question on the same ground as above noted.

(Objection withdrawn.)

Q. Do you remember Mr. Brasfield repeatedly saying to you in person that he would like to have you help him to support [31] and maintain the company and contribute money to carry on its business operations?

A. He has asked me to contribute money, yes.

Q. Which you either would not or could not do?

A. I contributed some.

Q. But not all that he wanted? A. No, sir.

(Testimony of F. W. Hoffman.)

Q. Not all that you were called upon for?

A. No.

Q. Then if this confession of judgment was made by Mr. Brasfield without consulting you, it was just like all the other business of the company, was it?

Mr. SMITH.—I object to that.

(Objection withdrawn.)

(No audible response.)

Direct Examination.

(By Mr. SMITH.)

Mr. SMITH.—I will introduce in evidence this letter to Mr. Hoffman, as to a suit by the bank for the collection of a note, signed by G. M. Brasfield.

(Received.)

Q. Mr. Hoffman, referring to the record of the meeting of the Board of Trustees of January 30, 1913, the minutes of which have been read, being on page 23 of the record book, if I understood the question of Mr. Harvey, he asked you whether you voted for the resolution confirming the various indebtedness, and ratifying and confirming that indebtedness, including various notes to Mr. Brasfield; I would ask you whether among that list of notes any one [32] was for salary?

A. I did not understand it was for salary, no, sir.

Mr. HARVEY.—And they were not.

Mr. SMITH.—Oh, very well. I would like now in connection with the testimony of this witness and the record evidence that has gone in, to read into the record the minutes of the meeting held on the first

(Testimony of F. W. Hoffman.)

day of February, 1913, set out on page 25 of the record book.

Mr. HARVEY.—No objection.

Mr. SMITH.—I will read as follows: "A meeting of the Board of Trustees of the Wenatchee-Stratford Orchard Company was held at Tacoma, on the first day of February, 1913, present George M. Brasfield and Virgie Elder Brasfield, constituting a majority of the Board of Trustees of said company, whereupon Virgie Elder Brasfield presented the following resolution: Whereas Mr. H. A. Hoffman has objected to the salary allowed to Mr. George M. Brasfield, by the resolution heretofore passed by the company, therefore, be it resolved that the salary of George M. Brasfield, from the date of his election to the present time, be, and the same is hereby fixed at the sum of \$9,840.00, and the president of this company is authorized to make, execute and deliver to the said George M. Brasfield a note for said sum.

Thereupon the meeting adjourned.

G. M. BRASFIELD,
Acting Secretary."

Q. Did you have notice of the meeting, Mr. Brasfield? A. No, sir.

Q. Did you know in advance of this action that was taken, that it was to be taken? [33]

A. No, sir.

Q. Did you ever know informally or otherwise of that action? A. The salary action?

Q. Authorizing the note for \$9,840.00 to Mr. Brasfield for salary? A. No, sir.

(Testimony of F. W. Hoffman.)

Q. I see this resolution refers to the salary of Mr. Brasfield from the date of his election to the present time. Can you tell me offhand when he was elected president?

A. I could not exactly, but about September 15, 1911.

Mr. SMITH.—In that connection I would like to read into the record the minutes of the meeting of the Trustees of the Wenatchee-Stratford Orchard Company, according to the record, on the 18th of September, 1911, and recorded in the minutes on page 19 of the record book, as follows: "Minutes of meeting of the Trustees of the Wenatchee-Stratford Orchard Company. A meeting of the trustees of the Wenatchee-Stratford Orchard Company was held in the City of Seattle, King County, Washington, upon the 18th of September, 1911, immediately following the special meeting of the stockholders, at which were present all the trustees of the company. It was thereupon moved and seconded and carried that George M. Brasfield be elected as president and treasurer of the corporation to succeed D. W. King, who had ceased to be a stockholder of the Company. It was thereupon moved and seconded and unanimously carried that pursuant to the unanimous vote of the stockholders at the stockholders' meeting of said company held on the 18th of September, 1911, that article 6 of the articles of incorporation of this company be amended to read as [34] follows: 'Article 6, That the principal place of business of this corporation shall be the City of Seattle, County of

(Testimony of F. W. Hoffman.)

King, State of Washington,' and that the Secretary certify said amendment in triplicate under the seal of said corporation as required by the laws relative to amendments of articles of incorporation.

Upon motion it was regularly ordered that the president be and he is hereby authorized and directed to borrow the sum of ten thousand dollars, and to execute and deliver to said ——— promissory note of said corporation for said sum, payable on or before, ———, bearing interest from date, at the rate of eight per cent per annum.

The resignation of F. W. Hoffman, as Treasurer of said Wenatchee-Stratford Orchard Company, was presented and accepted by said Trustees.

(Signed) GEORGE M. BRASFIELD,
President.

Attest: F. W. HOFFMAN,
Secretary."

Q. I would like to ask as the minutes do not make it expressly clear, whether Mr. Brasfield at that time was elected president? A. I think he was.

Q. And that was the same date of the stockholders' meeting which had been held? A. Yes.

Q. Then, when the resolution that I read before for the paying of salary, giving a note of \$9,840.00 to Mr. Brasfield for salary, from the date of his election, refers in there to the date of his election, it means substantially this date, September 18, 1911? [35]

A. Yes, sir.

Q. And he continued throughout that time as president? A. Yes.

(Testimony of F. W. Hoffman.)

Q. That would be then some 17 months?

A. Some 17 months.

Q. Which would be at the rate of about six hundred dollars a month salary? A. Yes, sir.

Q. Is it your understanding from what you have learned since as to the reduction of the salary, that he reduced from one thousand dollars to six hundred dollars? A. I do not understand you.

Q. Is that your understanding as you have learned since that meeting that that is what he did, to reduce his salary from one thousand dollars a month to six hundred dollars a month? A. Yes, sir.

Q. Did anybody else, that is other officers, receive a salary, that is, not employees, but officers?

A. No, sir.

Q. Never at any time?

A. No, sir. Well, let me see; there were some other officers paid for actual work done on the project, for certain trips.

Q. Piece work? A. Yes, sir.

Q. Never any salaries paid?

A. No regular salaries.

Q. Was there a by-law on that subject?

A. I am not sure.

Mr. HARVEY.—No other officer other than president, it provides. [36]

Mr. SMITH.—I want to go into the matter of the size of the business and operation and profits, as this salary matter has come up.

Q. You have testified that the company was about three years old, and the capital is one hundred and

(Testimony of F. W. Hoffman.)

fifty thousand dollars. A. Yes, sir.

Q. That was paid how, in property or money?

A. In property.

Q. Speaking broadly, without details, what are the property assets of the company? A. Land.

Q. How many acres?

A. About sixteen or seventeen hundred acres.

Q. Located where?

A. Near Stratford, Grant County.

Q. Are the lands practically all together in one general location? A. Yes, sir.

Q. What is the business of the company—it is an irrigation company, isn't it?

A. Irrigation and selling and improving land.

Q. Did you carry on any sort of a general business other than the matter of improving these lands and selling them? A. No, sir.

Q. Has Mr. Brasfield sold any of these lands?

A. Not to my knowledge.

Q. Who did sell them?

A. There was a selling agent before Mr. Brasfield was president; that was prior to that time.

Q. Selling agency contract? [37]

A. Yes, sir.

Q. About how much land have been sold in all?

A. In the neighborhood of 190 acres.

Q. And broadly speaking, who sold this?

A. The sales agents; I think they sold all of it.

Q. Mr. Brasfield sold none? A. No.

Q. Did Mr. Brasfield devote his time to cultivating these lands?

(Testimony of F. W. Hoffman.)

A. He had been out there quite a bit.

Q. I am asking about himself, his individual time?

A. Not that I know of.

Q. Where did he reside all this time?

A. In Tacoma, so far as I know.

Q. Did he spend a large portion of his time over at these lands near Stratford?

A. He spent sometime there, I understand; he would go there for a week or two weeks at a time.

Q. Your own home is at Wenatchee?

A. Yes, sir.

Q. Did you ever see him there for a long period of time? A. No, sir.

Q. Did the company have its own office here in Tacoma?

A. Not to my knowledge. Mr. Brasfield had an office here.

Q. Was there any particular office work that had to be done, taking a considerable amount of a man's time here or in Seattle or anywhere for the company?

A. There would be some.

Q. Would it be a considerable amount?

A. I would not think so, no. [38]

Q. Did you do any of that work yourself?

A. I did some of it; that is before the company was turned over to Brasfield.

Q. He did what was done after it was turned over to him? A. Yes.

Q. Had it ever been proposed before these meetings, the minutes of which have been read, that he should have a salary?

(Testimony of F. W. Hoffman.)

A. The only thing mentioned about a salary was when he was elected president. I think I mentioned it and he said, well, we won't bother about any salary.

Q. Was the matter ever brought up in the meetings of the directors after that until what has been read?

A. No, sir, I do not remember of it.

Q. Did the company ever declare dividends?

A. No, sir.

Q. Did it ever make any profits?

A. Well, I would not hardly know how to answer that.

Q. Was there ever any money available for dividends? A. No, sir.

Q. Who was directly in charge of the Orchard work over there at Stratford?

A. For the last year and a half?

Q. During Mr. Brasfield's presidency?

A. Mr. Dudley.

Q. An employee of the company? A. Yes.

Q. Foreman or something of that kind?

A. Foreman.

Q. He devoted all his time to it?

A. He lives on the property. [39]

Q. Was there any special amount of work required to be done on the property by the president over and above what Mr. Dudley did?

A. I would not think so.

Q. Who is this third member of the Board of Trustees, Virgie Brasfield—what, if any, relation to Mr. Brasfield? A. I think she is his wife.

Q. Did she ever take any active part in the man-

(Testimony of F. W. Hoffman.)

agement of the company?

A. Not to my knowledge.

The COURT.—Did she attend director's meetings?

A. Yes, sir, the two I attended.

Q. (By Mr. SMITH.) She was present at two?

A. Yes, the only two I attended in Tacoma.

Mr. SMITH.—I wish to read into the record a portion of the minutes bearing upon the question we are now considering, being a special meeting of the stockholders of the company, shown by the record to have been held on this same 18th day of December, 1911, as follows, being at page 17: "It was moved and seconded and carried unanimously that Article 6 of said by-laws be amended to read as follows: Members of the board of trustees except the president shall receive no compensation for service as such nor shall the corporation be held liable for any services rendered by said members except the president, except it is expressly provided by resolution passed by the Board of Trustees authorizing or ratifying the same; Provided, however, that members of the Board shall be allowed their reasonable traveling expenses when actually engaged in the business of the company, the [40] same to be audited and allowed as in other cases of demands against the company. The treasurer and other employees shall receive such compensation as the Board of Trustees shall determine. The president of the company shall receive a compensation of \$—— per annum payable ——."

Q. The resolution was adopted in that form, was it,

(Testimony of F. W. Hoffman.)

leaving a blank for the amount of annual compensation and the mode of payment?

A. I do not remember that resolution.

Q. State whether or not it was at this time that Mr. Brasfield made the remark you have testified to that you need not bother about salary.

A. Yes, sir, the way I remember it, it was at this time when we had that meeting at Seattle.

Mr. SMITH.—That is all at this time. However, I would like to ask: There does not appear in the record of this book any meeting being held subsequent to this meeting of February 1, 1913, which has been read into the record. Do you know of any subsequent meeting? A. No, sir.

Q. You received notice of none? A. No, sir.

Cross-examination.

(By Mr. HUGHES.)

Q. Is this resolution that was passed at the meeting of the 30th of January, 1913, in which Mr. Brasfield's salary was fixed at one thousand dollars, the record recites that Virgie Elder Brasfield moved the adoption of the foregoing [41] resolution which was seconded and voted and declared carried. Do you recall how the vote stood at that time?

A. Yes, sir.

Q. How was it?

A. Two in favor of the salary and one against it.

Q. And who voted in favor of it?

A. Mr. and Mrs. Brasfield.

Q. And who voted against it?

(Testimony of F. W. Hoffman.)

A. I voted against it.

Q. Were Mr. and Mrs. Brasfield the other two trustees? A. Yes.

Q. Mr. Brasfield voted in favor of the granting of his salary to that amount? A. Yes, sir.

Q. I understand you were not present at the meeting of the first of February at which his salary was reduced? A. No, I was not.

Redirect Examination.

(By Mr. HARVEY.)

Q. Now, Mr. Hoffman, if all of the business was carried on by Mr. Brasfield without your being informed as to it, you cannot tell now what arduous duties he performed in connection with his office as president, can you?

Mr. SMITH.—I think that is purely argumentative.

The COURT.—Counsel may be leading up to something else.

Q. As a matter of fact you do not know what Mr. Brasfield was doing in the conduct of the business, do you?

A. I know that he went over there occasionally.

Q. I did not ask you that, but you do not know what he did [42] as the president, do you; you have already sworn under oath that you did not know, have you not?

A. No, I do not know what was going on.

Q. Then you do not know what he did?

A. I do not know everything about it.

(Testimony of F. W. Hoffman.)

Q. Then you cannot tell this Court whether he earned a salary of one thousand dollars a month, can you? A. I do not know.

Q. Now, you have testified that these sales of land resulting in a profit to the company were through sales agency; do you know what Mr. Brasfield had to do with that?

A. That was sold prior to the time Mr. Brasfield was president.

Q. Do I understand you to say no land was sold since Mr. Brasfield was president?

A. I do not remember of any.

Q. Do you know? A. Not positively.

Q. Will you tell the Court whether you know anything about it, what land, if any, was sold?

A. No, I do not know.

Q. Then you do not know anything about that?

A. I do not know anything about that.

Q. Now Mr. Brasfield as president of the company lived in Pierce County? A. Yes, sir.

Q. And had an office in the Perkins Building where he handled the business of the Wenatchee-Stratford Orchard Company? A. I could not say.

Q. And all the business of the company was transacted from that office? [43]

A. So far as I know.

Q. Who was president when Mr. Brasfield made this remark to you about, never mind about salary?

A. That was at the time we had that meeting.

Q. Who was there?

A. Mr. Prowell and Brasfield and myself.

(Testimony of F. W. Hoffman.)

Q. The resolution was passed contemplating a salary for the president, but leaving it blank, to be fixed at another time; was that the way you understood it?

A. No, sir; I do not remember it that way.

Q. All you know is that the resolution was passed there; that his salary was to be fixed at blank dollars, from blank? A. Yes, sir.

Q. Now, look at these notes which I show you and see if your name appears on every one of those obligations, which is part of the claim put in judgment? A. Yes, sir, it does.

Q. All of those notes are notes of the company which you signed?

A. I signed them as secretary.

Q. Now, this was prior to the time that Mr. Brasfield took charge of all the property and management of the company? A. Yes, sir.

Q. Up to that time when you and Mr. King and Mr. Prowell were running the company, you signed the notes, did you not? A. Yes, sir.

Q. After Mr. Brasfield came in you signed no notes at all, is that correct? A. Yes, sir.

Q. Now, then, you don't question the genuineness of every one of [44] those notes, do you?

A. No, sir.

Q. Or that they are valid obligations of the Wenatchee-Stratford Orchard Company, do you?

A. No, sir.

Q. At this meeting in the Realty Building, you voted along with Mr. and Mrs. Brasfield to ratify all of the other indebtedness embodied in this judg-

(Testimony of F. W. Hoffman.)

ment here, except the salary, didn't you?

A. Yes, sir.

Q. Then all the notes of the Scandinavian Bank assigned to Mr. Woolfolk and every one of these notes of Brasfield, you have either put your name to or ratified, except the salary one?

Mr. SMITH.—Please identify these notes.

Q. The first note you testified to is for fifteen hundred dollars, dated May 13, 1911, payable on demand, signed Wenatchee-Stratford Orchard Company by Dennis W. King, president, F. W. Hoffman, secretary? A. Yes, sir.

Q. And the next is for \$190.00, June 1, 1911, payable on or before six months, signed Wenatchee-Stratford Orchard Company by Mr. King, president, and F. W. Hoffman, secretary and treasurer. That is your signature and that is the note of the company, isn't it? A. Yes, sir.

Q. The next note is for \$570.00, dated Wenatchee, Washington, August 8, 1911, signed Wenatchee-Stratford Orchard Company by the same officers as the other, and payable on demand, and that also is your signature and that is an obligation [45] of the company? A. Yes, sir.

Q. The first notes bears interest at the rate of eight per cent, and the second one at seven per cent, and the third at eight per cent? A. Yes.

Q. The next is a note for \$570.00, dated Wenatchee, April 13, 1911, to the order of D. W. King, payable on demand, interest eight per cent, signed by Dennis W. King, president, F. W. Hoffman, secre-

(Testimony of F. W. Hoffman.)

tary. That is your signature, and that is the just obligation of the company? A. Yes, sir.

Q. And the next is \$380.00, dated Wenatchee, Washington, May 1, 1911, to the order of D. W. King, payable on or before six months, signed by the Wenatchee-Stratford Orchard Company, by Dennis W. King, president, F. W. Hoffman, secretary, bearing interest at eight per cent. That is your signature and the obligation of the company?

A. Yes, sir.

Q. And the next \$380.00, dated at Wenatchee, July 15, 1911, payable on or before ninety days, to the order of Dennis W. King, bearing interest eight per cent, signed by the Wenatchee-Stratford Company, by Dennis W. King, president, and F. W. Hoffman, secretary. That is your signature and that is a just and valid obligation of the company?

A. Yes, sir.

Q. A note for fifteen hundred dollars, dated Wenatchee, Washington, July 1, 1911, payable to the order of George M. Brasfield, on or before ninety days, with interest at [46] eight per cent, signed Wenatchee-Stratford Orchard Company by Dennis W. King, president, and F. W. Hoffman, secretary and treasurer; and the next is a note of one thousand dollars, dated Wenatchee, Washington, June 21, 1911, payable to the order of George M. Brasfield, on or before six months, with interest at eight per cent, signed Wenatchee-Stratford Orchard Company by D. W. King, president and F. W. Hoffman, secretary; those are the just and valid obligations of the com-

(Testimony of F. W. Hoffman.)

pany and signed by yourself?

A. Yes, sir.

Q. A note of five hundred dollars, dated June 1, 1911, to the order of George M. Brasfield, payable on or before six months, with interest at eight per cent, signed Wenatchee-Stratford Orchard Company by Dennis W. King, president, and F. W. Hoffman, secretary. That is your signature and a just and valid obligation of the company?

A. Yes, sir.

Q. And a note for one thousand dollars dated Wenatchee, Washington, May 1, 1911, payable to the order of George M. Brasfield, on or before six months, with interest at eight per cent, signed Wenatchee-Stratford Orchard Company by Dennis W. King, president, and F. W. Hoffman, secretary. That is your signature and that is a just and valid obligation of the company? A. Yes, sir.

Whereupon an adjournment was taken until 10:15 A. M. [47]

10:15 A. M., Saturday, March 22, 1913.

Mr. F. W. HOFFMAN, being recalled for further cross-examination, testified as follows:

Further Cross-examination.

(By Mr. HARVEY.)

Q. I have called your attention to all these notes of the Wenatchee-Stratford Orchard Company which you signed, and I have also called your attention to the fifteen thousand dollars worth of notes of the Scandinavian-American Bank, assigned to Mr. Woolfolk, and the other notes of Mr. Brasfield, ag-

(Testimony of F. W. Hoffman.)

gregating \$8,706.51, which you as one of the trustees approved. So that you are willing to say, are you not, that all of these notes represented in this judgment are the valid, subsisting obligations of the company, your only *objecting* being to the salary note.

A. Why, I have not seen all of them.

Q. I am not talking about seeing notes, but about the obligations. That is, you voted to approve and ratify the indebtedness of the bank, fifteen thousand dollars and interest, and to ratify the notes issued by Mr. Brasfield to himself for money advanced, \$8,706.-51, at the same time your obligation was approved, so that you voted to approve those in addition to those which you signed. There is no question about that? A. Yes, sir.

Q. Then you have no objection to any part of the judgment entered there on any of the notes except the one salary note? [48]

Mr. SMITH.—I object to that question. That is a mixed question of fact and law.

Mr. HARVEY.—I will change the form of the question.

Q. You have, therefore, as secretary of the Wenatchee-Stratford Orchard Company and as a member of the Board of Trustees, approved and ratified each and all of the notes which are in controversy in that judgment except the one for nine thousand eight hundred and forty dollars for salary?

Mr. SMITH.—I object to the question. They have not shown of what that judgment is made up.

(Testimony of F. W. Hoffman.)

There is nothing before the Court to show that the judgment consists of these notes that counsel has shown to the witness, plus the salary note.

(Question withdrawn.)

Q. If it should transpire in these proceedings that this judgment is made up of these notes, which you signed as secretary, plus the notes which you ratified at the meetings of the Board, then you recognize as a creditor and as secretary of the company, all of those obligations except the salary note; do you understand what I am getting at? A. I think I do.

Q. Well, as I do not know all of what the judgment consists, but I say, supposing it consists of those things.

A. I would like to have the question read.

(Question read.)

A. I recognize all of the obligations that I signed as secretary and that we ratified at the meetings.

Q. I think that is all.

(Witness excused.) [49]

The COURT.—*No*, Mr. Harvey, you have presented claims of about fifteen thousand dollars and interest on behalf of the bank?

Mr. HARVEY.—Yes, \$8,706.51, with interest, which consisted of notes issued to Brasfield after he became president; and these various notes which I read into the record issued to Mr. King and others before Mr. Brasfield became connected with the concern.

The COURT.—I figure those up at \$7,590.00.
[50]

Mr. HARVEY.—I will call Mr. Brasfield.

[**Testimony of G. M. Brasfield.**]

G. M. BRASFELD, being called and sworn, testified as follows:

Direct Examination.

(By Mr. HARVEY.)

Q. Your name is George M. Brasfield?

A. Yes, sir.

Q. You were president of the Wenatchee-Stratford Orchard Company? A. I was.

Q. When did you become president as near as you can remember?

A. Some time in September, 1911.

Q. Did you continuously act as president from that time in September, 1911, until the bankruptcy proceedings in this case? A. I did.

Q. I call your attention to three notes for five thousand dollars each, made payable to the order of the Scandinavian-American Bank on January 8, 1912, April 30, 1912, and July 3, 1912, and ask you to state what the consideration for those notes was, and whether they were given by the Wenatchee-Stratford Orchard Company in the usual and ordinary course of business.

A. The amounts were for five thousand dollars each; they were given in the usual course of business. The Wenatchee-Stratford Orchard Company got the use of every cent of that money.

Q. Was the money placed to the credit of the Wenatchee-Stratford Orchard Company?

A. It was.

Q. State whether or not it was checked out and

(Testimony of G. M. Brasfield.)

the money paid [51] for the use and benefit of the company.

A. It was, in the regular way, and my checks will show it all, as issued against that account.

Q. I call your attention to these various notes, being the same notes to which I have called the attention of the witness Hoffman, purporting to be issued before you became president, and ask you to state if they were just and valid obligations of the company and came into your hands in the usual course of business before you assigned those to Mr. Woolfolk.

The COURT.—Those were the notes read into the record to-day?

A. I think they are all right, so far as I know they are absolutely right.

Q. I ask you to look at the following notes, one for two thousand dollars, dated November 3, 1911, payable on demand, to your order, with interest at eight per cent, signed Wenatchee-Stratford Orchard Company by George M. Brasfield, president; a note for two thousand dollars dated November 10, 1911, payable on demand to your order, interest at eight per cent, signed Wenatchee-Stratford Orchard Company, by George M. Brasfield, president; the third note for \$1,682.47, payable on demand to your order, with interest at eight per cent, dated January 1, 1912, signed Wenatchee-Stratford Orchard Company by George M. Brasfield, president; fourth note for \$1,023.94, dated January 25, 1913, on demand, payable to your order, with interest at eight per cent, signed Wen-

(Testimony of G. M. Brasfield.)

athee-Stratford Orchard Company, by George M. Brasfield, president; fifth, note for one thousand dollars, dated September 27, 1911, payable on demand, to your [52] order, with interest at eight per cent, signed Wenatchee-Stratford Orchard Company, by George M. Brasfield, president; sixth, note for one thousand dollars, dated October 10, 1911, payable on demand to your order with interest at eight per cent, signed Wenatchee-Stratford Orchard Company, by George M. Brasfield, president; and I will ask you to examine those notes and tell the Court whether or not those are just and valid obligations of the company, and what the consideration for those notes was.

A. These notes are all right, and I gave money for them to the amount stated in the notes.

Q. When you speak of giving money, what do you mean by that?

A. I mean I gave money to the company.

Q. Which was actually expended for the use and benefit of the company? A. Absolutely.

Q. And in good faith and the regular course of business? A. It was.

Q. I call your attention now to the last note, for nine thousand eight hundred and forty dollars, dated February 1, 1913, payable on demand to your order, with interest at eight per cent, signed Wenatchee-Stratford Orchard Company by George M. Brasfield, president, and ask you to look at that note and tell the Court what that represents.

A. That represents salary.

Q. From what date to what date?

(Testimony of G. M. Brasfield.)

A. From the time I became president of the company some time [53] in September, 1911, until the 1st of February, I believe, 1913.

Q. Is that the note referred to in the resolution shown on page 25 of the minute-book? A. It is.

Q. State to the Court whether or not after the meeting in the Realty Building, when you were voted a salary of one thousand dollars a month, you subsequently, after Mr. Hoffman complained of the amount of the salary, held a meeting with your wife, you and she as a majority of the trustees, and reduced the amount to \$9,840.00. A. We did.

Q. Mr. Hoffman had no notice of that meeting? It was simply called to reduce it in accordance with his wishes? A. Yes.

Q. Now, Mr. Brasfield, tell the Court as president of the company what you did, of what your duties consisted, what responsibilities you had; what money, if any, you caused to be procured for the benefit of the company, what condition you found the company when you took it, and just briefly a statement of the situation by which you earned the salary.

A. Well, it is a rather difficult matter to tell all of the things I did in connection with this matter during this period.

The COURT.—Give it in a general way.

Q. To begin with, the company was in a very bad condition when I was elected president. The trees had all died on the 400 acres of land planted, and the irrigation system was bad. We owed a great many

(Testimony of G. M. Brasfield.)

debts around in different places [54] and the company was generally in bad repute, almost ready to go into the hands of a receiver.

I attempted to bring the company about and put it on its feet. One of the first things I did was to put a fence around the property, a rabbit-proof fence, of about five miles, which I did. I employed a good orchardist, one of the best men in the country, and put him on the property. I had him level the land where it was high and where the water would not run. Instead of employing an expensive engineer *to that* work, I reorganized the irrigation system, which was totally inadequate, much of it had to be taken down and done away with.

Q. Why was that? A. It would not work.

Q. Had that been put in under your predecessors?

A. Yes. I began negotiations for pipe, lumber and stuff necessary to put in the irrigation, got the best bids we could; got good bids and bought the stuff at low prices, on long time. I knew we would have to get long time, because our money was scarce.

It was necessary to replant the whole 400 acres with trees. I got competitive bids on the price of trees; I got low prices, the best I could get, and accepted the lowest.

Then it was necessary to have money to carry this thing along and pay the bills, to pay off these suits they were threatening and some claims which had been put in the hands of attorneys, and to negotiate for funds and carry on the work, which I did, not only putting in my own money but made arrange-

(Testimony of G. M. Brasfield.)

ments with the [55] Scandinavian-American Bank to borrow fifteen thousand dollars, which they loaned us.

Q. Did you indorse the obligations?

A. I indorsed that myself personally. A good many land contracts had been sold to people. These people were up in arms and worried and troubled and all sorts of things going on. One of the things I did was to try to pacify those people and try to get them straightened out, and many of them I did; some few I did not, although I did everything I could. Most of them have gotten to going along all right.

In the spring we planted the whole four hundred acres of trees in good condition, cultivated them. I superintended the work and attended to the correspondence, a good deal of bookkeeping; got things straightened around generally.

I found the titles to our land and to our water bad. I supposed those things were good, but on looking into them found out they were not, and it has taken us a year to get those titles straightened.

Q. Tell the Court whether or not the matter of adjustment on these contracts took much time and work and diplomacy on your part.

A. It took a great deal of work; it was hard work, and mean work.

Q. Tell the Court whether or not there were lawsuits pending in Snohomish County or up in the Northern part of the State which required time and attention.

A. Yes. My idea was that when I got this thing

(Testimony of G. M. Brasfield.)

going and on its feet and the trees planted and the land in [56] cultivation and the irrigation system good and the contracts all quiet, I would be able to negotiate a loan on this property sufficient to pay off its debts and give us a working capital. I put in a great deal of time doing that. I got up prospectuses, blue-prints and all data with reference to apples and apple lands and everything of that sort. I took it up with loan men, bankers, financiers generally, and brokers, not only here and in Seattle, but in Portland, Chicago, New York, and everywhere I could think of, trying to negotiate a loan. I was not able to do it because of the condition of the apple business in the part season, and the evident depreciation in apple land, and simply was not able to do it. I tried to sell the raw lands, some of them; in fact, I tried to sell the whole proposition, wherever I could find any chance to sell it at all, but have not been able to do it. I did not try to sell any of the small tracts of orchards or contracts, because I did not think we were in condition to,—that is, there was a question about being able to carry out the contracts, and I did not want to make any more and have the same trouble and difficulty we had on the others.

It has been one of the most difficult and hardest and most vexing, worrying propositions I ever had anything to do with in my life, and I would not take the job again for one thousand dollars a month, and would not have it. I have not been able to think of anything else, it has been worry, fight and scrap all the way through.

(Testimony of G. M. Brasfield.)

Q. What portion of your time from September, 1911, until the bankruptcy proceedings here were consumed in the business [57] of the company?

A. I have done nothing else.

Q. You refer to the fact that you carried on the correspondence of the company; was that much or little? A. Considerable correspondence.

Q. What, if any, responsibility have you had with reference to the affairs of the company, and what, if any, assistance have you had from any other officer of the company in connection with it?

A. The responsibility has been great and I have had practically no support from anybody else.

Cross-examination.

(By Mr. SMITH.)

Q. Mr. Brasfield, these various notes to Mr. King you bought from him, did you? A. Yes, sir.

Q. Did you then sell those notes to Mr. Woolfolk?

A. I assigned the notes to Mr. Woolfolk as security.

Q. As security for what?

A. As security for the debt of the company on which I was endorser.

Q. And is the same true of the notes that the company made to you? A. It is.

Q. Was the assignment to the bank or Mr. Woolfolk personally? A. It was to the bank.

Q. When did you assign those and turn them over to the bank or Mr. Woolfolk?

A. I don't remember the exact date; sometime in February. [58]

(Testimony of G. M. Brasfield.)

Q. February of what year? A. 1913.

Q. You assigned these to the bank sometime in February, 1913, all of them? A. Yes.

Q. What had been the bank's security on those notes before that? A. My personal indorsement.

Q. Did you ever ask Mr. Prowell or Mr. Hoffman to indorse those notes?

A. Not those particular notes, but may I explain?

Q. You may explain that later.

Mr. HARVEY.—Go ahead now at this time and make any explanation in connection with your answer that you want to.

A. I had asked Mr. Prowell and Mr. Hoffman to indorse paper before, and they had refused to do it.

Q. What paper had you asked them to indorse before and they had refused?

A. I had asked them to indorse paper to raise the money to finance the institution.

Q. Give some specific instance.

A. I had not drawn up any paper; it was a talk or scheme or way by which I was in hopes of raising money.

Q. How long before that had you asked them to do this and they had refused?

A. Before which particular date do you have reference to?

Q. Before the time that you indorsed these notes of the Company given to the bank?

A. I had suggested a way of raising money at our September meeting in the year 1911. [59]

Q. State as nearly as you can remember what talk

(Testimony of G. M. Brasfield.)

you had with them at that time on this point.

A. My recollection is that the question of finances, which was a very live one at that time, came up, and ways and means of raising money was the question. So I suggested that we borrow the money from the bank and give the company's note, and all of us indorse the paper. They would not agree to that but said that they would put up their proportion of the money themselves. That was definitely understood and agreed to. When they declined to indorse the note, then it was agreed that each one should put up money in proportion to the amount of stock he had.

Q. But you did not catch my question. I asked you as nearly as you can state, what was said, not your conclusion or inferences—what was said between you and Mr. Hoffman and Mr. Prowell on this point?

A. I think that covers it; that is about as nearly as I can put it.

Q. I want you as nearly as you can remember to state what the conversation was between you and them; what you said and what they said?

A. Oh, I cannot attempt to remember all that.

Q. But state as nearly as you can remember what words were used; what conversation passed between you and them?

A. My recollection of their objection to that mode of procedure, that they had some,—

Mr. HARVEY.—I object to the question, in order to shorten the examination; it is entirely immaterial.

The COURT.—I think the witness has answered

(Testimony of G. M. Brasfield.)

as nearly as he can. [60]

Mr. SMITH.—I won't press the matter.

Q. You turned over this collateral, these notes to the bank and Mr. Woolfolk in February, 1913. State as nearly as you can what part of February it was.

A. It was,—I cannot remember the dates. I suppose it was along the 7th, 8th, 9th or 10th; in that neighborhood somewhere.

Q. What was the occasion of your turning these notes over to the bank?

A. The bank demanded further security for their loan.

Q. They demanded further security? A. Yes.

Q. Who was that—was that Mr. Woolfolk—did he conduct the matter?

A. He was the man I talked to.

Q. Did you and he agree that more notes of the Wenatchee-Stratford Orchard Company bearing only your personal indorsement and nothing else, would be further security? A. He did.

Q. You notice that these notes bear only one other indorsement and that is Dr. King's, and that is an indorsement without recourse? A. Yes.

Q. How long before Mr. Woolfolk began suit in the Superior Court of Pierce County on these notes did you turn over these King notes to him?

A. Mr. Woolfolk had not begun suit.

Q. How long before he began the suit was it that he turned these notes over?

A. I don't remember how long it was. [61]

Q. One day or one month or what, as nearly as you can state?

(Testimony of G. M. Brasfield.)

A. It was less than a month and more than one day. I suppose it was a couple of weeks,—something like that.

Q. That is as near as you can remember?

A. I am not clear on the date.

Q. Do you remember the incident of your confessing judgment—putting in a confession of judgment in that suit in the name of the Wenatchee-Stratford Orchard Company? . A. I confessed judgment.

Q. How long before you confessed judgment had you turned these notes over to Mr. Woolfolk?

A. That was, how long had I confessed judgment?

Q. How long before that had you turned over the notes to Mr. Woolfolk?

A. That was two or three weeks, something like that. I don't remember the exact dates.

Q. The service of summons and complaint in that suit was made on you as president of the company, wasn't it?

Mr. HARVEY.—I object to that as not proper cross-examination.

The COURT.—Objection sustained.

Q. You say it was about February 7th, 8th, 9th or 10th you turned these notes over to the bank, and it was done because they demanded additional security, and after you turned over these notes, additional notes, to the bank, were they then satisfied?

Mr. HARVEY.—Objected to as immaterial and irrelevant.

The COURT.—He may answer.

(Question read.)

(Testimony of G. M. Brasfield.)

A. Well, they were better satisfied than they did before without any security, I presume. [62]

Q. How did you turn over this salary note at the same time you turned over the King notes to the bank? A. I think so.

Q. Had the company ever owed you more than they do at this time—in other words, has the company ever paid you back anything it owed you?

A. Nothing at all.

Q. Have you the check-book in which you wrote your checks? A. I have not it here.

Q. Will you bring it in with you after adjournment? A. I will.

Q. And the account-books of the company?

A. Mr. Harvey has them.

Mr. HARVEY.—I will bring them in.

Mr. SMITH.—Also bring in any cancelled vouchers or cancelled checks which you have; that is, anything you have, so that we may have it for quick reference.

Q. Mr. Harvey wove into a question something about your having reduced your salary to six hundred dollars a month to meet Mr. Hoffman's wishes and you acquiesced; do you mean to say that Mr. Hoffman was satisfied with six hundred dollars a month salary to you?

A. No, I do not mean to make that statement at all. Mr. Hoffman objected to any salary at all.

Q. Your advances then to the company, your own advances, were only some \$8,706.51, that being the notes which have been testified to as your advances?

(Testimony of G. M. Brasfield.)

A. You mean my total advances?

Q. To the company?

A. My total advances to the company? [63]

Q. Yes.

A. Whatever those notes say. I don't recall the amount.

Q. When you bought these notes from Dr. King, that was not an arrangement between you and the company, but between you and Dr. King? A. Yes.

Q. This fifteen thousand dollars borrowed from the bank, you borrowed for current needs of the company from time to time, paying debts of the company for equipment, supplies, labor and what not?

A. Yes.

Q. Now, you say that your work as president of the company took all of your working time between September, 1911, and the institution of the bankruptcy proceedings, substantially?

A. I devoted all of my time to this business.

Q. How much of the time were you over at Stratford?

A. During the spring and summer I was over there a great deal of the time. I could not state the exact number of days I was there, but during the busy season, and when I was needed there I was there; sometimes two days at a time and sometimes a week, and sometimes two weeks at a time.

Q. Now, you had this expert orchardist whom you say is one of the best in the country? He was perfectly competent to do the work, to attend to the cul-

(Testimony of G. M. Brasfield.)

tivating and development of the properties, wasn't he?

A. He was perfectly competent to do the work, but he was not competent as a business man by any manner of means.

Q. He conducted all the practical work of improving and developing the properties, however? [64]

A. Under my supervision.

Q. Are you an irrigation man?

A. I am somewhat of one now. I was not in the beginning. I have learned a great deal about irrigation.

Q. When you started in you did not know anything about it? A. No, but I have been a close student.

Q. Now, your business experience has been mostly in lumber, hasn't it?

A. Yes, and I might add that I would have been in that now if I had not got into this.

Q. How many contracts did you settle?

A. How many contracts?

Q. Yes.

A. Well, I think there were 25 contracts, all told.

Q. That you settled?

A. Oh, no; there were ten I did not settle, and of the balance I have settled some of them and pacified the others. The fact is, I think I have settled all the balance.

Q. Some fifteen, then, you think you settled?

A. Yes. Well, I recollect one that there has been no controversy over.

Q. I suppose Mr. Dudley, your foreman, put

(Testimony of G. M. Brasfield.)

around the rabbit-proof fence?

A. Well, I hired the men and saw to the work, and I—

The COURT.—I assume this witness only had the general management.

Redirect Examination.

(By Mr. HARVEY.)

Q. Counsel in his cross-examination has referred to these [65] notes which we will specify as the King notes, that is running to Mr. King and signed by the company and purchased by you, and he has asked you if that was an arrangement between you and Dr. King. Please state whether or not what you were doing was to carry along the past-due obligations of the Wenatchee-Stratford Orchard Company; were these the obligations of the company outstanding, past due, which you were carrying?

A. Yes, they were.

Recross-examination.

(By Mr. SMITH.)

Q. You bought these notes from Dr. King about the same time you bought his stock, didn't you?

A. Oh, I bought the notes and stock at the same time.

Q. It was one transaction between you and him?

A. Yes.

(By Mr. HARVEY.)

Q. These notes are the obligations covered by this judgment which Mr. Smith asked you about?

A. Yes, they are.

(Witness excused.)

Mr. HARVEY.—I will furnish copies of the notes we have referred to, for the record.

Mr. SMITH.—That will be satisfactory.

Mr. HARVEY.—And I want also to supply the record with a certified copy of the judgment of the Superior Court of Pierce County, copy of which I have attached to my proof of claim. [66]

Mr. SMITH.—I do not care to have it certified, but would like also copies of the findings and conclusions.

Mr. HARVEY.—I will furnish copy of the findings and conclusions and will furnish a certified copy of the judgment.

Mr. SMITH.—Very well.

The COURT.—That will be understood.

(Argument by counsel.)

Whereupon an adjournment was taken until 1:30 P. M. [67]

Mr. SMITH.—I would also like to have the record show that I have leave to put my objections into compact written shape.

The COURT.—That may be understood.

Mr. HARVEY.—Of course the objections should not be any different than they have been here.

Mr. SMITH.—Oh, not at all, but with counsel's permission, I will omit entirely the objection I made, which I am inclined to think now was not well established, that is, the objection as to failing to vacate the judgment.

[Indorsed]: Filed U. S. District Court, Western District of Washington. April 16, 1913. Frank L. Crosby, Clerk. E. C. Ellington, Deputy. [68]

Petition [to Referee in Bankruptcy] for Review.

To the Honorable R. F. Laffoon, Esq., Referee in
Bankruptcy:

Your petitioner F. W. Hoffman respectfully shows
as follows:

I.

That he is a creditor of the above-named bankrupt;
that his claim has been duly and regularly filed with
and approved by the Referee in Bankruptcy herein;
that he is one of the officers of and a stockholder in
the above-named bankrupt corporation.

II.

That heretofore the above-named corporation was
adjudicated a bankrupt and on the 21st day of March,
1913, the first meeting of the creditors was held for
the purpose of filing and approving claims of credi-
tors and for the purpose of electing a trustee. That
at such time one L. H. Woolfolk of Seattle, Washing-
ton, submitted a claim to the above-named Referee
for approval and filed the same in said matter; that
said claim was in the amount of Forty-six Thousand
One Hundred Forty-seven and 84/100 (\$46,147.84)
Dollars and was based upon a certain judgment
entered in the Superior Court of Pierce County,
Washington, prior to said date.

III.

That your petitioner objected to the filing and ap-
proval of said claim and stated said objections to the
referee in bankruptcy orally and agreed thereafter
to file a written statement thereof. Said objections
were based upon the following grounds, to wit: [69]

I.

That it appeared that said claim was based upon a judgment in the Superior Court, Pierce County, Washington, and that it did not appear affirmatively that there was no real estate in said county on which said judgment would be a lien or that a transcript of said judgment had not been filed in other counties within the State in which there was real estate upon which said judgment would be a lien. That it did not appear that the claimant was not a secured creditor.

II.

That it appeared from the evidence submitted that some \$25,000.00 of said claim was not a valid or just claim against the above-named bankrupt; that said debt of \$25,000.00 was represented by certain promissory notes, executed by George M. Brasfield as President of said bankrupt corporation, payable to said George M. Brasfield individually, without any showing that said George M. Brasfield was authorized to so execute said notes or that there was any sufficient consideration or consideration at all therefor.

III.

That the evidence showed that between nine and ten thousand dollars of said alleged debt was a claim for salary to said George M. Brasfield for services rendered as President of said bankrupt corporation. That it further appeared that said alleged allowance of salary was not voted at a meeting of the trustees of said corporation duly and regularly held; that notice of said meeting, if any at all were held, was

not given to all the board of trustees; that said salary was alleged to be voted for past services rendered by said George M. Brasfield to said bankrupt corporation, but it affirmatively appeared that there was no contract by said corporation to pay for said services, and that there was no understanding or agreement that said George M. [70] Brasfield should be compensated therefor.

IV.

That it appeared that certain other of said notes so alleged to be executed by said bankrupt corporation to said George M. Brasfield were without any adequate consideration and were not duly authorized and in fact executed by said corporation.

V.

That the evidence established that said judgment upon which the whole of said claim was based was confessed by said George M. Brasfield purporting to act as the President and duly authorized agent of the above-named bankrupt corporation; that said George M. Brasfield was not authorized by said corporation to so confess judgment and acted entirely without authority or directions from said corporation and without the knowledge or concurrence of the stockholders of said corporation and its officers.

VI.

That it appeared that said judgment was based in part upon notes purporting to be issued by the above-named bankrupt corporation to said George M. Brasfield individually and purporting to have been assigned by said George M. Brasfield to the said L. H. Woolfolk, judgment creditor in said action, as col-

lateral security for the payment of certain other notes held by said L. H. Woolfolk executed by the above-named bankrupt and indorsed by said George M. Brasfield. That, as a matter of fact, the evidence clearly established that said notes were assigned to said L. H. Woolfolk by said George M. Brasfield for the purpose of collection and that said L. H. Woolfolk held said notes as trustee for said George M. Brasfield for the purpose of collecting them and that said George M. Brasfield in confessing judgment upon said notes in favor of said L. H. Woolfolk in virtue and effect confessed judgment in his own favor upon said notes against the [71] above-named bankrupt. That said judgment was fraudulent and collusive and was not a valid and existing debt of the above-named bankrupt.

VII.

On these several grounds, this petitioner objected to the filing and approval of said claim of L. H. Woolfolk and objected to the voting of said L. H. Woolfolk as a creditor of the above-named bankrupt upon said claim.

IV.

That over this petitioner's objections duly made and filed an order was entered in the above-entitled matter on the 24th day of March, 1913, approving said claim and permitting same to be filed and that at the time of said meeting of creditors, the said L. H. Woolfolk was permitted to vote upon said claim on all measures before said meeting and especially in the election of a trustee.

V.

It is the position of this petitioner that the Referee above named erred in not finding that said judgment upon which the claim of said L. H. Woolfolk was based was collusive and fraudulent; and in not finding that said claim was in part based upon promissory notes executed without authority and without any sufficient consideration therefor; and in not sustaining the objections of this petitioner established by the evidence adduced at said hearing and in permitting said claim to be filed and approved, and the said L. H. Woolfolk to vote as a creditor by virtue of said claim.

That said Referee erred in giving any virtue, effect or consideration to the vote of said L. H. Woolfolk so based upon said invalid claim. [72]

Wherefore, this petitioner respectfully prays that the usual record of the proceedings had pursuant to the filing and approval of said claim and the objections thereto, including said claim and the evidences in support thereof and all its exhibits, together with the objections thereto and the transcript of the testimony taken down and used in connection therewith, and the final order entered thereon on the 24th day of March, 1913, be certified for review to the District Court of the United States for the Western District of Washington, Southern Division.

WINFIELD R. SMITH,
Attorney for Petitioner. [73]

United States of America,
State of Washington,—ss.

I, Winfield R. Smith, attorney for the petitioner

mentioned and described in the foregoing petition, do make solemn oath and state that the foregoing petition is true according to the best knowledge, information and belief of affiant, and further certify that I believe that the petition is, in my opinion, well founded in point of law and that it is not interposed for delay.

WINFIELD R. SMITH.

Subscribed and sworn to before me this 29th day of March, A. D. 1913.

[Seal] ROY W. McREYNOLDS,
Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of the within paper is hereby rec'd this 31st day of March, 1913.

WALTER M. HARVEY,
Attorney for Trustee.

[Endorsed]: Petition for Review. Filed this 31st day of Mch., 1913. 3 P. M. R. F. Laffoon, Referee in Bankruptcy. [74]

Referee's Certificate on Review.

To the Honorable EDWARD E. CUSHMAN, U. S.
District Judge.

I, R. F. Laffoon, the Referee in Bankruptcy in charge of this proceeding, do hereby certify:

That in the course of such proceeding, and on the 21st day of March, 1913, at the first meeting of creditors herein, that certain creditor, L. H. Woolfolk, offered for filing his certain proof of claim in regular form for proofs of claims resting in judg-

ment, and specially waiving any claim of lien, preference or priority, by reason of said judgment, and said claim being in the sum and amount of \$46,138.84. That to said offer, and in opposition thereto, that certain creditor, F. W. Hoffman, by his attorney, Winfield R. Smith, Esq., interposed certain exceptions found at pages 4, 5 and 6 of the transcript of testimony taken at the hearing had upon such exceptions at said time. The gist of said exceptions being that the judgment upon which the claim of said Woolfolk was based, was a judgment by confession and that such confession was collusive, without authority, and prejudicial to the rights of other creditors and stockholders, and that the promissory notes upon which said judgment was based, were without consideration. That upon this view of the case, the Referee went into an examination of the claim presented, and heard the testimony offered by the objecting creditor, and that produced by the claimant, L. H. Woolfolk, in support of his claim.

It appeared from such examination that Mr. G. M. Brasfield became president and treasurer of the bankrupt corporation on about the 18th of September, 1911; that his wife, Virgie Brasfield, was a director in the company, as well as himself, and that the third director was the objector, F. W. Hoffman, who was during all this time the secretary; that the [75] board consisted of the three, G. M. Brasfield, Virgie Brasfield and F. W. Hoffman; that F. W. Hoffman, the secretary, resided at Wenatchee, and G. M. Brasfield and his wife, Virgie, resided at Tacoma; that G. M. Brasfield, as the president, was

empowered by the by-laws, to manage the whole affairs of the corporation, and that he actually did exercise complete control over the business affairs of the corporation during his incumbency as president and treasurer up to the date of the adjudication. See testimony of Hoffman, record, pages 10, 11 and 12; that the bankrupt, by Brasfield's predecessor, issued notes of the company to the extent of about \$7,590.00 at 8% interest, some to himself, and some to Brasfield, and that Brasfield bought from his predecessor the notes issued to himself known as the King notes, six certain notes. That Brasfield, during his incumbency had issued to himself, for money furnished by him for the bankrupt, notes in the sum of \$8,706.51. That he also during his incumbency, negotiated three loans from the Scandinavian-American Bank of Seattle, in the total amount of \$15,000.00, and suffered an overdraft of \$75.77, and issued the notes of the bankrupt company to the said bank, in that amount; that in his negotiations with the said bank in the obtaining of said loans, he personally indorsed the notes of company given to the bank for the loan, and indorsed to the bank as collateral to said loan, the notes of the bankrupt bought from King, his predecessor, the notes issued to him by the company through King, his predecessor, and the notes issued to him for money furnished the company by himself, all of which notes, including the notes given to the bank, were ratified by the full board of directors at a formal meeting of the board held in Tacoma, on January, 30, 1913; that at [76] said meeting on January 30, 1913, the board author-

ized a salary to the president of \$1,000.00 per month, from the date of his election, by a vote of two of the Trustees, Brasfield himself, and his wife, director Hoffman voting in the negative. Afterwards at a special meeting held at Tacoma, and no one present except Brasfield and his wife, a resolution was passed reducing the allowance of salary at \$1,000.00 per month during the time, and entering a resolution authorizing a salary of \$9,840.00 for the whole time. Record page 19. At the last stockholders' meeting held about the 18th of December, 1911, at which time Brasfield became president, a resolution was adopted by the stockholders, providing that no officer of the company should have a salary, except the president; that the president should receive a compensation of \$—— per annum, payable per —— . See record pages 26 and 27. Upon passing of the resolution authorizing \$9,840.00 salary to the president, Brasfield as president issued notes to himself for the same, and indorsed the said notes to the Scandinavian-American Bank, or the claimant, L. H. Woolfolk, as additional collateral to the aforesaid loans.

It was conceded that in the judgment complained of, L. H. Woolfolk was the assignee of the Scandinavian-American Bank, and the holder of all of the aforesaid notes. It was also conceded that said G. M. Brasfield was the owner of 69% of the capital stock of the bankrupt corporation. It was contended that there was collusion between L. H. Woolfolk and said Brasfield in the institution of said suit, and the confession of said judgment, but there

was nothing in the testimony, nor in the conditions surrounding the transaction, to [77] indicate to the Referee that any such collusion existed. The transaction with the bank seems to be against the interests of the said Brasfield. While the judgment confessed exceeds \$46,000.00, and the loan from the bank was slightly more than \$15,000.00, it would appear that the bank would become the trustee of the said Brasfield for any collections it would make over and above its \$15,000.00, yet the bankrupt estate would have to pay a dividend of about 40% before the bank would have recovered its \$15,000.00, so that Brasfield would obtain nothing from the bank by reason of said negotiations until after the bank has been fully paid out of all of the proceeds of the notes it holds, and if the estate should not pay more than 40%, Brasfield may never get anything, while all other creditors would get a dividend of 40%, if so much were paid, on all other claims, so it is hard for the Referee to see wherein Mr. Brasfield would gain in such an alleged conspiracy.

It was not contended that the president of the corporation had no power to confess judgment, but merely that Brasfield was not authorized by the company, so to confess, and that the confession was collusive; finding no basis for the charge of collusion, the Referee overruled the exceptions in that behalf.

On the other phase of the case, that the note for salary was unauthorized and void, the Referee was of the opinion that the records of the company were sufficient in themselves to warrant the board of directors in providing a salary for the president, either

for salary earned or to be earned, when it was contemplated by the stockholders that the president should have a salary, although the stockholders had not fixed it. It was conceded in the argument, that while [78] these notes for salary were unauthorized, the president would likely be able to recover for his services in an action on a *quantum meruit*. Under such circumstances, the board of directors have power to fix compensation for any servant, or officer, that is entitled to compensation under the by-laws of the company, and with that view of the matter the referee overruled the exceptions in that regard, and allowed the proof of claim to be filed as offered; and, thereafter, an election was held wherein George B. Burke, was elected trustee, said claim participating therein; and on March 24, 1913, an order was entered herein confirming said election.

The said F. W. Hoffman feeling himself aggrieved at such ruling and order, filed his petition for review on March 31, which petition was granted.

As appears to the referee, the question presented here for review is, whether the referee should have disallowed and rejected the claim of L. H. Woolfolk, as based upon the judgment of the Superior Court, and allowed the claim as proved before him, or, should he have allowed and filed the proof of claim offered, as he did.

I hand up for the information of the Judge, the following papers:

1. The record-book of this proceeding.
2. The petition on which this certificate is granted.

3. Transcript of the stenographer's notes of the proceeding.

4. All other papers filed with me herein which are pertinent to this review.

Dated Tacoma, Washington, April 15, 1913.

Respectfully submitted,

R. F. LAFFOON,

Referee in Bankruptcy. [79]

[Endorsed]: Referee's Certificate on Review. Filed this 16th day of April, 1913. 2 P. M. R. F. Laffoon, Referee in Bankruptcy. [80]

[Opinion.]

WINFIELD R. SMITH, for Petitioning Creditors
Hoffman & Prowell.

WALTER M. HARVEY, for Respondent Creditors
and Trustee.

CUSHMAN, District Judge.

This matter is before the Court upon a petition of certain creditors to review the decision of the referee, allowing a claim on confession of judgment and allowing the same to be voted upon the selection of a trustee. It is also before the Court upon the motion of such creditors to transfer the proceedings from the Southern to the Northern Division of the District, upon the ground that its principal place of business is in the Northern Division.

The referee certifies:

“The gist of said exceptions being that the judgment upon which the claim of said Woolfolk was based, was a judgment by confession and that such

confession was collusive, without authority, and prejudicial to the rights of other creditors and stockholders, and that the promissory notes upon which said judgment was based, were without consideration. That upon this view of the case, the referee went into an examination of the claim presented, and heard the testimony offered by the objecting creditor, and that produced by the claimant, L. F. Woolfolk, in support of his claim.

“It appeared from such examination that Mr. G. M. Brasfield became the president and treasurer of the bankrupt corporation on about the 18th day of September, 1911; that his wife, Virgie Brasfield, was a director in the company, as well as himself, and that the third director was the objector, F. W. Hoffman, who was during all this time the secretary; that the board consisted of the three, G. M. Brasfield, Virgie Brasfield and F. W. Hoffman; that F. W. Hoffman, the secretary, resided at Wenatchee; and G. M. Brasfield and his wife, Virgie, resided at Tacoma; that G. M. Brasfield, as the president, was empowered by the by-laws, to manage the whole affairs of the corporation, and that he actually did exercise complete control over the business affairs of the corporation during his incumbency as president and treasurer up to the date of the adjudication. See testimony of Hoffman, record, pages 10, 11 and 12; that the bankrupt, by Brasfield’s predecessor, issued notes of the company to the extent of about \$7590.00 at 8% interest, some to himself, and some to Brasfield, and that Brasfield bought from his predecessor the notes issued to himself known as the

King notes, six certain notes. That Brasfield, during his incumbency had issued to himself, for money furnished by him for the bankrupt, notes in the sum of \$8760.51. That he also [81] during his incumbency, negotiated three loans from the Scandinavian-American Bank of Seattle, in the total amount of \$15,000.00, and suffered an overdraft of \$75.77, and issued the notes of the bankrupt company to the said bank, in that amount; that in his negotiations with the said bank in the obtaining of said loans, he personally endorsed the notes of company given to the bank for the loan, and endorsed to the bank as collateral to said loan, the notes of the bankrupt bought from King, his predecessor, the notes issued to him by the company through King, his predecessor and the notes issued to him for money furnished the company by himself, all of which notes, including the notes given to the bank, were ratified by the full board of directors at a formal meeting of the board held in Tacoma, on January 30, 1913; that at said meeting on January 30, 1913, the board authorized a salary to the president of \$1000.00 per month, from the date of his election, by a vote of two of the trustees, Brasfield, himself, and his wife, director Hoffman voting in the negative. Afterwards at a special meeting held at Tacoma, and no one present except Brasfield and his wife, a resolution was passed reducing the allowance of salary at \$1000.00 per month during the time, and entering a resolution authorizing a salary of \$9840.00 for the whole time. Record page 19. At the last stockholders meeting held about the 18th of December,

1911, at which time Brasfield became president, a resolution was adopted by the stockholders, providing that no officer of the company should have a salary, except the president; that the president should receive a compensation of \$——, per annum, payable per ——. See record pages 26 and 27. Upon passing of the resolution authorizing \$9840, salary to the president, Brasfield as president issued notes to himself for the same, and endorsed the said notes to the Scandinavian-American Bank, or the claimant, L. W. Woolfolk, as additional collateral to the aforesaid loans.

“It was conceded that in the judgment complained of, L. H. Woolfolk was the assignee of the Scandinavian-American Bank, and the holder of all of the aforesaid notes. It was also conceded that said G. M. Brasfield was the owner of 69% of the capital stock of the bankrupt corporation. It was contended that there was collusion between L. H. Woolfolk and said Brasfield in the institution of said suit, and the confession of said judgment, but there was nothing in the testimony, nor in the conditions surrounding the transaction, to indicate to the referee that any such collusion existed. The transaction with the bank seems to be against the interests of the said Brasfield. While the judgment confessed exceeds \$46,000.00, and the loan from the bank was slightly more than \$15,000.00, it would appear that the bank would become the trustee of the said Brasfield for any collection it would make over and above its \$15,000.00, yet, the bankrupt estate would have to pay a dividend of about 40% before the bank

would have recovered its \$15,000.00, so that Brasfield would obtain nothing from the bank by reason of said negotiations until after the bank has been fully paid out of all of the proceeds of the notes it holds, and if the estate should not pay more than 40%, Brasfield may never get anything, while all other creditors would get a dividend of 40%, if so much were paid, on all other claims, so it is hard for the referee to see wherein Mr. Brasfield would gain in such an alleged conspiracy." [82]

The following authorities are cited by the petitioning creditors on the petition for review:

Adams vs. The Crosswood Printing Co., 27 Ill. App. 313;

Hoyt vs. Thompson, 5 N. Y. 321;

Joliet Elec. L. & P. Co. vs. Ingalls, 23 Ill. App. 45;

Stokes vs. New Jersey Pottery Co., 46 N. J. L. 237;

Arizona Min. Co. vs. Benton, 100 Pac. 952;

Doe vs. N. W. Coal & Trans. Co., 78 Fed. 62, at 66;

National L. & I. Co. vs. Rockland Co., 94 Fed. 335;

Dial vs. Company, 52 Wash. 81, 85-6;

Home & Co. vs. Tillman, 53 S. E. (Ga.) 1019, 1022;

Kahoe vs. Ry. Co., 60 S. E. (N. C.) 640;

Utica &c Co. vs. Waggoner &c. Co., 132 N. W. (Mich.) 502;

O'Brien Boiler Works Co., 135 S. W. (Mo.) 347;

- Brophy vs. American Brew. Co., 61 Atl. (Pa.)
123;
- Graffner vs. Ry. Co., 56 Atl. (Pa.) 426.
- Doernbecker vs. Columbia City Lbr. Co., 28 Pac.
(Ore.) 899, 900;
- Vaught vs. Ohio County Fair Co., 49 S. W.
(Ky.) 426-427;
- Singer vs. Salt Lake City Copper Mfg. Co., 53
Pac. (Utah) 1024, 1028;
- Hatch vs. Lucky Bill Min. Co., 71 Pac. (Utah)
865;
- Broughton vs. Jones, 79 N. W. (Mich.) 691;
- Bank of National City vs. Johnston, 65 Pac. 383;
- Holcome vs. Trenton White City Company, 82
Atl. 618;
- Hill vs. Rich Hill Coal Min. Co., 24 S. W. 223;
[83]
- Jacobson vs. Brooklyn Lbr. Co., 76 N. E. (N. Y.)
1075;
- 10 Am. & Eng. Enc. of Law, 790;
- Steel vs. Golfissure Gold Min. Co., 95 Pac.
(Colo.) 349; 351;
- McNulta vs. Corn Belt Bank, 45 N. E. (Ill.) 954;
- Camden Land Co. vs. Lewis, 63 Atl. (Me.) 523;
- McConnell vs. Combination M. & M. Co., 76 Pac.
194;
- Adams vs. Burke, 102 Ill. App. 148;
- Ritchie vs. People's Tel. Co., 119 N. W. (S.
Dak.) 990;
- State vs. Manhattan Rubber Co., 50 S. W. (Mo.)
321, 325;
- Monmouth Inv. Co. vs. Means, 151 Fed. 159;

Ravenswood S. & G. Ry. Co. vs. Woodyard, 33 S. E. (W. Va.) 285;

Dauids vs. Dauids, 120 N. Y. Sup. 350.

The following authorities are cited by the respondent creditors on petition for review:

Gilman vs. Heitman, 113 N. W. 932;

McDonald vs. Chisholme, 132 Ill. 273;

Chamberlain vs. Mammoth Min. Co., 20 Mo. 96;

Ford vs. Hill, 92 Wis. 188; 53 Am. St. Rpts., 902; 66 N. W. 115;

Clark & Marshall on Corporations, p. 2141;

Miller vs. Oregon City Mfg. Co., 3 Ore. 24;

Miller Bros. vs. Bank of British Columbia, 2 Ore. 291;

Irvine vs. Randolph Lbr. Corporation, 69 S. E. 350;

White vs. Crow, 17 Fed. 98; aff'd 110 U. S. 183; [84]

Van Fleet on Collateral Attack, Section 17;

Robinett vs. Michaux, 101 Va. 762; 45 S. E. 287; 99 Am. St. R. 928;

Nat'l Loan & Ins. Co. vs. Rockland Co., 94 Fed. 335.

The following authorities are cited by the moving creditors on the motion to transfer:

Rossie Iron Works vs. Westbrook, 13 N. Y. Sup. 141;

Elmira Steel Co., 109 Fed. 456;

Loveland on Bankruptcy, 4 Ed., 117;

The respondent creditors cite the following authorities on the motion to transfer:

Collier on Bankruptcy, pp. 26 and 27;

- Dressel vs. North State Lbr. Co., 107 Fed. 255;
 Tiffany vs. La Plume Condensed Milk Co., 141
 Fed. 444;
 In re Pennsylvania Consolidated Coal Co., 163
 Fed. 579;
 In re Magid-Hope Silk Mfg. Co., 110 Fed. 352;
 In re Machine and Conveyor Co., 91 Fed. 630.

Upon the hearing it was admitted that all of the money for which judgment was confessed was actually owing by the corporation, except a note for nine thousand eight hundred forty dollars, on account of back salary of Brasfield as President.

As proceedings in bankruptcy are administered according to principles of equity, Mr. Woolfolk, either as judgment creditor or as holder of between thirty and thirty-five thousand dollars of the uncontested notes, had a right to vote [85] for the trustee. With this undisputed amount voted, there was a majority of the creditors, in number and amount, voting for the trustee. Under such circumstances, it would be inequitable to treat the judgment as an entirety and disallow it *in toto*, if any part of the recovery allowed therein should be found unwarranted.

The Washington statute provides:

“When the action is against the state, a county or other public corporation therein, or a private corporation or minor, the confession should be made by the person who, at the time, sustains the relation to such state, corporation, county or minor, as would authorize the service of a notice (summons) upon him” 1 Rem. & Bal. Code, Sec. 414.

It is, therefore, clear that Brasfield, as president of the corporation had authority to confess judgment generally, as he was an officer upon whom service of summons could be had. 1 Rem. & Bal., Sec. 226 (8).

The salary note was a demand note and, under the circumstances in which it was given by the corporation, through its president, to himself, it is clear that it was due immediately and that the bank and the judgment creditor, Woolfolk, took it after maturity. 7 Cyc. 849, (2).

The question of good faith between the creditor, Woolfolk, and the president of the corporation in confessing judgment; the authority of the president of the corporation and his wife—being two of the three directors—to fix the amount of and vote him back salary without the consent, in the absence of and without notice to the other director, were, without objection, submitted to the referee, considered and determined by him.

There appears to be authority for this course:

“(2) IMPEACHING JUDGMENTS. Here the English doctrine is [86] much broader than our own. Full faith and credit being necessarily given to the judgments of the State Courts when pleaded in the Federal Courts, it was, under the former law, held that a judgment of a State court could not be impeached when presented as a claim in bankruptcy, but resort must be had to the State court. That it is conclusive between the bankrupt and the judgment creditor is elementary. But where the rights of general creditors have intervened, the English rule that such a judgment is but *prima facie* evi-

dence of a provable debt is fairer. The law in the United States seems, however, to be that the trustee of a creditor may attack it in the bankruptcy proceeding for fraud or collusion, but not otherwise. A judgment not regular on its face, or by a Court which did not have jurisdiction of the subject-matter, may of course be attacked anywhere; but jurisdiction need not affirmatively appear, nor can the recitals of the judgment, as a rule, be contradicted in a collateral proceeding." Collier on Bankruptcy, 9th ed., p. 861.

“VALIDITY—a In General. A judgment entered upon the confession of defendant may be impeached for fraud by other creditors whose rights or remedies are affected by it, although, if no fraud or deception was practiced on the debtor, it is binding as between the original parties. As to the proceedings in entering or confessing the judgment, although there are some decisions to the effect that a judgment which does not conform to the requirements of the statute is absolutely void, the better rule appears to be that if there has been an attempt to comply in all respects with the law, the judgment is at most only voidable at the instance of creditors, although the execution of such attempt be informal, or defective; but the total omission of any of the steps prescribed by the statute will render the judgment entirely inoperative and void. Where the statute provides that there shall be filed with a confession of judgment a statement of the facts out of which the indebtedness arose, it has been held that the filing of a defective or insufficient statement will not render the judgment

void as between the parties; as against other creditors it raises a presumption of fraud, and they may attack it on this ground; but plaintiff may sustain his judgment by proving that it is fair, and not fraudulent or collusive, and warranted by the facts actually existing although such facts were not included in the statement." 23 Cyc., pp. 720 & 721.

This being the state of the record, the same course will be followed and the salary note considered on its merits, without going into the questions of collateral attack and the faith and credit to be accorded the judgment of the State Courts generally.

It is concluded there is no authority in an agent, such as the director and president of a corporation, to thus deal with himself, to his own advantage and to the corresponding detriment of others whom he represents. That the salary [87] transaction was presumably fraudulent. If such an officer can, under the circumstances, recover at all, it is upon the *quantum meruit*, and not upon his contract with himself. 10 Cyc., pp. 789 et seq.

The amended Articles of Incorporation fixed the principal place of business of the corporation at Seattle, in the Northern Division of this District. It is contended that this fact is conclusive upon this question and, under Section 53 of the Judicial Code and subdivision 1, section 2 of the Bankruptcy Act, giving courts of bankruptcy jurisdiction,

"to adjudge persons bankrupt who have had their principal place of business, resided or had their domicile within their respective territorial jurisdictions for the preceding six months, or the greater portion thereof,"

the proceedings will only lie in the Northern Division of this District and that the cause should be transferred thereto.

It appears indisputably that, as a matter of fact, all of the business of the bankrupt was transacted from its offices at Tacoma, in the Southern Division for the six months preceding the filing of the petition to be adjudged a bankrupt. The fact, rather than the declaration in its articles, is controlling.

Collier on Bankruptcy, 9th Ed., p. 33 (Sec. 2);
Dressel vs. North State Lbr. Co., 107 Fed. 255;
In re Pennsylvania Consol. Coal Co., 163 Fed.
579.

The referee will proceed in accordance with this decision.

[Endorsed]: Decision on Petition for Review and Motion to Transfer. Filed in the U. S. District Court, Western Dist. of Washington, May 15, 1913. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy. [88]

Order [Ratifying, Approving and Confirming Certain Rulings and Decisions of Referee in Bankruptcy, etc.].

This cause having heretofore come on regularly for hearing upon the petition of F. W. Hoffman and W. R. Prowell, creditors of said bankrupt, to review the decision of the referee allowing the claim of L. H. Woolfolk, based upon a judgment by confession entered by the Superior Court of the State of Washington for Pierce County, and allowing the said L. H.

Woolfolk, as such judgment creditor, to vote upon the selection of a trustee, and it appearing to the Court that said judgment by confession was duly and regularly entered upon a statement confessing judgment signed by the president of said bankrupt corporation, who was duly authorized to execute and file the same, and that all of the promissory notes which formed the various causes of action which were reduced to judgment in said cause were valid, subsisting and legal obligations of said bankrupt corporation, for which said bankrupt received full value, save and except a certain note for \$9,840.00, which was a note executed to the president of said bankrupt corporation, George M. Brasfield for salary, which said salary note is not a just and valid claim against said bankrupt corporation, but that the president of said corporation upon a *quantum meruit* and not upon a contract made with himself, the said creditors F. W. Hoffman and W. R. Prowell appearing by their attorney, Winfield R. Smith, Esq., and the other creditors and trustee in bankruptcy appearing by their attorney, Walter M. Harvey, the Court having heard the argument of counsel and being fully advised in the premises and having taken said petition for review under advisement and having heretofore, to wit, on the 15th day of May, 1913, filed a written decision herein. [89]

Now, THEREFORE, it is hereby ordered that all of the rulings and decisions of the referee in bankruptcy in this cause (except as hereinafter provided) referred to in said petition for review and the action of the creditors in the selection of George B. Burke

as trustee, and the action of the referee in approving said selection and in allowing the said L. H. Woolfolk as a creditor to vote at said election, be and the same are hereby ratified, approved and confirmed.

IT IS HEREBY FURTHER ORDERED, that said referee in bankruptcy be and he is hereby directed in the allowance and consideration of claims against said estate to reduce said judgment by the amount of \$9840.00, and interest thereon amounting to \$13.12, and that George M. Brasfield, the president of said bankrupt corporation, and L. H. Woolfolk, as his assignee, be and they are hereby permitted to take such further steps and proceedings as they may deem proper to recover the amount of salary, if any, to which the said George M. Brasfield, as president of said corporation, may be entitled to, and this order and adjudication shall be without prejudice to the rights of said George M. Brasfield and L. H. Woolfolk, as his assignee, in connection with the claims for such salary; to which ruling the said creditors Hoffman and Prowell duly excepted and their exceptions were allowed.

Done in open court this 28th day of May, 1913.

EDWARD E. CUSHMAN,

Judge.

[Endorsed]: Filed U. S. District Court Western District of Washington. May 29, 1913. Frank L. Crosby, Clerk. F. M. Harshberger, Deputy. [90]

Order Permitting Appeal in Name of Trustee.

Upon the petition of F. W. Hoffman and W. R. Prowell, creditors of the above-named bankrupt, to

appeal in the name of George B. Burke, trustee in bankruptcy of said bankrupt, to the Circuit Court of Appeals for the Ninth Circuit, from an order entered by the above-entitled court on the 29th day of May, 1913, approving in part the allowance of the claim of L. H. Woolfolk, it appearing to the Court that the appeal should be allowed and that the trustee has refused to prosecute the same.

The petition of said creditors is hereby granted to conduct the appeal in the name of George B. Burke, trustee, at petitioner's cost in case of affirmance.

Done in open court this 7th day of June, 1913.

EDWARD E. CUSHMAN,
United States District Judge.

[Endorsed]: Order Permitting Appeal in Name of Trustee. Filed U. S. District Court, Western District of Washington. Jun. 7, 1913. Frank L. Crosby, Clerk. F. M. Harshberger, Deputy. [91]

Petition for Appeal.

George B. Burke, trustee in bankruptcy of the Wenatchee-Stratford Orchard Company, considering himself aggrieved by the order made and entered on the 29th day of May, 1913, in the above-entitled cause by the above-entitled court approving in part the allowance of the claims of L. H. Woolfolk, does hereby appeal from said order to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that the transcript of the record,

proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

WINFIELD R. SMITH,
Attorney for Trustee for the Purpose of This Appeal.

The foregoing claim of appeal is hereby allowed and the bond to be given therein fixed in the amount of \$1,000.00 this 7th day of June, 1913.

EDWARD E. CUSHMAN,
United States District Judge.

[Endorsed]: Petition for Appeal. Filed U. S. District Court, Western District of Washington. Jun. 7, 1913. Frank L. Crosby, Clerk. F. M. Harshberger, Deputy. [92]

Assignments of Error.

On this 7th day of June, 1913, come now F. W. Hoffman and W. R. Prowell, creditors, in the name and as the act of George B. Burke, the trustee in bankruptcy of the Wenatchee-Stratford Orchard Company, by Winfield R. Smith, attorney for the said trustee, for the purposes of this appeal, and say that the order entered in the above-entitled court in this cause on the 29th day of May, 1913, approving in part allowance by the referee of the claim of L. H. Woolfolk, is erroneous and against the rights of the remaining creditors represented by the said trustee, for the following reasons:

I.

The ruling that G. M. Brasfield, as president of

the said bankrupt corporation, was empowered to confess judgment in its behalf, is erroneous.

II.

The Court erred in failing to hold that Brasfield, individually, was the beneficial owner of the major part of the notes upon which said judgment was confessed, and in failing to hold that said judgment was therefore virtually confessed by Brasfield in his own favor.

III.

This judgment thus confessed is fraudulent and void and should have been so held.

IV.

The Court erred in holding the judgment partly good and partly bad, and in approving to the extent of the valid notes the claim based upon said judgment, the judgment being a legal entirety. [93]

V.

The Court erred in ruling that the election of trustee which depended upon this claim was valid.

VI.

The Court erred in refusing to set aside the election of trustee and remanding the cause for a new election, at which a claim based upon the valid notes held by Woolfolk properly verified and filed should be permitted to vote in the amount of principal and accrued interest of the said notes and no more.

WHEREFORE it is prayed that the said order of the above-entitled court, in so far as it affirms the allowance of the claim of Woolfolk and the election

of trustee as had, be reversed.

WINFIELD R. SMITH,
Attorney for Trustee for the Purposes of This Appeal.

[Endorsed]: Assignments of Error. Filed U. S. District Court, Western District of Washington. Jun. 7, 1913. Frank L. Crosby, Clerk. F. M. Harshberger, Deputy. [94]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, that we, F. W. Hoffman and W. R. Prowell as principals, and the National Surety Company of New York, as surety, are held and firmly bound unto L. H. Woolfolk in the full and just sum of one thousand dollars (\$1,000), to be paid to him, his attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 12th June, 1913.

WHEREAS, lately in the above-entitled court in the above-entitled matter, an order was entered allowing the claim of L. H. Woolfolk in part and approving the allowance of said claim by the referee in bankruptcy except as to \$9,840.00, and the principals herein having obtained an appeal and filed a copy thereof in the clerk's office of said court to reverse the said order, and a citation directed to the said L. H. Woolfolk, citing and admonishing him to appear at a session of the United States Court of

Appeals for the Ninth Circuit, to be holden in the city of San Francisco, in said circuit, on the 6th day of October, 1913.

Now, the condition of the above obligation is such that if the said principals shall prosecute their appeal to effect and answer all damaged and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

F. W. HOFFMAN. [Seal]

W. R. PROWELL. [Seal]

Sealed and delivered in the presence of

W. HARR. [95]

NATIONAL SURETY COMPANY,

[Seal]

By EDW. M. ALLEN,

Attorney in Fact.

Approved by

EDWARD E. CUSHMAN,

U. S. Circuit Judge.

[Endorsed]: Bond on Appeal. Filed U. S. District Court, Western District of Washington. Jun. 16, 1913. Frank L. Crosby, Clerk. F. M. Harshberger, Deputy. [96]

Citation on Appeal [Copy].

The United States of America,

Ninth Judicial Circuit,—ss.

The President of the United States to Lyman H.

Woolfolk, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, held at the city of San Fran-

cisco in the State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the Western District of Washington, Southern Division, wherein George B. Burke, trustee in bankruptcy for Wenatchee-Stratford Orchard Company, is appellant, and you are appellee, to show cause, if any there be, why the order in the said appeal mentioned should not be reversed in the respects specified and speedy justice should not be done to the parties in this behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 16th day of June, in the year of our Lord one thousand nine hundred and thirteen.

[Seal]

EDWARD E. CUSHMAN,
United States District Judge.

Service of the within citation and receipt of a copy thereof admitted this 18th day of June, 1913.

WALTER D. HARVEY,
Solicitor for Lyman H. Woolfolk, Appellee. [97]

[Endorsed]: Citation on Appeal. Filed U. S. District Court, Western District of Washington. Jul. 1, 1913. Frank L. Crosby, Clerk. F. M. Harshberger, Deputy. [98]

Exhibit No. 1.

Hotel Oregon,
Portland, Oregon.
Wright-Dickinson
Hotel Co.,
Proprietors.

Hotel Seattle,
Seattle, Wash.
Wright and Dickinson
Hotel Co.,
Proprietors.

HOTEL OREGON,
Portland, Oregon,
February 24,
Nineteen 13.

Mr. F. W. Hoffman,
Wenatchee, Wash.

Dear Sir:

The bank has instituted suit for the collection of their note. Recent suits at Seattle against several orchard companies, and dissatisfaction on the part of some of our buyers may have caused the bank's uneasiness. I found it absolutely impossible to raise money by mortgage on the land, or in any other way.

Mr. Walter M. Harvey, attorney, Tacoma, can give you any further information you may desire.

Yours truly,
(Signed) G. M. BRASFIELD.

3/21/13 C. D. S. [99]

**Certificate of Clerk U. S. District Court to Transcript
of Record, etc.**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States

District Court for the Western District of Washington, do hereby certify the foregoing and attached papers are a true and correct copy of the record and proceedings in the case of Wenatchee-Stratford Orchard Company, a corporation, Bankrupt, No. 1296, as required by the stipulation of counsel, filed in said cause, as the originals thereof appear on file in said court, at the city of Tacoma, in said District.

I do further certify that I hereto attach and herewith transmit the original Citation, and the original order extending time for record herein;

And I further certify the cost of preparing and certifying the foregoing record to be the sum of \$44.70, which sum has been paid to me by the attorneys for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the city of Tacoma, in said District, this tenth day of July, A. D. 1913.

[Seal]

FRANK L. CROSBY,

Clerk.

By E. C. Ellington,

Deputy Clerk. [100]

[Endorsed]: No. 2285. United States Circuit Court of Appeals for the Ninth Circuit. George B. Burke, as Trustee in Bankruptcy for the Wenatchee-Stratford Orchard Company, Appellant, vs. Lyman H. Woolfolk, Appellee. Transcript of Record. Upon Appeal from the United States District Court

for the Western District of Washington, Southern Division.

Filed July 14, 1913.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

*United States Circuit Court of Appeals for the Ninth
Circuit.*

In the Matter of WENATCHEE-STRATFORD
ORCHARD COMPANY,

Bankrupt.

Citation on Appeal [Original].

The United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States to Lyman H.
Woolfolk, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, held at the city of San Francisco, in the State of California, within thirty days from the date of this writ pursuant to an appeal filed in the clerk's office of the District Court of the United States for the Western District of Washington, Southern Division, wherein George B. Burke, trustee in bankruptcy for the Wenatchee-Stratford Orchard Company, is appellant, and you are appellee, to show cause, if any there be, why the order in the said appeal mentioned should not be reversed in the respects specified and speedy justice should not be done to the parties in this behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 16th day of June, in the year of our Lord, one thousand nine hundred and thirteen.

[Seal]

EDWARD E. CUSHMAN,
United States District Judge.

Service of the within citation and receipt of a copy thereof admitted this 18th day of June, 1913.

WALTER M. HARVEY,
Solicitor for Lyman H. Woolfolk, Appellee.

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Wenatchee-Stratford Orchard Company, Bankrupt. Citation on Appeal. Filed U. S. District Court, Western District of Washington. Jul. 1, 1913. Frank L. Crosby, Clerk. F. M. Harshberger, Deputy.

No. 2285. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 14, 1913. Frank D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit. By Meredith Sawyer, Deputy Clerk.

**[Order Extending Time to July 28, 1913, to File
Record on Appeal.]**

*In the United States Circuit Court of Appeals for the
Ninth Judicial Circuit.*

No. 1296.

In re WENATCHEE-STRATFORD ORCHARD
COMPANY, a Corporation,
Bankrupt.

For good cause shown,

IT IS NOW ORDERED that the time within
which the record on appeal herein may be filed in this
court be, and the same is hereby, extending to and
including the 28th day of July, A. D. 1913.

Dated July 3d, 1913.

EDWARD E. CUSHMAN,
District Judge.

[Endorsed]: Filed U. S. District Court, Western
District of Washington. Jul. 5, 1913. Frank L.
Crosby, Clerk. F. M. Harshberger, Deputy.

No. 2285. United States Circuit Court of Appeals
for the Ninth Circuit. Filed Jul. 14, 1913. F. D.
Monckton, Clerk U. S. Circuit Court of Appeals for
the Ninth Circuit.