

sum having been deposited with him by the Company. It was stated in the opinion first delivered by this Court, that this sum had been twice charged to the complainant, and this is now conceded by the defendant, and of course to that extent the account J. J. must be corrected. But the opinion of November, 1848, declared further, that there should have been no charge at all against the complainant in respect of this sum. And that now may be considered a question proper for further consideration, additional proof bearing upon it having been brought in since that opinion was made. This item of \$1,350 is referred to in the 13th paragraph of the amended answer, where it is alleged that this sum, on the 18th of December, 1835, was withdrawn by the complainant from the funds of the defendant, received by him or under his control, and applied professedly to the payment of an alleged claim of a manufacturing company in Boston, on account of patent rights, and the answer insists that the said sum is a just and proper debit against the complainant. It appears by the receipt of C. D. Williams, dated the 19th of September, 1828, that this sum of \$1,350 was placed in his hands, as a stakeholder, by Dean Walker, who, together with the defendant, had been carrying on a machine establishment, to answer for a claim set up by the agent of one Patrick T. Jackson, on account of certain patent rights. The complainant was that agent, and, on the 18th of December, 1835, as appears by an entry in the day-book of the defendant of that date, he being at that time the agent of the defendant, and at their factory, the sum in question was paid him as agent of Jackson by himself as the agent of the defendant. The money then was paid by the complainant to himself as the agent of Patrick T. Jackson, who was the agent and treasurer of the Boston company, to whom the patent right belonged. The complainant received the money in the capacity of agent, and in none other had he any color of right to it. But it now appears by the deposition of Eben Hobbs, taken under a commission sent to Boston, that the witness has been superintendent and agent of the Boston Company for thirty-two years, and that no money was