

any attempt been made to show, that the complainant ever received a dollar of the money of the defendants with which he did not charge himself. It appears from the evidence of John J. Tenain, taken before the Auditor, that the complainant, while acting as agent for the defendant, was in the habit, from time to time, of depositing cash at the store, and that it was likewise his habit to pay those having claims against the defendant by orders drawn by him upon the store, the moneys deposited being mingled with the proper funds of the store, and paid out indiscriminately with the money of the store, upon the complainant's orders. And further, that the moneys thus deposited by the complainant in the store, were not on any of the books kept for its regular business. And the evidence of Thomas C. Miller, in the printed record, pages 218 and 219, shows why it was that there was confusion in the cash accounts. The books certainly appear to me not to have been kept with as much accuracy as they should have been. Balances have been forced, and entries made in the profit and loss account which it is not easy to explain; but seeing that if the complainant is made to account for the amount of these orders as cash, that the defendant will get credit for more cash than it ever received from all sources, I cannot agree in the propriety of making the complainant so account.

These observations apply also to the eighteenth and nineteenth items of surcharge in the amended answer, and show that they cannot be maintained.

In coming to the conclusion that the complainant is not properly chargeable with the items of claim specified in the 16th, 18th, and 19th paragraphs of the amended answer, the letters of C. D. Williams to George Williams, dated in August and September, 1839, are certainly entitled to considerable weight. The complainant resigned his agency for the defendant on the 6th of July of that year, and was succeeded by the writer of these letters, and it must be presumed they were written after an examination of the accounts. It will be seen upon reading them, that no such claims as are now preferred against the complainant were then made. In that of the 21st of August, 1839,