

# JUDGE SIMPSON'S DECISION IN SHEVLIN CASE.

## Full Text of the Opinion in Which the Court Found for Thomas H. Shevlin in the Suit Brought by His Brother to Force the Retransfer of Lumber Company Stock.

State of Minnesota, County of Hennepin. District Court, Fourth Judicial District.

Edwin C. Shevlin, Plaintiff, vs. Thomas H. Shevlin, Defendant. Findings of Fact and Conclusions of Law.

This cause, being at issue, and duly on the April, 1904, general term calendar, came duly to be heard before the court, without a jury, on the 21st day of June, A. D., 1904.

Messrs. A. B. Jackson, T. N. Kearney, Eugene E. Prussing and Charles W. Purdie, appeared as attorneys for and on behalf of the plaintiff, and Messrs. Lancaster & McGe and A. Y. Merrill appeared as attorneys for and on behalf of the defendant.

Now, after hearing the evidence adduced by the respective parties, and the arguments of their counsel, and duly considering the same, and being fully advised in the premises, the court makes the following

### Findings of Fact:

I. That plaintiff and defendant are brothers; the former being in 1867 and the latter in 1852; and that both are and since 1886 have been residents of Minneapolis, Minn., and that defendant is, and for more than twenty years last past has been engaged in the lumbering business in said Minneapolis and elsewhere, in the state of Minnesota; and that from about the year 1886 to March, 1898, the plaintiff was employed in different and various capacities by the Hall & Ducey Lumber company, and the Shevlin-Carpenter Co., of which the defendant was at all times a large stockholder and president and general manager.

II. The plaintiff was married in December, 1895, to a sister of defendant's wife, and that at the time of plaintiff's said marriage the defendant gave to plaintiff twenty shares of the capital stock of the J. Neils Lumber company, a corporation; said twenty shares of stock being of the par value of \$2,000; and that in the month of June, 1897, the defendant agreed to sell and transfer to plaintiff seventy shares more of the capital stock of the said J. Neils Lumber company of the par value of \$7,000, for \$6,000, and to take the plaintiff's note in payment thereof, with interest at the rate of 6 per cent per annum; and that at the time of said sale and agreement the book value of said seventy shares of stock was over \$13,000; and that defendant made said agreement with the plaintiff because the latter was his brother and in order to help and assist him financially.

III. That in the year 1896, this defendant, F. P. Hixon, E. P. Arpin, A. L. Arpin, D. J. Arpin and H. C. Clarke organized, or caused to be organized, the St. Hilaire Lumber company, with a capital stock of \$200,000; the said F. P. Hixon, for himself, and the estate of G. C. Hixon, which he represented, taking 40 per cent of the capital stock of said corporation, the said E. P. A. L. and D. J. Arpin, together taking 20 per cent thereof, this defendant taking 35 per cent thereof, and said H. C. Clarke taking 5 per cent thereof; and that said corporation was so organized for the purposes of conducting a general lumber manufacturing business at St. Hilaire, in the state of Minnesota, and of buying and holding pine lands in said state; and that on September 9th, 1899, this defendant bought of the said Arpins one-half of their holdings of the capital stock of said corporation, to-wit, two hundred shares, and paid therefor the sum of \$25,000; and that the said F. P. Hixon at said time purchased the balance of the said Arpins' holdings, to-wit, two hundred shares.

IV. That in the fall of 1897 the defendant and the said F. P. Hixon conceived the plan of buying out all the mill plant, logs and stumpage of the Red River Lumber company, located at Crookston, Minn., and did so purchase the same, and later and in the month of January, 1898, organized, or caused to be organized, the Crookston Lumber company, a corporation, with a capital stock of \$100,000, and turned over to said Crookston Lumber company the said mill plant at said Crookston, and all the lumber, logs and stumpage, so purchased from the Red River Lumber company, and that the stock of said corporation was to be divided equally between said F. P. Hixon and the defendant; and that 50 per cent of said stock was so issued to said F. P. Hixon and, upon his order, to the estate of G. C. Hixon, which the said F. P. Hixon represented, and the balance of 50 per cent was issued, upon the request and order of defendant, as follows, to-wit: Thirty-five per cent to himself, 10 per cent, or one hundred shares, to the plaintiff herein, and 5 per cent to H. C. Clarke, and that plaintiff, upon the issuance of said stock to him, gave to defendant his promissory note for \$10,000 in payment thereof, and said defendant held the said one hundred shares of stock as collateral security for the payment of said note.

V. That plaintiff was not a party in interest in the purchase by the defendant and F. P. Hixon of the mill plant, logs and stumpage of the Red River Lumber company, and the organization of the Crookston Lumber company, but first acquired an interest in said enterprise when he agreed with the defendant to purchase said one hundred shares of stock in said

Crookston Lumber company. That defendant was induced to let the plaintiff have the one hundred shares of stock in said Crookston Lumber company in the manner aforesaid because the latter was his brother and because defendant desired to help and assist him into active business, and because he desired plaintiff to act as manager of said business; and that, at the same time, and as a part of the same transaction, it was arranged, the defendant influencing said Hixon and Clarke to consent thereto, that plaintiff should be and become the manager both of the Crookston Lumber company and of the St. Hilaire Lumber company, at a salary of \$2,500 a year; and that said plaintiff, on or about April 1, 1898, entered upon the discharge of his duties as such manager, was continued to act as such manager until about Jan. 1, 1900.

VI. That shortly after the purchase of the said Arpin stock in the St. Hilaire Lumber company by said F. P. Hixon and the defendant, on September 9, 1898, and on or about Jan. 1, 1899, defendant proposed to plaintiff to exchange with him two hundred shares in the St. Hilaire Lumber company for the ninety shares of stock in the J. Neils Lumber company, twenty shares of which latter stock had been issued to plaintiff, and for seventy shares of which the plaintiff held defendant's agreement to sell, as hereinbefore set forth, to which proposition plaintiff fully assented and agreed; and that later on and on or about the month of July, 1899, said agreement was fully consummated, and a certificate for two hundred shares of the capital stock of the St. Hilaire Lumber company was issued and delivered to the plaintiff, at defendant's request, and upon defendant's duly surrendering to said corporation two hundred shares of stock held by him; and that plaintiff held said two hundred shares of stock in the St. Hilaire Lumber company, so issued and delivered to him, until Jan. 15, 1900, when the same were turned over and delivered to defendant as hereinafter set forth; and that the time of the delivery of said two hundred shares of stock in the St. Hilaire Lumber company to plaintiff as aforesaid, said plaintiff assigned and delivered to defendant his said certificate for twenty shares of stock in the Neils Lumber company, and released and discharged defendant from any and all liability on his agreement to sell and deliver to plaintiff seventy shares of stock in the said J. Neils Lumber company, and that defendant from that time forward held only the one hundred shares of stock in the Crookston Lumber company, owned by plaintiff, as collateral security for the payment of plaintiff's indebtedness to defendant, which at that time amounted to more than \$17,000, and that the value of the two hundred shares of stock in the St. Hilaire Lumber company, at the time of said agreement, exchange, and at the time of the consummation thereof was substantially equal to the value of the ninety shares in the J. Neils Lumber company, and that such was the belief and understanding of each the plaintiff and defendant, and that such exchange was in all respects just, fair and equitable. And that plaintiff thereafter and until the transfer thereof to the defendant in January, 1900, was the owner of said two hundred shares of stock in the St. Hilaire Lumber company.

VII. That from about the year 1890 to December 9, 1896, plaintiff was to some extent addicted to the use of alcoholic liquors, and that in consequence thereof plaintiff did at the urgent request of the defendant and of plaintiff's wife, take, on or about December 9, 1896, what is known as the Keeley cure, and that after so taking said Keeley cure, and from said December 9, 1896, until the 15th day of December, 1903, the plaintiff, when mentally sound and fully competent and with a full and accurate knowledge of all the facts relating thereto, in all things acted in a fair and equitable manner, and that he ratified the sale of said stock, to defendant, and the contract evidenced by said instrument dated Jan. 15, 1900, and signed by the tenth paragraph of plaintiff's complaint.

VIII. That, save and except as hereinbefore found, the allegations in the plaintiff's complaint and reply are not sustained by the evidence and are found untrue.

IX. From the foregoing findings of fact the court makes the following

CONCLUSIONS OF LAW:

I. That plaintiff is not entitled to any relief against the defendant, either as prayed for in the complaint or otherwise.

II. That defendant is entitled to judgment against the plaintiff for his costs and disbursements in this cause. Let judgment be entered accordingly.

By the Court:  
(Signed) DAVID F. SIMPSON, Judge.

A stay of sixty days is hereby granted.  
Dated August 19th, 1904.  
(Signed) DAVID F. SIMPSON, Judge.

MEMORANDUM.

On January 1st, 1900, three hundred shares of stock in two corporations were transferred by the plaintiff, Edwin C. Shevlin, to the defendant, Thomas H. Shevlin, for a consideration of \$70,000.

The plaintiff now complains that such transfer was not fairly made, and that notwithstanding such transfer he should be held to be the beneficial owner of such stock.

The grounds upon which plaintiff rests his right to relief from such transfer, and which plaintiff claims are established by the evidence in this

case, are mental incompetency of the plaintiff to make the transfer; fraudulent misrepresentation and fraud in the transfer; undue influence and threats, thru which the defendant procured the making of the transfer; and relationship of the parties at the time of the transfer such that equity will not permit the defendant to hold the benefits of an ownership acquired thru such transfer.

As to the first three of these grounds, the findings filed herewith in terms negate the existence of the facts involved in the claims of the plaintiff, and any discussion of them must relate simply to the evidence submitted sustaining such findings. A comprehensive statement or review of the voluminous testimony at this time would not serve any useful purpose.

First—Outside of the testimony of the medical experts, the evidence submitted is entirely consistent with, and considered as a whole, clearly establishes that the mind of the plaintiff was normal, and that no trace of mental weakness or incompetency existed at the times of the negotiation for and transfer of this stock.

Second—With reference to the contention of the plaintiff that the defendant induced the plaintiff to dispose of the stock to him by fraudulent and untrue representations concerning its value, in respect to which the defendant was advised, and as to which the plaintiff was without knowledge, there is little conflict in the evidence, except upon the one point of the value of the stock. The aggregate amount in dollars at which the stumpage was carried on the companies' books was contained in the books and records of the company, and it is not contended that this item was not known to plaintiff, but it is contended that neither the amount per thousand feet, which the stumpage was taken from the books, nor the total amount of feet of the stumpage, had ever been known by plaintiff prior to the transfer of stock, or until some time prior to bringing this suit.

Plaintiff, a man of mature years, with business capacity and experience, bought 10 per cent of the capital stock of two lumber companies, and acted as local manager of both companies. Pine stumpage was the largest asset of these companies. Each of the three stockholders and the defendant knew that the entire period of the amount of this stumpage. These men were all in harmony, and the defendant, who was the principal asset of the St. Hilaire Lumber company when plaintiff acquired his stock in this company. At about the time of the consummation of the transfer, this company, its annual statement was made up, showing the amount of stumpage then held and the rate at which it was valued. Plaintiff details prove, and the defendant admits, the probable time it would take to clean up the supply of logs; knew that stumpage was being continually cut, and that the value of the same varied with the market. A plat book in plaintiff's office, made to show the companies' pine lands, was by plaintiff sent to defendant, and the defendant, down to date. These conditions, among others, admittedly existing, made it highly improbable that plaintiff did not know the amount of stumpage owned by these companies, and the value per thousand feet at which it was carried as an asset. And the defendant's testimony, showing the amount of stumpage, were submitted to the plaintiff prior to and at the time of the negotiations for the transfer of the stock, all the facts affecting the value of the stock.

The evidence in this case not only wholly fails to establish that the defendant made any fraudulent representations affecting the value of this stock, or that he concealed from the plaintiff any fact known to him affecting the value of the stock, but it affirmatively shows that the defendant had known and was familiar with and had brought to his attention at the time of the negotiations for the transfer of the stock, all the facts affecting the value of the stock.

3. The consideration of the assigned ground for relief, that the defendant induced the plaintiff to transfer of the stock to him by fraud, undue influence and threats, involves a determination of the time when the negotiations for the transfer were had, as well as the facts surrounding the actual transfer on the 15th of January.

Bearing upon these questions is the sharply conflicting testimony of the parties. The defendant testified that on the 5th or 6th of January he proposed to the plaintiff that the plaintiff sell him plaintiff's stock, and that thereupon such proposed sale, the value of the stock, and the value of the stock were discussed by them at two different times and places during those days, and that during such discussions a statement was made by the defendant showing the value of the stock as before them. That as a result the transfer of the stock was agreed upon, and that on the 15th of January it was consummated at the offices of the Shevlin-Carpenter Lumber company.

It is conceded that plaintiff was in Minneapolis on the 5th and 6th of January, 1900, and that he was not drinking, and in his then usual health. But the plaintiff testifies that on said day, or during that trip to Minneapolis, he had no conversation with defendant about selling defendant his stock; that the first conversation upon that subject between plaintiff and defendant was on the morning of Jan. 15; that plaintiff was then ill, and that defendant induced him to make the transfer by threats and by working upon his fears and his confidence in defendant. The plaintiff testified that he was in a feeble condition and the persistent threats and persuasion of the defendant.

The determination of the question which of these accounts is the correct one, fortunately does not rest solely upon the conflicting testimony of the respective parties in this case. The testimony of at least four other entirely credible witnesses strongly tends to establish that the negotiations for and the making of the transfer occurred substantially as detailed by the defendant. And much of the testimony of these witnesses is directly in conflict with the above evidence given by the plaintiff.

In addition to the testimony of other witnesses in this case, the relationship existing between the parties prior to the transfer and subsequent thereto is entirely consistent with the version of the defendant, and to me seems entirely inconsistent with the claim of the plaintiff.

Being satisfied from a consideration of all the evidence in this case that the negotiations for, and a substantial agreement as to the transfer of this stock, were carried on and concluded prior to Jan. 15, and that on or about both these days, the plaintiff's claim that he was induced to make the transfer by undue influence and fraud wholly fails; for by his testimony tending to establish the use of such undue influence and threats is entirely inconsistent with any understanding with reference to the transfer of this stock prior to Jan. 15, and the only testimony in the case tending in any substantial way to establish the use of undue influence or threats.

Fourth—The remaining ground upon which the plaintiff seeks relief is that because of the relationship between these parties, and because of the weakened physical and mental condition of the plaintiff, equity will not allow this transfer to stand; but will either compel a return of the stock by the defendant to the plaintiff, or will impress upon the defendant a trust for the benefit of the plaintiff.

Generally a person free from legal disability is bound by his contracts, but upon broad grounds of public policy the rule has been long and firmly established that equity will give relief where one party having induced and received the trust and confidence of another, takes advantage of his position to deprive such other party of some property right or benefit.

This principle finds its most frequent application in relationships established for special purposes, such as trustee and cestui que trust, attorney and client, and guardian and ward, but it is not limited to a relationship of any special kind or for any special purpose. In the case of a trustee the law will not permit him to traffic in the trust property for his own benefit. In the case of a trustee for a trustee the law requires him to act for the benefit of the person whose trust and confidence he has invited and received.

The effect of the relationship may vary with the facts and conditions. In the case of a trustee dealing with the trust property the transaction will be set aside upon demand of the person whose trust and confidence was invited, whether such transaction appears to be fair or not, because of the settled policy to remove in such cases opportunity for fraud at times might be difficult of detection. In other relationships of established trust and confidence equity only requires proof of the fact that the transaction to prevent its disaffirmance.

Also the purposes leading to the relationship or the elements that, taken together, make it up may be varied, but the fact that confidence actually invited and reposed in the resulting duty.

The rule has been broadly stated, that "the principle applies to every case where influence is acquired and abused, where confidence is reposed and betrayed."

It is difficult to define by terms the exact scope and application of this principle, because the meaning of the terms as used in equity must be understood by the facts and circumstances of each case. In many cases, however, the principle is best understood by examination of the cases in which it is applied. Equity interferes where there is an absence of the proper conditions for fairly entering into a contract, i. e., that each party undertakes to act for himself, and is free, and reasonably able, to do so.

In many fair contracts are present some of the circumstances that have been mentioned, but the fact that they are present, in and of themselves, does not establish a violation of the principle. Relations of kinship, inequality in ability and experience, ties of affection, exist alike between parties to valid and voidable contracts. Many, many, perhaps most, contracts, entered into between parties regarded in law as strangers, trust and confidence exist to some extent. In the case at bar some circumstances exist that are similar to a part of the circumstance going to make up a case for equitable interference, but after the most careful examination of the evidence submitted, and of the cases announcing the principle under discussion, I am satisfied that any statement of the facts in this case at bar that will bring this case within the relationship that furnishes an equity basis for relief, will fall in many important respects wholly outside of the principle established by the evidence. And that a statement of all facts as established by the evidence in this case, falls in many important respects outside of the principle that equity will relieve from a contract procured by the betrayal of confidence in a trust, or the misuse of influence acquired.

Involved in this ground assigned as a basis for relief is the condition of the plaintiff, the relationship actually existing between the plaintiff and the defendant, and the nature of the transfer made.

It appears by the testimony of the plaintiff that on the 5th and 6th of January, 1900, he was in his then usual condition of health. In this condition of health the plaintiff had a sufficient understanding of a large business; able to wisely pass upon the varied and important questions that continually presented themselves to him, and to make a determination.

Upon the morning of the 15th of January, it appears that the plaintiff had been ill as the result of a period of excessive drinking, covering three or four days, and that he was then weak and nervous, and in my opinion the evidence clearly establishes that he was in the possession of his faculties, and that his mind was not in any way impaired, and he was not in the state of extreme mental and physical debility claimed on the part of the plaintiff.

Several persons intimately acquainted with the plaintiff met and spoke to him on the morning of the 15th of January at the offices of the Shevlin-Carpenter company; and these persons have testified that they saw nothing unusual in the appearance of the plaintiff.

As tending to sustain the position of the plaintiff as to his then condition, in addition to the testimony of the

plaintiff and his wife, the testimony of a physician who prescribed for him in the afternoon of the 15th of January, and prior thereto, has no suggestion of any occasion for this witness recalling the exact condition in which the plaintiff then was until three or four years thereafter. This witness also testified as an expert on behalf of the plaintiff, giving as his opinion that the plaintiff was on the 15th of January, and prior thereto, incompetent to transact business. It is possible that the lapse of time and the opinion advanced by the witness may tend to emphasize somewhat unduly in his mind some phases of the condition of the plaintiff that would tend to sustain his theory. Certainly the condition of profound collapse described by the physician in the afternoon is inconsistent with the testimony of the officers of the Shevlin-Carpenter company who met and spoke to the plaintiff during the forenoon and noticed nothing unusual in his appearance or condition.

The relationship of the parties; the plaintiff being fifteen years younger than the defendant, and having for considerable intervals of time lived in the same household as a member of his family. This relationship and difference in the ages of these parties, however, of no importance, however, when we consider that the younger brother had at the time of this transaction arrived at the age of thirty-three years. It is also to be noted that the defendant's brother, had been for many years in the employ of companies managed by the defendant and have been accustomed to such employment, and the wishes and directions of the defendant. But this condition, if it indicates anything different from the complete control of the defendant over the business experience, and that he had for nearly two years been in the position of local manager of two large companies, and that the defendant, from such experience had become habitually accustomed to exercising independent judgment upon matters of importance.

The evidence in this case fairly considered shows the plaintiff at this time to have been a man of mature years, of good natural ability, of a high position of confidence in himself, persistent and tenacious; a man of rather unusual business capacity; and a man who had completed a course of business experience, and experience in business, and that he had for nearly two years been in the position of local manager of two large companies, and that the defendant, from such experience had become habitually accustomed to exercising independent judgment upon matters of importance.

The evidence in this case fairly considered shows the plaintiff at this time to have been a man of mature years, of good natural ability, of a high position of confidence in himself, persistent and tenacious; a man of rather unusual business capacity; and a man who had completed a course of business experience, and experience in business, and that he had for nearly two years been in the position of local manager of two large companies, and that the defendant, from such experience had become habitually accustomed to exercising independent judgment upon matters of importance.

Force has been laid upon the fact that the defendant requested the resignation of the plaintiff as manager of the St. Hilaire Lumber company prior to the making of the transfer, as showing a lack of capacity on the part of plaintiff to protect himself in the transfer in question.

It is to be noted, however, that a man may be undesirable as the continual manager of an extensive business because of periods of intoxication, while he is not thereby rendered incapable of transacting business. The evidence in this case shows that the plaintiff, while he was sober, was able to free himself from entirely, and that he was not thereby rendered incapable of transacting business. The evidence in this case shows that the plaintiff, while he was sober, was able to free himself from entirely, and that he was not thereby rendered incapable of transacting business.

One other established fact in this case urged as showing a lack of capacity upon the part of the plaintiff, and a recognized relationship of trust and responsibility between the plaintiff and the defendant, and that is the clause in the agreement of Jan. 15, 1900, providing that if the plaintiff desired to engage in business, he should first obtain the consent of the defendant, and that the defendant, the defendant agreed to pay the plaintiff the balance due him at that time.

This clause does certainly show that the defendant, at that time was assuming to exercise some care for the future of the plaintiff. The clause is outside of lines of purely business transactions, and was very unquestionably prompted by a regard for the future of the plaintiff. Fairly considered, however, it does not, to my mind, tend to establish a lack of capacity or resulting dependency in a business transaction while the plaintiff was not under the influence of liquor, or that the defendant had any right to demand the resignation of the plaintiff, or that the plaintiff was then unable to transact business when he was free from the influence of liquor, but does fairly sustain the explanation made by the defendant himself, that he was apprehensive that the plaintiff might enter into some unwise business enterprise, and that he was desirous of protecting the plaintiff's interest in the Crookston and St. Hilaire Lumber companies, for a consideration of \$70,000.

Whether the price agreed upon for this transfer bore a fair relation to the value of the stock, enters into the consideration of all the grounds assigned by the plaintiff as a basis for relief in this case.

In the findings I have fixed upon \$56,000 as a sum that to my mind, under all the evidence submitted, most nearly represents the value of the stock transferred by plaintiff to defendant. This is \$25,000 more than the price paid by defendant. Unquestionably other prices might have been fixed at a different sum. The witnesses who testified as to the value of this stock, and the value of the assets of the companies, expressed opinions varying over a wide range. These

were of a comparatively small number of persons best able to form a just opinion as to those values, and in the opinion of the court, were interested and candid witnesses.

The important question here, however, is not what I may believe to have been a fair price for the stock, but whether the price agreed upon by the plaintiff and defendant was such a price, as under the evidence, each might have considered a fair price under all the existing circumstances each exercising an independent judgment, and each having the necessary information, and being in a position to determine for himself what was a fair consideration. The court is neither charged with the duty of giving the privilege of reviewing and modifying the judgment of the parties to this transaction; it is charged with the duty of determining whether each of the parties did in fact determine for himself the price he would take or give for this stock, and whether each of the parties was at the time free from any imposition or undue or improper influence on the part of the other.

The wide range of opinion as to the value of this stock, and the apparent opportunity for such difference of opinion as to a value, relative to its importance, however, when we consider that the younger brother had at the time of this transaction arrived at the age of thirty-three years. It is also to be noted that the defendant's brother, had been for many years in the employ of companies managed by the defendant and have been accustomed to such employment, and the wishes and directions of the defendant. But this condition, if it indicates anything different from the complete control of the defendant over the business experience, and that he had for nearly two years been in the position of local manager of two large companies, and that the defendant, from such experience had become habitually accustomed to exercising independent judgment upon matters of importance.

The evidence in this case fairly considered shows the plaintiff at this time to have been a man of mature years, of good natural ability, of a high position of confidence in himself, persistent and tenacious; a man of rather unusual business capacity; and a man who had completed a course of business experience, and experience in business, and that he had for nearly two years been in the position of local manager of two large companies, and that the defendant, from such experience had become habitually accustomed to exercising independent judgment upon matters of importance.

The evidence in this case fairly considered shows the plaintiff at this time to have been a man of mature years, of good natural ability, of a high position of confidence in himself, persistent and tenacious; a man of rather unusual business capacity; and a man who had completed a course of business experience, and experience in business, and that he had for nearly two years been in the position of local manager of two large companies, and that the defendant, from such experience had become habitually accustomed to exercising independent judgment upon matters of importance.

The evidence in this case fairly considered shows the plaintiff at this time to have been a man of mature years, of good natural ability, of a high position of confidence in himself, persistent and tenacious; a man of rather unusual business capacity; and a man who had completed a course of business experience, and experience in business, and that he had for nearly two years been in the position of local manager of two large companies, and that the defendant, from such experience had become habitually accustomed to exercising independent judgment upon matters of importance.

The evidence in this case fairly considered shows the plaintiff at this time to have been a man of mature years, of good natural ability, of a high position of confidence in himself, persistent and tenacious; a man of rather unusual business capacity; and a man who had completed a course of business experience, and experience in business, and that he had for nearly two years been in the position of local manager of two large companies, and that the defendant, from such experience had become habitually accustomed to exercising independent judgment upon matters of importance.