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## Testimony before Vice-Chancellor.

### *For Complainant.*

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*Bill of Complaint.*

**BILL OF COMPLAINT.**

Filed March 21, 1923.

**In Chancery of New Jersey**

*Between*

ABRAHAM A. KAUFER,  
*Complainant,*

*and*

JACOB ROTHMAN,  
*Defendant.*

10

*On Bill, &c.  
Bill of  
Complaint.*

To His Honor Edwin Robert Walker,  
Chancellor of the State of New Jersey:

20

The complaint of Abraham A. Kaufer, of the City of Newark, County of Essex and State of New Jersey, respectfully shows unto this Honorable Court:

1. That complainant, on or about September 1st, 1922, entered into a written agreement of co-partnership with one Jacob Rothman, under firm name and style of Kaufer's Fur Shop, for the purpose of carrying on the business of manufacturing, buying, selling, storing and repairing furs, taking over the business formerly conducted by the complainant at #449 Orange street, Newark, N. J. A copy of said agreement is attached to this bill of complaint and made part hereof and marked Schedule "A."

30

2. Thereafter complainant and Rothman commenced said co-partnership business at #449 Orange street, Newark, N. J., both making equal investments in the capital of said partnership,

40

*Bill of Complaint.*

represented by fixtures, merchandise and cash, pursuant to said partnership agreement. That subsequently said investments were increased.

3. Since the inception of said partnership and down to Saturday, March 17th, Rothman and complainant devoted all their time and attention  
10 to the partnership business.

4. On or about March 8th, 1923, an inventory was taken of the merchandise belonging to the partnership located on the store premises at #449 Orange street, Newark, N. J. Said inventory showed merchandise valued in the amount of \$6,444.00. This inventory was subsequently approved by Rothman and complainant. The stock of merchandise listed in the inventory has since been depleted only in small part by the  
20 ordinary course of business.

5. On or about March 8th, 1923, an accounting was made of the condition of the business of the partnership since its inception. Said accounting showed complainant's interest was in the amount of \$7,369.75; that said Rothman's interest was in the amount of \$501.91. The balance sheet in connection with said accounting showed cash on hand in the amount of \$210.64;  
30 accounts receivable in the amount of \$886.00; merchandise inventory in the amount of \$6,444.00, and furniture and fixtures inventory in the amount of \$2,246.73, besides other items. Said accounting showed accounts payable in the amount of \$950.96 and loans payable in the amount of \$1,125.00, all other liabilities of the business are represented by the aforesaid capital investment of complainant and Rothman. Said accounting was subsequently approved by complainant and Rothman, and in substance  
40

*Bill of Complaint.*

used on or about March 15th, 1923, as a basis of the income tax return filed by the partnership, and complainant and Rothman individually.

6. Complainant is advised and verily believes that on March 15th, 1923, Rothman abstracted the sum of \$400.00 which he collected on delivery of certain goods to a firm by the name of Blank, located at 29th street near 7th avenue, New York City. 10

7. Complainant alleges that he is informed and verily believes that on Saturday, March 17th, 1923, Rothman abstracted from the aforesaid place of business of the partnership all of the merchandise belonging to the partnership located on the aforesaid store premises excepting two coats and certain merchandise left for repairs or storage. Said Rothman also abstracted all books of account and records belonging to the partnership business. 20

7. Complainant further alleges that Rothman admitted to him on Monday, March 19th, 1923, having taken said merchandise and also stated that he had sold the same; that if the complainant had any rights against him he could sue him; that Rothman refused to give information to complainant as to the whereabouts of said merchandise. 30

8. Complainant alleges that Rothman's equity in the partnership was in the amount of \$501.91; that Rothman illegally removed from the partnership, assets in the amount of \$6,444.00 in merchandise.

9. Complainant fears that Rothman has sequestered said merchandise somewhere within this State; that he has not sold same, but is about to do so, to the detriment of said partnership. 40

*Bill of Complaint.*

WHEREFORE your complainant prays:

1. That the defendant, Jacob Rothman, may answer this bill of complaint and each statement therein made to; that a temporary receiver be appointed to take charge of the partnership business and all property of any nature  
 10 wheresoever situated belonging to it; that defendant, Jacob Rothman, be compelled to make discovery as to the whereabouts of said merchandise removed by him from the partnership place of business; that he be compelled to turn over said merchandise to the receiver of this Court; that he be compelled to account to said receiver for any monies received by him for the sale of said merchandise; that he be compelled to disclose to the said receiver the identity and  
 20 whereabouts of persons to whom such merchandise has been disposed.

2. That said partnership between complainant and defendant, Jacob Rothman, be dissolved; that all matters and things relating to said partnership be wound up.

3. That an order be made directing defendant, Jacob Rothman, to show cause before this Court on a day to be fixed why the appointment of said temporary receiver should not be made  
 30 permanent.

4. That a writ of subpoena may issue, requiring the defendant Jacob Rothman to answer this bill of complaint and abide by such decree as this Court may make in the premises.

5. That the complainant may have such other and further relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

40

HERMAN KROHN,  
 Solicitor and of Counsel with Complainant.

*Answer.*

**ANSWER.**

Filed April 17, 1923.

The answer of Jacob Rothman, of the City of Newark, County of Essex and State of New Jersey, defendant, says:

1. He admits paragraphs 1 and 2 of the Bill of Complaint, except the clause which alleges that the investments were increased. 10

2. He admits paragraph 3 of the Bill of Complaint.

3. He denies paragraphs 4 and 5 of the Bill of Complaint, but says that in truth and in fact, no inventory was taken about March 8, 1923, but that an account was made up by the accountants, based on information furnished by the complainant, which was entirely incorrect; that since the filing of the Bill in this cause, this defendant has had accountants at work on the books of the partnership, and these accountants show that there should be charged to the said complainant, for moneys taken by him belonging to the co-partnership, and for charges unjustly made by him against the co-partnership, the sum of \$11,749.82; that based upon the information gathered from the books of the co-partnership, if the complainant had honestly turned over to the co-partnership everything belonging to it, the co-partnership, instead of having suffered a loss, as shown by the statement made in the Bill of Complaint, would show a net profit of \$10,000. 20 30

4. This defendant denies all the other allegations of the Bill of Complaint, but says that when he received the report of the accountants showing a loss of \$2,207.96, in the co-partnership business, knowing that it could not be 40

*Answer.*

correct, he sought advice, and was advised that, in order to bring the complainant to terms, to get a correct accounting, he should sell some of the co-partnership merchandise and use the money for himself. Following said advice, this defendant sold in bulk, 39 Fox Skins, 120 Opos-  
 10 sums, 1 Black Muskrat Coat; 12 Sable Skins, 2 Stone Martens, 1 Russian Sable, 8 Black Foxes, 1 Hudson Seal Coat, and 225 Squirrel Skins, which, if inventoried, would amount to \$2,077., but which he sold for \$1,600, in order to realize some cash.

5. This defendant further answering says, that he is perfectly willing to have the accounts between the complainant and himself, as co-  
 20 partners, settled and stated by this Honorable Court, or any Master to whom the same may be referred, and offers himself to abide by the decree of this Court, and pay any moneys to the Receiver appointed for said co-partnership, that this Court may decree is owing by this defendant to the co-partnership.

PHILIP J. SCHOTLAND,  
 Solicitor and Counsel with Defendant.

30 Consent is hereby given to the filing of within Answer as of time.

HERMAN KROHN,  
 Solr. of Compl.

*Order of Reference.***ORDER OF REFERENCE.**

Filed April 17, 1923.

This matter coming on to be heard in the presence of Herman Krohn, solicitor of complainant, and Philip J. Schotland, solicitor of defendant, and the parties having in open court agreed to the entry of the within order: 10

It is on this 17th day of April, 1923, on motion of Herman Krohn, solicitor of complainant, ORDERED, that the matters in controversy herein between the complainant and defendant, be and the same are hereby referred to Charles M. Myers, Esquire, as Special Master, to state an account between the complainant and defendant and determine what, if any, moneys are due from either or both of them to the co-partnership and to each other and make report to this Court of his conclusions and findings: 20

And it is further ORDERED that in the taking of said accounts said Special Master shall be at liberty to examine the parties under oath, and such other witnesses as may be produced; and for the better clearing of such accounts, the parties are to produce all books and all accounts kept by them or either of them, relating to the matters aforesaid, checks, vouchers and such other documents as the Special Master shall direct: 30

And it is further ORDERED and DECREED that either party may apply to the court for further directions to the said Master in the taking and setting of such accounts, if the same shall become necessary and all further equity is reserved until the coming in of the said Master's report.

E. R. WALKER,

Respectfully advised,

JOHN H. BACKES,

V.-C.

C. 40

*Israel M. Pogash, direct.*

**Testimony before Charles M. Myers, Esq.,  
Special Master in Chancery.**

10 It is stipulated and agreed that the report on special investigation dated August 9, 1923, made by the accountants of the respective parties contains a correct statement of the items agreed upon and the items in dispute on the accounts between the parties.

The report dated August 9, 1923, is received in evidence, and marked Exhibit P. 1, *ex parte* complainant.

20 It is further stipulated that \$250.00 balance on a coat purchased by Mrs. Krumholz should be added to the total of the gross sales, and the question as to whether the partnership should be charged with that \$250.00, or Kaufer personally is laid over for further consideration.

ISRAEL M. POGASH, a witness produced on the part of the complainant, being duly sworn according to law, on his oath deposes and says:

*Examination* by Herbert J. Hannoeh.

30 Q Mr. Pogash, you are an accountant connected with the firm of Flink & Krohn? A Yes.

Q What has been your connection with the Kaufer-Rothman partnership with reference to the keeping of their books? A As a representative of the firm of Flink & Krohn I was employed to audit the books of account of the firm of Kaufer and Rothman. Part of the time I actually wrote up the books and did the auditing at the same time.

40 Q What did you have to do with the opening of the books? A I personally opened the books of account.

*Israel M. Pogash, direct.*

Q How frequently did you audit the books? A The books were audited usually within the period of one month, but later on when I began to write them up I came up two or three times a month.

Q What part of the bookkeeping entries did you make? A For example, I transferred the checks from the check book into the cash book, and cash receipt slips into the cash book. 10

Q What records were kept by Kaufer & Rothman from which you did the transcribing?

A They kept the original records. They drew the checks and filled in the stub in the check book. They made out the sales slips and cash receipt slips. They kept all original records.

Q You did the posting? A Yes.

Q Have you any record in the books with reference to a coat of Mrs. Krumholz? A Yes, there is a sale of a coat to Mrs. Krumholz in the records. 20

Q For how much? A The order reads "Coat for \$350."

Q How much was paid by Mrs. Krumholz on it? A The records show \$100 received from Mrs. Krumholz.

Q What happened to the other \$250? A The \$250 was cancelled in lieu of interest which the partnership owed to Mrs. Krumholz on a note that she had taken from the partnership. 30

Q Where did you get the information that it was cancelled? A My information came from Mr. Kaufer.

Q Were there any entries made on the books with reference to that cancellation? A No.

Q As far as the books show, what appears with reference to that \$250 balance? A The \$250 was never charged to Mrs. Krumholz in the books of account. Automatically it rights itself out. 40

*Israel M. Pogash, direct.*

Q What do the books show with reference to the Krumholz loan? A The books show that on December 23, 1922, there was paid to Mrs. Krumholz \$100 for interest on this note, that being the only payment the partnership made.

10 Q How much was the loan? A \$10,000 originally.

Q What payments were made on account of the loan? A I haven't the full account here. There was a payment on January 2nd of \$1,000, and January 4th of \$1,500.

Q Haven't you all the records of the payments that were made on it? A No.

Q Where are they? A In the books.

Q Are the books here? A No.

20 Q Where are they? A In the office of Hoenig & Hoenig.

Q Do you know when the \$10,000 was loaned? A I am not sure, I think it was in August, 1922.

Q Do you know how much has been paid off on it? A No, I do not know.

Q Do you know from what period to what period this \$250 interest is supposed to cover? A No.

30 Q Who has the records as to those payments and the interest calculation? A They are in the books of account. It can be ascertained.

(The further examination with reference to the charge of \$250 for the coat of Mrs. Krumholz is postponed.)

40 Mr. Hanoach: I offer in evidence the articles of co-partnership made between the complainant and defendant dated September 1, 1922.

*Israel M. Pogash, direct.*

The articles of co-partnership are received in evidence and marked Exhibit P. 2, *ex parte* complainant.

Mr. Hanooh: I offer in evidence the report of the accountants at the time of the beginning of the partnership, which report is dated September 7, 1922. 10

The report is received in evidence and marked Exhibit P. 3, *ex parte* complainant.

Mr. Hanooh: I offer in evidence the account of the complainant, dated May 21, 1923.

The account is received in evidence and is marked Exhibit P. 4, *ex parte* complainant.

Mr. Hanooh: I offer in evidence the report of the examination made by the accountants for the defendant. 20

The report is received in evidence and is marked Exhibit P. 5, *ex parte* complainant.

---

MR. ISRAEL M. POGASH, recalled.

*Examination* by Mr. Hanooh.

Q Tell us what this \$425.19 item is? A This was a journal entry placed on the books as a credit to Mr. Kaufer and charged in the opening entry as being the additional value of the inventory contributed by Mr. Abraham Kaufer. 30

Q Why was the entry made, at whose instructions? A At the instructions of both parties.

Q How was the sum arrived at? A I have the original figures as they arrived at it? Ten per cent. of skins \$5,680.56, linings \$571.31, total 40

*Israel M. Pogash, cross.*

\$6,251.87. Less \$2,000, net \$4,251.87. Ten per cent. of \$4,251.87, being \$425.19.

Q When was that put on the books? A At the opening, September 7th.

Q Entered on the books at that time? A Yes, sir.

10 Q Was it included in your subsequent reports? A Automatically, but on the books it was submitted on each report.

Q Was any complaint ever made? A No.

Q When did you know a complaint was made? A When I read the report of Messrs. Hoenig & Hoenig.

Q How long were the books carried? A From Sept. 7th or around that time until the time of the dissolution.

20 Q Why was the value of the inventory increased? A I do not know the value of the inventory. That is the explanation on the journal entry.

Q Was there any discussion with members of the firm before that was done? A Yes.

Q Who participated in it? A Both Kaufer and Rothman, and on their instructions I worked it out and this is the figure we used on the entry.

30 *Cross examination by Mr. Schotland.*

Q Mr. Pogash, you prepared the inventory marked Exhibit P. 3 of September 7th, on which the co-partnership is based? This is the report. A Yes, sir.

Q Will you show me where the \$425.19 appears? A That item was put on after the report was submitted.

40 Q Will you show it to me? A I am unable to show it to you as it was added on after the report was submitted.

*Israel M. Pogash, cross.*

Q It does not appear on the report? A No.

Q That is the report Exhibit P. 3 of September 7th? A Yes.

Q These lead pencils figures of \$425.19 are what you put on here? A After submitting the report, and discussing it before opening the books I put these figures here.

10

Q Where was it kept? A In my file in the office. This was my office copy. In discussing it with them I made the calculations on it.

Q When was the next report after September 7th when you submitted this report to the co-partnership? March 8th, was it not? A No, I had intervening reports given monthly or bi-monthly, every time I was there, as it happened to be.

Q Have you a copy of the reports here? A I haven't got a copy of the report in my file. I have it in the office.

20

Q Will you tell me where you got the idea of adding ten per cent. to the value of the skins that had been inventoried? A I had been instructed by both of the parties. It was not my idea.

Q What was the deduction of \$2,000 for? A It was the instructions of the parties.

Q You don't know where it came from? A No, sir.

30

Q You don't know what it was for? A No.

Q First you took the \$5,680.56, the inventory of the skins, then you added to that the inventory of the linings. Is that right? A Yes.

Q Then you deducted \$2,000. Then you added ten per cent. of the total, \$425.19, just as appears here? A Yes.

Q Those were the figures the parties told you to work on? A Yes, I can't explain the \$2,000 deduction.

40

*Jacob Rothman, direct.*

Q Can you explain why the ten per cent. was added? A No, those were the instructions.

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MR. JACOB ROTHMAN, recalled.

10 *Examination* by Mr. Schotland.

Q Mr. Rothman, do you know anything about the adding of ten per cent. after the report was made up? A No.

Q Did you ever tell Mr. Pogash to add that? A No.

Q Did you ever receive a statement where there was added that amount, before the last statement at the time of the dissolution? A  
20 No, sir.

Q Do you know why any ten per cent. was added after the inventory was made up and the partnership agreement filed? A No, sir.

Q Did skins go up in value in September, 1922? A No, sir.

Q Did they go down? A About the same as when we took the inventory.

Q At what rate did you take them in making the inventory? A Market value.

30 Q Did you mark any down? A No, sir.

Q Regular market value? A Yes.

*By the Special Master.*

Q Between September 7, 1922, and March 8, 1923, Mr. Pogash was your accountant? A Yes.

Q Was he the accountant for the firm or for one of the firm? A For the firm.

*Israel M. Pogash, recalled.*

MR. ISRAEL M. POGASH, recalled.

*Examination* by Mr. Schotland.

Q Mr. Pogash, I show you report of March 8th and ask you if you can tell me how the item of \$425.19 can be distinguished in that report? A It cannot be distinguished. 10

Q Is there any way for Mr. Rothman, if he were looking to see if there were any additional charges, that he could discover it from that report? A If I recall correctly, I gave Mr. Rothman a written statement of the capital account of both parties at the time this report was submitted, and I think you will find it on that statement.

Q That is when the rumpus started between them? A About a week before that. 20

Q It started as a result of that report, didn't it? A I don't know.

Q You mean the report that he asked you for, so that he could determine whether the proper charges were made that he testified about? A To see if the capital accounts were correctly stated.

Q Didn't you give him a report about March 8th because he asked you for that so that he could see if proper charges were made against Kaufer that he had in mind? A He mentioned the fact that he wanted to see what charges were made to Kaufer. 30

Q And that is the time you gave him these two yellow sheets? A Yes.

The yellow sheets referred to are marked Nos. 6 and 7 for identification.

Mr. Hannoeh: I offer in evidence the report of the accountants dated March 8, 1923. 40

*Israel M. Pogash, recalled.*

The report is received in evidence and is marked Exhibit P. 6, *ex parte* complainant.

*Examination* by Mr. Schotland.

10 Q These sheets that you gave Mr. Rothman on March 8, 1923, to show the capital account of each party, on these sheets you have got that the contribution of Kaufer was \$13,622.71, exactly the same as in the inventory statement dated September 7, 1922, and you have added to that, under date of September 15th, additional value of inventory \$425.19? A Yes.

Q Isn't that the first time that you gave Mr. Rothman any statement that showed any such charge? A Possibly.

20 Q When you made up that March 8th report and saw how the partnership stood you told Mr. Rothman that there was something wrong with it, didn't you? A I intimated as much.

30 Q Something was wrong with the accounts of the co-partnership? A Yes. At that time the report showed that the partnership had made a loss, and I said that with the volume of the business it appeared to me that there should be a profit, and I advised them to get together and take a new inventory and submit it to me, and I would revise my inventory and submit a new report.

40 Q Didn't you tell Rothman that the account made by Kaufer was wrong when Kaufer was not there? A No; I was called down by Rothman to speak to him personally. He told me at that time that Mr. Kaufer wanted to pay him out of the partnership on the basis of my report of March 8, 1923. I advised him then that I did not think it would be fair if he made the dis-

*Israel M. Pogash, recalled.*

solution on that basis and if he inferred that that meant—

Q Did you tell him why? A Because in taking the inventory of a going concern it is different than the taking of inventory for dissolution, because for dissolution it will be taken at market value and for a going concern it would be lower. That would not be fair to Mr. Rothman, and for that reason I advised him that it would not be fair to him. 10

*Examination by Mr. Hannoch.*

Q Why wouldn't it be fair? What did you want them to do? A To retake inventory and submit it to me.

*By Mr. Schotland.*

20

Q At your previous conversation with Rothman when Kaufer was not there didn't you tell Rothman that you thought that there was something wrong with Kaufer's account—that there should be a profit? A No, sir.

Q Did you tell him anything of that kind? A No, sir; just what I stated before.

Q You didn't know who committed any wrong, but you thought something was wrong? A 30  
There might be something wrong.

(Adjourned to September 21, 1923.)

40

*Israel M. Pogash, direct.*

The further taking of testimony is hereby adjourned to four o'clock in the afternoon, on the twenty-first day of September, 1923, at my office, No. 763 Broad street, Newark, New Jersey.

Special Master in Chancery of New Jersey.

10

Continuation of the taking of depositions in the above-entitled cause before me, the subscriber, one of the Special Masters of this Court, this twenty-first day of September, 1923, at four o'clock in the afternoon, at my office, No. 763 Broad street, in the City of Newark, New Jersey, in pursuance of the order of reference recited, and in the presence of Herman Krohn, Esq., and Herbert J. Hannotch, Esq., representing the firm of Stein, Stein & Hannotch, solicitors for the complainant, and Philip J. Schotland, solicitor of the defendant.

20

Special Master in Chancery of New Jersey.

MR. ISRAEL M. POGASH, recalled.

30 *Examination* by Mr. Hannotch.

Q Have you the original journal entry covering this transaction? A Yes, sir. This is it.

*By the Special Master.*

Q In whose handwriting is it? A Mine.

40

Mr. Hannotch: I offer in evidence page 10 of the journal, showing the following entry: "merchandise inventoried to A. Kaufer to

*Israel M. Pogash, cross.*

record additional value of merchandise contributed by A. Kaufer, \$425.19.”

*By the Special Master.*

Q What are the figures 13 in parenthesis? What does it mean? A General ledger page.

Q And the figure in parenthesis 49? A Same. 10

*Cross examination by Mr. Schotland.*

Q The page to which you transferred it? A Yes.

Q When did you make that entry? A That entry was made in September, 1922, immediately after making the opening entry.

Q Is this the only book of journal entries used in the co-partnership? A That is the journal. 20

Q Where are the October entries in the journal? A There were none in October.

Q What entries did you make in the journal? A Any entry that could not be placed in other books of original entry was set forth in the journal.

Q Only those entries that could not be placed in other books of original entry? A Yes.

Q Are you sure that Rothman told you to add the \$425.19? A Yes. 30

Q Are you positive of it? A Yes.

Q When was the next statement you submitted to the co-partnership after September, 1922? A I have no record. The next one I see is March 8th.

Q You did not submit any statement between September and March 8th? A I don't recall. I think I submitted one December 31st at the time of the income tax. 40

*Jacob Rothman, direct.*

Q Have you any record of it? A No.

Q All right.

The book marked "General Journal" is received in evidence, marked Exhibit P. 9, *ex parte* complainant.

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MR. JACOB ROTHMAN, recalled.

*Examination* by Mr. Schotland.

Q Mr. Rothman, did you ever see this journal book which has been offered now in evidence? A No, sir.

20 Q Did you go over the books at all, or examine any of the entries? A No, sir.

Q Did Kaufer ever tell you about this \$425.19 as additional value of his inventory? A No, sir.

Q Did he ever talk to you about it? A No, sir.

Q Do you know how it came to be entered in the books? A I don't know.

30 Q I show you sheets marked Nos. 6 and 7 for identification, dated March 8, 1923. Is that the first time you ever saw any addition of \$425.19? A That is the first time I ever saw it, until I came to Mr. Greenberg and asked him what it means. I could read English very little, only printing. In fact, writing I can't make it out at all, and Mr. Pogash knows that.

Q You can only read letter printing? A Yes.

---

40

*Jacob Rothman, direct.*

MR. JACOB ROTHMAN, recalled.

*Direct examination by Mr. Schotland.*

Q Who handled the cash that came in? A Mr. Kaufer and his daughter.

Q Who made the deposits? A Mr. Kaufer and his daughter. 10

Q Who attended to that part of the business which consisted of taking orders, making entries, receipting bills, receiving deposits, selling merchandise and receiving and disbursing money?

A Mr. Kaufer and his daughter.

Q What part of the business did you attend to? A Upstairs to the shop, in the workroom.

Q Where was that part of the business where the cash came in and was disbursed? A Downstairs in the store. 20

Q Did you ever attend to the business in the store? A Very seldom. Some nights when Mr. Kaufer was busy he called me down to take some orders, or when he did not know exactly what to charge. He used to call me in those cases.

Q Did you ever handle the cash? A Very seldom.

Q On what occasions? A When I was downstairs and some woman came in and said she had an order, I took a check and rang it up in the register and Mr. Kaufer gave her a receipt. 30

Q Why didn't you give her a receipt? A Because my receipt nobody could understand the handwriting.

Q Do you write English? A Very little. I think about all the receipts in the books you could find one or two that I entered. That was on a Saturday when I was alone, maybe I gave a receipt to a woman. 40

*Jacob Rothman, cross.*

Q The petty cash checks you signed with Mr. Kaufer, checks to draw petty cash to have in the store? A Yes, sir.

Q Did you use any of that petty cash? A No, sir.

10 Q Do you know if any of it was used for the business? A It was the understanding. Mr. Pogash gave us to understand that we should make out a check for \$10 and it should be cash, and whenever we spend any money of it it should be put on a paper and Mr. Pogash should see what it was spent for and make out another check.

Q Did Mr. Kaufer ever account for the petty cash to you? A No, sir.

20 Q Do you know what, if anything, was bought for the business with money of the petty cash? A Not as I know.

Q Did you ever hear of what became of the petty cash money? A No, sir.

Q When did you know that there was \$125 petty cash drawn, and no slips put in for what the money was used? A The first time in Mr. Greenberg's office.

30 *Cross examination by Mr. Hanoach.*

Q How much were these petty cash checks? A I don't know how much they were.

Q You signed them? A I signed a check for \$10.

Q And you never asked what happened to the other checks? A No, sir.

Q How many checks did you sign? A About six.

40 Q And they totaled \$125? A That is what Mr. Greenberg told me.

*Jacob Rothman, cross.*

Q I understood you to say, Mr. Rothman, that you never made any deposit in the bank?

A I don't think so.

Q Do you understand that you are under oath now? A Yes, sir.

Q You wouldn't swear that you never made any deposits, would you? A No, sir. 10

Q You don't swear to that, that you did not make a lot of deposits? A No, sir.

Q You don't swear that you did not make fifteen or twenty deposits? A I do swear to that.

Q How many deposits did you make? A About three or four.

Q Why did you tell Mr. Schotland you never made any deposits? A I didn't understand what Mr. Schotland asked me. 20

Q Are you telling us that you never had anything to do with the store downstairs? A I said very seldom.

Q How seldom? A When it was busy in the store, when Mr. Kaufer was busy.

Q How about Saturdays? A Then I was with Mr. Kaufer's daughter.

Q Are you sure she stayed Saturdays? A Positively.

Q What happened when she left? A She never left until March. 30

Q When did she leave? A January 15th I think.

Q Why did you say March, that isn't January? Are you sure it was not December? A Yes.

Q Who took care of the store after she left? A Mr. Kaufer's boy and myself. After Mr. Kaufer opened the store in the morning, he used to leave the boy there. 40

*Jacob Rothman, cross.*

Q How old is the boy? A I think about thirteen or fourteen years old.

Q Then what happened? A After he went away I stood there with the boy or the girl.

Q After the girl had left this boy was the only person that was there in the store with you  
10 on Saturdays? A Yes, sir.

Q Who took the money for the furs? A Sometimes I did.

Q Who sold the fur coats and received the money? A I did.

Q What did you do with the money? A There were very little sales on Saturday that I made. If I made any sales I put it in the register.

Q So you did handle some of the money? A  
20 I said I did.

Q Do you recall getting some help for upstairs? A Yes.

Q Was there a special reason for getting that help? A Not as I know.

Q Do you remember that you got some additional help so that you could be down in the store? A Because we were busy and we needed another operator.

30 Q You say you didn't get additional help so that you could be in the store? A No.

Q Do you remember paying the boiler-maker out of the petty cash? A No, sir.

Q Do you remember paying the man who takes care of the furnace? A It was up to Mr. Kaufer to deal with him.

Q I am asking you whether you ever remembered paying him. Do you remember taking the money out of the petty cash and paying  
40 him? A I never paid him.

*Jacob Rothman, cross.*

Q Do you remember paying any money out of the petty cash? Did you take any money out of the petty cash? I don't say for your own purposes, but for the business? A Very seldom.

Q But you took it sometimes? A Yes, once or two.

10

*By Mr. Schotland.*

Q From the petty cash? A Yes, that is, I didn't handle it. Mr. Kaufer gave it to me.

*By Mr. Hannoch.*

Q Do you remember Wasser and Yonker? Why were they employed? A Because we were busy.

Q One was your brother-in-law? A Yes.

Q They were not employed because you wanted to be down in the store and help to sell? A One was a cutter and one was an operator.

20

Q What did you do? A I am an operator and a cutter.

Q At one time checks of the partnership were signed by either one of the two partners, were they not? A Yes.

Q And for how long was that? A About two and one-half years.

30

Q How long after this partnership in Newark? A From September until October, just about a month.

Q Then the checks had to be signed by both parties? A Yes.

Q Why was that done? A Because Mr. Kaufer said it is best to have both of us sign the checks. We made the agreement on that point we should both sign checks, and after that I always signed the checks together with Mr. Kaufer.

40

*Israel M. Pogash, direct.*

Q And you say you never looked in the check book or any of the books in the office to find out what happened with the money? A No, sir.

Q You never did? A No, sir.

10 Q Did you sign checks without asking what they were for? A When Kaufer brought me the checks and told me to sign it I took it and signed it.

---

ISRAEL M. POGASH, recalled.

*Examination by Mr. Hannoeh.*

20 Q As of what date next preceding the time that Kaufer left the partnership, were the books of the concern closed? A The books were audited as of March 8, 1923.

Q For that purpose was an inventory taken? A An inventory was taken and submitted to me for the purpose of preparing a statement as of March 8, 1923.

Q In what shape was that inventory? A On a letterhead of the partnership, as I recall, two sheets showing the value of the goods.

30 Q Were they written in pencil or ink or what? A In pencil.

Q Who carried out the extensions? A I have been informed that the extensions were carried out by Kaufer.

Q You did not carry them out? A No.

Q In what shape was it given to you? A The items we re-listed, priced, extensions made and totalled.

40 Q What part did that inventory play in making up of your report as of March 8th? A The

*Israel M. Pogash, direct.*

figures shown on the sheets, after several small adjustments were made, was the figure used in my report of March 8th.

Q Do you recall in whose handwriting the inventory was? A I think it was written by Mr. Kaufer.

Q Did you have any discussions with Kaufer or Rothman with respect to that inventory? A Yes, the inventory was taken up with both partners. 10

Q Were the actual papers before them when they were taken up, the physical inventory? A Yes, sir.

Q Were those inventory sheets ever in your possession? A They were, while there at the office and while the report was being made up.

Q Then what was done with the inventory as far as you know? A After completing the audit, the inventory sheets were left on their desk in the office, as far as I know. 20

Q What was the total of that inventory? A \$6,444.

Q Have you any work sheets showing the details of that inventory at all? A No details are shown.

Q What do your work sheets show? A The figures used, \$6,444. 30

Q When last did you see those inventory sheets? A That was the last I saw of it.

Q Did you have any subsequent conversations with the partners about the inventory? A Do you mean after the date of the report?

Q Yes. A No.

Q Referring particularly to any conversation that you had about increasing the value of the inventory? A There was a discussion of retaking and making a new inventory. 40

*Israel M. Pogash, direct.*

Q When was that? A That was between March 8th and March 17th.

Q Do you know whether that was done? A I have no information about that.

Q For what purpose was that to be done? A In order to use the figures for dissolution purposes.

Q How did you arrive at the figure of \$6,294 as being the amount of merchandise on hand on March 17, 1923? A I started with the figure \$6,444, being the value of the merchandise on hand on March 8th. The sales from March 8th to March 17th are as follows:

	1 wolf skin .....	\$15.00
	2 stone martins .....	75.00
	1 white fox .....	25.00
20	2 mink skins .....	35.00
		<hr/>
	Total .....	\$150.00

Q Where did you get that information from? A The sales were taken from the sales books.

Q After the receiver was appointed? A Yes.

Q And the books were then in the possession of whom? A Hoenig & Hoenig.

Q Go ahead with your explanation. A I deducted \$150 from \$6,444 and got \$6,294 as the value of the inventory on March 17th.

Q Do you know whether there was any merchandise bought or brought into the store between those two dates? A There might have been a small item of linings. No skins were purchased within those periods.

Q You have a list of the articles that the receiver took over, taken from the receiver's inventory? A Yes, sir.

*Israel M. Pogash, cross.*

Q Did you get that up specially? A I have the original list and a copy.

Q How did you arrive at the figure of \$94 as being in the cash register on March 17th?

A On March 8th the bank reconciliation was made showing no cash on hand. The cash receipt books show receipts from March 8th to March 17th as follows: 10

March 9 Mrs. Grover .....	\$ 25.00	
March 9 Mrs. Oscar Meyer ...	3.00	
March 9 Mr. Blank .....	100.00	
March 10 Mrs. Nagy .....	15.00	
March 13 Miss Mullin .....	2.00	
March 14 Miss Borchner .....	10.00	
March 14 Mrs. Biddles .....	15.00	
March 14 Miss Young .....	13.00	
March 14 Thomas .....	4.00	20
March 15 Mrs. Dominicas .....	8.00	
March 15 Mrs. McOtto .....	25.00	
March 15 A. Lindeman .....	25.00	
	<hr/>	
Total cash receipts .....	\$245.00	
March 12th, deposit in bank ....	147.00	
	<hr/>	
Difference .....	\$ 98.00	

The books show an expenditure of \$4 for window cleaning, leaving \$94, the balance of cash on hand March 17, 1923. 30

*Cross examination by Mr. Schotland.*

Q Mr. Pogash when you made up this report which bears date March 8, 1923, were you informed by the partners that the purpose of your getting up that report was to give them a basis of dissolution? A No, sir. 40

*Israel M. Pogash, cross.*

10 Q The inventory that you refer to in this report, P. 8, which you have prefixed with the statement "The value of the inventory at March 8, 1923 was submitted to us by the partners. We were not informed on what basis this figure was arrived at," you say consisted of some items on two letterheads? A Yes, sir.

Q In Kaufer's handwriting? A Yes, sir.

Q Handed to you by Kaufer? A I think it was handed to me by Kaufer.

Q And the figures on those two sheets show that amount, \$6,444? A After some small adjustments that had to be made.

Q Now, you say that at that time there was to be an inventory taken? A I don't understand your question.

20 Q I understood you, on direct examination, to say that the partners then spoke of taking an inventory for the purpose of dissolution? A After the report was submitted, a day or two later, talk of dissolution began and I told them to take another inventory.

Q What did they say? A I left with the understanding that the inventory would be taken.

30 Q You have never seen any report of inventory that was supposed to be taken? A After March 8th?

Q Yes. A No, I have not.

*By the Special Master.*

40 Q Why would it be necessary for them to take another inventory within a few days after March 8th inventory, if the March 8th inventory was correct? A In the first place, there must have been some transactions after March

*Israel M. Pogash, cross.*

8th that might necessitate a new inventory, and then there was a question as to prices. The inventory of March 8th was priced as a going concern, whereas the inventory for dissolution would be priced at market only.

*By Mr. Schotland.*

10

Q That is your understanding of it? A  
A Yes, sir.

Q Then you claim, according to your figures, that there should have been \$6,294 worth of merchandise there, and it would not be according to market prices? A No, it would be the price they took their inventory on March 8th.

Q This inventory you speak of, which was handed to you for the purpose of the March 8th report, that included all the furniture and fixtures? A No, sir. 20

Q That did not include furniture and fixtures at all? A No, sir.

Q That included simply the merchandise on hand and in the course of manufacture? A Yes, sir.

Q Item for item? A Yes, sir.

Q You looked it over? A I checked the extensions and the footings. 30

Q Did you look over to see if all the merchandise was itemized? A You mean, did I check the items against the merchandise sheet?

Q You know what I mean. You can tell when you look at an inventory if it says "A box of assorted linings," etc. A By appearances, it seemed to be an itemized statement.

Q Every single item counted? A Yes, sir.

Q That is your recollection? A Yes, sir. 40

*Israel M. Pogash, cross.*

Q What did you do with the letterheads on which the inventory was made? A I left them on the desk where I had been working.

Q You did not put them in a drawer or anything? A No, sir.

10 Q When was it that you left them on the desk where you were working? A On or about March 10th, the 9th or 10th.

Q Who was there when you left them on the desk? A I don't recall who was in the office at the time.

Q It was just two unattached letterheads? A I think they were attached with a clip.

Q Laying flat on the open desk? A Yes.

Q On the 10th of March? A On or about the 10th.

20 Q Now, you have testified regarding the receipts as shown by the sales book between March 8th and March 15th. Haven't you any entry for any receipts on March 16th or March 17th? A I did not testify as to receipts shown by the sales book between March 8th to March 15th.

Q What receipts did you testify about? A Receipts shown in the cash receipt book.

30 Q What is the difference as far as receipts are concerned between receipts shown in the cash receipt book and sales book? A Sales book shows whatever sales were made, whether in cash or on credit. Cash receipt book shows what cash was received.

Q Have you any entries to show any cash receipts on March 16th or March 17th? A No, there are no entries of cash received on March 16th or 17th.

40 Q You have no knowledge, of course, as to who handled the cash up to March 15th? A No.

*Abraham A. Kaufer, direct.*

Q All that you know is that according to the co-partnership books the difference between the cash receipts and the cash deposited and expended shows a shortage of \$94? A Yes, sir.

Q That is all you know about it? A Yes, sir.

Q Now, you started the explanation as to the shortage of \$94 with the statement that on March 8th the bank account was reconciled showing no money on hand. You mean no cash in the bank? A No, no cash on hand.

Q Or in the register? A No.

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MR. ABRAHAM A. KAUFER, recalled.

*Examination by Mr. Hannoeh.* 20

Q Do you recall the time when Mr. Pogash made up his report of March 8th? A Yes, sir.

Q What was done for the purpose of taking an inventory in order to have that report made up? A To determine what we actually were worth.

Q What was done, who took the inventory? A Mr. Rothman called it off, and I wrote it down on our own billhead, on two billheads. 30

Q What do you mean, called it off? A He took stock and told me the prices and I looked after it and agreed on the prices, and after we agreed on the prices, I put it on the sheet.

Q You went around the store? A Yes, sir.

Q Was there any merchandise in any place other than the store? A Yes, sir. 40

*Abraham A. Kaufer, direct.*

Q Where? A In the shop, upstairs.

Q In any other establishment or concern?

A No.

Q Any other places outside? A In Joseph Hollander & Co. and Quality Fur Dressing Co., we had some merchandise.

10 Q Was that all included in the inventory?

A Yes.

Q You wrote it down? A Yes, sir.

Q What was done with the inventory after you finished taking it? A It was put away on the desk.

Q Did Mr. Pogash ever see it? A He saw it when we handed it to him to make the report.

Q What did he do with it, as far as you know? A I don't know.

20 Q Did you ever get it back from him? A No, sir.

Q Did you ever see it after he had it? A No, sir.

Q Do you recall on what day that inventory was taken? A On two days. We could not finish it all in one day. We started on the 7th and finished on the 8th of March, the day of Mr. Pogash's visit.

30 Q You then got a report from Mr. Pogash?

A Yes.

Q How soon after that were there any circumstances which caused you to question Rothman's removal of merchandise? A On March 17th, on a Saturday morning, I had met Mr. Rothman. I wanted to find out whether he had collected \$400 from a party by the name of Blank, also what happened to the foxes, also the squirrels, did he sell it, and if it is so, he should take the checks and the \$94 from  
40 the register and deposit it as we were short.

*Abraham A. Kaufer, direct.*

Q Tell us about this box of squirrels. A On Friday, March 16th, it was a rainy day. A customer came in and wanted to see some foxes, and Mr. Rothman was not there on that day. The foxes were not there, and Saturday morning—

Q Did you look for the foxes? A Yes. 10

Q You could not find the foxes? A No. Mr. Rothman was not around all that day, Friday.

Q What did you do? A I was anxious to know what happened to it. I came in Saturday morning, which I usually don't do, and asked Mr. Rothman if he knows anything about foxes, what he did with them. He said, "Yes, I took them to New York to sell them; also the squirrels, and it was raining hard, so I could not see the people. You will go with me Monday morning to New York, and we will collect all the money and we will pay all our bills." 20

Q Did you ask him at that time anything about this \$400 of Mr. Blank? A Yes.

Q What did he say? A That is what he answered me. He told me it was raining and he did not go out. He did not collect.

Q What did he say he did with the squirrels and foxes? A He left them in New York, he did not sell them. 30

Q When you left Friday night, what had you done with the money in the drawer? A I counted it and put it in the cash register, as usual.

Q How much was there? A \$94.

Q What did you do on Saturday morning after you came in and spoke to Mr. Rothman; what was said? A I asked him if he collected the money, he could deposit this money with 40

*Abraham A. Kaufer, direct.*

it. He said "It was raining hard. I could not go out. You will go with me on Monday morning."

Q What did you do? A I went home.

Q You don't stay there on Saturdays? A No, sir.

10 Q You didn't stay there that Saturday morning? A No, sir.

Q When did you come back to the store? A About six o'clock.

Q Saturday night? A Yes.

Q What did you find? A An empty store with the exception of the things the receiver has taken care of.

Q What do you mean, an empty store? A No goods, safe nearly empty and all shelves and compartments empty.

20 Q Were the books there? A No, sir, books gone, checks and vouchers, everything gone.

Q Were there any of your personal articles there? A Yes, sir, one muskrat lining, intended for a fur-lined coat.

Q Was it there or missing? A It was gone with the rest of the stuff.

Q What did you do then? A I made a complaint.

30 Q What kind of complaint? A Police complaint.

Q You went to the police station? A Yes.

Q What happened? How did you get in touch with Mr. Rothman? A Yes, sir.

Q What did you do with respect to reaching Rothman? A I went to his house that Saturday night and did not find him home. I went to his father-in-law's home Sunday morning with my wife.

40 Q Was Rothman there? A No, sir.

*Abraham A. Kaufer, cross.*

Q You went to see his father-in-law? A I went to see him at his father-in-law's house.

Q You did not find him? A No, sir.

Q Where did you go to look for him? A No place else.

Q What made you think that he took the stuff? A The neighbors across the street saw it. 10

Q Did you find Rothman? A Mr. Singer, who was there, saw it, too.

Q Did you find Rothman? A No.

Q What did you do? A I had him arrested.

Q Where did the police find him? A On Monday night at his house. In going down from his house with the policemen I asked him "Rothman, why did you do it?" He told me in the presence of the policemen, "I took it. It is mine. I did it. I had a right to do it." 20

Q Did you do anything Monday with respect to anything else, seeing a lawyer or anybody? A I went to Mr. Krohn, and then application for a receiver was made.

*Cross examination by Mr. Schotland.*

Q Mr. Kaufer, these two letterheads on which you say you took the inventory of the merchandise on hand, you say it took you two days to take the inventory that you put on these two letterheads? A We did not work all day. We were interrupted by customers coming in. 30

Q You took an actual inventory? A Yes, sir.

Q What was the reason? A We owed money and wanted to know how we stand.

Q That was the only reason? A Yes. 40

*Abraham A. Kaufer, cross.*

Q Wasn't it because you and Rothman were getting ready to dissolve partnership, that you were negotiating to dissolve partnership? A No, sir.

10 Q Did you take an actual inventory or did you simply put down some figures at a guess and say, "Well, that is about what the merchandise is worth?" A We took the inventory and we discussed every article singularly.

Q Then why were you supposed to take another inventory right after that? A That was Mr. Pogash's suggestion, seeing that the business showed a loss.

20 Q What was the purpose of taking another inventory, why? A Mr. Pogash had suggested why. Maybe we made a mistake, to know for sure, because it showed a loss in business.

Q He didn't suggest that you take it over because you were contemplating dissolution of the partnership? Because you were preparing to dissolve the partnership and the first inventory was on the basis of a running business and the inventory that you would take if you took it over again would be on the basis of market prices? That is not so? A Yes.

30 Q What? You heard the question. A We took it at the value what we thought it was worth.

40 Q I am asking you if it was not arranged between you and Mr. Rothman and Mr. Pogash that you should take another inventory for the purpose of dissolution of the partnership because this first inventory was supposed to show the value of the merchandise in a going business and for dissolution purposes you would have to make the inventory according to the market value? A I don't remember exactly whether it is so.

*Abraham A. Kaufer, cross.*

Q All you remember is that the only reason for taking the inventory over again was because the first inventory showed a loss? A We wanted to see what it is worth.

Q Why didn't you take the inventory over again then? A Didn't get a chance.

Q Why? A I couldn't do it myself. Mr. Rothman would not help me. I couldn't take inventory myself and put prices down myself. 10

Q Then you couldn't take the inventory over again because Mr. Rothman would not help you and you couldn't do it yourself? A No, sir.

Q That is right? A Yes.

Q Between March 8th and March 15th, who made the deposits that were made in the bank? A I don't remember. Sometimes I did and sometimes he did and sometimes my daughter did, so I don't remember who made it. We only made about one deposit and I do not remember who made that deposit. 20

Q You don't know who made the deposit during that week? A No.

Q Who received the cash that was taken in? A If I was in I received it and if Mr. Rothman was in he received it.

Q I am asking you as to the fact, just during those last few days that you were in business, who received the cash? A When I was in I received it. 30

Q You were in most of the time? A Yes. When I was absent he received it. I don't remember exactly the date to say distinctly which day I received it and which day he received it.

Q The money was received by you on week days? A Yes. 40

*Abraham A. Kaufer, cross.*

Q On week days you were the one that was there to receive it? A He was there, too, Mr. Schotland.

Q He was upstairs in the shop, wasn't he? A He was downstairs, too. When I was absent he was downstairs.

10 Q Was he upstairs as a rule? A When I was absent or to lunch he was in the store. When he was in the store and a customer brought in money he took it.

Q How often did you count the money that night? A Every night.

Q How much did you have left Monday week? A I don't remember.

Q Tuesday night? A I can't tell you now.

Q Wednesday night? A I don't remember how much money.

20 Q How much Thursday night? A I don't remember.

Q How much did you find Friday night? A \$94.

Q How do you remember that? A Because it was the last night. I did not come in Saturday.

Q Isn't it because the accountant told you there should have been \$94? A No, I have  
30 counted the money.

*By the Special Master.*

Q Are you in the habit of leaving as much as \$94 in the cash register over night? A Yes.

*By Mr. Schotland.*

Q Did you always do that? A Sometimes I put it in the safe and sometimes in the register.

Q According to the business you did, was  
40 \$94 a small sum? A No, I forgot it.

*Abraham A. Kaufer, cross.*

Q You just forgot to put it in the safe? A Yes. I had it in the register and forgot to put it in the safe.

Q You forgot to put it in the safe? A Yes.

Q But, you remember the exact amount? A Yes, I counted it.

Q You started in the fur business yourself, didn't you? A Yes, sir. 10

Q Where? A 449 Orange street, Newark, N. J.

Q I mean after March 17th? A Yes, sir.

Q When did you start for yourself? A May 1st.

Q Did you take any merchandise that used to be in the Kaufer Fur Shop? A No, sir.

Q What time Saturday morning did you go to the store and talk to Rothman? A A little after eight o'clock. 20

Q The store was open? A Yes.

Q Rothman was there? A Yes.

Q You had a talk with him? A Yes.

Q Then you went home? A Yes.

Q Didn't you go to shool that morning? A Yes.

Q Did you have a shool at your home? A No, sir.

Q You testified that you went home. I went to shool. I went home for a cup of coffee and then went to shool. 30

Q Then you didn't get back until six o'clock, and you found a lot of the merchandise gone? A Yes, sir.

Q And nothing in the cash register? A No, sir.

Q When you found that Rothman had taken out a lot of the merchandise, you didn't take any out yourself? A No, sir. 40

*Joseph J. Pallita, direct.*

Q Are you sure? A Yes, sir.

Q You don't have any merchandise in your present shop that used to be in this partnership?

A No, sir.

*By Mr. Krohn.*

10 Q You closed the business on Friday night?

A I did.

Q Was Mr. Rothman there when you closed it? A He was not in that day at all.

Q Who opened the store Saturday morning?

A Rothman.

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20 JOSEPH J. PALLITA, a witness produced on the part of the complainant, being duly sworn according to law, on his oath deposes and says:

*Examination by Mr. Herbert J. Hannoeh.*

Q Mr. Pallita, you are the receiver in this case? A Yes, sir.

Q Did you, upon your appointment, take possession of the store at 449 Orange street,  
30 Newark, N. J.? A Yes.

Q Did you make an inventory of what you found there? A I did.

Q Have you the inventory here? A Yes.

Q Is that it? A Yes, this is it.

Mr. Hannoeh: I offer this inventory in evidence.

(The inventory is received in evidence and is marked Exhibit P. 9, *ex parte* complainant.)  
40

*Joseph J. Pallita, cross.*

Q On what day did you make this inventory?

A March 21, 1923.

Q Did you find any merchandise any place else besides the Orange street store? A Any place else?

Q Any other place besides the Orange street store? A Yes, there was a lot of skins that had been left with Hollander & Sons, on Wilson avenue, for dyeing. 10

Q Are they included in that inventory? A I don't think they are. No, this is just the stuff that I found at the Orange street store.

Q Where did you find the books of the company? A Some of the books, I think, were in the store, and some I think were in Mr. Krohn's office.

Q Do you know Mr. Citret? A Yes.

Q Are you sure those books were at Mr. Krohn's office? A No, there were no books at Mr. Krohn's office. Mr. Citret had the books. I got the books from Citret. 20

Q Did you get possession of them? A Yes.

Q How did you know that Mr. Citret had the books? A I think that information was given to me by Mr. Kaufer or Mr. Krohn, who is the attorney for Mr. Kaufer. 30

*Cross examination by Mr. Schotland.*

Q Mr. Pallita, did you find any books and records up at the place of business at all? A I think there was some order books up there. There might have been an order book and some receipt books.

Q In addition to the order book and receipt books, were there any bills and vouchers and loose records up there? Didn't you get them when Mr. Greenberg went there with you looking 40

*Joseph J. Pallita, cross.*

for them? A Yes, that is right. Mr. Greenberg and I went up there to get some other books. I think there was a receipt book; receipts for goods which they received for repairing.

10 Q This inventory, P. 9, Mr. Pallita, did you make it yourself? A Yes.

Q Did you write down here everything you found there or write what Mr. Kaufer told you was there? A I wrote everything that I found. Everything was counted in my presence and gone over and marked down.

Q One item you have got here, "15 boxes of assorted trimmings of tails and heads." There were 15 boxes? A Yes.

20 Q Did you count them? A I didn't count the contents.

Q Now, you have got in this inventory, "\$94 taken out of cash register." How did you have that in the inventory? A That was information given to me. On this second sheet.

Q The second sheet is not part of the inventory? A No, simply a memorandum of things told to me.

Q Just a memorandum of things told to you? A Yes.

30 Q The first sheet is the inventory? A Yes, the second sheet was things told to me.

Q And it makes no part of the inventory at all? A No.

Q You didn't have anybody appraise the merchandise and fix any value at all? A No.

Q Are you sure that you have got all of the fixtures that were there? A I think I did. I tried to be as accurate as possible.

40 It is agreed by and between the solicitors for the complainant and the defendant,

*Joseph J. Pallita, cross.*

that in addition to the inventory taken by the receiver there was at that time, in the possession of Joseph Hollander, Inc., at 11 Paris street, Newark, New Jersey, 116 muskrats, belonging to the co-partnership.

In addition thereto, there was in the possession of the Quality Fur Dressing Company, Inc., 145 Miller street, Newark, New Jersey, the following: 10

Nine coon skins.

Forty-three skunk skins.

Two American mink skins.

Three weasel skins.

*Examination by Mr. Krohn.*

Q Mr. Pallita, did you include the inventory of merchandise at the Quality Fur Dressing Company in this inventory? A No. We went there, but there was no merchandise there. 20

*By Mr. Hannoch.*

Q The second sheet of the inventory that you took off, from Exhibit P. 9, referring to this \$94 cash said to be taken from the cash register, when was that memorandum made by you? 30

Mr. Schotland: I object to that altogether because the witness testified that that is a memorandum he made from information that either Mr. Kaufer or Mr. Krohn gave him. Mr. Rothman was not present.

A (Objected to.) It was made March 21, 1923.

Q What was the source of your information as to the \$94? A It was given to me by either Mr. Krohn or Mr. Kaufer. 40

*Jacob Rothman, direct.*

WILLIAM COHEN, a witness produced on the part of the complainant, being duly sworn according to law, on his oath deposes and says:

*Examination* by Herman Krohn.

10 Q You are an employee of Quality Fur Dressing Company? A Yes, sir.

Q Have you with you a receipt that refers to— A Yes.

Q Will you let me have it? A Yes, sir.

20 The witness produces a receipt marked No. 1324, dated March 12, 1923, showing the receipt from Quality Fur Dressing Company by Kaufer & Rothman, of 43 skunk skins, 9 coon skins, 2 American mink and 3 weasels. The receipt is signed J. Rothman. It is admitted that the signature of J. Rothman is the signature of the defendant in this suit.

The receipt is received in evidence and marked Exhibit P. 10, *ex parte* complainant.

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JACOB ROTHMAN, recalled.

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*Examination* by Philip J. Schotland.

Q Mr. Rothman, this receipt of the Quality Fur Dressing Company that you signed, did you receive the skins that are shown on that receipt? A I received them in the store.

Q Where? A 449 Orange street.

Q What did you do with them? A Put them in the closet the same as the rest of the merchandise that was there.

40

*Jacob Rothman, direct.*

Q I notice that when the receiver sold out there was left among the stock that he sold, 34 skunk skins. Were those 34 skunk skins a part of these 43 skunks that you received from the Quality Fur Shop? A No, sir; they were not.

Q What became of those skins that you received from the Quality Fur Dressing Company? 10

A They were laying in the closet, but that that I bought from the receiver were of no value to them at all.

Q What became of the skins that you signed the receipt for? What became of them? A I don't know.

Q Did you ever take them out or sell them or do anything with them? A I don't know.

Q Were they in the store when you left?

A Yes.

Q Where were they? A With the rest of the merchandise. 20

Q When you left the store, was there any more merchandise there than what the receiver has shown that he found there? This is the copy of the list the receiver made (showing witness Exhibit P. 9). A Yes.

Q What was there? A Beavers, skunks, racoons, Hudson seal skins, squirrels and some ready-made garments. 30

Q Do you know what became of them? A No, sir.

Q On that Saturday, March 17th, who closed up the store? A Mr. Kaufer.

Q Now, let's go back to that Saturday morning: Did you sell any merchandise at wholesale on that Saturday morning, March 17th? A Yes.

Q What did you sell? A If I can remember I will tell you.

Q Have you no list of it? A Yes, I will tell you. I sold 39 foxes— 40

*Jacob Rothman, direct.*

Q What are you testifying from? A My own paper.

Q When did you make that memorandum? A Right in the store.

Q Is this the original memorandum? A No, I just made it up for myself, I should remember what it was.

10 Q This is on the back of a letter of Herman Krohn dated August 16, 1923. Where did you copy that from? A It must have been a piece of paper in my pocket.

Mr. Schotland states that about March 22, 1923, Rothman brought to him a memorandum containing a list of the goods which Rothman claimed to have sold out of the partnership business on March 17, 1923, to Philip Mazer.

20 It is agreed that the witness may testify using this copy as a memorandum.

Q Now what was it that you sold out of the store? A Thirty-nine foxes, 120 opossum skins, one black muskrat coat, 12 sable skins, two stone martins, one Russian sable, eight black foxes, one Hudson seal coat, and 225 squirrel skins.

30 Q How much did you sell that merchandise for? A \$1,600.

Q What was the wholesale price in the store of the fox skins, how much a skin? A About \$10 a skin.

Q You say the skins were carried in the store at \$10 a skin? A Yes.

Q And the opossums? A About \$2.25 or \$2.50 a skin.

40 Q What about the black muskrat coat? A \$100.

*Jacob Rothman, direct.*

Q The sable skins? A Twenty-five dollars a skin.

Q The stone martins? A Twenty dollars.

Q The Russian sable. Is that a coat or skins? A No, just a choker.

Q A Russian sable choker? A Yes.

Q How much is it worth? A One hundred and fifty dollars. 10

Q The black foxes? A Fifteen dollars a piece.

Q The Hudson seal coat? A About \$75.

Q The squirrel skins? A Two dollars.

Q Then you sold \$1,925 worth of merchandise out of the store for \$1,600 cash, which you received? A Yes, sir.

Q Did you take any other merchandise out or sell any other merchandise than what you have just given us a list of? A A day or two before a New York man was in the store and bought a parcel for \$400 merchandise. 20

Q Who was the man? A Mr. S. Blank.

Q Blank bought \$400 worth of merchandise? A Yes.

Q What did he buy? A Skunks, rats, foxes, racoons. There was a duplicate bill. Mr. Kaufer made out the bill to that man.

Q Mr. Kaufer sold him the merchandise? A Yes. He took two per cent. off and paid me, and I received \$390. 30

Q Mr. Rothman, wasn't it \$500 worth that Blank bought, and he paid \$100 in cash at the time of the sale? A Yes, I think it was.

Q Was that merchandise sold to him at inventory or as a special lot for the parcel?

A Not exactly at the inventory price, below the inventory price.

Q Did you take out any other merchandise? A No. 40

*Jacob Rothman, direct.*

Q Did you sell any other merchandise? A No, sir.

Q Then the only merchandise that you know of that were sold the last few days, including the last day that the store was open, is this list that you gave us that you sold to Mr. Mazer and the merchandise which Kaufer sold to Mr. Blank, on which you collected a balance of \$390? A Yes, sir.

It is agreed, that according to the books of the co-partnership, the merchandise sold to Mr. Blank was sold on March 9, 1923, and consisted of 305 rats, 16 gray foxes, 29 racoons, four red foxes, eight minks, 50 opossums, nine skunks, price \$500, deposit \$100; balance \$400. Bill No. 235.

It is further stipulated that in addition to the sales testified to on pages 100 and 101 of this testimony, there was sold the following: four mink chokers, one taupe fox, two mink chokers, one marten set, taken on memorandum by Mrs. French of 28 North Tenth street, Newark, N. J., about which positive information is to be obtained as to whether it was returned prior to March 17th or not.

Q Mr. Rothman, in the report of the accountants, Krohn & Flink, dated as of March 8, 1923, there is a statement showing merchandise inventoried at \$6,444. Was there an inventory taken at that time? A No, sir.

Q Where did that item, \$6,444 come from? A I don't know.

Q Did you agree with Kaufer to call that an inventory? A No, sir. Mr. Pogash asked

*Jacob Rothman, direct.*

us we should take a correct inventory and he said when he left, "Well, it is up to you to take inventory again and give me a correct figure and then I will make a report," and that is why Mr. Pogash did not give me a report until about two weeks later after this thing happened. That I could prove.

10

Q Had you taken an inventory before he told you to take a correct inventory? A About a month before. I think it was in January.

Q At that time in January, was that the figure, \$6,444? A I think it was.

Q That was in January? A I think it was the latter part of January, or in February, about six weeks before Mr. Pogash gave me a report. That is why Mr. Pogash told us both to take a new correct inventory.

20

Q What was the purpose of this account dated March 8, 1923. Why was that made up? A Which account?

Q The account of March 8, 1923, that Mr. Pogash made. A To see where we stand as we had to finish up the books.

Q Was there any discussion between you and Mr. Kaufer at that time about dissolving the partnership? A No, sir.

Q You are sure that that inventory, \$6,444 was taken six weeks before Mr. Pogash worked on the books? A Positively.

30

Q I show you a statement of Al Klein, March 21, 1923, to Kaufer & Rothman. What is that? A That is a statement from Al Klein that he sent us.

Q Did you pay that \$387.92 balance? A It was not a correct bill, the \$387.92. Mr. Pogash understands that. With Mr. Klein we dealt all year around. We sold him merchan-

40

*Jacob Rothman, direct.*

dise and we bought merchandise of him. At the end of the year when Mr. Pogash came up, on that day I asked Mr. Pogash to charge Klein with every thing that is in our books. We had some merchandise memorandums and also we had some claims that was for merchandise that we sold him, and we wanted allowances. I  
10 told Mr. Pogash to charge according to our books and I will straighten it up with Mr. Klein myself.

Q It was straightened out with Mr. Klein?

A Yes, sir.

Q How did you straighten it out with him?

A I came to him in Mr. Levy's store and told him "Here is the statement my account shows" and he showed me different things. He said,  
20 "The merchandise I took of you on memorandum I will return," and he asked an allowance and we straightened it out and I paid him.

Q How much did you pay him? A I don't remember. I think I brought you a paid statement or bill from Al Klein that I paid.

Q Is \$647.25 the correct amount you paid Klein? A Yes.

Q You say Mr. Kaufer can get a duplicate of that amount from Klein? A Yes.

30 Q Will you yourself get a duplicate of the account from Mr. Klein showing how this \$647.25 was the balance and produce it here?

A Yes, sir.

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*Hyman Rothman, direct.*

HYMAN ROTHMAN, being a witness produced on the part of the defendant, duly sworn according to law, on his oath deposes and says:

*Examination by Mr. Schotland.*

Q Are you related in any way to Jacob Rothman? A No, sir. 10

Q Do you know him? A I know him from the old country.

Q You are a friend of his? A Yes, sir.

Q Were you in the Kaufer Fur Shop at 449 Orange street, Newark, on March 17th, of this year? A Yes.

Q Did you see Mr. Rothman sell any merchandise at wholesale to any one? A Yes, sir. 20

Q To whom? A Mr. Mazer.

Q Do you know Mr. Mazer? A Yes, sir.

Q What merchandise did you see him sell to Mr. Mazer? A Squirrels, opossums, foxes, sables, natural black muskrat coat and Hudson seal coat, stone martens.

Q What else, if anything? A That is all.

Q That is all you remember? A Yes.

Q Do you remember how much money he sold the merchandise for? A That I don't know how much he took. 30

Q How was that merchandise taken out of the store? A It was removed by a truckman there.

Q Was Mr. Mazer there with the truckman? A Yes, sir.

Q Were you there? A Yes, sir.

Q Do you know how many squirrel skins there were? A Yes.

Q How many? A 225. 40

*Hyman Rothman, direct.*

Q Do you know how many opossums were there? A Yes, sir.

Q How many? A 120.

Q Do you know how many stone martens there were? A Two.

10 Q Were there any fox skins there? A Yes, sir.

Q How many? A 89.

Q You mentioned a natural muskrat coat, how many were there? A One.

Q How many sable skins? A 12.

Q Were there any black foxes there? A Eight.

Q How many seal coats? A One.

Q Was there a Russian sable there? A Yes, one pair.

20 Q What do you mean a pair? A When you count two together it is a pair.

Q Two skins? A Two skins that makes up a choker.

Q How did you come to remember the exact number and kinds of these skins that Mr. Rothman sold to Mr. Mazer? A I was in the place when he sold him the stuff so I remember it.

30 Q Was that stuff all counted in front of you? A Yes, sir.

Q Was the bargain as to how much money was to be paid made in front of you? A The money part I did not hear anything about.

Q Did you help in taking the skins and counting them? A Yes.

*By the Special Master.*

40 Q Did you make any memorandum at the time of the number of skins that were counted and taken out? A No, sir.

*Hyman Rothman, cross.*

*By Mr. Hannoch.*

Q Where do you live? A In New York.

Q How long since you moved from Mr. Rothman's house? A Four months.

Q You always lived with Rothman? A Before I lived in New York.

10

Q Until when? A Until he got married.

Q How recently have you lived with him? A Quite a few years.

Q You have not lived with him for quite a number of years? A Yes, sir.

Q You haven't lived with him recently? A Sure I did. Four months ago I moved to Mr. Rothman's house and I am living with him now.

Q You are living with him now? A Yes.

Q Were you living with him when Mr. Krohn and Mr. Pallita went to his house? A Yes.

20

Q The day after the receiver was appointed? A Yes.

Q What were you doing there? A I came out to live with him.

Q Were you living with him then? A Yes.

Q That was in March. That was more than four months ago? A I don't remember the exact date.

Q Do you remember the exact date you started to live with Mr. Rothman? A No, I don't.

30

Q You are a cousin of his, aren't you? A No.

Q Isn't your mother his mother's sister? A No.

Q No relation at all? A No.

Q You work for him now? A Yes, sir.

Q How long have you worked for him? A Since he opened his place of business.

40

*Hyman Rothman, cross.*

Q Who were you working for when the receiver was appointed? A I wasn't working at all.

Q You were living with Rothman at that time? A Yes.

10 Q Why did you go to the store that Saturday morning? A Just came to the place of business to see him. I didn't have anything to do at the house so I came to the store.

Q You spent the morning with him? A Yes.

Q You knew he was going to move the stuff that Saturday morning? A No.

Q Didn't he ask you to come down to help him move it? A No, he didn't.

Q Were you paid for helping him move it? A No.

20 Q Did you ride on the truck? A No, sir.

Q How is Mr. Mazer related to you? A Not at all.

Q How is Mazer related to the other Rothman? A Not at all. They just came from the same city.

Q Were you in the store when Mazer came in? A I was in the store until the merchandise was removed from the store.

30 Q Were you there when he came in? A Yes, sir.

Q You were there all the time he was there? A Yes.

Q And during that entire time you didn't hear any price talked about? A No, sir.

Q Who else was there besides you and Rothman and Mazer? A The man that removed the goods.

Q What was his name? A Mr. Miller.

40 Q Who is he? A A friend of Mr. Rothman's.

*Hyman Rothman, cross.*

Q Is he a truckman? A Yes.

Q Whose truck was used? A Mr. Miller's truck.

Q Do you know what time of the day the stuff was removed from the store? A About one o'clock in the afternoon.

Q And you were there all morning until one o'clock? A Yes, sir. 10

Q Packing up these various articles? A Yes.

Q How were they packed? A Just in bags.

Q And who did the packing? A I and Mr. Rothman and Mr. Miller and Mr. Mazer himself.

Q What did you do after the truck went away? A I went home.

Q Did Mr. Rothman stay in the store? A Rothman went away, too.

Q What did you do with the store? A Closed it up. 20

Q Who picked out these various furs that were packed up? A The truckman.

Q Who told the truckman what to take out? A Mr. Rothman.

Q Did Mazer have anything to do with that? A Yes, sir. He said, "This is the merchandise I bought. Take it out and pack it up."

Q Mazer said that was the merchandise he bought? A Yes. 30

Q Did Mr. Mazer have a list of the things? A Yes.

Q He had a list, did he? A Yes, sir.

Q Did Rothman have a list? A I think he did.

Q What kind of paper? A Plain paper.

Q What was done with the list? A I don't know that.

Q Did you see any money paid? A No, sir.

Q Was the safe open or closed when you left? A Closed. 40

*Hyman Rothman, cross.*

Q Who closed it? A Mr. Rothman did.

Q What was in the safe when it was closed?

A There was some skins there; I think Hudson seal, and some ready made garments. There was some raccoons there.

10 Q How many raccons were left? A I don't know how many. There was a whole bunch of them.

Q What have you been working at since March, 1923? A I was not working at all since March, 1923.

Q Where have you been working since March, 1923? A I was not working.

Q You don't work now? A Now I am working for Mr. Rothman.

20 Q When did you start? A At that time I was sick so I could not work.

Q When did you start to work for Mr. Rothman? A When he opened his place of business.

Q When was that? A I don't remember the date.

Q How long after the time these furs were taken away? A Just as soon as he opened his place of business.

Q Was it one week, two weeks or three weeks later? A About six or eight weeks.

30 Q About the end of April or the beginning of May? A About that time.

Q And you have worked for him since? A Yes.

Q What business is that? A The fur business.

Q Do you buy and sell furs? A I am working inside.

40 Q What sort of work do you do? A Anything. I am not experienced in that line. I am just learning.

*Hyman Rothman, cross.*

Q You didn't know anything about furs; you just started to learn about it when you started to work for Rothman? A Yes.

Q You never knew anything about furs? A I know about skins, but I don't know the value or how to make them up.

Q And you just started to learn how to make them up when you started to work for Rothman? A Yes. 10

Q Where did you learn about skins? A I used to go to Mr. Rothman when he was in business himself in New York years ago.

Q How many years? A Eight or nine.

Q Since that time what business were you in when you were working? A Ladies' garment worker.

Q Before you worked for Rothman? A Yes. 20

Q As a manufacturer? A As an operator.

Q What kind of ladies' garments? A Coats.

Q Have you spoken to anybody about this case, to Mr. Rothman? A No, sir.

Q When did you find out you were going to testify here? A When Mr. Rothman told you, "You happened to be in the store that day so you will have to come as a witness."

Q When did he tell you to come in Mr. Myers' office? A About three or four weeks ago, when it started first. 30

Q Did Mr. Rothman give you a list of the things that were taken away? A No, sir.

Q No list at all? A No, sir.

Q Do you remember being in the store at any time before that Saturday morning? A I was there quite a few times.

Q What did you do there? A Just came to see Mr. Rothman. I didn't do anything, just sat there for hours. I just came to see him. 40

*Jacob Rothman, direct.*

*By Mr. Schotland.*

Q Was there any stock left in the store after Mr. Mazer bought the things that you testified to? A Yes.

Q Much stock? A There was a few coats, Hudson seal and beavers, racoons.

10 Q Did you count them? A No, sir.

Q Did Mr. Rothman go away with you from the store after Mr. Mazer took away this merchandise? A Yes, sir.

Q Rothman went with you? A Yes, sir.

*By Mr. Hannöch.*

Q Did you take a black muskrat lining, unfinished, away from the safe that day? A No, sir.

20 Q Was that packed up in the bag? A No, sir.

Q It was not? A No, sir.

Q Was the mantel-piece taken away? A No, sir.

Q Did you see it there when you left? A I don't remember.

---

30 JACOB ROTHMAN, recalled.

*By Mr. Schotland.*

Q After the merchandise was sold to Mr. Mazer what did you do with the store? A I closed it up.

Q Locked it up? A Yes.

Q Where did you go? A I went to New York to Mr. Mazer to get the money for the merchandise.

40 Q You went with Mazer then? A Yes.

*Jacob Rothman, cross.*

Q On the truck? A No, I went with Mr. Mazer on the train.

*Cross examination by Mr. Hannoeh.*

Q When you went in to see Klein about settling this bill you had with you a report from Mr. Pogash? A Yes, sir. 10

Q A statement? A I think I had.

Q Did Mr. Klein give you a statement? A Yes, sir, Mr. Klein gave him a statement.

Q And this is the statement Mr. Klein gave you? A No, this was sent about a month before. That was not the statement Klein gave me.

Q When did you go to Klein? A I think it was on March 12th. It was a couple of days after Mr. Pogash left. I happened to be in New York and I went in to settle with Mr. Klein. Mr. Pogash told me to settle with Mr. Klein. It was March 12th or 13th. 20

Q How much did you pay him? A As I said, I don't remember the amount.

Q About how much? A About \$600.

Q When did you pay him that amount? A I don't remember the date.

Q Was it the same day you went there, that you fixed the amount? A Yes, the same day. 30

Q After you fixed the amount you gave him the money? A Yes, sir.

Q This statement here you say was received when? A I don't know when it was received.

Q This is received March 21st. A I have not seen that statement.

Q It is the statement you were looking at a moment ago. Mr. Schotland showed it to you a couple of minutes ago and you were reading from it. A From what? 40

*Jacob Rothman, cross.*

Q From this statement. A I said that is not the statement Mr. Klein gave me.

Q Where did you get it? A I didn't get it.

Q Mr. Schotland gave it to you a few minutes ago and you were reading from it. A I did not read. I said this is not the statement.

10 Q How do you know this statement is made on March 21st? A Now I see the date.

Q Let me see where the date is? A Here, March 21st.

Q How much does Klein say you owe him on that statement? A \$387.92.

Q How much credit does he give you? A This is credits, \$1,980.82.

Q How much are the charges? A \$2,368.74.

20 Q Do you know how Klein happened to send that statement on March 21st when you settled with him before that? A I don't remember when I settled with him. I don't remember the date.

Q Where did you learn to read English? A I don't read English good now.

Q What kind of English can't you read? A Written English I can't read.

30 The statement dated March 21, 1923, on the billhead of Al Klein, to Kaufer & Rothman, showing a balance due Al Klein of \$387.92, is received in evidence and marked Exhibit P. 11, *ex parte* complainant.

Q What kind of English can't you read? A Written English.

Q Do you read printed English? A Yes.

Q Typewritten English? A Yes.

Q I understood you to say some time ago that you could not read Mr. Pogash's reports.

40 A I said the writing I can't read.

*Jacob Rothman, cross.*

Q That is what you remember as to what you said that you could not read writing? A Yes.

Q When did you decide to take this merchandise out and sell it? A I decided to sell it around the 15th or 16th.

Q Why? A After I had been told by Mr. Pogash in the front of people that I was trimmed by Kaufer, either consciously or unconsciously, but I was trimmed, after that I went to a lawyer by the name of Citret, and he advised me if I could sell some merchandise and get some cash I should do it. 10

Q How much did Pogash tell you Kaufer had flim-flammed you out of? A He didn't tell me the amount.

Q How much do you think? A It should be about \$12,000 profit. That is what Mr. Pogash told me. I asked Mr. Pogash in front of Mr. Kaufer how much the profits should be and he said between \$10,000 and \$12,000. 20

Q Did he show you how that was arrived at? A He did not.

Q He did not tell you why there should be \$10,000 or \$12,000 profit? A He said that from the books it should be between \$10,000 and \$12,000 profit. 30

Q Didn't the account show what the profits were? A I don't know what it showed. It showed there was a loss.

Q How do you know? A Mr. Pogash told us on March 8th.

Q How did Mr. Pogash know? A He looked over the books, and after he got through finishing the books I asked Mr. Pogash—it was on a Friday—I asked Mr. Pogash what is the result. He said, "It shows a loss of \$2,200." Mr. Kaufer was in the store. He told him that and Mr. 40

*Jacob Rothman, cross.*

Kaufer said, "That must be some mistake." He said Mr. Pogash didn't figure right and he should go over it again, maybe he made a mistake.

10 Q What did Pogash say? A Mr. Pogash said, "I am sorry, Mr. Kaufer. I think I could figure. You could have another account if you wish to, but the figures are correct, but you should take inventory again and see if there is a mistake somewhere."

Q Did you take inventory again? A No, sir.

Q How long had Pogash been working in the store before he made that report? A A couple of days.

Q What was he doing during these couple of days? A Looking over the books.

20 Q Were you there? A Yes, sir.

Q Did you talk to him at all? A Yes, sir.

Q Did he ever ask you any questions about the books? A Not as I know.

Q What did you talk to him about? A I just asked him when it will be finished. He said, "In a day or so."

30 Q He didn't ask you about any records and sales? A Sometimes if Mr. Kaufer didn't remember a sale, how it was, then he asked me if I remembered.

Q Do you remember having talked with Kaufer and Pogash about the records? A About something.

Q Was there any discussion as to what the records should be and what they should not be? A No, sir.

40 Q Did Pogash ever put any matters up to you and Kaufer to decide as to what the entries should be or where the money came from or went to? A No, sir.

*Jacob Rothman, cross.*

Q Why didn't you take inventory again when Pogash asked you to do it? A We were thinking of taking an inventory later on. There was some work to be done. We were thinking of finishing everything it should be cleaned up, and then take inventory.

Q Any other reason why you didn't want to take inventory? A No. 10

Q How long did it take to take the inventory for Mr. Pogash? A I didn't take any inventory for Mr. Pogash.

Q Never? A No.

Q At no time? A No, I didn't.

Q Did you help Mr. Kaufer to take inventory? A I helped Mr. Kaufer take inventory on September 15, 1922, for Mr. Pogash.

Q That is the only time? A No, sir. Then in January or February again I took with Kaufer inventory, not for Mr. Pogash but for our own use. 20

Q Why did you take the January inventory? A In January or February, the year was over, and we wanted to see how much stock we had on hand and see what was done.

Q You didn't take any in March? A No, sir.

Q In January and February, did Mr. Pogash make a report? A No, sir. 30

Q That was the inventory you took yourself? A Yes. Mr. Pogash was not in in January or February.

Q This lawyer you went to see told you to get some merchandise and sell it? A Yes.

Q What did you do? A I went to New York and I saw a man, a dealer, and I asked him if he could use any merchandise. He said, "Yes."

Q Did you tell him what you were going to do? A No, sir. 40

*Jacob Rothman, cross.*

Q You didn't tell him you were going to take it from the firm? A No, sir. I said, "Mr. Mazer, if you are interested in merchandise I got some skins you could use." He came and whatever he was interested to buy I sold him.

10 Q Did you have a list made up before he came there? A No, sir.

Q You had no list at all? A No, sir.

Q And this other Mr. Rothman was wrong when he said that there was a list? A After Mr. Mazer bought the merchandise.

Q After he bought or after he left? A After he bought the merchandise.

Q That was written down? A Yes, on a piece of paper.

20 Q How did you go about picking out the furs? A I didn't pick. I asked Mr. Mazer, "Do you want to buy this?" When I opened the safe he looked at the merchandise and whatever he wanted he picked out and put away on a side, and so on. Whatever he put away on a side that I copied on a piece of paper and I gave him prices.

Q He was only willing to take \$1,600 worth of goods? A Yes, sir.

Q Did you try to sell him more? A Yes, sir.

30 Q What did you do with the rest of the merchandise? A It was back in the same place it was.

Q Why didn't you take that away? A I didn't want to.

Q Why? A Because I couldn't sell it. I didn't want merchandise.

Q Was it any good? A Yes, but he was not interested to buy.

40 Q Why didn't you take it away? A I didn't want merchandise.

*Jacob Rothman, cross.*

Q Didn't the lawyer tell you to take as much as you could get from the store? A He told me to get a man and sell him the merchandise and get ahold of some cash money.

Q He didn't tell you to take merchandise?  
A No.

Q You knew the merchandise that was left was worth money and you could have sold it?  
A Yes. 10

Q Why didn't you take it? A Because I didn't want to take merchandise.

Q That is the only reason? A Yes.

Q You thought that Kaufer had taken away about \$10,000 of your money, didn't you? A The profit should be \$10,000. Mr. Kaufer would only take away \$5,000, not \$10,000.

Q According to your idea, Kaufer had taken away \$5,000 of stuff of yours? A Yes. 20

Q You thought he trimmed you out of \$5,000 and you had an opportunity to take all the furs away and you didn't do it? A Yes.

Q And you only took \$1,600 worth? A Yes, sir.

Q How much do you think was left? A I think about \$2,500 or \$3,000 merchandise.

Q And why did Mazer say he would not take the rest of the stuff? A It was of no market value for him. He was a dealer in skins and he bought what he could re-sell and realize money. 30

Q What was left? A Merchandise there was no demand for, ready-made garments, coats. They were old models; he was not interested to buy.

Q How about skunk skins? A There was no demand for skunk skins. There is no demand even today. 40

*Jacob Rothman, cross.*

Q He bought some, didn't he? A Some good skins. Whatever he was interested to buy he bought.

Q How many skunk skins did he buy? A Mr. Mazer? I don't think he bought many.

Q Mr. Blank bought skunk skins, didn't he?  
10 A Yes.

Q Why didn't Mazer want the wolf skins?  
A I don't know why he didn't. He said he is not interested in it.

Q Why didn't he want the foxes? A He bought some.

Q Why didn't he buy them all? A He took them all.

Q He seemed to have left six for the receiver.  
A They were made up; not foxes; ready-made  
20 garments.

Q Did you tell Mazer to buy the made-up garments? A Whatever he was interested in.

Q Did you sell Mazer everything but made-up garments? A Whatever he was interested in.

Q I am not asking you that. Were there any skins that were not made up that Mazer did not buy? A Yes, sir.

Q There were? A Yes, sir.

30 Q Just because he was not interested in them? A Yes.

Q Did he go to Hollander's; did he look at the stuff there? A No, sir.

Q Why not? A I didn't take him to Hollander's.

Q Why not? A I didn't take him. How could I go there if I didn't have no receipt. I didn't have what to show.

Q Who is this man Mazer? A He is a  
40 dealer.

*Jacob Rothman, cross.*

Q Is he related to you in any way? A No way at all.

Q Never been in business with you? A Never.

Q Never occupied the same office you did?

A Yes.

Q When? A He had an office with me when I was in business on 28th street.

10

Q How is he related to you? A No relation.

Q How did you happen to go to him? A He is a dealer and I know he buys merchandise.

Q That is the only reason you picked him in preference to anybody else? A Yes.

Q How long did you have an office together? A About five or six months.

Q What business were you in then? A Dealing business.

Q What? A Dealing in wholesale in skins.

20

Q Did you take anything out of the store on the Thursday before Mazer took the stuff? A Yes, sir.

Q What did you take out? A The merchandise that I delivered to Mr. Blank.

Q Did you take anything in addition to that? A No, sir.

Q That is all you took out? A Yes.

Q Where do you think that Pogash got the inventory figure that he used in his March 8th report? A I don't know.

30

Q Haven't you any idea? A No, sir.

Q It wasn't the January inventory? A No, sir.

Q Are you sure about that? A I don't know where he got that inventory figure.

Q But you know that it was not the same as the January inventory? A I don't know.

Q Do you know whether it was the same as the September inventory? A No, it was not the same as the September inventory.

40

*Jacob Rothman, cross.*

Q How do you know that? A The September inventory was about \$13,000.

Q What was the January? A Around that figure.

Q Around which figure? A \$6,000.

Q How was the September inventory taken?  
10 Who took it? A I and Mr. Kaufer and a girl named Miss Meyerson.

Q How did you take it? A Market value.

Q I mean, how did you take it? Who called it off? A I did.

Q Who fixed the values? A Mr. Kaufer and the girl.

Q Who wrote it down? A The girl, Miss Meyerson.

Q How did you take the January inventory?  
20 A The same way.

Q On what sort of paper? A On a plain letterhead of paper.

Q How many inventories did you take in the store that you remember? A The September and the January or February; just two.

Q Only two? A Yes.

Q When Pogash showed you from his report that the firm lost \$2,200, did you ask him how he arrived at that figure?  
30 A He did not show me a report. He said, according to the books, it showed a loss.

Q Did you ask him how he arrived at it? A No, sir.

Q You didn't ask? A No.

Q Weren't you interested? A I didn't ask him.

Q You were interested, then? A I was interested but I was shocked; I did not ask him.

Q You didn't ask any questions as to how he arrived at the \$2,200 loss?  
40 A No.

*Jacob Rothman, cross.*

Q Did you make any inquiries at all about it? A The only inquiry I made was if Mr. Kaufer didn't overdraw his account, he should give me on a separate piece of paper how much Mr. Kaufer withdrew. He wrote it out on a separate piece of paper and gave it to me.

Q He gave you a statement of Kaufer's withdrawals? A Yes. 10

Q That was all you were interested in? A Yes.

Q How were you interested? A Because it made me think where the profit went to. Mr. Kaufer kept drawing money all the time.

Q How did that affect the profit? A If Mr. Kaufer overdrew his account and some money was not charged against him it would affect the profit.

Q Did you find anything like that? A I don't know. I think I did. There was some checks should have been charged against him and was not. 20

Q Did you check the amount of sales? A I did not check up sales at all.

Q Did you look up the sales book? A Not on that day.

Q You didn't do anything of that sort until Mr. Greenberg went over it with you? A No. 30

Q And without anything further you went to see Citret? A It was a couple of days later. I was at the Quality Fur Dressing Company and I happened to tell them about this case, what should I do. There was a bookkeeper there. His name is Bennie Eisen. I said to Mr. Eisen that Mr. Pogash told me I was trimmed by Kaufer, so he said, "If Mr. Pogash said that I would like to hear it." And he called on the telephone, Mr. Eisen did, and Mr. Pogash came down to the Quality Fur Dressing Company and we started 40

*Jacob Rothman, cross.*

talking about this matter again, how this thing happened, and then Mr. Pogash said in the front of Mr. Bennie Eisen, and Mr. Bernstein and Panzer. The three of them heard what Mr. Pogash said.

10 Q What did he say? A That consciously or unconsciously I was trimmed by Mr. Kaufer.

Q That is what Pogash said? A Yes.

Q And you sent for Pogash in order that Pogash would make that statement in front of Eisen? A I didn't phone. Mr. Eisen phoned.

Q That is the reason Mr. Pogash was sent for, that you would have witnesses to that statement? A Yes.

Q When did Pogash tell you that before? A Right in the store.

20 Q In front of Mr. Kaufer? A No, Mr. Kaufer did not hear. I asked him what is the reason. He said Kaufer trimmed me.

Q So Pogash told you twice? A Yes.

Q Did he tell you in the store that Kaufer had trimmed you consciously or unconsciously? A No.

Q He only told you that at the Quality? A Yes.

30 Q Did he take his books with him when he went there? A No, sir.

Q Did he know why they sent for him? A No, sir. He didn't know why they were calling for him.

Q What did they tell him they wanted from him? A Bennie is a friend of his and called Pogash. He said, "I would like to see you for a couple of minutes." He was around the neighborhood and came in.

40 Q What did Bennie tell Mr. Pogash? A He started talking about this matter between Kaufer and me, what he knew about it, so he started

*Jacob Rothman, cross.*

talking with Mr. Pogash why there is no profit. He asked him what he thought the profit should be and he said he agreed with me that the profit should be about \$10,000 or \$12,000.

Q And during all those remarks nothing was said about an inventory? A No, sir.

Q Nothing at all was said about it? A No. 10

Q Do you know how an inventory would affect profit and loss? A I don't know.

Q Do you know what difference it would make if the inventory would be big or small?  
A Now I know if the inventory would be big it would be more profit.

Q And you say you knew nothing about it at that time? A No.

Q You don't know what difference an inventory would make? A What do you mean? 20

Q How can you tell in your business whether you make money or lose money without taking an inventory? A Of course you can't.

Q Then you must have known that Pogash had some inventory when he made the report of March 8th? A He said he only had the January or February inventory.

Q Do I understand you to say now that Pogash told you when you were discussing the March 8th report that the inventory which he used in that report was the old January inventory? A Yes, sir. 30

Q You say that now? A Yes, sir.

*By Mr. Schotland.*

Q Mr. Rothman, on Saturday, March 17th, did you take any money out of the cash register?

A I did not even go to the register.

Q Answer my question. A No, I did not. 40

*Jacob Rothman, cross.*

Q Was there any money in the register? A I don't know.

Q Did you see any money in the register?  
A No, sir. Usually at night when we went away Mr. Kaufer took the money with him.

10 *By Mr. Hannoch.*

Q You don't know if he did it this Saturday?  
A I was not in the store. Mr. Kaufer closed the store Friday night.

*By Mr. Schotland.*

Q Are you sure Mr. Kaufer took the money out? Did he leave it in the safe? A He always took it with him.

20 Q So you didn't expect any money in the register Saturday morning? A Nothing at all.

Q Did you ever on any previous occasion find money in the cash register on Saturday mornings? A Only a few dollars for petty cash.

*By Mr. Hannoch.*

Q What do you mean by petty cash? A A couple of cents or dollars in the cash register.

30 Q What was that for? A It was used for car-fare.

Q What else was it used for? A That is all.

Q Why did they leave it in the cash register on Saturday? A Not only on Saturday—every day.

Q Why was there any money left in the cash register for Saturday? A It was not on Saturday.

40 Q Saturday you never had any petty cash?  
A Yes, it was only petty cash in the register.

*Philip Mazer, direct.*

Q Kaufer was not there on Saturday, was he? A No.

Q Who was to use the money on Saturday? A Nobody.

Q What did you have it there for? A We left it in the register every day.

Q You say you never used any money on Saturday for car-fare or anything else? A I don't know; maybe sometimes I did. 10

Q Who took in the money on Saturday? A Mr. Kaufer's daughter. I gave the estimates and she took the money.

Q You took the money in, too? A Yes.

Q This Saturday morning, when you came there for the purpose of selling the merchandise and getting what cash you could, you tell us you didn't open the cash register to see if there was any money there? A No, sir. 20

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PHILIP MAZER, a witness produced on the part of the defendant, being duly sworn according to law, on his oath deposes and says:

*Examination* by Philip J. Schotland.

Q What is your address? A 202 West Tweny-ninth street, New York City. 30

Q What is your business? A Fur dealer.

Q Wholesale or retail? A Wholesale and retail. Anybody comes in that I can sell to.

Q How long have you been in the fur business? A For myself I am twenty-three years; in the trade I am thirty-four years.

Q Do you know Jacob Rothman? A Yes, sir.

Q On March 17th of this year did you buy any furs from him? A Yes. 40

*Philip Mazer, cross.*

Q From the store in Orange street, Newark?

A I can't remember exactly the date, but I bought from him on a Saturday; I don't remember the date.

Q How much worth of merchandise did you buy from him? A \$1,600.

10 Q Did you pay him \$1,600? A Certainly.

Q Did you buy the furs at market or less than market price? A Market price.

Q According to the value? A Yes.

Q Did you buy any goods you did not need because they were cheap or did you just pick out whatever you could use? A I bought anything I could sell in my store.

Q Do you remember exactly the items—the names of the different pieces and how many  
20 kinds you bought? A No, I could not remember.

Q Have you got the bill that you received from Rothman at the time you bought it? A Yes, I have got it. I haven't got it with me.

Q Where is it? A I got it in my place.

Q Are you sure that all you bought was \$1,600 worth? A Positive.

Q What became of the goods? How were they moved out of there after you picked them out? A What do you mean; I don't understand.  
30

Q How did the goods get to your place? A Mr. Rothman delivered them to me with a truck.

Q Mr. Rothman engaged a truck and had the goods delivered to your place in New York after you picked them out? A Certainly after, not before.

*Cross examination by Mr. Hannoeh.*

40 Q How did you pay for the furs? A Cash.

*Philip Mazer, cross.*

Q You brought the cash with you? A Yes, sir.

Q And paid for the furs that morning? A I did not bring with me the cash, but I paid him in New York in cash.

Q In New York? A Certainly; not here.

Q When did you learn first that these furs were to be offered for sale? A He told me a few days or a week before. 10

Q Did he make an appointment with you to come over? A Certainly.

Q It wasn't your truck that came over? A No.

Q Do you know how you happened to come over Saturday? A I came on a Saturday because it was more convenient.

Q Did you know who Rothman's partner was? A Yes, I know Mr. Kaufer. I used to stay with him together last year in the store. 20

Q You knew that Kaufer was Rothman's partner? A Certainly.

Q Did Rothman tell you that Kaufer knew about this sale? A Rothman didn't tell me. I know Kaufer is a man what he keeps Saturday his own and I didn't ask Rothman for Mr. Kaufer.

Q You didn't ask Rothman anything as to whether Kaufer was satisfied with this or not? A I supposed they were always satisfied. 30

Q You didn't ask him? A I didn't ask him.

Q How long were you in the store that Saturday morning? A About an hour and a half.

Q Who was there besides you? A Another boy.

Q And yourself? A Yes, and Mr. Rothman.

Q Who helped pack the goods up? A Mr. Rothman and the other boy. 40

*Philip Mazer, cross.*

Q Did you stay until they were packed up and did you see that they were put on the truck?

A No, I did not stay there because I know he keeps his word good.

Q Did you get a list of what he brought? A No. I just bought it and it was figured on a  
10 piece of paper, and after we made out the whole amount, and after when the truck got to New York and nothing was missing, I paid him.

Q Did you make the amount in a lump sum for the whole lot or so much for each article? A We had on a piece of paper. We were figuring, and after the whole amount was so much.

Q You paid a lump sum for the whole lot? A Just what I bought. He had left goods that I didn't want to buy.

Q Were you there when the truck was loaded?  
20 A No.

Q You don't know how many trucks went there, or anything about it? A What do you mean we need trucks for \$1,600 worth of goods?

Q How were these goods brought to your place? A By a truck.

Q How many bundles? A Two sacks.

Q Just two bundles? A Two bundles.

Q Did you go to New York alone or with  
30 Rothman? A With Rothman.

Q Rothman went with you? A Yes.

Q Where were the furs when you left? A The furs I left in the store. They were supposed to send me the furs with the truck.

Q So when you and Rothman left the store the furs were still in the store? A Yes.

Q And Rothman went with you? A We went to Rothman's house, and from the house we went.

40 Q Where? A To New York.

*Philip Mazer, cross.*

Q You and Rothman? A Yes.

Q So when you left the store the furs were not packed yet? A Yes, they were packed. They packed them when I bought them. It is not so much work. They were packed in bundles.

Q The store was open? A When I came in? Certainly. 10

Q When you left? A Certainly.

Q Who was in charge? A A boy there.

Q Did Rothman go all the way to New York with you? A Yes.

Q How long did he stay in New York that day? A In the afternoon, maybe 2 or 3 o'clock.

Q Then he left you? A Yes.

Q Can you identify the boy who was in the store? Can you describe him—what kind of a boy was he, old or young? A Twenty-five or thirty years old. 20

Q Was he blind in one eye? A He looked so. He was a little side-looking.

Q Do you know his name? A I can't remember.

Q Was he a relative of Rothman's? A No, I don't think he is a relative.

Q Do you know if his name is Herman Rothman? A He is not Rothman. 30

Q Are you related to Rothman? A No.

Q You were in business with him in New York? A Yes, sir.

Q For how long? A One year.

Q Were you in business together, or what? A We just stayed together in one store. I was doing for myself and he was doing for himself.

Q Had you ever purchased any furs from Rothman before you bought this lot? A Yes, sure, sometimes he buys from me and sometimes I from him. 40

*Philip Mazer, cross.*

Q Why did you pay him in cash? A Why I paid him in cash? Because he told me he wanted to have cash. What's the difference to me?

10 Q Did you draw the cash out of your bank or have it in your store? A I didn't have it at that time and I was lending the cash by a few people, not by one.

Q You borrowed the cash? A Yes.

Q Do you know from whom you borrowed the cash? A Certainly.

Q From how many different people did you borrow this cash? A Three different people.

Q Did you put the money in the bank? A No.

20 Q Did you have a bank account at that time? A Yes, sir.

Q Check account? A Yes, sir.

Q Rothman tell you he wanted so much cash? A He told me he wanted cash. What's the difference to me?

Q Did he tell you why? A No.

*Cross examination by Mr. Krohn.*

30 Q Do you know Hyman Rothman by name? Do you know anybody by the name of Hyman Rothman? A No.

Q Were you in the store in New York when these goods were delivered by truck? A Yes.

Q Was Mr. Rothman with you? A Yes.

Q What time of the day was it? A It was in the afternoon about 12:30 or 1 o'clock.

40 Q What time did you leave the store on Orange street? A 11:30, maybe 12 o'clock. I don't remember exactly.

*Philip Mazer, cross.*

Q Did you get a bill or a receipted bill from Mr. Rothman for these furs? A I got a bill, yes.

Q When did you get it? A I got it in the store in New York.

Q When did you get it? A We had a memorandum made out in the store when I bought the goods and when I saw everything, and after he gave me the bill but he didn't mark every single item separate. He marked the whole lot and gave me a bill on a statement of Kaufer & Rothman. 10

Q How long after the Saturday that you bought the furs did you give him the money? A In the store at my place.

Q Did you write over the memorandum on a bill-head before you left Rothman's store? A No, sir. 20

Q Did you ever get a bill which was written on a bill-head of Kaufer & Rothman? A It was a statement of Kaufer & Rothman, not a bill.

*By Mr. Hannoch.*

Q Can you send that statement to Mr. Schotland? A I will.

*By the Special Master.*

30

Q Have you got any paper showing the items you purchased? A No, no items.

*By Mr. Hannoch.*

Q How much of the furs in the store did Rothman sell you? A I couldn't say.

Q Was there any stuff left when you and Rothman left? A Yes, certainly there was.

Q There were some things left? A Yes. 40

*Abraham A. Kaufer, direct.*

Q And the boy was in the store when you and Rothman went away? A Yes.

Q And you did see what was packed in the truck before you went away? A It was packed at the time.

Q You got all you paid for? A Yes, sir.  
10 If not, I wouldn't pay him.

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JACOB ROTHMAN, recalled.

*Examination by Mr. Schotland.*

Q During one of the examinations you had promised to get a duplicate statement from Klein? A Yes.

20 Q Did you go to Klein and ask him for a duplicate statement? A I did.

Q What did he tell you? A Mr. Klein said that Mr. Kaufer was there last week and he gave him the statement.

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ABRAHAM A. KAUFER, recalled.

*Examination by Mr. Krohn.*

30

Q Did you go to New York last week to see Mr. Klein? A Yes, sir.

Q Did you ask him for a bill for the balance of \$600 which Mr. Rothman claims to have paid? A Yes, sir.

Q What happened? A He promised to mail it to me.

Q Did you get it? A No, sir.

Q Did you go after it? A Yes, sir.

40 Q With what result? A No result.

*Abraham A. Kaufer, direct.*

Q The Receiver's inventory shows that he found the following merchandise in the store when he took possession: One muskrat coat—What is the value of that? A About \$225.

Q One Hudson Seal coat—What is that worth? A About \$150.

Q Sixteen dried wolf skins—What is the value per skin? A About \$12 per skin. 10

Q Thirty-four skunk skins—What is the average value per skin? A About \$1.

Q One otter skin—What is the value of that? A About \$7.00.

Q Six dyed foxes—What is the value of that? A About \$15 apiece.

Q Seventy shears—What are they worth? A About fifty cents or sixty cents apiece.

Q Fifteen boxes assorted trimmings, tails and heads—What is the value of the fifteen boxes? A About \$100. 20

Q Twenty-two pieces of linings—What is the value of that? A About \$75.00.

Q Five pieces of cloth remnants—What is the value of that? A About \$10.

Q One-half dozen scarfs—What is the value of that? A About \$30.

Q There was some stuff over at the Joseph Hollander & Co. plant, belonging to the co-partnership. There were 116 muskrats; how much were they? A About \$1.60 apiece. 30

Q There was some merchandise supposed to be at the plant of the Quality Fur Dressing Company. There were nine coon skins—How much were they worth? A About \$4 apiece.

Q Forty-three skunk skins—What was the value of that? A About \$2.30 apiece.

Q Two American mink skins. What were they worth? A About \$28. 40

*Abraham A. Kaufer, cross.*

Q Three weasel skins—What were they worth? A About \$.25 apiece.

10 Q Mr. Rothman testified that this stuff which was at the Quality Fur Dressing Company that I have just mentioned was receipted for by him, received and taken to the place of business of the co-partnership at Orange street and put into the business. Is that true? A I never received that.

Q He says that this happened within a week or ten days before March 17, 1923. Is that true? A No.

*Examination by Mr. Schotland.*

Q Do you remember those particular items that you have just testified about? A Yes.

20 Q Do you remember just exactly what price you paid for those items in the inventory? A No, sir.

Q You do not? A That was the prices I paid, about.

Q Those prices that you testified to, are those the same prices as those that you put in the inventory for those goods? A About the same.

30 Q What did you say the muskrat coat was worth? A About \$225 from my estimate.

Q How much did you put it in the inventory for? A I don't remember. Whatever we agreed, Mr. Rothman and I, to put in the inventory.

Q You don't remember how much you put it in the inventory for? A Not exactly.

Q But you now say that in your estimation it is worth about \$225? A Yes.

40 Q And what did you say the Hudson Seal coat was worth? A \$150 about.

*Abraham A. Kaufer, cross.*

Q How much did you put that in the inventory for? A I can't remember. Whatever we agreed on.

Q This \$150 price is what you put on now, you don't remember whether you put it in the inventory for more or less? A No, sir.

Q What about the dyed wolf skins. How much were they worth? A \$15.00 apiece. 10

Q How much did you put them into the inventory for? A For less.

Q You remember that? A About that price. I can't remember exactly.

Q You don't remember what you put them in the inventory for? A No.

Q The skunks, how much do you say they were worth? A About \$1 apiece.

Q How much did you put them in the inventory for? A From my knowledge about the same. 20

Q How much did you pay for those skins? A We paid more, but we used the best ones. There were different qualities when we bought them.

Q How much did you pay for the skins that you had let in the store? A We have used some of them. I can't tell the price of the skins left in the store?

Q You didn't use what you have left? A We bought them before with other stuff, better and worse. 30

Q How much did you pay per skin? A Some \$1.00, some \$3.00, some \$2.50, and some we paid less.

Q Did you say positively that they were only worth \$1.00 per skin? A I didn't say positively. I said they were about that.

Q Approximately? A Yes.

Q Is that what you mean by all the prices? A Yes. 40

*Abraham A. Kaufer, cross.*

Q And you haven't any knowledge what you carried them in the inventory for? A The inventory sheet was taken away with the papers.

Q You have given a value on the shears that were used in the manufacturing part of the business. How much did you pay for the shears? A  
10 About \$1.50 a pair.

Q And you had seventy of them? A We had more than that but we used them before.

Q But when the receiver took possession he found seventy left? A Yes.

Q And you price them now for how much? A Fifty cents or sixty cents apiece.

Q How much did you carry them in the inventory for? A For about that price.

Q About which price, the price you bought them for or for fifty or sixty cents? A The  
20 price I paid.

Q At \$1.50 a pair? A Yes.

Q You have given us an estimate now of the value of the contents of fifteen boxes of assorted trimmings of tails and heads. How much did you say that that is worth? A About \$100 or a little over.

Q How much did you carry that in the inventory for? A I don't remember what I put  
30 it down then.

Q You haven't any idea? A No, sir, about the same price, to my knowledge.

Q But you are not positive as to the price you are putting now nor as to the price you put it in the inventory for? A No.

Q Those twenty-two pieces of lining, what price do you give for that per piece now? A I didn't give a price per piece.

Q What price did you give? A I can't tell  
40 the price per piece because they were different odds and ends.

*Abraham A. Kaufer, cross.*

Q What price do you now make them? A  
A reasonable sum.

Q What is that reasonable sum? A About  
\$10.00.

Q You don't remember what you testified  
to five minutes ago? A No.

Q What did you testify to? A About \$20. 10

Q Are you sure now you said \$20? A About  
\$20.

Q Are you sure that you said \$20 about five  
minutes ago? A No, sir, I am not.

Q You don't remember what you said about  
five minutes ago when Mr. Krohn asked you? A  
About \$20.

Q Are you sure that is what you said? A I  
am not sure.

Q Why aren't you sure? A Because my 20  
memory is very poor; I can't remember.

Q You can't remember the length of time  
between direct examination and cross examina-  
tion? A No.

Q Mr. Kaufer, you testified to the value of  
five pieces of cloth remnants that the receiver  
took possession of? Do you remember just what  
those cloth remnants were? A Yes, sir.

Q What kind of remnants were they? A 30  
Some black cloth and brown cloth.

Q And what were they being saved for?  
A They were left from the business. They  
were left in the store.

Q Could they be used for customers? A  
Yes; in fact, one of the pieces belonged to a  
customer. She asked me for it. She left it  
there to be made into a suit and we didn't make  
it. Now she came to me and asked me for that  
piece of cloth, for which I will have to make  
good. 40

*Abraham A. Kaufer, cross.*

Q That is one of the pieces that the Receiver sold? A Yes, sir.

Q Now you have not testified to their value at that time. What do you say they were worth at that time? A About \$20.

Q Those five pieces? A Yes.

10 Q How much did you carry them in the inventory for? A I suppose for about the same.

Q Do you remember; do you know for sure? A No, sir.

Q And this value that you now put on is that approximate or is it positive? A It is about positive. It is approximate.

Q Now Mr. Kaufer, the statement of the business that you got from Flink & Krohn, the accountants, which is called the audit report of  
20 March 8, 1923, was that a correct statement as far as you know, of the business done, and the amount paid out for merchandise? A Yes, sir.

Q I notice in Exhibit B. of that statement that the amount of business done in the store between September 15, 1922, and March 8, 1923, is \$39,199.56. A Yes, sir.

Q And that the total cost of the merchandise together with the labor, is \$35,145.29? A Yes,  
30 sir.

Q You know that to be correct? A Yes, sir.

Q Now these figures do not include the overhead expenses, do they? They only include the goods you purchased and the labor you put on the garments? A According to the statement. Whatever the statement is I presume it is right.

Q Your salary and Rothman's salary and the rent and all other business expenses are not figured in that part of the statement, are they?

40 A No.

*Abraham A. Kaufer, cross.*

Q And that part of the statement shows that the gross profits that you made on \$39,199.50 consisting of sales, is \$4,054.27. Is that right? A Yes.

Q This \$39,199.56 consisting of sales, were all retail sales, were they not? A No, sir, there are some wholesale sales, too. 10

Q What kind of wholesale sales did you make? A Skins, sold to dealers and different people during that time.

Q How much worth of skins did you sell wholesale, do you know? A Between \$5,000 and \$10,000— About \$5,000.

Q To whom? A To different people.

Q You sold about \$5,000 worth of skins at wholesale? A Yes.

Q And your books will show that? A Yes. 20

Q Did you sell those skins at wholesale at a profit or loss? A A small profit.

Q How much of a profit? A Ten per cent. about.

Q The skins that you sold at wholesale you sold at an average profit of ten per cent.? A About that. Sometimes less. Very seldom less. Always more.

Q Mr. Kaufer, I didn't invent this ten per cent. Didn't you say that the skins you sold at wholesale averaged a profit of ten per cent.? A Yes, and sometimes at a loss. 30

Q Do you remember my asking you whether you sold those skins at a profit or at a loss, and you answered me that you sold them at a profit of about ten per cent.? A I said about, but sometimes we were forced to sell below cost in order to settle our bills.

Q When was that? A During that time. 40

*Abraham A. Kaufer, cross.*

Q When? A Between August and March 17th.

Q You were only in business from September 15th to March 15th. Exactly six months. This is the statement rendered from September 15th to March 8th, isn't it? A Yes.

10 Q You were only in business exactly six months? A Yes, sir.

Q And during the time that you were in business, you paid off, in addition to the business creditors, \$10,000 worth of outside debts, didn't you? A What we owed.

Q But it was an outside debt, outside of merchandise purchased? A Not outside, out of the business, that I loaned.

20 Q That was a \$10,000 debt that you owed before this partnership was formed for this store on Orange street, wasn't it? A For merchandise used in the store.

Q The \$10,000 that you paid off, which was on a note to your sister-in-law was a note that you owed before this co-partnership for this particular store in Orange street was formed, wasn't it? That is true? A We both owed that money, me and Mr. Rothman.

30 Q But you owed it before this partnership in this store was formed? A Yes.

Q And you paid it off out of the money that came into this partnership? A Yes.

Q That is true? A Yes.

Q That is the money that is charged to your personal account—most of it is? A Yes.

Q \$5,000 of that is charged to your personal account, is it not? A Yes, sir.

40 Q And that was paid off during these six months that you were running this business? A Yes, sir, but that is not \$10,000.

*Abraham A. Kaufer, cross.*

Q But you paid out \$10,000? A Yes, sir.

Q When was it that during this six month period, you had to sell merchandise at a loss in order to pay your bills? A About the month of December.

Q In the month of December? A Yes, about.

Q Can you point out in December sales just what merchandise you sold at a loss? A We sold so many items I can't point them out and remember what we sold. 10

Q Can you point out any item that you sold at a loss at any time during the existence of this particular co-partnership? A Yes.

Q Point them out, please. A We sold some black foxes to Mr. Klein.

Q What else did you sell at a loss that you can point out? A We sold things very cheap, sometimes below cost. I don't remember exactly when and what. 20

Q Can you point them out? A No, sir, I can't remember, how can I point them out.

Q You can write and read, can't you? A Yes, sir.

Q Now, Mr. Kaufer, outside of the \$5,000 worth of furs that you say you sold at wholesale— A About \$5,000.

Q About \$5,000 worth of furs that you sold at wholesale did you sell any garments to any retail customer or make up any garments to a retail customer at a loss? A Yes, sir. 30

Q Why did you do that? A In order to get some money in.

Q Can you point out any single retail sale at a loss? A Yes, sir.

Q Then point it out, please. A I made a coat for \$500 for a party in Trenton, N. J. She returned that coat, that is, she refused to take 40

*Abraham A. Kaufer, cross.*

that coat and on that particular coat we lost about \$150.

Q You mean because the customer refused to take it? A Yes, sir.

Q You didn't sell it to her at a loss in the beginning? A No, sir.

10 Q It was only because she refused to take it? A Yes.

Q Did you sell the coat? A We sold it later. We made it over and lost all the labor which it cost us, about \$150. It brought a loss of about \$150. That is one particular item that I remember.

Q Can you remember any single item where you sold to a retail customer any garment at a loss? A Yes.

20 Q Who? A I will look over the books and I will find a couple of names.

Q Do you remember about what scarfs you sold at retail for a loss? A Yes.

Q Why did you sell them at a loss? A Because they were old-fashioned. They were out of fashion.

30 Q You were one in business in this co-partnership for one season? A Yes, sir; but I had carried over goods from the New York store and also from 460 Orange street at my old store which was taken in in the inventory.

Q Now, let me get this. The original inventory of merchandise that you put in when this co-partnership was formed, which is set forth in the audit report dated September 7, 1923, and which shows that you put in \$13,688.57 worth of merchandise. A Yes, sir.

40 Q It is part of that merchandise that you now say was old-fashioned and had to be sold at a loss? A It might have been.

*Abraham A. Kaufer, cross.*

Q It is part of that merchandise? A Part of that and part from the New York store.

Q Doesn't that include all of the goods from the New York store? A No, sir.

Q Part of the goods, then, that you took over from the New York store, and part of the goods that was put into your personal inventory, were old-fashioned? A Yes. 10

Q And had to be sold at a loss? A Yes.

Q In other words, they were worth less than what they were carried in the inventory? A Well—

Q They were worth less than what you carried them in the inventory for? A Yes.

Q If part of the goods that you carried over from the New York store and that you put in from your personal store in Orange street, were worth less than the inventory price, why did you add 10 per cent. to the inventory when this partnership was first formed? A It cost me 10 per cent. to carry that goods. 20

Q That is why you added 10 per cent. to the inventory and charged the co-partnership? A Yes, we agreed to that.

Q Even though the merchandise was worth less than what you carried it in the inventory for? A Yes. 30

Q About how many cases do you remember where you sold merchandise at retail at a loss? A One particular item I know now. I remember now we had a Hudson Seal sable from the New York store. It was charged \$45. Mr. Rothman has charged me \$45 apiece for them, and when we took inventory we have taken them in stock for \$20 or \$25 apiece.

Q When you took what inventory? A In the month of March. 40

*Abraham A. Kaufer, cross.*

Q Were there many of those? A Quite a few.

Q How many? A About ten or fifteen.

Q But I am asking you about sales that you made to a customer. I am not asking you about the inventory. I am asking you about retail sales to customers at less than cost? A Yes, 10 sir, we have sold some things less than cost.

Q At retail? A Yes.

Q Much? A Quite some.

Q Why? A Because it was the end of the season and things got out of fashion.

Q When was it that you sold things at less than cost? A December and January. Also in February.

Q Can you point those out in the books? 20 A I can go through them and see the sales and point them out.

Q You will do that? A Yes.

Q And have a list made before the next hearing? A Yes.

Q Most of the business was making up garments for customers? A Yes, and some stock.

Q But most of the business was making garments to order for customers? A Yes.

Q Did you make any garments for customers 30 at a loss? A No.

Q What profit did you charge on every garment that was ordered? A We charged about ten per cent., but by the time we got through the labor sometimes cost us more than we figured and we didn't get that much.

Q Do you mean to say that when a customer came to you and ordered a coat you estimated the material and cost of what the labor would be and then added a ten per cent. profit? A I have 40 figured overhead and labor and I figured mer-

*Abraham A. Kaufer, cross.*

chandise and then figured about ten per cent. profit.

Q Suppose we take Schwartz, a Hudson Seal coat, with mink trimmings, order No. 1098, which you sold for \$500. A Yes, sir.

Q Do you remember that? A Yes.

Q Do you remember the items that go to make up the cost of that? A Yes, about. 10

Q Did you use more than sixty skins of Hudson Seal? A Yes, sir.

Q How many skins did you use. A Seventy-five or more.

Q Which is it? A About seventy-five.

Q And the cost of each skin was how much? A \$3.25.

Q You are sure of that? A Yes.

Q And you remember how many mink skins you used for that coat? A About twelve. 20

Q You used twelve. Ten wasn't enough, was it? A According to the size.

Q I am talking about Mrs. Schwartz's coat that you remember. A I don't remember—ten or twelve.

Q How much do the mink skins cost? A \$15 apiece.

Q Well, we will figure that you used ten skins. How much did you use for lining? A About \$25; the average lining. 30

Q And labor. Do you know how much it cost for cutting it? A The average is \$100 for making a coat.

Q That is how you figured it? A Yes, sir.

Q According to your testimony, then, you figured up this particular garment to cost you \$518.75? A We work ourselves and make up out profit on labor.

Q You mean you get paid for your own labor? A Yes. 40

*Benjamin Eisen, direct.*

Q Is that profit? A Yes.

Q Mr. Kaufer, do you mean to say that when Mrs. Schwartz came into your store to order a fur coat, a Hudson Seal with mink trimming, you figured up that it would cost you, including the labor of yourself and partner, \$518.75, and took the order for her to make up the coat for \$500? A At that time we had skins that cost us a little less than \$3.25 apiece. Maybe the coat only came to \$450, and I added ten per cent., which is \$50, and I charged \$500 for the coat.

Q I asked you particularly about this particular coat. You said you remembered the order. A This particular coat I have estimated that it stood us about \$450.

Q But the figures that you have just given me amount to \$518.75. A We had different kinds of skins. Some cost \$2.50, some \$2.75, and sometime we paid \$3.25 for the skins, which the book will show.

The further taking of the evidence is interrupted for the taking of the testimony of another witness.

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30 MR. BENJAMIN EISEN, a witness produced on the part of the complainant, being duly sworn according to law, on his oath deposes and says:

*Examination by Herman Krohn.*

Q Mr. Eisen, where do you reside? A 15 Belmont Terrace, Newark, N. J.

Q Are you connected with the Quality Fur Dressing Company? A Yes.

40

*Benjamin Eisen, direct.*

Q In what capacity? A Bookkeeper.

Q How long have you been with them? A Three years.

Q Do you recall in March of this year having a conversation with Mr. Pogash here, in the Quality Fur Dressing Company's plant, relative to the business affairs of Kaufer Fur Shop in the presence of Mr. Rothman? A Yes, sir. 10

Q Under what circumstances did you meet Mr. Pogash? A Mr. Rothman came down to the place one day and he told me that he had some trouble with Kaufer, and he said that he didn't believe things were going on right up at his place. I asked him who took care of their books, and he told me Flink & Krohn, and that Mr. Pogash came there to audit the books. I told him I would try to get Pogash to come to the place and talk it over with him and find out what the trouble was. I called up Pogash and he came down. He didn't know what it was about. He thought he was coming down to see me. He came in and I asked him what the trouble was there. 20

Q Who did he meet there? A Rothman.

Q Anybody else there? A A few others. Members of the firm, I think. I don't know just who it was. Then a conversation ensued between Pogash and Rothman and myself, and Rothman wanted to find out whether he was getting a square deal at the Kaufer and Rothman partnership, and Pogash told him that as far as he knew he thought that the books were being run correctly, and that the only leak that there might be would be in the taking of the inventory, which Pogash said he did not witness, but received Kaufer's and Rothman's word that the inventory was taken correctly. That is all. 30 40

*Benjamin Eisen, cross.*

Q Mr. Eisen, there has been testimony here by Mr. Rothman that Mr. Pogash said to Mr. Rothman in your presence on this occasion that the business of Kaufer and Rothman should have showed a \$10,000 and \$12,000. Was that said? A I don't recollect.

10 Q You were there during all of the conversation? A I believe I was.

Q Mr. Rothman further testified in this matter that Mr. Pogash said to Mr. Rothman on this occasion when you were present that, either consciously or unconsciously, he was being trimmed by Mr. Kaufer. Was that said? A I didn't hear it.

*Cross examination by Mr. Schotland.*

20 Q You didn't hear it, or you don't remember it? A I didn't hear it.

Q Do you remember what was said? A Whatever I mentioned is what I remember was said.

Q You said that you didn't remember all that was said, to begin with? A That is what I said.

Q Do you remember whether this was said or not? A I remember that it was not said.

30 Q You remember that positively? A Absolutely.

Q Don't you remember that Pogash said something about things not looking right? The only thing he said was in reference to the inventory.

Q Didn't he say that things didn't look right to him? A No, sir.

Q Didn't he say that it looked to him as if Rothman wasn't getting a square deal? A I remember Rothman saying that he didn't believe  
40 he was getting a square deal and Pogash told

*Abraham A. Kaufer, cross.*

him that he believed the books were being run correctly, but there may be an error in the inventory, which was made by Rothman and Kaufer.

Q Didn't Pogash agree that there should have been a profit shown instead of a loss for the volume of business? A I don't know. 10

Q Don't you remember? A I do not remember.

Q Your recollection of what took place at that time is not very clear, is it? A As much as I remember I testified to.

Q How long did the conversation last? A Not very long.

Q Do you remember how long? A About fifteen or twenty minutes.

Q There was more said in those fifteen or twenty minutes than those two or three sentences, wasn't there? A I believe there was. 20

Q But that is all you remember? A That is all.

Q And you haven't the slightest recollection of what else was said? A No, sir.

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ABRAHAM A. KAUFER, recalled.

30

*Cross examination by Philip J. Schotland.*

Q Mr. Kaufer, at the last hearing I was questioning you about the business you did and the profit you made in the business. Can you show me a single sale or any sales to customers of garments you made for them where your profit was less than 10%, or 10%?

Mr. Krohn: I object to the question on the ground that it is too general, that all of 40

*Abraham A. Kaufer, cross.*

this line of testimony has not the slightest bearing on the issues in this case that Mr. Myers has to decide on.

10 A (Objected to.) I could not remember all the times we made, which one we have lost or on which one we have made on, but Mr. Schotland has reminded me of one of the sales for a party by the name of Schwartz and to my estimation we have lost money on that particular garment.

Q Mr. Kaufer, that particular garment was the making of a Hudson seal coat with mink trimming for \$500? A Yes, sir.

Q Why did you charge a price which would result in a loss? A Why?

20 Q Yes. A Because we have paid as high as \$3.25 for Hudson seal and we have also paid \$15 per skin, which we used ten skins for that particular garment and the labor on a garment of that sort stood us between \$75 and \$100. A lining for this garment stood us between \$20 and \$25, and according to this here price we did not make any money, as far as I can remember.

30 Q You knew the cost of the materials necessary to make up the garment when you took the order, did you not? A The amount came higher than I estimated. Expenses were higher than I estimated and our drawing salary was also higher.

Q What about a Hudson seal coat you made for Mrs. Joseph Ordower for \$350? Did you lose money on that, too? A I am sure we did not make any money. That particular coat I have to make over now. I am making it over free of charge in order to keep the trade.

40 Q You also made a Hudson seal coat for Mrs. Katz for \$325. Did you make any money on that coat? A I don't know. I don't think so.

*Abraham A. Kauffer, cross.*

Q You also made a Hudson seal coat with skunk trimming for Mrs. Stern for \$450. Did you make any money on that garment? A No, sir. We allowed her \$100 on the last garment, so the coat actually cost her \$350.

Q You also made a Hudson seal coat with squirrel trimmings for Mrs. Zucker for \$362. Did you make any money on that? A I don't remember. 10

Q You also made a Hudson seal coat for Mrs. Kurtz for \$365. Did you make any money on that? A I don't remember every garment.

Q Do you know whether you made any money on the garment? A I know I made the coat, but I don't know if we made money on it.

Q Can you pick out any sale of garments you made for any customer where you did make money? A I couldn't remember. 20

Q You can't pick out any sale of garments that you made for a customer where you made money? A I can't remember.

Q You can't remember any where you made money? A No.

Q And you can't pick them out from your books? A No.

Q You were the one to fix the prices and take the orders? A Yes, sir. 30

Q Why did you take orders and fix prices which did not net at a profit? A Because we had to dispose of our goods. We had a lot of goods on hand. When bills came due we had to have money to settle our bills.

Q So you ran your business regardless of profit, just for the sake of doing business? A For the sake of making a living and paying bills.

Q How did you figure on making a living if you did not figure to charge a price so that 40

*Abraham A. Kaufer, cross.*

there would be a profit? A I did not think the labor and overhead would be so high.

Q You knew what it was? A No, sir, not until we took stock.

Q Didn't you know what your expenses were? A Yes, but I could not figure it out.

10 Q Mr. Kaufer, at the time you entered into this co-partnership business you put into this co-partnership business merchandise amounting to \$13,688.57? A Yes.

Q And furniture and fixtures amounting to \$1,870? A Yes, sir.

Q Accounts receivable amounting to \$560? A Yes, sir.

Q Making a total of \$16,118.57? A Yes.

Q And against that you owed \$1,058.80? A Yes.

20 Q Which left you \$15,059.77? A No, sir, I owed money to the bank and my sister on that merchandise. I borrowed money to pay for that merchandise.

Q But as far as your partnership statement shows it was net \$15,059.77? A Yes.

Q In addition to that you owned the property where this partnership was going in? A Yes, sir.

30 Q What number Orange street is it? A 449 Orange street.

Q What is the value of that building? A \$14,000.

Q What is it mortgaged for? A \$14,000.

Q How much cash did you put in when you bought it? A No money.

Q You made no cash investment at all? A No, except that I paid the bonus to the building and loan and search fees.

40 Q How long do you own the property? A Eight months or a year.

*Abraham A. Kaufer, direct.*

Q Before the co-partnership was formed? A  
A couple of months before.

Q You owned some other property at that  
time? A Yes, sir.

Q What property? A The home where I  
live.

Q Where is that? A 96 North 6th street. 10

Q How much is it worth? A About \$25,000.

Q How much is that mortgaged for? A  
\$21,000.

Q How much was it mortgaged for at the  
time you started this co-partnership? A \$21,000.

Q Building and loan mortgage? A \$18,000  
building and loan and \$3,000 second mortgage.

Q How long has the building and loan mort-  
gage been on? A Six months or so.

Q And do you own any other property? A  
No, sir. That is all the property I had. 20

*Examination by Mr. Krohn.*

Q Mr. Kaufer, you testified on examination  
by Mr. Schotland before that you owed \$1,058.80  
at the time of the formation of this partnership  
as shown by the accountant's report of Septem-  
ber 7, 1922? A Yes, sir.

Q Had you any liabilities on this merchan-  
dise at that time? A Yes, sir. 30

Q What were they? A \$10,000 to Bertha  
Krumholz.

Q She is your sister-in-law? A Yes.

Q There was a partnership note for that  
amount? A Yes, sir, signed by Mr. Rothman  
and his father-in-law.

Q And were there any other liabilities you  
had? A Yes, sir, in the bank.

Q How much? A \$4,000.

Q What bank? A Liberty Trust Company. 40

*Abraham A. Kaufer, direct.*

Q Any other liabilities which you can remember? A I don't remember.

Q Mr. Kaufer, will you tell me why these liabilities owing on your merchandise investment were not put into the accountant's report?

10 Mr. Schotland: I object to that. I don't see how that is going to bind us in any way at all.

A (Objected to.) Yes, because it would hurt our credit. We could not get any merchandise and my sister-in-law told me that any time I will have the money I can return it to her. Any time I will dispose of the merchandise I will pay her the money back.

*By Mr. Schotland.*

20 Q Mr. Kaufer, when the new partnership, dated September 27, 1922, between you and Rothman was formed, to conduct the business at 449 Orange street, Newark, didn't you, in order to make your investment in the co-partnership the value of the merchandise and the fixtures in 449 Orange street personally assume as your own personal liability the \$4,000 that you owed the Liberty Trust Company and the  
30 \$10,000 that you owed your sister?

Mr. Krohn: I object, on the ground that it calls for a legal conclusion. I believe that this witness can properly be called on to state the facts and circumstances and conversations which might lead the Master to form his conclusions on these questions.

A (Objected to.) Yes, with the consent of Mr. Rothman. He knew it; that is the reason he  
40 signed the note with his father-in-law.

*Abraham A. Kaufer, direct.*

Q How old was the note at that time? A I could not tell exactly. The note can be seen.

Q The note was renewed a good many times, was it not? A No, sir.

Q It was never renewed? A No, sir.

Q Isn't the note at least three years old? A I don't remember. 10

Q Isn't it at least two years old? A I don't know.

*By the Special Master.*

Q At the time this new partnership was formed a new note was given? A No, sir, but it was signed by his father-in-law.

Q When? A A few weeks after the new partnership was formed.

Q When was it signed by you? A When we were in New York. 20

Q How long before the 7th of September was it signed by you? A I could not tell exactly.

Q Did Mr. Rothman sign the same time you signed it? A The same time.

Q He signed it only once? A He signed with me.

Q And it was a long time afterward that you say his father-in-law put his name on the back of the note? A Not a very long time. 30

Q The note was signed by you and Rothman while you were in New York, and his father-in-law signed it after you were in Newark? A No, sir, before we formed the partnership.

Q Then the note was signed by the father-in-law before September, 1922? A I assume so.

*Examination by Mr. Krohn.*

Q Mr. Kaufer, was the note signed by you and Rothman on the date which it bears? A Yes, sir. 40

*Abraham A. Kaufer, direct.*

The note is received in evidence and marked Exhibit

*By Mr. Schotland.*

10 Q Didn't you, for the purpose of making the new co-partnership at 449 Orange street and claiming to put in \$13,622.71 in that co-partnership, personally assume to pay the \$4,000 that you owed to the Liberty Trust Company and the \$10,000 that you owed to your sister-in-law from before?

Mr. Krohn: I object for the same reason as stated before.

20 A (Objected to.) I did, with the understanding with Rothman if he signed this note and his father-in-law signs this note, which they did. That is the reason I did it, otherwise I would not have done it.

Q Hadn't Mr. Rothman and his father-in-law endorsed this note more than a year before this new co-partnership was formed? A It might have been. It can be seen.

30 Q At the time this new partnership was formed, in order to audit this capital, as shown by the schedules, you assumed the payment of the note and the amount due to the Liberty Trust Company? A I did.

*Examination by the Special Master.*

Q Then, at the time this co-partnership was formed you did not consider that the new partnership owed the \$10,000 to your sister-in-law or the \$4,000 to the Liberty Trust Company? A I felt that we both owed it to Mrs. Krumholz. I and Mr. Rothman.

40

*Jacob Rothman, direct.*

Q If the new partnership that you organized in September, 1922, had been prosperous and had made money, from whom would your sister have received payment of this note? A From me, but I would take the money from the business and pay it to her.

*By Mr. Schotland.*

10

Q And then it would be charged to you in the business? A Yes.

Q That is exactly what happened, is it not? A Yes, sir.

Q You did take the money from the business and did pay it to her and it was charged to you?

A Yes, sir.

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JACOB ROTHMAN, recalled.

20

*Examination by Philip J. Schotland.*

Q Mr. Rothman, how long have you been in the fur business? A Eight years.

Q Are you a practical furrier? A Yes, sir.

Q What part of the work do you do yourself? A Cutting, operating, nailing—all around man.

Q That is, you knew the entire manufacturing end of it? A Yes, sir. 30

Q Did you go over a few of the orders for coats that your firm had made during the time that you and Kaufer were in partnership? A Yes, sir.

Q The order for Schwartz, Hudson seal coat, mink trimmed, Order No. 1098, for \$500. Do you know how many seal skins were used in that coat? A Yes, sir.

Q How many? A Sixty.

Q How much did they cost? A \$3. 40

*Jacob Rothman, direct.*

- Q How many mink skins were used? A Ten.
- Q At how much? A \$12.
- Q And how much lining? A Four yards.
- Q How much did it cost? A \$4 a yard—\$15.
- Q How much did it cost for labor and cutting? A \$15.
- 10 Q Operating? A \$15.
- Q Finishing? A Finishing the entire garment, \$20. Finishing means nailing and all-round finishing.
- Q You figure the whole coat cost you \$366?
- A Yes, sir.
- Q And the profit you made was \$134? A Yes.
- Q Do you remember a Hudson seal coat that was made for \$325 for Mrs. Katz? A Yes, sir.
- Q How many skins were used in that coat?
- 20 A About the same, sixty skins.
- Q At the same price? A Yes, sir.
- Q How much lining for that garment? A Four yards.
- Q Do you remember Mrs. Katz? A Exactly.
- Q How much did the whole garment cost to make? A Sixty skins at \$3, about four yards lining and labor is the same.
- Q That would be \$50 for labor? A Yes, sir.
- 30 Q That is \$246? A Yes.
- Q That is \$79 profit, about 24%? A Yes, sir.
- Q Do you know why that order was taken so as to leave only 24% profit? A Mrs. Katz was a good friend of Kaufer and came in with the first coat. He wanted to do this coat a little cheaper than our regular price.
- Q What was the average profit charged on garments, to your knowledge? A Between 25% and 35%.
- 40 Q Did you undertake to make any garments for less than 25% profit? A Never did.

*Jacob Rothman, direct.*

Q Then, you say that on all of the business that was done, it was done on a basis of 25% profit? A About that.

Q The books show that instead of having made a profit on the six months' business you made a loss. Can you account for that? A No, sir.

Q Where did the money go, if there was a loss instead of a profit? A May I answer where I think it went?

Q Yes.

Mr. Krohn: I object to that question as presented and agreed to by Mr. Schotland on the ground that it is irrelevant what he thought. We are dealing with facts.

A (Objected to.) I think that Mr. Kaufer handled the cash and he needed some money in real estate business. Whether he loaned it or not I don't know, but some money was taken out and not charged to his credit. How it was done I don't know.

Q You claim that money is short? A Yes.

Q And you claim Kaufer handled it? A Yes.

Q And he is the one you are holding responsible for it? A Yes.

Q How much profit do you say the books should have shown on the \$39,000 worth of business that was done? A Between \$10,000 and \$12,000.

Q Could the profit have been less than \$10,000? A It could not.

Q Did you ever sell any skins at wholesale at a loss while you and Kaufer were in business together? A No, sir.

Q Did you ever sell any skins at wholesale while you were in business together, up to the time you made the sale to Mazer? A Yes.

*Jacob Rothman, cross.*

Q Did you sell them at a loss or a profit? A  
A profit.

Q How much profit did you charge when you  
sold them at wholesale? A 25%, or maybe  
30%, simply because it was an article that ad-  
vanced the price. Once we sold beavers to Mr.  
10 Klein and we made profit.

Q You promised to produce Mr. Klein's state-  
ment, a duplicate of it. Is that it? A Yes, sir.

Q This is the duplicate which shows the  
whole Klein account? A Klein told me this is  
the statement which shows the whole Klein ac-  
count.

Mr. Schotland: I offer in evidence this  
statement of Al. Klein.

The statement is received in evidence and  
20 marked Exhibit D. 2.

*Cross examination by Mr. Krohn.*

Q Mr. Rothman, you testified previously at  
one of these hearings that in this particular  
business most of the time you acted as foreman  
upstairs in the cutting and operating room; isn't  
that so? A Yes, sir.

Q And that it was only on rare occasions  
30 that you came downstairs and paid any attention  
to the selling end of the business. Isn't that so.  
Didn't you testify that? A Yes, sir.

Q How do you account for your ability to  
testify now as to what the costs and profits on  
the Schwartz job were? A Because Mr. Kaufer  
came up to me or called me down to the store  
when he had to make a new order. I should give  
him a figure how many skins the garment needs  
and what the price should be.

Q Then you had as much to say as he in fix-  
40 ing the price for that job, didn't you? A Yes.

*Special Master's First Report.***Special Master's First Report dated April 22nd,  
1925, Abstracted, by Consent of Counsel.**

Filed April 22, 1925.

This report states that a partnership agreement was entered into between the complainant and defendant on September 1, 1922, at which time the complainant Kaufer's net capital contribution amounted to \$13,622.71; that his withdrawals during the existence of the partnership amounted to \$6,392.17, leaving \$7,230.54 as his net capital contribution. The Special Master charged the complainant \$1,444 on disputed accounting items, which amount, deducted from \$7,230.54 exhibits complainant's net capital contribution as \$6,086.54. 10

The Special Master finds that the defendant Rothman's capital contribution amounted to \$1,634.71; that he should be charged with withdrawals amounting to \$28.82; that he should be charged \$1,600 for merchandise removed and sold from the partnership place of business on March 17, 1923, in the absence of the complainant, less a payment of \$647.25 that he made to Al Klein, a creditor of the partnership, out of said \$1,600. These total charges amounting to \$954.57, deducted from defendant's contribution of \$1,634.71, leaves his net capital contribution as \$653.14. 20 30

*Exceptions to Special Master's First Report.***Exceptions to the Special Master's Report of  
April 22nd, 1925.**

Filed May 5, 1925.

10 Exception is hereby made to the confirmation  
of the report of Charles M. Myers, Special  
Master, in the above stated cause, made in pur-  
suance of an order in this cause dated April 17,  
1923, whereby it was ordered that the matters in  
controversy between the complainant and de-  
fendant be referred to him, to state an account be-  
tween them and determine what, if any, monies  
are due from either or both of them to the co-  
partnership, and each other, and to make a  
report to the court of his conclusions and find-  
ings, and the following causes are respectfully  
20 urged against the confirmation of said report  
bearing date April 22, 1925, and the making of  
the order therein recommended:

1. The Special Master is in error in de-  
termining that the gross charges to the account  
of the defendant should be confined to only  
\$1,600. The greater weight of the evidence  
effectively shows that the defendant early in  
March, 1923, abstracted merchandise and monies  
30 from the partnership place of business without  
the knowledge or consent of the complainant,  
the merchandise being valued by them at \$5,248,  
and the monies abstracted from the cash register  
amounting to 94

---

\$5,342

40 Therefore, it is submitted that the findings of  
the Special Master should commence with a  
charge to the defendant of \$5,342 instead of  
\$1,600, which the defendant admits taking in  
merchandise.

*Exceptions to Special Master's First Report.*

2. The Special Master is in error in crediting the account of the defendant with the sum of \$647.25 in reduction of the \$1,600 charge for merchandise alleged to be purchased by the partnership from Al Klein a creditor of the partnership. The defendant did not produce legal proof, and the greater weight of evidence negative his claim of, payment to Al Klein for this merchandise, excepting to the extent of \$246.66, credit for which amount the complainant concedes. The other \$400.57 represents merchandise which the defendant sets up that he purchased without the knowledge of the complainant immediately before the break-up of business. 10

The following is a summary of the exceptions:

Charge	Special Master's Finding	Complain- ant's com- putation	20
Merchandise and monies abstracted by defendant	\$1,600.00	\$5,342.00	
Sale of merchandise for which defendant claims complainant is chargeable. ....	250.00	Denied	30
Credits			
Monies paid by defendant for merchandise purchased from Al Klein. ..	647.00	246.68	

Respectfully submitted,

HERMAN KROHN,

Solicitor of Complainant, Abraham Kaufer.

HERBERT J. HANNOCH,

Of Counsel with Complainant.

Dated May 5, 1925.

*Opinion of Vice-Chancellor.***Opinion.**

BACKES, V.-C.

10 The parties to the suit were partners, retail  
dealers in furs. The partnership came to an  
abrupt end when the defendant made way with  
most of its merchandise on a Sabbath while his  
more orthodox and pious partner was at de-  
votions in the synagogue. An accounting was  
ordered. An inventory taken nine days before  
showed merchandise assets of \$6,444. The value  
of the remnant taken over by the receiver in the  
cause, three days after the business was wrecked,  
was \$1,140. The defendant admitted selling some  
of the furs in bulk for \$1,600, the market of which  
was conceded to be \$1,925. The master charged  
20 the defendant only with the goods he had sold  
and at the price he received, to which the com-  
plainant excepts. The master should have de-  
termined the value of the merchandise as of the  
day of the involuntary dissolution, and the value  
of the remnant in the receiver's hands, and, after  
making due allowance for sales from the time the  
inventory was taken until the closing down of  
the business, charged the defendant with the  
difference, giving him opportunity to further dis-  
30 charge himself if he could. The inventory should  
have been taken as *prima facie* evidence of the  
stock and value. The burden of discharging him-  
self of the difference was upon the defendant  
because of his responsibility for the confusion.  
The defendant is liable for the real value of  
the assets appropriated by him, not the price at  
which he sold them. *Philips v. Reeder & Prior*,  
18 N. J. Eq. 95. Exception sustained.

40 The defendant was allowed \$647.23 which he  
claimed he paid to one Klein; a debt of the co-

*Opinion of Vice-Chancellor.*

partnership. The proof rests solely on the testimony of the defendant, and it is not convincing. There is no satisfactory voucher. The exception is sustained, with leave to produce further evidence to support the discharge.

The master refused to charge the defendant with \$94 cash alleged to have been in the safe of the firm on the day of the raid and taken by the defendant. The charge is not established; the proof that the money was in the safe does not preponderate. Exception overruled. 10

The master charged the complainant with \$250 the price of a fur coat—merchandise of the firm—sold by him to a Mrs. Krumholtz. He received and accepted credit for the sum on interest due on a debt owed by him to the purchaser. Exception overruled. 20

30

40

*Order Sustaining Exceptions to First Report.*

**Order Sustaining Exceptions to Special Master's  
Report as Modified, and Re-referring  
Accounting.**

Filed January 4, 1926.

10 This cause coming on to be heard in the pres-  
ence of Herman Krohn, solicitor of complainant,  
and Stein, Stein and Hannoeh, of counsel with  
complainant, and Philip J. Schotland, solicitor  
of defendant;

20 And it appearing that by an order of refer-  
ence entered in this cause on April 17, 1923, it  
was referred to Charles M. Myers, one of the  
Special Masters of this court, to state an account  
between the complainant and defendant, and de-  
termine, what, if any, moneys, are due from  
either or both of them to the co-partnership and  
to each other, and make a report to this court of  
his conclusions and findings;

And it further appearing that the Special  
Master made a report of his conclusions and  
findings on April 22, 1925, which is on file herein;  
and it further appearing that the complainant,  
on May 5, 1925, excepted to the report of the  
Special Master in respect of three items thereof;

30 And upon considering the report of the Special  
Master and the exceptions of complainant, and  
upon examining the pleadings and depositions,  
and the court being satisfied that the exceptions  
to the report of the Special Master should be  
sustained with the exception of the \$94 item of  
the first exception and also the third exception  
which should be overruled, and that the defend-  
ant Jacob Rothman be given leave to offer  
further testimony before the Special Master  
40 aforesaid in respect of the subject matter in-  
volved in the first and second exceptions;

*Order Sustaining Exceptions to First Report.*

It is on this 4th day of January, 1926, ordered, adjudged and decreed that the report of the Special Master, dated April 22, 1925, and all the matters and things therein contained and with the modifications above referred to stand ratified and confirmed;

It is ORDERED, ADJUDGED and DECREED that the complainant's exceptions to the Special Master's report be sustained with the exception of the \$94 item of the first exception and also the third exception which are hereby overruled, and the defendant Jacob Rothman or complainant Abraham Kaufer are hereby given leave to offer further testimony before the Special Master aforesaid in respect of subject matter involved in the first and second exceptions. 10

It is hereby re-referred to Charles M. Myers, Special Master, aforesaid, to restate an account between the said partners in accordance with the directions contained in the opinion of this court filed herein on December , 1925, with respect to said exceptions, and make a report to this court of his conclusions and findings within thirty days of the date hereof. 20

E. R. WALKER,

C.

30

Respectfully advised,

JOHN H. BACKES,  
V.-C.

40

*Special Master's Second Report.*

**Special Master's Second Report, dated March 16, 1926, Abstracted, by Consent of Counsel.**

Filed March 16, 1926.

10 The Special Master states that this report was made in accordance with the directions contained in the opinion of Vice-Chancellor Backes, filed in December, 1925, with respect to exceptions made by the complainant to the Special Master's first report, dated April 22, 1925.

The Special Master further states as follows:

20 I do report and find that an inventory taken on March 8, 1923, showed merchandise on hand amounting to \$6,444. A few days thereafter the defendant removed merchandise from the place of business, the market value of which was \$1,925, which he sold for \$1,600. Between March 8, 1923, and the date of the appointment of the receiver there was merchandise sold for the sum of \$150. After the removal of the merchandise by the defendant and at the time of the appointment of the receiver there was left in the place of business and taken by the receiver merchandise amounting to \$1,304.25.

30 I do report and find that the defendant should be charged with the sum of \$4,989.75, being the difference between the amount of inventory on hand on March 8, 1923, and the amount taken by the receiver at the time of his appointment.

40 I further find and report that the defendant, instead of being credited with the sum of \$647.23 alleged to have been paid to one Al. Klein, should be credited with the sum of \$246.66, representing the amount shown on the books of the partnership to be owing to the creditor, and in addition thereto the defendant should be credited with \$517.75, being the amount paid by him to the

*Order Confirming Second Report.*

receiver herein, leaving as the amount with which the defendant should be charged the sum of \$4,225.34, instead of the amount as shown on the schedule attached to the original report filed herein.

10

**Order Confirming Special Master's Second Report.**

Filed March 24, 1926.

This matter coming on to be heard on application of Herman Krohn, solicitor of complainant, and Stein, Stein & Hannoeh, of counsel with complainant, in the presence of Philip J. Schotland, solicitor of defendant, on application for entry of an order confirming the amended Special Master's report dated March 16, 1926.

20

It is hereby, on this 24th day of March, 1926, ORDERED, ADJUDGED and DECREED that the report of the Special Master dated March 16, 1926, and all the matters and things therein contained stand ratified and confirmed, with this exception, that the Court determine on final hearing as to a credit to the partners of salary earned by them, in case the same is not contained in the reports of the Special Master.

30

E. R. WALKER,

C.

Respectfully advised,

JOHN H. BACKES,  
V.-C.

I hereby consent to the entry of the foregoing.

PHILIP J. SCHOTLAND,  
Solicitor of Defendant, Jacob Rothman.

40

*Abraham A. Kaufer, direct.*

IN CHANCERY OF NEW JERSEY.

April 6, 1926.

	<i>Between</i>	}
10	ABRAHAM A. KAUFER, <i>Complainant,</i>	
	<i>and</i>	
	JACOB ROTHMAN, <i>Defendant.</i>	

Transcript of shorthand notes of testimony taken in the above-entitled matter before his Honor, JOHN H. BACKES, Vice-Chancellor, at the Chancery Chambers, in the City of Newark, New Jersey, in the presence of Herman Krohn for complainant, and Philip J. Schotland for defendant.

ABRAHAM A. KAUFER, sworn for complainant.

*Direct examination* by Mr. Krohn.

30 Q You are the complainant in this case? A Yes, sir.

Q Is this your signature? (Showing witness paper.) A Yes, sir.

Mr. Krohn: I offer the agreement in evidence.

(Paper marked Exhibit C. 1.)

40 Q I want to call your attention to this part of the agreement, "As to the capital with which the firm shall commence business, each of the

*Abraham A. Kaufer, direct.*

said partners shall contribute the sum of (blank space); the said Jacob Rothman's contribution shall be in the form of cash, while the said Abraham A. Kaufer's contribution shall be in the shape of merchandise now owned by him and now located at 449 Orange street, the said location being the business place of the co-partnership; the value of the said merchandise shall be determined by audit and inventory." Mr. Kaufer, do you know the circumstances of that blank space being in the agreement? A Yes, sir. 10

Q Will you tell the Court what the circumstances of that were? A Judge, your Honor, the circumstances of this blank—we didn't know exactly how much money Mr. Rothman will put in or how much exactly merchandise I had on hand or how much I owed and we were supposed to take stock and have the books gone over by a certified accountant and then put in the exact amount of the amount into the blank space of the agreement. 20

Q Mr. Kaufer, you started in business in September of 1922 or 1923 in Newark on Orange street? A Yes, sir.

Q And before that had you been in business with Mr. Rothman? A In New York.

Q What address? A 202 West Twenty-eighth street. 30

Q What became of that New York business when you started the Newark business? A We gave it up. The lease ran out and we took our merchandise over into the Newark store.

Q And whose merchandise was that, was it yours or the partnership's or Rothman's? A It was partnership's.

Q And when you started in in Newark what was your contribution to be? A Merchandise; furs. 40

*Abraham A. Kaufer, direct.*

Q What merchandise? A Furs; furs brought from New York and part from Newark; I had a store in Newark previously to that myself.

Q And were you to take an inventory of those furs? A We did. The agreement says so.

Q At the time this agreement was signed did  
10 you have that inventory before you? A No, sir.

Q It hadn't been conducted? A No, sir, not before; the inventory had been taken quite a few weeks after.

Q Whose store was it of which the inventory was to be taken? A Whose store?

Q Yes. A My store.

The Court: You owned the furs? You owned the stock of furs in that store?

20 Witness: I owned the stock before I went in partnership.

The Court: But who, at the time that you made this agreement, owned the stock of furs that was to be put into the new partnership?

Witness: We owned it partly, both of us owned it partly; we both of us bought together the furs; I and Mr. Rothman.

The Court: Where was that store?

30 Witness: 449 Orange street.

The Court: Did you and Rothman own that store together?

Witness: No, sir. After we came from New York—we ran a store in New York—I rented the store separately.

The Court: Do you understand what I am saying to you?

Witness: Yes, sir.

40 The Court: Who rented the store on Orange street?

*Abraham A. Kaufer, direct.*

Witness: I did.

The Court: Who owned the store on Orange street?

Witness: I did.

The Court: Did you dissolve that New York partnership?

Witness: No, sir; we took it in in the Newark store. 10

The Court: The Orange street store?

Witness: Yes, sir; took in the merchandise.

The Court: How did you get to be the owner of it?

Witness: Sir? The owner of it?

The Court: Of the Orange street store.

Witness: I was previously the owner. 20

The Court: Either you are dumb or I am.

Q Did you before September, '22 or '23, have a partnership business—did you have a business in New York and another business in Newark?

A We had two businesses; New York one and Newark one.

Q And after that September you discontinued the New York business? A Yes, sir.

Q And you then formed the partnership to continue at the Newark address? A Yes, sir. 30

Q Orange street? A Yes, sir.

The Court: Was that dissolved?

Witness: No, sir; not dissolved.

The Court: Did you continue it up until you made this written agreement of partnership?

Witness: We make this agreement—we went in business in New York; we also had 40

*Abraham A. Kaufer, direct.*

a store in Newark; but I had the store before this myself. That is what I want to bring out.

10 Q Did you settle up your accounts with the New York store before you went into partnership in the Orange street store in that September?

A We took the inventory.

Q I am asking you whether you settled up your accounts; did you take yours and did Rothman take his? A No, sir.

The Court: How did you get to be the owner of the Orange street store then?

Witness: I wasn't the owner at that time. I was the owner before I went in the partnership.

20 The Court: How did you get to be the owner of this Orange street store when you made this agreement?

Witness: Before, your Honor.

The Court: How did you get it?

Witness: I was in business before. I moved from 460.

30 Q This business in New York, was that wholesale or retail? A Retail and wholesale.

Q And the Newark business was what? A Retail only.

Q This merchandise—these furs that you put into the Newark business—you say that they were your property? A They were my property.

The Court: You mean under this contract of partnership?

40 Mr. Krohn: No; under the settlement of the New York business. I will get further

*Abraham A. Kaufer, direct.*

light on that in a moment from the accountant, who is here.

The Court: Is it agreed that the Orange street store was his property?

Mr. Schotland: No, sir. As I understand it, they were in partnership for several years prior to the date of this agreement. 10

Q This merchandise that you invested in the partnership; how did that become your property?

Witness: Which partnership?

Q In the Orange street store, Newark partnership, after September.

The Court: Why do you speak of September? What is the date of this agreement? 20

Mr. Schotland: September 1, 1922.

Q You say that you did make an inventory later on? A Later on; yes, sir.

Q And about how much was that inventory?  
A As far as I can recollect about \$17,000.

Q Was that to be your contribution to the assets of the firm? A Yes, sir; but—no, not that much. The merchandise—the partnership was supposed to take over the liability. 30

Q What liabilities were there on that merchandise? A They were about \$10,000.

Q And who were they owing to? A To a party by the name of Kromholtz, most of it, and Steiner.

Mr. Schotland: From the knowledge that I have of the situation, the inventory having 40

*Abraham A. Kaufer, direct.*

been introduced in evidence, we are simply wasting time to have this witness guess at things, and his guess is a poor one. The inventory and account is in writing and was used before the Master, dated November 7th.

10 Mr. Krohn: Have you the inventory here?

Mr. Schotland: No; the Master has that.

Mr. Krohn: I have all the Master's papers and it is not among them. We have approximately the amount. I would like to go on.

The Court: Go on.

20 Q Do you know how much was due to the other party you mentioned, not Kromholtz—who was the other creditor you mentioned on that merchandise? A There were several creditors. The books will show all. I don't remember—it is over three years now.

Q In other words, were you to put in the equity of that merchandise? A We were supposed to put in an equal amount.

Q You were first to take an inventory of those furs in the Orange street store, Newark, and in the New York store? A Yes, sir.

30 Q Next you were to determine about what debts were due on them? A Yes, sir.

Q And were you to put the equity into this new business as your contribution? A Yes, sir.

Q What was Rothman's contribution to be? A \$2,000.

Q Why \$2,000? A He had no more.

Q Was Rothman to put in an amount equal to your equity in those furs?

40 Mr. Schotland: I object.

*Abraham A. Kaufer, cross.*

Witness: Yes; later on.

The Court: He was supposed to get some more money and put in?

Q He put in cash \$2,000? A As far as I can remember.

Q As far as you can remember he never paid 10  
in any more money to bring his investment up to yours? A No, sir.

*Cross examination by Mr. Schotland.*

Q Now, Mr. Kaufer, you were in partnership with Mr. Rothman for several years before September 1, 1922, were you not? A No; we were dealing together, buying things, but not legally in partnership. We were supposed to form a partnership after. 20

Q Weren't you in partnership in the fur business in New York City? A Yes, sir.

The Court: With Rothman? A Yes, sir.

Q For how long before September 1st, before this agreement was formed? A About a year and a half.

The Court: And up until that time. 30

Q And up until the time when this agreement was formed? A Yes, sir.

Q And you took the assets of the New York partnership and put them right into the New York store? A There were hardly any assets; there was no merchandise.

Q Whatever there was. A There was very little. 40

*Abraham A. Kaufer, cross.*

Q Whatever there was you took over, didn't you? A Yes, sir.

Q And put right into this Newark store? A Yes, sir.

10 Q Now, at the time when you started this partnership business in the Newark store, you took an inventory and had an account made of all your joint accounts between you and Rothman, didn't you? A Yes, sir.

Q And the inventory was in writing and was offered in evidence, and the account was offered in evidence before the Master, Mr. Meyers, was it not? A Yes, sir.

Q And that showed exactly what your contribution to the partnership was? A Yes, sir.

20 Q And it did show what the contribution of Mr. Rothman to the partnership was, didn't it? A Yes, sir.

Q That shows the whole account? A Yes, sir.

Q When did you start the Orange street store? A After—the second store I had—the partnership—the store when we had the partnership?

Q When did you start the first store at 449 Orange street? A September, 1922.

30 Q You never had a store there before? A I had across the street. I had one across the street before myself for four or five years previous to that.

Q When did you give that one up? A Before—after I went from—gave up New York—after I gave up the New York store I gave up my store and moved across the street.

40 Q Then the store at 449 Orange street started at the same time the New York partnership was moved over to 449 Orange street? A About the same time.

*Abraham A. Kaufer, cross.*

Q That was started at the same time? A Yes, sir.

Q You didn't have any store there at that place before? A No, sir.

*By the Court.*

Q Now what was the number of the store in which the furs were that were to be appraised? 10

A 449 Orange street.

Q What was the number of the store that the partnership had carried on? A 449 Orange street—New York 202 West 28th street.

Q No; where was the store on Orange street in which the furs were that you were to put in the new partnership? A I had the furs 460 Orange street.

Q How long had you had that store? A I had that store for five years previous. 20

Q Your own? A Yes, sir.

Q And that is the one of which this is the inventory?

The Court: Is that the inventory of that stock at 460?

Mr. Schotland: I don't know. I don't recollect this as the one that was offered in evidence and used before the Master at all. 30

The Court: Isn't it marked?

Mr. Schotland: No, sir. This is not that one at all that I have in mind. This is the New York store.

The Court: We want the inventory of the store 460, the stock of which was to be put into this new partnership.

Mr. Schotland: The inventory, bearing that same date, which was offered in evidence 40

*Abraham A. Kaufer, cross.*

before the Master showed—that is, that statement showed the inventory of the merchandise and the fixtures that were to be put in at 449 Orange street.

The Court: From 460?

10 Mr. Schotland: It doesn't mention it as from 460, but according to his evidence I suppose that is where it came from. This may be part of the same figures, but this is not the statement of the account between them.

The Court: You are speaking of the inventory before the Master. Where is that?

20 Mr. Schotland: The inventory, the complainant produced this accountant before the Master to show what the investment of each co-partner was in the co-partnership.

The Court: Where is it?

Mr. Krohn: I don't know where it is. I have been given the entire file.

Mr. Schotland: I had a duplicate copy of it which I turned over to the Master before he filed his report and I told Mr. Krohn if he hasn't got his copy he should go to the Master and get it.

30 Q You remember there was a folder or something like that (indicating) showing the account of the partnership at 449 Orange street? A I kept the books right along.

40 Q Won't you answer the question? Don't you remember the account of the co-partners, what each invested and what the co-partnership had and what you took over was in a folder something like that (indicating) that was put in evidence? A I don't remember now, but it was in a folder, yes, sir.

*Abraham A. Kaufer, cross.*

Q Mr. Kaufer, you recognize this sheet marked Exhibit D., as the account—you recognize this as the account made up by your accountant? A Yes, sir.

Mr. Schotland: I ask that it be marked in evidence.

10

(Paper marked Exhibit D. 1.)

Q Now I notice on this Exhibit D. 1—page which is marked Exhibit D., is headed “Kaufer & Rothman, Orange street, Newark, N. J., Balance Sheet as of September 7, 1922.” Is this the account between you and Rothman showing what you each contributed to the partnership for the Orange street store? A Yes, sir.

Q This is; and this shows then that you contributed \$13,622.71? A Yes, sir.

20

Q And Rothman contributed \$1,634.71? A Yes, sir.

Q And it shows that the only debts which the Newark partnership took over were accounts payable of \$1,836.33, and a loan payable of \$5,000; that is right, is it not? A According to this, yes, sir.

Q That is correct, isn't it? A Well, I don't know. I am not sure because the accountant is sure of all this; he took care of my books.

30

Q And this is what the accountant made up for you when you and Rothman started the co-partnership business at the Orange street store in Newark? A Yes, sir.

Q Now, Mr. Kaufer, as a matter of fact, when you and Rothman started your partnership, or shortly before you started your partnership, Rothman was working for you, was he not? A Yes, sir.

40

*Abraham A. Kaufer, cross.*

Q As a designer? A No, sir.

Q As a what? A As an operator.

Q He is a practical furrier? A No, sir; he is an operator.

Q What is an "operator"? A Works at the machine.

10 Q Makes up garments? A Sews the skins together.

Q And you asked him to go into partnership with you while he was working for you? A He asked me.

Q You didn't ask him? A I might have.

The Court: I thought they were in partnership up until September 1st?

Mr. Schotland: I am going back of that, to the original arrangement.

20 The Court: In New York?

Mr. Schotland: Yes, sir; that is when Rothman was working for Kaufer.

Q Now, while he was working for you and you asked him to go into partnership with you, didn't you tell him that he should put in as much money as he had and you will put in whatever may be necessary for the business and you will  
30 be equal partners?

The Court: In New York?

Mr. Schotland: In New York.

A No, sir.

Q You didn't tell him that? A No.

Q Did you put in the same amount that he did? A I put in more.

Q You did put in more? A Yes, sir.

Q But you were equal partners. A No, sir;  
40 we were not supposed to be equal partners un-

*Abraham A. Kaufer, cross.*

less he paid me full amount—equal partners to the profits, but not to the—(interrupted).

The Court: But not to capital?

Witness: Not to capital.

Q Did you put that into any agreement? A 10  
We were supposed to put it in the blank, the part the agreement left open—blank.

The Court: This agreement applies to the partnership in the Orange street store only?

Witness: Yes, sir.

Q Did you have a written agreement for the New York partnership? A No, sir.

Q How much did Rothman put into the partnership in New York? A About \$2,000. 20

Q Didn't Rothman put in \$4,000? A We kept books, I don't know.

Q Answer. Didn't he? A I don't remember, not what it was.

Q Now as a matter of fact, did Rothman put in anything new when you started at the Orange street store in partnership or did you simply carry over Rothman's investment from the New York co-partnership? A I carried 30  
over—we carried over.

Q You carried over his investment from the New York co-partnership? A Yes, sir.

Q And you took the inventory as to how much stock you brought into the Orange street store?

A Yes, sir; from 460.

Q In 449.

The Court: From 460?

Witness: From 460. 40

*Abraham A. Kaufer, cross.*

Q To 449? A Yes, sir.

Q And you took that account which I showed you in Exhibit D. 1, to show just exactly how much each invested in the co-partnership? A Yes, sir.

Q And how much capital the co-partnership  
10 had at 449 Orange street; that is right, isn't it?

A Yes, sir.

Q And you based your statement to creditors on that account, Exhibit D. 1? A Yes, sir.

Q That is right. Now, who drew this partnership agreement P. 1, for 449 Orange street? A Samuel Kaufman.

Q Who is he? A Lawyer right here in court.

Q What relation is he to you? A He is a  
20 cousin.

Q You had him draw that? A Yes, sir.

Q Did Mr. Rothman have any lawyer there? A Yes, sir.

Q Who? A I don't know. I don't think so. I don't remember whether he had a lawyer or not.

Q Why do you say, yes, he did? A No, he did not; I don't think he did.

Q Your cousin drew this agreement for both  
30 of you? A Yes, sir.

Q Now, what you now say is, that in the blank in Exhibit C. 1 where it says the partners shall contribute the sum of blank dollars, what was to be filled in there was what the accountants found when they made up the account as shown by this Exhibit D. 1? A No; that wasn't correct.

Q Wasn't that to be filled into this partnership papers? A Not this, no, sir.  
40

*Abraham A. Kaufer, cross.*

Q What was to be filled in? A Filled in the exact amount after we have determined how much money we had. We owed money on that.

Q Isn't this the exact amount, Exhibit D of D. 1? A Well, it is the exact amount.

Q That is the exact amount. Those were the figures that were supposed to be filled into this partnership agreement, weren't they? A Not this, no, sir. 10

Q What figures were supposed to be filled in? A We didn't determine the figures yet.

Q You never determined them? A No; we didn't determine them—we didn't determine the figures and didn't put them in.

Q You never have determined them? A No, sir.

Q Not until this day? A I borrowed money to buy this merchandise. This merchandise was all bought mine. I borrowed money to pay for the merchandise. If, Judge, your Honor, you will allow me to explain from the beginning, I can explain it better. 20

The Court: Your lawyer will do that.

Q Didn't you in the accounting before the Master claim and get the Master to report that your investment in this co-partnership was the amount shown on this Exhibit D of D. 1? A Yes, sir. 30

Q Now you claim that you have never determined the figure as to what your investment and what your partner's investment is? A That day this was the figure. The next day the figure was different. We didn't know exactly. We couldn't put them in. We were about to sell the stuff and pay off the debts and put an equal amount of money in. 40

*Abraham A. Kaufer, cross.*

Q When were you going to sell the stuff and pay the debts and put in an equal amount of money? A After we got out from New York.

Q When did you get out from New York? A About that time when the agreement was drawn.

10 Q When the agreement was drawn or when the account was made up? A The account was made up after the agreement was drawn.

Q Well, when did you come out from New York, when the agreement was drawn and before the account was made up? A Before the agreement was drawn I went from New York.

Q You went from New York before the agreement was drawn? A Yes, sir; as far as I can remember.

20 Q And then when were you going to sell the merchandise, pay the debts and determine how much each partner was going to put in? A About the same—about a month later or so when the season begins. The season was supposed to begin and I figured we would sell some of the merchandise and we'd pay up our debits and then we can determine how much money each one is to put in and fill in in that agreement.

Q And that you never did? A No, sir.

30 Q So you don't know how much your share is and how much Rothman's share is in this partnership? A We know—I never do know—we keep books for that—but we didn't know in the agreement how much it will be exactly, but according to the books I know how much I owe and how much I own.

Q Now, let us go back a minute. You knew that when Rothman put in the \$4,000 in the co-partnership of New York that that was all the money he had, didn't you? A Yes.

40 Q And you knew that when you gave up the New York business and you started the co-part-

*Abraham A. Kauffer, cross.*

nership in Newark that the only money that Rothman had to put in in the Newark co-partnership would be whatever he had left out of the New York partnership? A Yes, sir.

Q You knew that; that was correct? A Yes, sir.

Q Rothman didn't have to put in any more than what he had in the New York co-partnership? A Why not? I was supposed to withdraw—put in less? 10

Q Rothman didn't have to put in any more. A Certainly, he was supposed to loan money, the same as I do, and bring it in and he did—I can prove that he made his father-in-law sign a note—he made his father-in-law sign a note to help the partnership to get merchandise, credit.

Q Wasn't that note signed at least a year before you ever started the Newark co-partnership—wasn't that in the New York business? A The note is here to prove it. 20

Q Wasn't the note long before you started the Newark partnership? A Yes, sir; I don't remember when the note was made; I do not remember. The note is here in evidence.

Q Will you answer my question? Was the note supposed to be put into the Newark co-partnership, or was the note discounted and made out long before you started in the Newark co-partnership? A It was made for the New York store. 30

Q Why do you mix it up with the Newark store? A Because I personally guaranteed that money.

Q Didn't Rothman personally guarantee it? A After I asked him to guarantee it he did.

Q Didn't Rothman guarantee it originally when the note was first made out? A After I 40

*Abraham A. Kaufer, cross.*

had seen that we are losing money I was worried about it and I asked him would he get me somebody to endorse this note; he says "Yes," and I asked him who would it be; and he said his father-in-law; I asked him has his father-in-law any real estate, is he good for it. He says,  
 10 "Yes; he owns a house on 12th street," and he went over with me and his father-in-law has signed this note. After I found out that his father-in-law didn't own no property.

Q Now will you answer my question? A Yes, sir.

Q When the note was first made out, it was made out by you and Rothman, was it not? A Yes, sir.

Q So that you both guaranteed this note? A  
 20 Yes, sir.

Q And this note was, that is, the proceeds of this note were used for the purpose of your New York co-partnership business? A Yes, sir.

Q At that time you didn't have in mind any Newark store, did you? A I had a Newark store in conjunction with it.

Q But you didn't have in mind any Newark co-partnership, did you? A No, sir.

Q And you were running the Newark store  
 30 for the partnership? A I was running the Newark store for the partnership? The Newark store was my personal property.

Q Why did you just say you were running it for the partnership? A No; I wasn't running it for the partnership.

The Court: You just said you were.

Witness: I made a mistake then. I went  
 40 in partnership; after I dissolved in New York I took the merchandise and took Mr.

*Abraham A. Kaufer, cross.*

Rothman as partner in Newark store, after I seen I was losing money—I lost everything I had in New York store—I wound up with nothing—what little bit was left, merchandise, I took the inventory and took it in the Newark store and take him in the Newark store for partner there.

10

Q This note which you now say was borrowed for the New York co-partnership is dated June 1, 1922, and I see it bears on the back an endorsement on December 1, 1922, "Kaufer's Fur Shop paid \$7,000 on account of this note," and that that is signed by Bertha Kromholtz, the payee. Was that \$7,000 taken out of the partnership money of Kaufer & Rothman at 449 Orange street? A Yes, sir.

20

Mr. Schotland: I offer this note in evidence.

(Paper marked Exhibit D. 2.)

Q Now, in the co-partnership account at 449 Orange street, the partnership did not take over or assume this \$10,000 debt on this note, Exhibit D. 2, did they? A It did so. Co-partnership make the note.

30

Q Now, was the proceeds of this note, the money you got for this note used to buy furs? A Yes, sir.

Q And didn't you have those furs in your Newark Orange street store? A No, sir; we had it in the New York store.

Q Those furs? A Yes, sir.

Q And you moved those furs over to Newark? A What was left.

Q How much was left? A According—there is an inventory for that purpose.

40

*Israel M. Pogash, direct.*

*Re-direct examination by Mr. Krohn.*

Q I want to call your attention to the endorsement on the back of this note that \$7,000 was paid by Kaufer's Fur Shops to Bertha Kromholtz. A Yes, sir.

10 Q That money was paid between September, 1923, and March, 1924? A That can be proved by the books.

The Court: Answer the question.

Q Was that \$7,000 paid between September, 1923, when you started the co-partnership—1922—when you started the co-partnership at 449 Orange street and March 17, 1923, when you broke up? A Yes, sir.

20 Q And to whom were those checks made payable? A To Bertha Kromholtz.

Q And who signed those checks? A Both of us.

Q You are sure about that? A I am almost sure—I am sure about that, yes, sir.

---

30 ISRAEL M. POGASH, sworn for complainant.

*Direct examination by Mr. Krohn.*

Q What is your business? A I am a public accountant.

Q What has your connection been with either Mr. Kaufer or Mr. Rothman? A I was their public accountant at the time of their partnership.

40 Q When did you first act for them? A I acted as the accountant at the New York store

*Israel M. Pogash, direct.*

and acted as their accountant when they came over here to Newark.

Q How long were you connected with them at the New York store? A Why, about a year or so I was doing their work in New York.

Q And did you individually handle their account or did you handle it as the junior of some firm? A I handled it as an employee of an accounting firm. 10

Q Who were they? A Flint & Krohn.

Q Are they certified public accountants in this State? A Yes, sir.

Q Will you examine this report, Exhibit D. 1, and tell me if you have seen that before? A Yes, sir.

Q Did you prepare that? A Yes, sir.

Q What is that report? A This is a statement—financial statement and statement of the portion of the New York firm of Kaufer & Rothman that came to the Newark partnership, formed in Newark by Kaufer & Rothman. 20

Q Does that report show the inventory of merchandise that was put into this new co-partnership business at 449 Orange street, Newark? A By whom?

Q By Kaufer. A The report shows the inventory to be worth \$13,688.57. 30

Q Does that contain the items of skins and values? A That contains items, individual items of skins, lining, storage, repairs and finished garments.

Q Does that report show any liabilities on that merchandise? A This report does show the accounts payable—its liabilities to customers on this merchandise.

Q How much were they—what were the items? A They total \$1,058.80. 40

*Israel M. Pogash, direct.*

Q Have you a list there of an indebtedness to Bertha Kromholtz? A No; I have none.

Q What is this contribution of \$13,000 made up of? A This is skins only, \$13,000.

Q Where were they? A At the Newark store.

10 Q Which store, 460 or 449? A As I understand it, Mr. Kaufer was running this new store—this new Orange street store—prior to the partnership agreement. These goods were in that store at the time.

Q Do you mean that the merchandise was moved from 460 to 449 before this co-partnership began? A Yes, sir.

Q And about how long before? A I don't know. It was there before I started working  
20 and I started before the formation of the partnership.

Q Did you have anything to do with this note of Bertha Kromholtz? A No, sir.

Q Ten thousand dollars? A No, sir.

Q Were the accounts of Mr. Kaufer and Mr. Rothman in the New York store settled before they began their new co-partnership venture in Newark? A The accounts were balanced, a statement taken of it showing their relative positions in the firm.  
30

Q What were their relative positions according to your report? A The report shows that. The report submitted to them shows that J. Rothman had a capital there of \$1,634.71, where Kaufer had a debit in his capital account—that is he withdrew more than he put in—by \$1,437.06.

Q That was to be the contribution to the new firm? A Yes, sir.

Q What did you make up this statement  
40 from? A Books and inventory taken.

*Israel M. Pogash, cross.*

The Court: A statement agreed upon by both parties?

Witness: Yes, sir.

Q Mr. Pogash, did you open the accounts of the new co-partnership in Newark? A Yes, sir.

Q And at that time did you have before you this agreement? This is a copy of the one in evidence. I refer to this agreement here, marked C. 1. A No, sir; I didn't have a copy of this before me. 10

Q Were you informed of this agreement? A No, sir.

Q In opening up the books what did you show as the capital investment of Kaufer and what did you show as the capital investment of Rothman? I am referring to the new co-partnership venture at 449. A I show that Rothman contributed nothing but his interest in the New York firm, \$1,634.71; Kaufer's contribution was his interest in the New York firm, which was a debit against him of \$1,437.06, and his interest in his Newark business. 20

The Court: Thirteen thousand plus?

Witness: That is not the exact amount. That shows, inventory and accounts payable, that his investment was \$15,059.77. 30

*Cross examination by Mr. Schotland.*

Q Mr. Pogash, as the accountant, you found and report in this exhibit that Kaufer and Rothman had each started their co-partnership with a contribution of \$4,000? A Yes, sir.

Q (The Court.) In New York? A In New York. 40

*Israel M. Pogash, cross.*

Q And there was no new capital contribution reported to you when the partnership was transferred to the Newark store at 449 Orange street, was there? A I do not understand your question, Mr. Schotland.

10 Q Was there any new cash put in by either party in the Newark business when they formed the Newark co-partnership? A Yes, sir.

Q What cash was put in by either one? A No; there was no cash, receivable, inventory and fixtures.

Q Now, what was done was that the entire co-partnership assets from New York was taken over bodily to the Newark store? A Yes, sir.

20 Q And an inventory was given to you of the assets of the Newark store which Kaufer was supposed to own irrespective of the New York partnership? A Yes, sir.

Q And you started the new partnership books on that basis? A Yes.

30 Q Which was Kaufer's investment in the new co-partnership business, \$13,688.57? A No; his investment was \$15,059.77—his equity in the Newark store—less \$1,437.06, his debit to his account, New York store, giving him a net balance of \$13,622.71, his investment in the Newark store.

Q In the New York co-partnership he had drawn out all of his capital and \$1,437.06 besides? A Yes, sir.

Q So that amount was deducted from the net value of his stock in the Newark store? A Yes, sir.

40 Q And that made on your capital account, a credit to Kaufer as his investment \$13,622.71? A Yes, sir.

*Israel M. Pogash, cross.*

Q And Rothman's investment was what you carried over from the New York co-partnership, \$1,634.71? A Yes, sir.

Q Now, did either Rothman or Kaufer tell you in making up your books that either one was to contribute any more money to that co-partnership in Newark? A No, sir. 10

Q And in apportioning profits and loss did either one tell you that you were to apportion them any differently than equal shares? A No, sir.

Q They told you to apportion them equally? A I suppose I went ahead and apportioned them equally.

Q Apportioned what equally? A Profit and loss.

Q Thereafter? A Thereafter. 20

Q In making up the current account? A Yes, sir.

Q After September, 1922? A Yes, sir.

Q In the Newark co-partnership? A Yes, sir.

Q With their mutual consent and understanding? A Yes, sir.

Q Now, Mr. Pogash, if, when the Newark co-partnership was started in September, 1922, if you had charge of an indebtedness of the co-partnership in addition—the Newark co-partnership—if you had charge of an indebtedness of the Newark co-partnership in addition to the liabilities that you show on Exhibit D of Exhibit D. 1, namely, accounts payable \$1,836.33, loans payable \$5,000, a \$10,000 indebtedness on a note, would Kaufer have had any investment in the co-partnership? A If this indebtedness was to be charged to Kaufer—if he had gotten the proceeds of this note, his investment of \$13,- 30 40

*Israel M. Pogash, cross.*

622.71 would have been reduced by \$10,000, leaving the balance \$3,622.71.

The Court: I do not get that.

10      Witness: There is a note liability of \$10,000. If Kaufer got the proceeds of that liability—of that note—if he got the \$10,000 and used it as his own and he wanted to put this on the partnership books, then he owed \$10,000 more.

The Court: The note was paid by the co-partnership, the \$10,000?

Witness: Seven thousand dollars was paid by the co-partnership, but it was charged among payments to Mr. Kaufer personally.

20      Q Only \$2,000 was charged to him personally?  
A \$5,000 was the liability of the New York store. If this liability had been set up on the books his capital would have been so much less. His capital was \$13,000 and if we show he owed \$10,000 on the notes, he would only have \$3,000 equity in the business.

30      The Court: How do those liabilities represent—how do they form a part of this arrangement?

Witness: Are you referring to the \$10,000?

The Court: No; the other.

Witness: The \$1,836.33 liabilities for merchandise.

The Court: From New York?

Witness: From both Newark and New York; that is the total.

40      The Court: Co-partnership liability?

*Israel M. Pogash, cross.*

Witness: We are talking about the Orange street store in Newark now, not of the failure.

The Court: 460 Orange?

Witness: The new store, 449.

The Court: What is the \$1,800 for?

Witness: I can make that pain, I think. 10  
In New York they had accounts payable, liabilities to creditors on merchandise, \$777.53. Mr. Kaufer had personal liabilities to creditors of \$1,058.80. If we add those together we get the liabilities of the partnership at the date of formation of the new partnership in Newark.

The Court: What is the \$1,000 for Kaufer?

Witness: He had liabilities. 20

The Court: Partnership liabilities?

Witness: No; personal liabilities.

The Court: 460?

Witness: Yes—no, at 449. I thought I made it clear that he was in business at 449 before the partnership had formed. That gives you the liabilities of the new partnership at 449.

The Court: How? I don't understand why Mr. Kaufer's thousand dollars should be—(interrupted). 30

Witness: Added to the other?

The Court: No.

Witness: Well, you see—(interrupted).

The Court: To the partnership. The parent partnership had liability of \$700, so each owed that.

Witness: Yes, sir. 40

*Israel M. Pogash, cross.*

The Court: Why should the two-one Kaufer's liability and one the partnership—(interrupted).

10 Witness: You are right on that. I will make that clear in just a moment. Mr. Kaufer contributed \$13,000 in the inventory, merchandise.

The Court: It would be a deduction of a thousand dollars, if Kaufer assumed it.

Witness: In addition to that he contributed \$586 in accounts receivable, moneys owed to him; furniture and fixtures valued at \$1,870; so in the total he contributed \$16,118.57.

The Court: Deduct—

20 Witness: A thousand dollars gives him a contribution of \$15,059.77.

The Court: And that \$5,000, what was that?

Witness: That is a liability of the New York store—the New York partnership, \$5,000 loans payable, Sturnhop, \$5,000.

The Court: Did the new partnership assume that?

Witness: Yes, sir.

30 The Court: What about this ten thousand-dollar note? You said if Kaufer got it—what do you mean by—what do you know about it? Was that a New York partnership liability?

Witness: I don't know, your Honor.

The Court: How does it figure in your accounting?

40 Witness: It didn't figure at all. As far as I am aware this was a personal liability of Mr. Kaufer.

*Israel M. Pogash, cross.*

The Court: Yes; was it paid?

Witness: Well, now, he had this at the time of the formation of the partnership.

The Court: Of the New Jersey partnership?

Witness: Yes, sir. But this wasn't put on the books at that time. 10

The Court: Understood to be his liability?

Witness: Yes, sir.

The Court: And as I recall your former testimony, some part of the proceeds of the New Jersey partnership was used to pay some part of that note?

Witness: Yes, sir. 20

The Court: How much?

Witness: Ten thousand dollars of the New Jersey partnership was used to pay this note. Upon the payment—I don't remember just—(interrupted).

The Court: That was withdrawal of so much of Kaufer's capital.

Witness: Yes, sir; that is it exactly.

The Court: All right. I got it. 30

Mr. Schotland: It was not charged to him, however; \$2,000 was charged to him.

The Court: But you understand \$7,000 was taken out of the firm to pay Kaufer's \$10,000.

Mr. Schotland: No. This witness claims he is not familiar with this. He didn't see that agreement, didn't see the note.

The Court: Did he get the money from Mrs. Kromholtz? 40

*Abraham A. Kaufer, recalled.*

Mr. Krohn: No, sir; he did not. I can offer Mr. Kaufer again.

The Court: Let us find out about it.

10 ABRAHAM A. KAUFER, recalled.

*By the Court.*

Q Why was that ten thousand dollar note made? A It was paid back—for a loan.

Q Why was the ten thousand dollar note executed—why? A For merchandise which I had to buy. We paid for the merchandise. I loaned that money to pay for merchandise.

20 Q You borrowed money to buy merchandise for the New York store? A Yes, sir.

Q It was not for your own use? A No, sir.

Q Not to buy merchandise for Newark? A For the partnership—for the New York store.

*By Mr. Krohn.*

Q This note is dated June 1, 1922; is that the date on which it was made? A Yes, sir.

30 Q And that was about four months before the formation of this new co-partnership in Newark? A Yes, sir.

Q And this note is signed "Kaufer-Rothman." Who signed that? A I did.

Q It has the endorsement on the back of "C. Bernstein." A That is his father-in-law.

Q "A. Kaufer" that is your signature? A Yes, sir.

40 Q "J. Rothman" that is someone else's signature? A Mr. Rothman's signature.

*Abraham A. Kaufer, re-direct.*

*By the Court.*

Q Why was a coat bought by Mrs. Kromholtz for \$395, \$250 charged to you as against interest on this note? A I do not remember, your Honor, why—how. I didn't charge. I never done anything without the consent of my partner.

Q There was a \$250 coat bought by Mrs. Kromholtz and she paid for it by interest on this note—crediting you with interest on this note and the item was charged against you by the Master; how does that come about? A I don't know. It wasn't supposed to be charged against me, your Honor. 10

*Re-direct examination by Mr. Krohn.*

Q You took exception to the report of the Master that you should be charged with that two hundred and fifty dollars. 20

The Court: The Master found—(interrupted).

Mr. Krohn: The situation was that Bertha Kromholtz is a relative and bought a coat and we had that as an account receivable.

The Court: She got a credit of interest on this note and charged to Kaufer. 30

Mr. Krohn: That was Mr. Schotland's contention and it was sustained.

Q Did the firm after September, 1922, continue liable on this ten thousand dollar note of Bertha Kromholtz dated June 1, 1922? A Yes, sir.

Q Is that why payments of seven thousand dollars were made to Bertha Kromholtz? A Yes, sir. 40

*Abraham A. Kaufer, re-direct.*

Q From September, 1922, to March, 1923?

A Yes, sir.

Q And those checks of seven thousand dollars to Bertha Kromholtz were signed by both you and Rothman? A Yes, sir.

10 The Court: Does the firm still owe Mrs. Kromholtz three thousand dollars?

Witness: It was charged to me.

The Court: Why?

Witness: I don't know, your Honor.

Q Do you know whether Mrs. Kromholtz filed with the receiver a claim for that three thousand dollars? A I think she did and she is holding me liable for it if she don't get it. She says—  
20 (interrupted).

The Court: Where was the charge to you? What do you mean? Where and by whom was it charged to you?

Witness: By the bookkeeper.

Q If this note was to continue a co-partnership liability after September, 1922, why didn't you write it down on the books of the co-partnership—why didn't you instruct the bookkeeper to put it in that form? A I don't remember whether I did or not. If I did it is on the books.  
30

The Court: It is on the books?

Witness: It is over three years now, and I don't remember how it was charged to me or why it was charged to me or was it still an open debt. It is still an open debt. I don't remember what happened to it. The  
40 books will show everything. We kept books

*Abraham A. Kaufer, re-direct.*

and from time to time a certified accountant took off everything off my mind; I shouldn't have to worry and things—everything should be straight.

Q Was this report of the accountant that has been offered in evidence, September, 1922, made before or after or at the time this partnership agreement was written? A The report shows the date when it was made. 10

Q I am asking you whether it was made after or when it was made? A After.

Q The report is dated September 7, 1922. Is that the date it was submitted to you? A Yes, sir.

Q And the agreement is dated September 1, 1922. Is that the day on which it was made? A Yes, sir. 20

Q In starting this co-partnership at 449 Orange street, Newark, September 1, 1922, what did you understand that your contribution to the capital of the firm was?

Mr. Schotland: I object.

The Court: Let us have something. I have got to have something.

A I do not quite understand. 30

Q At the time you started this partnership business at 449 Orange street, Newark, September, 1922, what was your contribution? A My contribution was supposed to be four thousand dollars, and the firm was supposed to take over all the liabilities and debts what is over that amount.

Q How do you arrive at four thousand dollars? A Because Mr. Rothman had put in—was supposed to put in about four thousand dollars 40

*Abraham A. Kaufer, re-direct.*

and twenty-five hundred dollars more. He had four thousand dollars when we started in New York and we lost in New York, and after we dissolved our New York store Mr. Rothman only had sixteen hundred dollars and we were—(interrupted).

10 Q Forget for a moment about how much Mr. Rothman was to put in. How did you arrive at the amount that you were going to put into Newark? You say you were to put in four thousand dollars. How do you get down to that amount? A Well, I had merchandise.

The Court: I will send this to Mr. Meyers. It is all accounting, isn't it?

Mr. Krohn: I hope you will not. I think we can make it sufficiently clear.

20 The Court: You may make it clear to him, but you cannot get it into my head—not at the present time. This man will tell you anything—use any sort of figure that comes into his head and any sort of answer that is agreeable to him.

30 Q You say you were to put in merchandise in this new business September 1, 1922? A Yes, sir.

Q And was that merchandise to be inventoried? A Yes, sir.

Q And was it inventoried? A Yes, sir.

Q And how much, about, was that inventory? A Seventeen thousand dollars.

40 Q How much were you to put in in all? What was your net as against Rothman's net? What was the net amount you contributed to the Newark partnership September 1, 1922? A This statement shows it.

*Abraham A. Kaufer, re-direct.*

Q How much? Read it. A Kaufer investment, four thousand dollars; additional profits twenty-seven twenty-seven less drawing.

The Court: What is this, do you know?

Mr. Schotland: It is the New York partnership account—statement he is reading; 10 shows they each invested four thousand dollars.

Q You say the inventory of merchandise which you put into this business was seventeen thousand; is that correct? A According to the statement it is. As far as I can remember the statement shows exactly what I had and what I took out from the other store and put it in the new partnership.

Q Did you owe any money on that merchandise? A Yes, sir; I did. 20

Q How much? A According to the statement—if you will let me see the statement I will tell you how much.

Q Do you find a liability of ten thousand dollars to Bertha Kromholtz?

The Court: Is it there?

Witness: No, sir; I didn't find it yet. 30

Q Is that liability there? A No, there isn't, in that report.

The Court: Now, you are as bad as the witness. The liability on 460 Orange street, ten thousand dollars. You have asked him is there a liability of that amount? You may not have had any reason for asking the question, Mr. Krohn; is there a liability of that amount? 40

*Abraham A. Kaufer, re-cross.*

Mr. Krohn: There is, but not in that report. I think the situation is perfectly clear.

*Re-cross examination by Mr. Schotland.*

10 The Court: I want to know whether this ten thousand dollars was a debt of his own on 460. That is apparently in line with the old testimony that I can remember.

Q Didn't you testify before Mr. Meyers that this ten thousand dollars to Mrs. Kromholtz was an indebtedness that you owed her? She is your sister, is she not? A Yes, sir.

Q That was money that you owed her, which you took over personally in order to make your contribution to the partnership \$13,622, as it reads on the accountant's report? A Yes, sir.

Q Didn't you testify to that? Isn't that the fact? A I don't remember whether I—(interrupted).

Q Isn't it the fact, whether you remember how you testified or not? Isn't that the fact? A I don't remember what I testified. It is over a year ago. How could I remember what I testified, your Honor? I swear I am going to state the truth.

30

The Court: Is the ten thousand dollars to Kromholtz and this note we are talking about one and the same item?

Mr. Schotland: One and the same item.

Q What is the fact? A The fact is I have loaned that money—(interrupted).

The Court: Borrowed the money.

40 Witness: Borrowed the money and put it in to pay for merchandise.

*Abraham A. Kaufer, re-cross.*

The Court: In 460?

Witness: Yes, sir; New York store, your Honor. And I brought the merchandise over to 449 Orange street. I borrowed the money when I was in partnership to pay for the merchandise.

The Court: Now, the inventory of 460 was \$17,000? 10

Witness: Yes, sir.

The Court: And you owed this ten thousand dollars on that?

Witness: Yes, sir.

The Court: That is, the ten thousand dollars is represented by part of that inventory of merchandise you put in 449 Orange street?

Witness: Yes, sir. 20

Q So, if you took credit—(interrupted).

The Court: Do not argue it any more. That answers it. In other words, if there is an inventory of seventeen thousand dollars and he owed ten thousand dollars, then his net inventory was seven thousand dollars?

Mr. Schotland: Yes, sir.

The Court: That is in line with that coat purchase? 30

Mr. Schotland: That was his personal indebtedness to her; that is the reason the coat was charged to him. That is all.

*Samuel Kaufer, direct.*

SAMUEL KAUFER, sworn for complainant.

*Direct examination by Mr. Krohn.*

Q Did I examine you before? A No, sir.

Q You are a member of the Bar of this State?

10 A Yes, sir.

Q Is this your signature as subscribing witness to this partnership agreement? A It is.

The Court: It should have been written on the books; kept off, I suppose, so it would not show up.

Mr. Schotland: That is what his testimony is.

The Court: Where?

Mr. Schotland: Before the Master.

20

The Court: Are you going to put that in here?

Mr. Schotland: I think it ought to go in.

The Court: I think it ought to be in unless you can agree upon that being the fact.

Mr. Krohn: That is the fact. I can refer to the page.

30

The Court: That is the fact?

Mr. Krohn: Yes, sir.

The Court: I asked you some time ago whether this ten thousand dollars was not this man's individual debt and you said "No"; now you say it is.

Mr. Krohn: I probably didn't understand your Honor. There was at least eight or nine pages of testimony and Mr. Schotland's cross examination on that very point.

40

The Court: Now I can see daylight.

*Samuel Kaufer, direct.*

Q Mr. Kaufer, I call your attention to the blank space at the 12th line of the first page of this agreement with reference to the amount that each partner should put in. Will you read that and explain the circumstances of that omission?

A Beginning from where?

Q As to capital. A As to the capital with which the firm was to commence business, each of the said partners shall contribute the sum of blank the said Jacob Rothman's proportion shall be in the form of cash, while the said Abraham A. Kaufer's shall be in the form of merchandise now owned by him and located 449 Orange street, said location being the business place of the co-partnership. The value of the said merchandise shall be determined by audit and inventory.

Q Why didn't you fill in that space before having the agreement signed? A The facts in that case were that Mr. Rothman and Mr. Kaufer came to my office as I remember it, and requested me to draw a co-partnership agreement. I took the facts. I asked them how much each was to put into the partnership. They both told me that Mr. Kaufer was to move his private stock of goods into the partnership that he had moved from 460 to 449 a little previous to the time he made the partnership with Mr. Rothman at 449; that he didn't know the value of his contribution until the bookkeeper or the accountant went over the books. I at that time told them why not wait until you get the report and Mr. Kaufer says—said, "Why, I really don't need any paper with him at all; I was in partners with him in New York and I trust him; I don't even need it, but just to make it legal," he says, "I might as well sign it." He says, "When we get the report

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*Samuel Kaufer, cross.*

from the auditor we will fill it in." Now, that is what I remember as to that.

10 Q That agreement refers to an inventory and it also referred to an audit. Was there anything said about the inventory at the time you had this agreement signed? A I am not so very clear as to that now, but I do know that they both said they were waiting the audit of the accountant, and that was not ready.

Q What did you understand that audit would disclose? A That would disclose the equity.

Mr. Schotland: I cannot see how that would bind anybody what this witness thinks the audit would disclose.

Mr. Krohn: I will withdraw the question.

20 Q Did either Mr. Kaufer or Mr. Rothman at the time of signing this agreement tell you of the purpose of that audit? A Yes, sir.

Q What was it? A It was to determine the equity of Mr. Kaufer in the furs.

Q The furs that he would contribute to the new business? A He would contribute to the new business.

30 Q And did they tell you what Mr. Rothman was to put into the new business? A He was to put in an equal amount in cash.

Q To make it equal with—(interrupted). A To make an equal investment.

*Cross examination by Mr. Schotland.*

Q Who said that? A Both. That is why I said they each should put in a blank amount.

40 Q Just a moment. Did you draw the red ink lines on this duplicate of the contract? A I did not.

*Jacob Rothman, direct.*

Mr. Krohn: Does your Honor want any testimony from the receiver that there is a claim filed with him by Bertha Kromholtz?

The Court: No. It was, on its face, a partnership debt. Of course she would file it against—(interrupted).

Mr. Schotland: On its face it was a New York proposition. 10

The Court: All one thing.

COMPLAINANT RESTS.

JACOB ROTHMAN, sworn for defendant.

*Direct examination* by Mr. Schotland.

Q Mr. Rothman, at the time when the agreement D. 1, dated September 1, 1922, between you and Kaufer was drawn up, what was the understanding between you and Kaufer—what was the arrangement between you as to what each was to put into this 449 Orange street store? A As much inventory as there is of the Newark store should be put into the partnership and as much money as is left over of the New York store shall be carried over in the one business, combined in the one business, and equal partners, because I was with Mr. Kaufer three years before that. 20

Q You say you were a partner with him before September 1, 1922? A Yes, sir.

Q In what store? A At 460 Orange street and 202 West 28th street, New York. 30

Q The whole business? A The whole business was partnership and Mr. Flink and Krohn was the accountants. At that time Mr. Pog- 40

*Jacob Rothman, direct.*

ash was not working for Flink & Krohn, but there was an accountant by the name of Schwen working for Flink & Krohn and he kept both sets of books for 460 and West 28th street.

Q So you were equal partners all the way through? A Equal partners all the way through.

10

The Court: If that was so why did you agree in writing that he should contribute his Orange street store stock as his contribution to the new firm?

20

Q Do you understand the question? Why did you agree in the co-partnership that Samuel Kaufer drew up that Kaufer was to contribute the merchandise in the Orange street store according to the inventory? A At that time we didn't have any agreement at all. We stood without an agreement. Everything was with us. The only thing—his daughter was bookkeeper—Mr. Kaufer's daughter was bookkeeper to 460—449—and he had a strange bookkeeper at 202 West 28th street.

Q You had no written agreement at all? A We had no written agreement whatsoever.

Q For the partnership before that? A For the partnership before that.

30

Q So you were taking in what was over here in Kaufer's own name. A Right.

Q Because it was part of the partnership property? A Part of the partnership property.

40

The Court: Why was he to be given credit for it then in the new partnership, if that is so? Why was he to be given exclusive credit for it if you are telling the truth now?

*Jacob Rothman, direct.*

Witness: Because Mr. Kaufer never gave me any account of the store 460 Orange street. He always said it doesn't show any profit at all.

The Court: If the Orange street store was part of the New York partnership, why did you in this new agreement arrange to give Kaufer credit for the amount of his stock in that store as his contribution? 10

Witness: Because Mr. Kaufer claimed this was the same amount. He claimed it will figure, the amount invested at first at 460 when we started the partnership—when we started the partnership 460 and 202 28th street, Mr. Kaufer claimed at that time he had the books—that the books would prove he had about seventeen thousand dollars inventory and I invested four at that time; everything should be combined into the one store, and since then he said that the retail store didn't show any profit. 20

Q The Newark store was retail? A Newark store was retail and New York was wholesale, dealing in skins.

Q Then you say that you were absolutely equal partners? 30

The Court: In the profits, yes.

Q In the profits and in the assets of this store 499 Orange street? A Equal partners in the store 449 Orange.

Q Capital investment? A Capital investment and everything.

The Court: Notwithstanding he put in thirteen thousand and you put in sixteen 40

*Jacob Rothman, direct.*

hundred, you were to be equal owners in the capital?

Witness: I put in four thousand.

The Court: In New York?

Witness: In New York. That is what my investment was when we started up the partnership, four thousand dollars.

10

Q How did you come to invest the four thousand dollars? What was the arrangement between you and Kaufer? A As much money as I have I shall invest and I had four thousand dollars and I invested four thousand dollars.

Q How much was his investment? A As much as he had. At that time he had around sixteen or seventeen thousand dollars invested in the old inventory. What he had invested should go in the co-partnership.

20

The Court: With respect to Newark?

Witness: 460 Orange street including.

Q You claim you were partners all the time in both the Newark and the New York business?

A Yes, sir.

Q And that the Newark business was not Kaufer's own business? A No, sir.

30

Q Why do you say he had assets of sixteen thousand dollars—or inventory of seventeen thousand dollars that belonged to him? A Before I started out with him while I was working for him yet—I was working at 460 Orange street for him, too.

Q You were working for him at 460 Orange street? A Orange street.

Q Before the New York business was started?

A Before the New York business was started.

40

*Jacob Rothman, direct.*

Q And that is when you made the arrangement to become partners? A Right.

Q In both businesses? A Both businesses.

Q Now, what if anything, was said—(interrupted).

The Court: Before the New York business started? 10

Witness: Before the New York business started, yes, sir.

Q Now, what, if anything, was said between you and Kaufer about your rights and his rights in all of the partnership assets when you only put in four thousand dollars and he put in the Newark store? A It should be equal partnership, otherwise I would never went into the business, because I had an agreement with Mr. Kaufer—(interrupted). 20

The Court: Half of his sixteen thousand dollars was to be yours?

Witness: He should invest all the money that was necessary and I should invest four thousand dollars, because that was all the money I had. 30

The Court: Of the twenty thousand dollars you were to own ten thousand the moment you invested four, is that your understanding? He had sixteen, you had four, that made twenty thousand dollars capital, didn't it?

Witness: Yes, your Honor.

The Court: The moment you put in your four were you to be the owner of ten thousand dollars of the twenty-thousand capital? 40

*Abraham A. Kaufer, direct.*

Witness: That was the understanding—that was the agreement.

Q What was that based on, that understanding? A That was based on because I was working for Mr. Kaufer, and—(interrupted).

10 Q What were you drawing when you were working for him? A A hundred and seventy-five, 200, 210.

Q A week? A A week.

Q How much did you draw under the partnership? A Seventy-five.

Q And all the rest of your earnings went into the partnership? A Right. I had an agreement with Mr. Kaufer before I went into the partnership of \$5,000 a year. If I didn't feel like going into the partnership there, Mr. 20 Kaufer said he would guarantee me five thousand a year and ten per cent. profit, and I will prove that, too.

Q That is how that partnership was made up? A That is how that partnership was made up.

(No cross examination.)

30

ABRAHAM A. KAUFER, recalled in rebuttal.

*Direct examination by Mr. Krohn.*

Q This business at 460 Orange street, Newark, was Mr. Rothman your partner in that business ever? A No, sir.

Q What connection did he have with that business? A He had been working for me; that 40 is all. No connection whatsoever.

*Abraham A. Kaufer, cross.*

Q What was the most he ever made a week in that business? A With overtime, about a hundred dollars.

Q Did he ever make as much as \$200? A Not to my knowledge.

Q Did he ever make over a hundred and seventy-five or two hundred? A Never; no man made that yet. 10

Q When you went into the partnership he says you put in \$16,000 and he put in four thousand, then you were to split up even the capital? A No, sir.

The Court: Any arrangement of that kind?

Witness: No, sir.

The Court: You don't look like a man that would give away \$6,000. 20

*Cross examination by Mr. Schotland.*

Q When he started to work for you, didn't you pay him a hundred and ten dollars a week by contract, originally, as wages? A No, sir.

Q What were his original wages? A One hundred dollars a week—seventy-five, originally, but a hundred dollars with overtime. 30

Q You have still got your books, haven't you, from 460 Orange street? A No, sir; Mr. Rothman took the books. He took all the books laying there; I haven't got it. Mr. Rothman took the books with the merchandise when he moved the merchandise—took his books, my books and all the books that were there.

*Israel M. Pogash, direct.*

ISRAEL M. POGASH, recalled for complainant.

*Direct examinatioin* by Mr. Krohn.

Q Mr. Pogash, will you tell us what the books disclosed as to this \$5,000? A No, sir.

10 Q What was the proof before the Master? Did you appear before the Master? A Yes, sir.

Q And before the Master was the \$7,000 paid on the Kromholtz note out of the proceeds of the firm's operations charged to Mr. Kaufer? A I haven't seen the Master's report. I don't know whether it was or not. I testified that it was charged against Mr. Kaufer.

Q You haven't seen his report? A No.

Q Could you from his report tell whether there had been any charge to Mr. Kaufer? A  
20 Yes, sir.

The Court: Does it appear there by name?

Witness: No; it appears here in the schedule showing Mr. A. Kaufer's capital account, showing the original contribution, \$13,000, withdrawals \$6,393—in those withdrawals I have the totals of those withdrawals—they show as to payments to  
30 Kromholtz as follows: December 20th, \$500; December 1st, \$2,000; January 2nd, \$1,000; January 4th, \$1,500. That totals \$5,000. That is all I see in here.

The Court: The Master's amount is—  
(interrupted).

Witness: Sixty-three hundred.

The Court: How is that made up?

Witness: That is two pages of accounts.

40 The Court: Small items there?

*Israel M. Pogash, direct.*

Witness: Yes, sir.

The Court: Appears on pages (interrupted).

Witness: 41 and 42 of the general ledger, making a total of \$6,393.17.

Mr. Schotland: If this seven was included—(interrupted). 10

The Court: Five included.

Mr. Schotland: But there was seven.

The Court: What about that?

Witness: I don't know. It might be in this account in some other items.

Mr. Schotland: There is a lot of items which we proved should be charged to him to make up the 6,300.

(Adjourned until tomorrow morning). 20

April 7, 1926.

Continuation of hearing pursuant to adjournment.

Testimony closed.

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*Order Re-referring Accounting to Special Master.*

**Order Adjudicating Partnership Agreement and  
Re-referring Accounting to Special Master  
for Final Statement.**

Filed June 9, 1926.

10 It appearing that a report of Charles M. Myers, Special Master, herein, dated March 16, 1926, re-stating an accounting taken between the partners, was confirmed by an order in that behalf entered on March 24, 1926; and this cause now coming on for final hearing this 7th day of April, 1926, in the presence of Herman Krohn, solicitor of the complainant, and Herbert J. Hannoeh, of counsel with complainant, and Philip J. Schotland, solicitor of the defendant; and the Court having read the partnership agree-  
20 ment, dated September 1, 1922, between the parties to this cause and having taken testimony and heard the argument of counsel with respect thereto, and being of the opinion that such partnership agreement determines that the partners share profits and losses equally and capital invested in the proportion in which they contributed the same;

30 It is on this 9th day of June, 1926, ORDERED, ADJUDGED and DECREED that the partnership agreement of September 1st, 1922, determines that on dissolution of the partnership and distribution of its assets, the complainant and defendant do share profits and losses equally and capital invested in the proportion in which each of them contributed the same; and

40 It is ordered that it be referred to Charles M. Myers, Special Master, to re-state the account of said partners in accordance with the above adjudication construing the terms of partnership agreement with respect to the sharing of

*Order Re-referring Accounting to Special Master.*

profits and losses and capital; and in case the report of the Special Master, dated March 16th, 1926, has been prepared in anticipation of and in accordance with the above adjudication of the partnership agreement, that he accordingly certify the same.

It is further ordered that the Special Master be and he hereby is directed to submit his final report within five days from the date hereof. 10

Application being made that the salary claims of the partners be computed in the statement of such final account between the partners, the Special Master is hereby directed to report the same accordingly.

E. R. WALKER,  
C.

Respectfully advised, 20

JOHN H. BACKES,  
V.-C.

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*Final Report of Special Master.***FINAL REPORT OF SPECIAL MASTER.**

Filed July 14, 1926.

In pursuance of an order of this Court bearing date the 8th day of June, 1925, whereby it was ordered, adjudged and decreed that the  
10 partnership agreement of September 1, 1922, determined that on dissolution of the partnership and distribution of its assets the complainant and defendant shared profits and losses equally and capital investment in the proportion in which each of them contributed thereto and whereby it was referred to the subscriber, a Special Master of this Court, to re-state the account of the said partners in accordance with the above adjudication, construing the terms of  
20 the partnership agreement with respect to the sharing of the profits and loses and capital, and directing the Special Master to compute the salary claims of the partners in the statement of such final account.

I do find and report that the net contribution of the complainant to the said co-partnership was \$6,086.54 after deducting from his original contribution the withdrawals amounting to the sum of \$1,144 charged against him in the report  
30 of the Special Master dated April 22, 1925.

And I do further find and report that it appears by the books and the report of the accountants that the losses incurred from operations for the period between September 1, 1922, and March 17, 1923, which was the duration of the partnership business, amounted to \$2,207.96, and that each of the partners should be charged with one-half thereof.

And I do further find and report that the loss  
40 in the net assets of the partnership between

*Final Report of Special Master.*

March 17, 1923, and the date hereof by the liquidation of the partnership business through receivership proceedings, was the sum of \$3,464.32 and that each of the said partners should be charged with one-half thereof, a total loss to be chargeable to the complainant being the sum of \$2,927.14.

10

And I further find and report that the balance of the contribution of the complainant after deducting the amounts hereinabove set forth is the sum of \$3,059.40.

And I further find and report that the complainant and defendant are each entitled to a credit of \$731.09, being one-half of the profits of \$1,462.19 arising from adjustments made by the Special Master in his previous reports.

And I do find and report that there is due to the complainant the sum of \$528.57, being five and two sevenths weeks' salary from February 8, 1923, to March 17, 1923, at the rate of \$100 per week.

20

And I do find and report that there is due to the defendant the sum of \$396.43 for salary for the same period at the rate of \$75 per week.

And I do find and report that the interest of the complainant in the partnership assets after making the deductions and additions hereinabove referred to, is the sum of \$4,419.06.

30

I do further find and report that after charging the defendant with the sum of \$4,989.75, being the difference between the amount of inventory on hand on March 8, 1923, and the amount taken by the receiver, together with the amount of losses hereinabove referred to, there was a deficit in his capital contribution of \$6,311, from which should be deducted the profits, salary and payments made by the defendant

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*Final Report of Special Master.*

amounting to \$1,891.94, leaving the sum of \$4,419.06 as the amount of deficit of the defendant in the partnership assets.

Attached hereto is a statement of the contribution of each of said partners together with the charges and allowances made by the Special  
 10 Master in his previous reports.

Respectfully submitted this fourteenth day of July, nineteen hundred and twenty-six.

CHARLES M. MYERS,  
 Special Master in Chancery of New Jersey.

## ABRAHAM KAUFER

	Original contribution .....	\$13,622.71
	Withdrawals .....	6,392.17
		<hr/>
		\$ 7,230.54
20	Withdrawals—(See Special Master's Report of March 16, 1925) .....	1,144.00
		<hr/>
		\$ 6,086.54
	Charges	
	One-half of loss Sept. 15, 1922—March 17, 1923 .....	\$1,103.98
	One-half of loss March 8, 1923—June 30, 1926 .....	1,823.16
		<hr/>
		\$ 2,927.14
		<hr/>
		\$ 3,059.40
	Profits arising from adjustments detailed in Master's Reports—March 16, 1925 and Apr. 19, 1926—One-half .....	731.09
30	Salary Feb. 8 to Mar. 17, 1923 .....	528.57
		<hr/>
		1,259.66
		<hr/>
	Amount of Kaufer's interest in partner- ship for which he is entitled to decree against Rothman .....	\$4,419.06
		<hr/>

*Final Report of Special Master.*

## JACOB ROTHMAN

Original contribution .....	\$ 1,634.71	
Withdrawals .....	28.82	
	<u>\$ 1,605.89</u>	
Withdrawals (See Special Master's Report of April 19th, 1926)		
Inventory .....	\$ 4,989.75	
One-half of loss		
Sept. 15, 1922—Mar. 17, 1923.....	1,103.98	10
One-half of loss		
Mar. 18, 1923—June 30, 1926.....	1,823.16	
	<u>7,916.89</u>	
Deficit in capital .....	\$6,311.00	
Profits arising from adjustments detailed in Master's Reports of Mar. 16, 1925 and April 19, 1926—One-half .....	731.10	
Salary Feb. 8th, to March 17, 1923.....	396.43	
Payment to Al. Klein .....	246.66	
Payment to Receiver .....	517.75	
	<u>1,891.94</u>	
Amount of deficiency which is owing by Rothman to Kaufer .....	\$4,419.06	

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*Decree Confirming Final Report.***DECREE CONFIRMING SPECIAL MASTER'S  
REPORT OF JULY 14, 1926.**

Filed July 20, 1926.

10 This matter coming on to be heard in the presence of Herman Krohn, solicitor of complainant, and Herbert J. Hannoeh, of counsel with complainant, and Philip J. Schotland, solicitor of defendant not appearing, although noticed, on application of complainant to confirm the final report on partnership accounting of Charles M. Myers, Special Master, dated July 14, 1926,

20 It is on this 20th day of July, 1926, on application of Herman Krohn, solicitor of complainant, ordered, adjudged and decreed that the final report of the Special Master on partnership accounting dated July 14, 1926, and all of the matters and things therein contained, stand ratified and confirmed; and

It is ordered, adjudged and decreed that there is due the complainant Abraham Kaufer from the defendant Jacob Rothman, the sum of \$4,419.06; and

30 It is further ordered, adjudged and decreed that the defendant Jacob Rothman pay to the complainant Abraham Kaufer such sum of \$4,419.06, together with taxed costs of suit within ten days from the entry of this decree and service upon him of a true but uncertified copy thereof, and that in default of such payment, execution do issue according to the practice of this Court and the statute in such case made and provided.

E. R. WALKER,  
*Chancellor.*

JOHN H. BACKES,

V.-C.

*Opinion of Vice-Chancellor.*

**OPINION.**

Filed December, 1926.

**BACKES, V.-C.**

The matter is before the Court to confirm the master's report and for the construction of the partnership agreement: 10

1. After the decision sustaining exceptions to the master's report (98 N. J. Eq. 467) the case was re-referred to the master, who, conformably, reported the value of the merchandise at \$6,444, as per inventory, and after deducting \$150, the value of merchandise sold by the firm after the inventory was taken, and \$1,304.25, the value of the goods that came to the receiver's hands, charged the defendant with the balance, \$4,989.79, and to this there seems to be no objection, except that it is insisted that the appraisement should not have been made, as it was, on "going business" prices but on a dissolution price basis, as the firm was about going out of business. The distinction, if there is one, is not judicially noticeable, and no evidence appears from which it may be deduced. 20

2. Kaufer borrowed \$10,000 from a Mrs. Krumholtz, with which he purchased merchandise, and is reflected in his original contribution of \$13,622.79, as shown by the master's report. This loan was a personal obligation, although evidenced by co-partnership papers. It formed no part of the accounting between the partners and has not been included, save that it appeared that the partnership from time to time paid on account of the debt a total of \$5,000 and interest, and this was charged against Kaufer and is included by the master in the withdrawal charges 30 40

*Opinion of Vice-Chancellor.*

10 against him of \$6,392.17 and \$1,144, \$2,000 was evidently paid on account by Kaufer—obviously not by the firm—and for the balance Kaufer concedes his personal liability, although Mrs. Krumholtz has filed a claim for the sum with the receiver of the firm. The personal liability of Kaufer was found in the earlier decision in which he was charged with \$250, the price of a fur coat sold by the firm to Mrs. Krumholtz and for which Kaufer took credit on account of interest on his debt.

20 Rothman claims he paid Al. Klein, a creditor of the firm \$647.23, which the master allowed in an earlier report, but on exception was disallowed, with leave to furnish better proof (98 N. J. Eq. 467). The books show the firm owed Klein \$246.66, which the master allowed in his later report. Rothman protests that he should have credit for the larger sum. Upon the proofs the master would have been justified in rejecting the claim in its entirety.

30 The point is made that Kaufer should not have been given credit for contribution to the firm of merchandise amounting to \$13,622.71, and that Rothman should have been credited with \$4,000 as his contribution instead of \$1,634.71. The proofs amply support the finding of the master in these respects.

40 The contract of co-partnership provides that “at the expiration of one year period of the co-partnership, and in the event that it is mutually decided to discontinue the partnership, the said Abraham A. Kaufer is to retain the aforesaid business and said Abraham A. Kaufer is to pay to the said Jacob Rothman one-half of the physical assets of the firm at the termination of the co-partnership.” This was predicated upon

*Notice of Appeal.*

the terms of the agreement that the partners were to make equal contribution to the capital. The amount was left blank in the contract. Kaufer contributed \$13,622.71 as against Rothman's \$1,634.71. Rothman contends for a literal performance of the terms and an equal division. Manifestly, that would be unjust. A decree will be advised in accordance with the report of the master and the views here entertained. 10

**NOTICE OF APPEAL.**

Filed July 30, 1926.

To Herman Krohn, Esq., 763 Broad St., Newark, N. J., solicitor of complainant.

Dear Sir: 20

PLEASE TAKE NOTICE, that Jacob Rothman, the defendant in the above-entitled cause, hereby appeals from the final decree made in this Court by the Chancellor on the advice of Vice-Chancellor John H. Backes in the above stated cause, and from the whole and every part thereof, to the Court of Errors and Appeals, in the last resort of all causes.

MILTON M. UNGER, 30  
Solicitor of Defendant.

I consider that there is a good cause for appeal in the above suit.

MILTON M. UNGER,  
Of Counsel with Defendant.

Due and legal service of the within notice of appeal is hereby acknowledged this 30th day of July, 1926.

HERMAN KROHN, 40  
Solicitor of Complainant.

*Petition of Appeal.*

**PETITION OF APPEAL.**

Filed September 16, 1926.

**New Jersey Court of Errors and Appeals**

10 *Between*

ABRAHAM KAUFER,  
*Complainant-Appellee,*

*and*

JACOB ROTHMAN,  
*Defendant-Appellant.*

*On Appeal  
from Court  
of Chancery.*

*Petition of  
Appeal.*

20 *To the Honorable Court of Errors and Appeals  
in the last resort in all causes;*

The petition of Jacob Rothman, the appellant in the above-entitled cause, respectfully shows that:

30 I. The petitioner finds himself aggrieved by a certain final decree confirming the report of a Special Master made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date of July 20, 1926, in a certain cause in said Court of Chancery, wherein the said Abraham Kaufer was complainant, and the said Jacob Rothman was defendant.

40 II. The said decree adjudges that the final report of the Special Master, dated July 14, 1926, stand ratified and confirmed; that there is due the complainant, Abraham Kaufer, from the defendant, Jacob Rothman, \$4,419.06; and that Jacob Rothman pay to Abraham Kaufer said sum of \$4,419.06, together with taxed costs.

*Petition of Appeal.*

III. Petitioner appeals from the decree of the Chancellor upon the ground that the same is erroneous in the following respects:

1. The Court below erred in decreeing that any money was due from the defendant, Jacob Rothman, to the complainant, Abraham Kaufer. 10

2. The Court below erred in not finding the facts according to the evidence and the weight thereof.

3. The Court below erred in ratifying and confirming the final report of the Special Master on the partnership accounting, dated July 14, 1926, and all of the matters and things therein contained.

4. The Court below erred in decreeing the defendant, Jacob Rothman, to pay the sum of \$4,419.06, together with taxed costs, to the complainant, Abraham Kaufer. 20

5. The Court below erred in sustaining complainant's exceptions to the Master's Report, in that the Court refused to allow \$647.23 to the defendant, Jacob Rothman, paid by him to a creditor of the partnership; and in that the Court refused to charge the defendant only with the goods he had sold and at the price he received, and instead charged the defendant with the real value of the assets and with the difference between the value of the merchandise as of the involuntary dissolution, and the value of the remainder in the Receiver's hands after making due allowance for sales from the time the inventory was taken until the closing down of the business. 30

6. The Court below erred in finding that an inventory taken nine days before the dissolu- 40

*Petition of Appeal.*

tion of the partnership showed merchandise assets of \$6,444.00.

7. The Court erred in finding that the value of the remnant taken over by the Receiver three days after the dissolution of the partnership was \$1,140.00.

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8. The Court below erred in finding that the complainant, Abraham Kaufer, was entitled to an accounting from the defendant, Jacob Rothman.

9. The Court below erred in finding that the original contribution of Abraham Kaufer to the partnership was \$13,622.71.

10. The Court erred in finding that the original contribution of Jacob Rothman was \$1,634.71.

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11. The Court below erred in granting to the complainant any and all of the prayers contained in his bill of complaint, to wit:

A. That the defendant, Jacob Rothman, may answer this bill of complaint and each statement therein made to; that a temporary receiver be appointed to take charge of the partnership business and all property of any nature wheresoever situated belonging to it; that defendant, Jacob Rothman, be compelled to make discovery as to the whereabouts of said merchandise removed by him from the partnership place of business; that he be compelled to turn over said merchandise to the Receiver of this Court; that he be compelled to account to said Receiver for any monies received by him for the sale of said merchandise; that he be compelled to disclose to the said Receiver the identity and where-

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*Petition of Appeal.*

abouts of persons to whom such merchandise has been disposed.

B. That said partnership between complainant and defendant, Jacob Rothman, be dissolved; that all matters and things relating to said partnership be wound up.

C. That an order be made directing defendant, Jacob Rothman, to show cause before this Court on a day to be fixed why the appointment of said temporary receiver should not be made permanent.

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D. That a writ of subpoena may issue, requiring the defendant, Jacob Rothman, to answer this bill of complaint and abide by such decree as this court may make in the premises.

E. That the complainant may have such other and further relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

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MILTON M. UNGER,  
Solicitor for and of Counsel  
with Defendant-Appellant.

Service of a copy of the within petition of appeal is hereby acknowledged this 15th day of September, 1926, and consent is hereby granted on this 15th day of September, 1926, to the filing of said petition of appeal as of time.

30

HERMAN KROHN,  
Solicitor for and of Counsel  
with Complainant-Appellee.

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*Answer to Petition of Appeal.*

**ANSWER TO PETITION OF APPEAL.**

Filed September 30, 1926.

The answer of the complainant-appellee Abraham Kaufer to the petition of appeal of the defendant-appellant.

10 The appellee admits it to be true that on July 20, 1926, a certain final decree was made and entered in the Court of Chancery as in the petition of appeal is stated, but as to the substance and form thereof appellee prays to refer thereto when the same shall be produced. And this appellee is advised and believes that the said decree is agreeable to law and equity and he prays that the same may be affirmed with the costs to be adjudged to this appellee.

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HERMAN KROHN,  
Solicitor and of Counsel with  
Complainant-Appellee, Abraham Kaufer.

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*Order Incorporating Statement.*

stantiating that statement. After reading the statement, Mr. Schotland stated to the Court that he now understood the loan transaction and the statement was satisfactory to him. Mr. Kaufer, Mr. Steinhoff and Mrs. Krumholtz accordingly did not testify. A copy of the statement is as follows:

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“During the life of the New York firm, Mr. Steinhoff made a \$5,000 loan to it. Later, in August , 1922, Mrs. Krumholtz took over Steinhoff’s loan and in addition gave Mr. Kaufer \$5,000 in cash for which she got a note for \$5,000.

This \$10,000 loan was paid back to Mrs. Krumholtz by firm checks as follows:

	December 1 .....	\$7,000
20	December 20 .....	500
	January 2 .....	1,000
	January 4 .....	1,500

On the books of the firm the \$10,000 payments were charged as follows:

To Steinhoff, loan payable account \$5,000  
To A. Kaufer, personally ..... 5,000”

E. R. WALKER,

30

C.

Respectfully advised,

JOHN H. BACKES,  
V.-C.

I hereby consent to the entry of the foregoing order.

MILTON M. UNGER,  
Solicitor of Defendant.

40

*Exhibit C. 1.*

**EXHIBIT C. 1.**

ARTICLES OF AGREEMENT, made the 1st day of September, in the year of Our Lord One Thousand Nine Hundred and Twenty-Two, between, ABRAHAM A. KAUFER, of the City of Newark, in the County of Essex and State of New Jersey, and JACOB ROTHMAN, of the City of Newark, in the County of Essex and State of New Jersey.

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*WITNESSETH AS FOLLOWS:—*

The said parties above named have agreed to become co-partners in business, and by these presents do agree to become co-partners together under and by the name and firm of KAUFER'S FUR SHOP, in the business of retail furriers, their co-partnership to commence on the 1st day of September, 1922 and to continue until the 1st day of September, 1923, As the capital with which the firm shall commence business each of the said partners shall contribute the sum of

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the said JACOB ROTHMAN'S contribution shall be in the form of cash, while the said ABRAHAM A. KAUFER'S contribution shall be in the form of merchandise now owned by him and located at 449 Orange Street. Said location being the business place of the co-partnership. The

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value of the said merchandise shall be determined by audit and inventory. And it is agreed by and between the parties to these presents, that at all times during the continuance of their co-partnership, they and each of them will give their attendance, and to their and each of their best endeavors, and to the utmost of their skill and power exert themselves, for their joint interest, profit, benefit, and advantage, and truly employ, buy, sell and merchandise with their joint stock,

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*Exhibit C. 1.*

and the increase thereof, in the business aforesaid, and also that they shall and will at all times during the continuance of said co-partnership, bear, pay and discharge equally between the, all expenses that may be required for the support and management of the said business, and that all gains, profit, and increase that shall come, grow, or arise, from or by means of their said business, shall be divided between them, and all loss that shall happen to their said joint business by ill commodities, bad debts or otherwise, shall be borne and paid between them.

And it is agreed, by and between the said parties, that there shall be had and kept at all times during the continuance of their co-partnership, perfect, just and true books of account wherein each of the said co-partners shall enter and set down, as well all money by them or either of them received, paid, laid out and expended in and about the said business, as also all goods, wares, commodities and merchandise by them or either of them, bought or sold, by reason or on account of the said business, and all other matters and things whatsoever, to the said business and the management thereof in anywise belonging; which said book shall be used in common between the said co-partners, so that either of them may have access thereto, without any interruption of hindrance of the other.

That as for salaries to be paid to the parties hereto the said ABRAHAM A. KAUFER, shall be entitled to draw the sum of ONE HUNDRED DOLLARS \$100 per week as salary aforesaid, and the said JACOB ROTHMAN, shall draw as salary the sum of SEVENTY-FIVE DOLLARS \$75 per week. The firm shall also pay as rent of

*Exhibit C. 1.*

premises 449 Orange Street, wherein the business shall be conducted the sum of ONE HUNDRED FIFTY DOLLARS \$150 per month, to be paid in advance on the first day of each month.

At the termination of one year period of this co-partnership, and in the event that it is mutually decided to discontinue partnership the said, ABRAHAM A. KAUFER, is to retain the aforesaid business, the said ABRAHAM A. KAUFER is to pay to the said JACOB ROTHMAN, one-half of the physical assets of the firm at the termination of the co-partnership. One-half of accounts receivable, however, are to be paid to the said JACOB ROTHMAN upon receipt of same by debtors. Good will for purpose of dissolution.

or any other intangible rights shall not be considered as assets./. No payment shall be made by the said ABRAHAM A. KAUFER, to the said JACOB ROTHMAN on account of any such good will or any other intangible rights or assets.

And also, the said co-partners, once in each month or oftner if necessary, shall make, yield and render, each to the other, a true, just and perfect inventory and account of all profits and increase by them, or either of them made and of all losses by them or either of them, sustained; and also all payments, receipts, disbursements, and all other things by them made received, disbursed, acted, done, or suffered in this said co-partnership and business; and the same account so made, shall and will clear, adjust, pay and deliver, each to the other, at the time, their just share of the profits so made as aforesaid. And the said parties hereby mutually covenant and agree, to and with each other, that during the continuance of the said co-partnership, neither

*Exhibit C. 1.*

of them shall nor will endorse any note or otherwise become surety, for any person or persons whomsoever, without the consent of the other of the said co-partners. All banking of the firm shall be done at the Liberty Trust Co., and all negotiable papers and instruments shall not be valid unless signed by both of the parties hereto. And at the end or other sooner determination of their co-partnership, the said co-partners each to the other, shall and will make a true, just and final account of all things relating to their said business, and in all things truly adjust the same.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 1st day of September, in the year One Thousand Nine Hundred and Twenty-Two.

20 ABRAHAM A. KAUFER (L. S.)  
JACOB ROTHMAN (L. S.)

Signed, sealed and delivered:  
in the presence of:  
SAMUEL KAUFER.

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*Exhibit C. 2.*

**EXHIBIT C. 2.**

The partnership general journal contains the following entries explanatory of the financial condition of the business at its commencement, September 1922:

(At page 11).

The following entries are made to open the books of the partnership of A. Kaufer and J. Rothman engaged in the retail fur business at 449 Orange St., Newark, N. J.

Cash .....	\$ 224.21	
Accounts receivable .....	1,552.89	
Notes receivable .....	1,781.53	
Merchandise inventory .....	2,894.35	
Deposits .....	70.00	
Furniture and fixtures .....	400.00	
Accounts payable .....		\$ 777.53
Loans payable—Steinhoff .....		5,000.00
Notes receivable discounted .....		947.80
Capital .....		197.65
J. Rothman Credit.....	\$1,634.71	
A. Kaufer Debit.....	1,437.06	

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The above entry transfers the assets, liabilities and capital of the firm Kaufer and Rothman engaged in the wholesale fur business in New York City, to the new books.

Accounts receivable .....	\$ 560.00	
Merchandise inventory .....	13,688.57	
Furniture and fixtures .....	1,870.00	
Accounts payable.....		\$ 1,058.80
A. Kaufer—Capital .....		15,059.77

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Exhibits C. 3—C. 4.

**EXHIBIT C. 3.**

The partnership ledger contains the following entries with respect to payment of loans:

(At page 41). *A. Kaufer-Drawing.*

			DEBIT.	
10	Dec. 1, 1922	B. Krumholz	C 101.....	\$2,000
	Jan. 2, 1923	Krumholz	C 103.....	1,000
	Jan. 4, 1923		C 103.....	500
	Jan. 4, 1923	Krumholz	C 103.....	1,500

The same book contains the following entries:  
(At page 37). *Loans payable.*

	DEBIT.		CREDIT.	
	Dec. 1, 1922	C 95 \$5,000	Sept. 15, 1922	Steinhoff J. 11 \$5,000

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**EXHIBIT C. 4.**

The report of Flink & Krohn, certified public accountants on behalf of the partnership, dated March 8th, 1923, represents an audit of the books of accounts for the period from September 15th, 1922, to March 8th, 1923.

The report states as to the merchandise inventory of \$6,444 at March 8th, 1923, "The value of the inventory at March 8th, 1923 was submitted to us by the partners."

Exhibit "A" of the report shows the following balance sheet:

KAUFER & ROTHMAN  
BALANCE SHEET                      MARCH 8, 1923

	ASSETS	
40	Cash .....	\$ 210.64
	Accounts Receivable .....	886.00
	Loans Receivable .....	30.00
	Merchandise Inventory .....	6,444.00
	Investments B. & L. ....	130.25
	Furniture & Fixtures .....	2,246.73
	ASSETS .....	<u>\$ 9,947.62</u>

*Exhibit C. 5.*

LIABILITIES AND CAPITAL		
Accounts Payable .....	\$ 950.96	
Loans Payable .....	1,125.00	
Capital		
A. Kaufer Contribution .....	\$14,865.90	
Less: Drawings .....	6,392.17	
	<u>\$ 8,473.73</u>	
Less: Loss .....	1,103.98	7,369.75
	<u>\$ 1,634.71</u>	
J. Rothman Contribution .....	28.82	10
Less: Drawings .....		
	<u>\$ 1,605.89</u>	
Less: Loss .....	1,103.98	501.91
	<u>\$ 9,947.62</u>	

**EXHIBIT C. 5.**

(In handwriting of receiver Joseph J. Pallita)

Inventory of stock and fixtures of Kaufer's Fur Shop made by me on March 21st, 1923, about 11:30 A. M. in the presence of Mr. Kaufer, Mr. Krohn and Mr. Singer.	20
1 muskrat coat	
16 dyed wolf skins	
34 skunk skins	
1 otter skin	
6 dyed foxes	
70 shears	
1 counter	
2 closets-3 parts	30
1 cash register	
1 large safe	
2 fur machines	
4 tables	
3 chairs	
15 boxes of assorted trimmings of tails and heads	
1 stuffed bear	
22 pieces of lining	
5 pieces of cloth remnants	
2 forms	
½ dozen scarfs	40

*Exhibit P. 11.***EXHIBIT P. 11.**

Statement

Al. Klein  
 Raw and Dressed Furs  
 142 West 29th Street  
 New York

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Kaufer &amp; Rothman

March 21, 1923

## CREDITS.

Beavers .....	\$ 920.00
Ship raw furs .....	744.35
2 foxes .....	36.00
1 skunk .....	3.00
Notes transferred—Verfell .....	277.47

Previous Balance .....	\$2,368.74	\$1,980.82
Credits .....	1,980.82	

Balance .....	\$ 387.92
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Exhibit D. 1.

**EXHIBIT D. 1.**

The report of Flink & Krohn, certified public accountants of New Jersey, dated September 7th, 1922, on behalf of the partnership, states the financial position of the partnership Kaufer and Rothman, at the dissolution of their New York partnership. 10

This report shows the respective capital investments of Kaufer and Rothman at September 7th, 1922, with which the new partnership in Newark commenced business.

**KAUFER & ROTHMAN**  
BALANCE SHEET AS AT SEPTEMBER 7, 1922.

ASSETS		
CASH .....		\$ 224.21
ACCOUNTS RECEIVABLE .....		2,112.89
NOTES RECEIVABLE .....	\$ 1,781.53	
Less: Discounted .....	947.80	833.73
		20
MERCHANDISE INVENTORY.....		16,582.92
DEPOSITS .....		70.00
FURNITURE AND FIXTURES		
New York Store .....	\$ 400.00	
Newark Store .....	1,870.00	2,270.00
		\$22,093.75
LIABILITIES AND CAPITAL		
ACCOUNTS PAYABLE .....		\$ 1,836.33
LOANS PAYABLE .....		5,000.00
<b>CAPITAL</b>		
<b>A. Kaufer</b>		
Capital Contribution		
Exhibit C .....	\$15,059.77	
Less: Capital Debit.....	1,437.06	\$13,622.71
		30
Exhibit A		
<b>J. Rothman</b>		
Capital Contribution		
Exhibit A .....	1,634.71	
		\$15,257.42
<b>TOTAL CAPITAL .....</b>		<b>\$22,093.75</b>

*Exhibit D. 2.***EXHIBIT D. 2.**

## Statement

Al. Klein  
 Raw and Dressed Furs  
 142 West 29th Street  
 10 New York  
 Kaufer & Rothman

March 15, 1923

1922 .....		\$5,638.52
Dec. 30	50 Squirrels @ \$1.60.....	80.00
1923		
Jan. 12	7 Persian Lambs @ \$8.50 ....	59.50
Jan. 25	50 Hudson Seals @ \$3.00 } .....	912.50
	61 Minks @ \$12.50 }	
Feb. 7	100 Hudson Seals @ \$3.00 .....	300.00
Mar.	Mink .....	259.33
		<hr/>
		\$7,249.85
20		6,602.60
		<hr/>
		\$ 647.25

Paid March 17, 1923  
 Al. Klein

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## New Jersey Court of Errors and Appeals

*Between*

ABRAHAM KAUFER,  
*Complainant-Respondent,*

*and*

JACOB ROTHMAN,  
*Defendant-Appellant.*

*On Bill, &c.*

*On Appeal  
from Court  
of Chancery.*

### BRIEF OF DEFENDANT-APPELLANT.

#### Statement of Facts.

This is an appeal from a decree of the Court of Chancery by which the appellant was decreed to pay to the complainant the sum of \$4,419.06, together with costs.

The parties entered into a written partnership agreement, dated September 1, 1922, whereby they associated themselves in the business of retail furriers for a period of one year. The agreement contained the following statement relative to the contributions to be made by each to the partnership: "As the capital with which the firm shall commence business, each of the said partners shall contribute the sum of (     ). The said Jacob Rothman's contribution shall be in the form of cash, while the said Abraham A. Kaufer's contribution shall be in the form of merchandise now owned by him and located at 449 Orange street."

The parties in execution of the agreement opened a place of business at 449 Orange street, Newark, N. J. They had previously been associated in the same business in New York and on Orange street, Newark, N. J. The character of

their association at the two last mentioned places is disputed and is carefully taken up in the testimony before the Vice-Chancellor (S. C., pp. 120-132).

The partnership business at 449 Orange street was a continuation of their former partnership association in New York City and in Newark at 460 Orange street.

The appellant on one day in March, 1923, sold and delivered some of the partnership merchandise for \$1,600. The respondent thereupon had a receiver appointed who took over the partnership affairs and made an inventory of the assets he received. The receiver subsequently filed his accounts and was discharged after he made payments to the creditors of the firm and discharged the costs of the administration of the estate. A bill for an accounting was filed by the respondent which culminated in the decree which is the subject of this appeal. The matter, before the decree was entered, was referred to a Special Master who took testimony and made several reports. The findings of the Master are made the basis of the decree of the Court.

The question on this appeal is whether or not the Court of Chancery was in error in decreeing the appellant to pay to the respondent the sum of \$4,419.06, and more particularly:

a. Whether the sum of \$4,419.06 was the correct amount due from the respondent to the appellant, if any amount was due.

b. Whether the Court of Chancery erred in sustaining respondent's exception to the report of the Special Master in that such report refused to allow to the appellant credit for a payment of \$647.23 made to a creditor of the partnership.

c. Whether the Court of Chancery was in error in finding that the partnership merchandise assets just prior to the alleged dissolution, were \$6,444.

d. Whether the Court erred in finding that the value of the goods taken over by the receiver was \$1,140.

e. Whether the Court erred in finding that the contribution of the respondent to the partnership was \$13,622.71.

f. Whether the Court below erred in finding that the contribution of the appellant to the partnership was \$1,634.71.

g. Whether the Court below erred in finding against the weight of the evidence.

#### POINT ONE.

The appellant is not liable to pay and the respondent is not entitled to receive from him, the sum of \$4,419.06.

The figure of \$4,419.06 is arrived at as follows:

The original contribution of the respondent is taken by the Special Master to be \$13,622.71, less withdrawals of \$6,392.17 and \$1,144, making a total net contribution of \$6,086.54. He is then charged with one-half of the loss which the partnership business sustained during its existence and is credited with certain profits and certain salaries due him, so that the total of his interest is determined by the Special Master to be \$4,419.06.

The Master also finds the original contribution of Rothman, the appellant, to have been \$1,634.71, less \$28.22 withdrawals, making a total of \$1,605.89. He is then charged with further

withdrawals amounting to \$4,989.75, and with one-half of the loss sustained by the partnership business and is given credit for certain profits made by the business and for salary due. He is credited with a payment to Al Klein, a creditor of the partnership, in the sum of \$246.66 and is also credited with a payment of \$517.75 to the receiver of the partnership, making a total deficit of \$4,419.06 (S. C., pp. 174-175). This computation is erroneous in several respects. In the first place, the original contribution of the respondent was *not* \$13,622.71. The parties, as already stated, had been engaged in a partnership in New York City and in Newark before the opening of the store which is now involved. The stock of goods at 460 Orange street, the store which was conducted prior to the one at No. 449, was partnership property, and the value of the goods taken over from No. 460 to No. 449 cannot be credited to Kaufer as his contribution, but only his interest in them, which was not \$13,622.71. When the Newark business at No. 449 Orange street was started, the New York establishment was given up, and the accounts between the parties were stated by an accountant who testified that there was a *debit* in Kaufer's capital account in New York, amounting to \$1,437.06.

On page 142 of the State of the Case, the following testimony of the accountant appears:

“Q Were the accounts of Mr. Kaufer and Mr. Rothman in the New York store settled before they began their new co-partnership venture in Newark? A The accounts were balanced, a statement taken of it showing their relative positions in the firm.

Q What were their relative positions according to your report? A The report shows that. The report submitted to them

shows that J. Rothman had a capital there of \$1,634.71, where Kaufer had a debit in his capital account—that is he withdrew more than he put in—by \$1,437.06.

Q *That was to be the contribution to the new firm?* A *Yes, sir.*

Q What did you make up this statement from? A Books and inventory taken.

The Court: A statement agreed upon by both parties?

Witness: Yes, sir.”

This sum was deducted from a supposed equity of Kaufer in the Newark store at No. 460 Orange street, which equity was calculated to amount to \$15,059.77, so that the total alleged contribution was the figure already referred to, namely \$13,622.71. The fault with this computation is that *Kaufer had no such equity in the Newark business for the business was a partnership business and not his own.*

It will thus be seen that the entire basis of computation was erroneous and that there should be a re-reference in any event, to ascertain the correct amount due. The theory upon which the learned Vice-Chancellor proceeded was that since the appellant sold and delivered goods from the partnership stock, he is to be charged with all such stock which appears to be missing upon the making of an inventory. Assuming for the present purposes the correctness of this rule of law (which is in fact disputed by the appellant), there must be two correct inventories with which to commence and when one of them is arrived at, by regarding as individual stock, that which is really partnership property, then the entire computation will, of course, be erroneous.

The testimony bears out the contention that the parties were partners from the inception of their relationship in New York and continued

to be such in Newark in both businesses on Orange street. In the testimony taken before the learned Vice-Chancellor, the respondent testified as follows (S. C., p. 122):

“The Court: But who, at the time that you made this agreement, owned the stock of furs that was to be put into the new partnership?

Witness: *We owned it partly, both of us owned it partly; we both of us bought together the furs; I and Mr. Rothman.*”

The witness further on made a statement exactly to the contrary and an examination of his testimony will show that he reversed his position on so many matters, so many times, that his statement quoted above, together with the affirming of the facts contained in it, by the appellant in his testimony (S. C., p. 161), would certainly warrant no other conclusion than that the parties were partners throughout all their transactions. Kaufer's testimony on page 127, State of the Case, is as follows:

“Q Now, Mr. Kaufer, you were in partnership with Mr. Rothman for several years before September 1, 1922, were you not?  
A No; we were dealing together, buying things, but not legally in partnership. We were supposed to form a partnership after.

Q Weren't you in partnership in the fur business in New York City? A Yes, sir.

The Court: With Rothman?

A Yes, sir.

Q For how long before September 1st, before this agreement was formed? A About a year and a half.”

Reference has already been made to the fact that when the partnership business was opened at No. 449 Orange street, the contribution of the appellant in the New York store was carried over as his contribution in the Newark business. He

was given credit, however, for only \$1,634.71, although the accountant testified as follows (S. C., p. 143):

“Q Were the accounts of Mr. Kaufer and Mr. Rothman in the New York store settled before they began their new co-partnership venture in Newark? A The accounts were balanced, a statement of it taken showing their relative positions in the firm.

Q What were their relative positions according to your report? A The report shows that. The report submitted to them shows that J. Rothman had a capital there of \$1,634.71, where Kaufer had a debit in his capital account—that is he withdrew more than he put in—by \$1,437.06.

Q That was to be the contribution of the new firm? A Yes, sir.

Q What did you make up this statement from? A Books and inventory taken.

The Court: A statement agreed upon by both parties?

Witness: Yes, sir.”

In effect, therefore, the new business was merely a continuation of the existing partnership and a change of the status of operation. This being so, the computation is highly erroneous and the decree by which the appellant is ordered to pay to the respondent the sum of \$4,419.06 is the result of errors for which it should be reversed, or the case at least re-referred.

#### POINT TWO.

The appellant should have been allowed credit for a payment of \$647.23 made to a creditor of the partnership.

This payment was made to Al Klein for goods sold to the partnership. In the first report of the Special Master (S. C., p. 111), the appellant

was given credit for this payment which he made out of the moneys he realized from the sale of certain partnership goods, already referred to. In the second report filed by the Special Master (S. C., p. 118), the Special Master completely reverses himself on this item, and allows only a credit of \$246.66.

There was introduced by the respondent a statement (Exhibit D. 2, S. C., p. 196) rendered by the creditor to the partnership on March 15, 1923, which sets forth the amount of \$647.25 as being the amount due. Another statement was introduced from the same creditor to the partnership, dated March 21, 1923, which shows to be due the sum of \$387.92.

The learned Special Master bases his findings in his second report upon the apparent state of the partnership books with respect to the amount due to this creditor. Neither of the statements offered in evidence, however, shows the amount of \$246.66 to be due. It is, therefore, more consistent with reason that a partner should be credited for a payment made to a partnership creditor, in accordance with the terms of a statement rendered to the partnership.

### **POINT THREE.**

The learned Vice-Chancellor erroneously found the partnership assets, prior to the dissolution, to be \$6,444.00.

This inventory, which was taken a few days before the application for the appointment of a receiver was made, was taken on the basis of going business values.

The testimony discloses that the business at the time was not a going business for the reason

that an audit made of the books showed that it was sustaining big losses, and in fact the inventory was made with a view to the dissolution of the partnership. The figure should rather be computed by assuming the worth of the merchandise and partnership assets as a whole, for the purpose of sale in bulk.

The learned Vice-Chancellor, in his opinion, stated that he could not judicially notice the distinction. However, the Courts are continually noticing the distinction, and the Court of Chancery itself, in dealing with insolvent corporations, authorizes receivers to engage the services of appraisers to determine the value of the assets of an insolvent corporation, for the purpose of resale in bulk.

#### POINT FOUR.

The finding that the value of the goods taken over by the receiver was \$1,140.00 is erroneous.

The same objection is made to this inventory as is contained in Point Three above, and in addition it is to be noted that the receiver, an attorney, inexperienced in the value of furs, made this inventory himself. In addition, it is to be noted that this inventory was not made until sometime *after* the sale by the appellant of part of the partnership goods. It does not represent the value of the true amount of merchandise in the partnership business *immediately after* the appellant effected the sale referred to above. No proof was offered to show what disposal was made of any of the goods in the store, or what precautions were taken that none of the goods be disposed of, or that any record was kept of any goods which were in any way disposed of in the interim. This inventory is therefore an im-

proper one upon which to compute the amount for which the appellant is accountable.

#### POINT FIVE.

The Court below erred in finding the facts against the weight of the evidence.

An examination of the record will disclose that the respondent made evasive and contradictory answers throughout, and that the accountant had very little personal knowledge of the affairs of the partnership, aside from having audited the books at intervals. In addition, it must be noted that in the original partnership agreement the following is contained (S. C., p. 189):

“At the termination of one year period of this co-partnership, and in the event that it is mutually decided to discontinue partnership the said, ABRAHAM A. KAUFER, is to retain the aforesaid business, the said ABRAHAM A. KAUFER is to pay to the said JACOB ROTHMAN, one-half of the physical assets of the firm at the termination of the co-partnership.”

The appellant was charged with the difference between the two inventories taken, namely with the difference between \$6,444 and \$1,140. This mode of holding a party to account might be correct where the parties sought to be charged had *complete control* and charge of the business; but certainly should not be invoked where both parties had equal access and control, as in the present case.

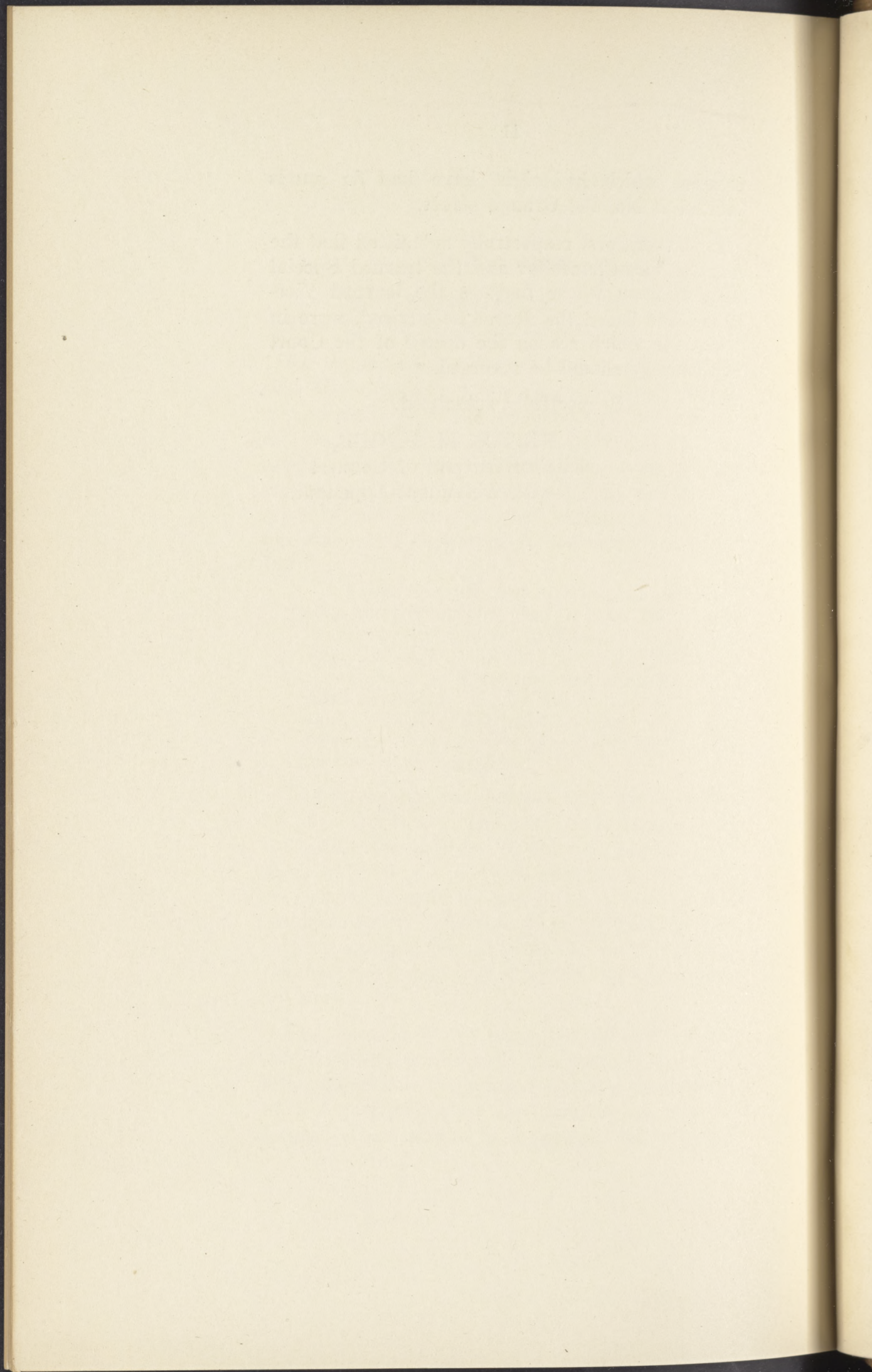
The learned Vice-Chancellor refused to find that the parties were equal partners as to capital, although it was in evidence that the contribution of the respondent to the business at No. 449 Orange street was to be a capital debit plus any

interest which he might have had in goods located at No. 460 Orange street.

It is, therefore, respectfully submitted that the learned Vice-Chancellor and the learned Special Master, upon whose findings the learned Vice-Chancellor based the decree he advised, were in error, for which reason the decree of the Court of Chancery should be reversed.

Respectfully submitted,

MILTON M. UNGER,  
Solicitor for and of Counsel  
with Defendant-Appellant.



Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

*Between*

ABRAHAM KAUFER,  
*Complainant-Respondent,*  
 and  
 JACOB ROTHMAN,  
*Defendant-Appellant.*

*On Bill, etc.*  
*On Appeal*  
*from the*  
*Court of*  
*Chancery.*

### BRIEF OF COMPLAINANT-RESPONDENT.

#### Statement of Facts.

The appeal in the case at bar presents for review a final decree advised in the Court of Chancery by Vice-Chancellor Backes on July 20th, 1926, directing that the defendant-appellant Rothman pay to the complainant-respondent Kaufer the sum of \$4,419.06, plus costs, on a dissolution of the partnership which had existed between them covering the period from September 1st, 1922, to March 17th, 1923.

The facts surrounding the dissolution of the partnership and a concise history of the proceedings in this case are clearly stated in the opinion of Vice-Chancellor Backes, (S. C. 114).

“The parties to the suit were partners, retail dealers in furs. The partnership came to an abrupt end when the defendant made way with most of its merchandise on a Sabbath while his more orthodox and pious partner was at devotions in the synagogue. An accounting was ordered. An inventory taken nine days before showed merchandise assets of \$6,444. The value of the remnant taken over by the receiver in the cause, three days after the business was wrecked, was \$1,140. The defendant admitted selling some of the furs in bulk for \$1,600, the market of

which was conceded to be \$1,925. The master charged the defendant only with the goods he had sold and at the price he received, to which the complainant excepts. The master should have determined the value of the merchandise as of the day of the involuntary dissolution, and the value of the remnant in the receiver's hands, and, after making due allowance for sales from the time the inventory was taken until the closing down of the business, charged the defendant with the difference, giving him opportunity to further discharge himself if he could. The inventory should have been taken as prima facie evidence of the stock and value. The burden of discharging himself of the difference was upon the defendant because of his responsibility for the confusion. The defendant is liable for the real value of the assets appropriated by him, not the price at which he sold them. *Philips v. Reeder & Prior*, 18 N. J. Eq. 95. Exception sustained."

On final hearing held April 6th, 1926, the court construed the partnership agreement of September 1st, 1922 (S. C. 187), in respect of fixing the respective capital interest of Kaufer and appellant on dissolution of the partnership business. It decided that the capital investment of the partners be repaid them in proportion to the amounts of their respective investments, and an order was made on June 9th, 1926, (S. C. 170), adjudicating the partnership agreement and referring the accounting to the Special Master for final statement. The Special Master on the rereference made his final report, (S. C. 172), computing the net capital interest of the partners as follows: Kaufer \$6,086.54, and appellant a deficit of \$3,383.86, and after charging each partner with one-half of the \$2,207.96, loss sustained in business operations for the six months' period, and charging each of them with one-half

of the loss of \$3,464.32 sustained by the partnership through the receivership proceedings, advised that Kaufer was entitled to a decree of \$4,419.06 against appellant. Appellant did not except to that report and accordingly a decree was entered on July 14th, 1926, (S. C. 177), confirming the final report.

### Statement of Issues.

The petition of appeal states eleven grounds of appeal, but the appellant's brief discusses only four of those points. The others will be treated as abandoned. The points are wrongly labeled, and I am restating them.

Point 1. The partnership agreement was misconstrued in allowing a distribution of the physical assets of the partnership in proportion to the respective investments of the partners.

Point 2. Payment of \$647.23 by appellant to a creditor Al Klein was properly vouched for.

Point 3. The inventory of \$6,444 is erroneously computed.

Point 4. The appraisal of the receiver's inventory of left-over merchandise at \$1,140 is erroneous.

### POINT 1.

The partnership agreement was misconstrued in allowing a distribution of the physical assets of the partnership in proportion to the respective investments of the partners.

On final hearing before Vice-Chancellor Backes, appellant Rothman contended in respect of construing the partnership agreement, that notwithstanding that his capital interest in the partner-

ship business when it broke up was nominal, \$1,634.71 and that of Kaufer considerable, \$13,622.71, they should not only share profits and losses equally, but the aggregate capital investment in the same proportion.

The partnership agreement, made September 1st, 1922, at the inception of the partnership says that:

“As the capital with which the firm shall commence business *each of the said partners shall contribute the sum of* . The said Jacob Rothman’s contribution is to be in the form of cash while the said Abraham Kaufer’s shall be in the form of *merchandise now owned by him* and located at 449 Orange street, Newark, said location being the business place of the co-partnership. The value of said merchandise shall be determined by audit and inventory.”

And the court, (C. S. 178), disposed of that contention, as follows:

“The contract of co-partnership provides that ‘at the expiration of one year period of the co-partnership, and in the event that it is mutually decided to discontinue the partnership, the said Abraham A. Kaufer is to retain the aforesaid business and said Jacob Rothman one-half of the physical assets of the firm at the termination of the co-partnership.’ This was predicated upon the terms of the agreement that the partners were to make equal contribution to the capital. The amount was left blank in the contract. Kaufer contributed \$13,622.71 as against Rothman’s \$1,634.71. Rothman contends for a literal performance of the terms and an equal division. Manifestly, that would be unjust. A decree will be advised in accordance with the report of the master and the views here entertained.”

But appellant Rothman, undaunted by the court’s adverse decision, effectively disposing

of this contention, next shrewdly tries to accomplish his purpose of having an equal division made of the physical assets of the partnership, by advancing a fictitious theory, which he never even mentioned in the entire three year duration of the case on the accounting before the Special Master, a delay, by the way, mostly of his making. This theory is appellant's last straw man. Restated concisely, appellant contends that there existed an uninterrupted partnership, firstly in New York, secondly at 460 Orange street, Newark, and finally at 449 Orange street, (the first partnership being wholesale, and the others retail), and that his interest in the physical assets in the New York firm was miscalculated in closing the books of the New York firm and opening the books of the last Newark firm in this respect, that there had existed an oral agreement between Kaufer and Rothman prior to the making of the written partnership agreement of September 1st, 1922, that notwithstanding a large capital investment by Kaufer in the New York business as against a slight investment by appellant, they agreed to share equally the physical assets of that New York business, and consequently at the inception of the last Newark firm, their capital investment on the books of the last Newark partnership should have been carried over from the New York firm in equal proportions. That agreement, if made, would be contrary to the usual rule prevailing in the absence of a written agreement. See Uniform Partnership Act, (P. L. 1919, 487), "Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property." The appellant does not quote the testimony for and against this theory, but I will give it in substance.

Appellant testified, (S. C. 161):

“Q You say you were a partner with him before September 1, 1922? A Yes, sir.

Q In what store? A At 460 Orange street, and 202 West 28th street, New York.

Q The whole business? A The whole business was partnership and Mr. Flink and Krohn was the accountants. At that time Mr. Pogash was not working for Flink & Krohn, but there was an accountant by the name of Schwen working for Flink & Krohn and he kept both sets of books for 460 and West 28th street.

Q So you were equal partners all the way through? A Equal partners all the way through.

The Court: If that was so why did you agree in writing that he should contribute his Orange street store stock as his contribution to the new firm?

Q Do you understand the question? Why did you agree in the co-partnership that Samuel Kaufer drew up that Kaufer was to contribute the merchandise in the Orange street store according to the inventory? A At that time we didn't have any agreement at all. We stood without an agreement. Everything was with us. The only thing—his daughter was bookkeeper—Mr. Kaufer's daughter was bookkeeper to 460—449—and he had a strange bookkeeper at 202 West 28th street.

Q You had no written agreement at all? A We had no written agreement whatsoever.

Q For the partnership before that? A For the partnership before that.

Q So you were taking in what was over here in Kaufer's own name? A Right.

Q Because it was part of the partnership property? A Part of the partnership property.

The Court: Why was he to be given credit for it then in the new partnership, if that is so? Why was he to be given ex-

clusive credit for it if you are telling the truth now?

Witness: Because Mr. Kaufer never gave me any account of the store 460 Orange street. He always said it doesn't show any profit at all.

The Court: If the Orange street store was part of the New York partnership, why did you in this new agreement arrange to give Kaufer credit for the amount of his stock in that store as his contribution?

Witness: Because Mr. Kaufer claimed this was the same amount. He claimed it will figure, the amount invested at first at 460 when we started the partnership—when we started the partnership 460 and 202—28th street, Mr. Kaufer claimed at that time he had the books—that the books would prove he had about seventeen thousand dollars inventory and I invested four at that time; everything should be combined into the one store, and since then he said that the retail store didn't show any profit.

Q The Newark store was retail? A Newark store was retail and New York was wholesale, dealing in skins.

Q Then you say that you were absolutely equal partners?

The Court: In the profits, yes.

Q In the profits and in the assets of this store 449 Orange street? A Equal partners in the store 449 Orange.

Q Capital investment? A Capital investment and everything.

The Court: Notwithstanding he put in \$13,000 and you put in \$1,600, you were to be equal owners in the capital?

\* \* \* \*

Q Now, what, if anything, was said between you and Kaufer about your rights and his rights in all of the partnership assets when you only put in four thousand dollars and he put in the Newark store? A It

should be equal partnership, otherwise I would never went into the business, because I had an agreement with Mr. Kauffer—(interrupted).

The Court: Half of his \$16,000 was to be yours?

Witness: He should invest all the money that was necessary and I should invest \$4,000, because that was all the money I had.

The Court: Of the \$20,000 you were to own \$10,000 the moment you had invested four, is that your understanding? He had sixteen, you had four, that made \$20,000 capital, didn't it?

Witness: Yes, your Honor.

The Court: The moment you put in your four were you to be the owner of \$10,000 of the \$20,000 capital?

Witness: That was the understanding—that was the agreement."

Kauffer immediately contradicted appellant (S. C. 167).

"Q This business at 460 Orange street, Newark, was Mr. Rothman your partner in that business ever? A No, sir.

Q What connection did he have with that business? A He had been working for me; that is all. No connection whatsoever.

Q When you went into the partnership he says you put in \$16,000 and he put in \$4,000, then you were to split up even the capital? A No, sir.

The Court: Any arrangement of that kind?

Witness: No, sir.

The Court: You don't look like a man that would give away \$6,000."

Kauffer again testified, (S. C. 174):

"Q How did you get to be the owner of this Orange street store when you made this agreement? A I was in business before I moved from 460.

Q This merchandise—these furs that you put into the Newark business were—you say that they were your property? A They were my property.”

The evidence as to the partnerships is that Kaufer took his net interest in the New York wholesale business, when it was dissolved, to a retail store he had alone conducted for several years previous to September, 1922, at 460 Orange street, Newark; that after a brief lapse of time, he formed a new retail partnership with appellant in a building then owned by him, Kaufer, at 449 Orange street, Newark, across the street from his own retail business; that a written partnership agreement was made on September 1st, 1922, between Kaufer and appellant as to this new retail partnership at 449 Orange street, which clearly expresses the terms upon which the capital investment is to be made and a dissolution had.

And the partnership accountant Israel Pogash testified, (S. C. 144):

“Q Now, what was done was that the entire co-partnership assets from New York was taken over bodily to the Newark store? A Yes, sir.

Q And an inventory was given to you of the assets of the Newark store which Kaufer was supposed to own irrespective of the New York partnership? A Yes, sir.

Q And you started the new partnership books on that basis? A Yes.

Q Which was Kaufer's investment in the new co-partnership business, \$13,688.57? A No; his investment was \$15,059.77—his equity in the Newark store—less \$1,437.06, his debit to his account, New York store, giving him a net balance of \$13,622.71, his investment in the Newark store.

Q In the New York co-partnership he had drawn out all of his capital and \$1,437.06 besides? A Yes, sir.

Q So that amount was deducted from the net value of his stock in the Newark store?

A Yes, sir.

Q And that made on your capital account, a credit to Kaufer as his investment \$13,622.71? A Yes, sir.

Q And Rothman's investment was what you carried over from the New York co-partnership, \$1,634.71? A Yes, sir."

And Pogash again testified on cross examination of appellant's counsel, (S. C. 143):

"Q In opening up the books what did you show as the capital investment of Kaufer and what did you show as the capital investment of Rothman? I am referring to the new co-partnership venture at 449. A I show that Rothman contributed nothing but his interest in the New York firm, \$1,634.71; Kaufer's contribution was his interest in the New York firm, which was a debit against him of \$1,437.06, and his interest in his Newark business.

The Court: Thirteen thousand plus?

Witness: That is not the exact amount. That shows, inventory and accounts payable, that his investment was \$15,059.77."

The above analysis of the evidence should conclusively refute appellant's contention that an equal distribution of the New York partnership assets should have been written on the books of the Newark partnership. On the one hand, Vice-Chancellor Backes considered the testimony of appellant, which he did not believe, and as against that testimony, he considered testimony, which he did believe, viz., that of Kaufer and Pogash, and the fact that appellant did not, in a period of more than three years, while the Newark partnership was in existence, while numerous hearings were being conducted before the Special Master, and in fact up to the point of the final hearing in April, 1926, attack the unequal capital

investments as written in the accountant's reports at the close of the New York partnership, at the inception and during the existence of the Newark partnership, and as stated in the partnership books, and the numerous reports of the Special Master.

And the most convincing refutation of appellant's contention is the written partnership agreement of September 1st, 1922 (the New York partnership agreement having been oral). It says, "As the capital with which the firm shall commence business:

(1) Each of the partners shall contribute the sum of

(2) The said Jacob Rothman's contribution shall be in the form of cash.

(3) *While the said Abraham Kaufer's contribution shall be in the form of merchandise now owned by him and located at 449 Orange street, said location being the business place of the co-partnership."*

See also testimony of Samuel Kaufer, the attorney who drafted and was present at the execution of the partnership agreement, (S. C. 159):

"Q Why didn't you fill in that space before having the agreement signed? A The facts in that case were that Mr. Rothman and Mr. Kaufer came to my office as I remember it, and requested me to draw a co-partnership agreement. I took the facts. I asked them how much each was to put into the partnership. They both told me that Mr. Kaufer was to move his private stock of goods into the partnership that he had moved from 460 to 449 a little previous to the time he made the partnership with Mr. Rothman at 449; that he didn't know the value of his contribution until the book-keeper or the accountant went over the books."

**POINT 2.**

**Payment of \$647.23 by appellant to a creditor Al Klein was properly vouched for.**

The Special Master credited Rothman with \$647.23 representing an indebtedness alleged to have been paid by Rothman to Al Klein, a creditor of the partnership with a portion of the proceeds of the merchandise abstracted and complainant excepted to that finding, contending that only \$246.66 was due that creditor and the balance represented personal purchases of Rothman. Kaufer contends that Rothman should therefore be charged with \$400.57.

It developed, in connection with contempt proceedings pending and undetermined before Vice-Chancellor Backes, that out of the moneys which Rothman admitted receiving from Mazer for the merchandise removed, he is alleged to have paid to a creditor, Al Klein, of New York, a bill amounting to \$647.25, although the books of account of the firm showed a balance due of only \$246.68. This matter being brought to the attention of the Special Master, he requested Rothman to procure a statement substantiating his payment of \$647.25, and a statement dated March 15th, purporting to show this payment, was offered in evidence, in Rothman's behalf. This statement of March 15th, besides being at variance with the firm's books of account, differs from a statement prepared by Al Klein, dated March 21st, four days after the break-up of business, which was received by the receiver in the mails and came into the hands of complainant's counsel. The statement of March 21st, although by about \$15 inaccurate, shows a balance of only \$387.92 then due. Deducting from \$387.92 the \$15 mistake, and \$127 representing a sale made by the partnership to Al Klein, the

resultant balance coincides within a few cents of the balance, \$246.68, shown due on the firm's books.

By the statement of March 15th, which Al Klein furnished to Rothman in substantiating the alleged payment of \$647.25, Al Klein seeks to change the partnership books record by charging the firm \$259.23 for a mink and failing to give the firm the above credit of \$127. It should be noted that no bill was ever received by the firm for this item of \$259.23 and it does not appear in Al Klein's statement of March 21st.

The resultant excess payment of \$400 to Al Klein is chargeable to appellant because according to the foregoing analysis it is not properly substantiated. Vice-Chancellor Backes in open court ordered appellant to hand over to the receiver \$1,600, the amount which he had admitted receiving for merchandise abstracted and sold but that out of this amount he should be credited with any payments made to customers, if any, if proper vouchers substantiating these payments would be produced showing the *bona fides* of accounts involved. It should appear conclusively from the above summary analysis of the account that the excess payment of \$400.57, if in fact made, was improper and is therefore chargeable against Rothman.

The position of appellant is further untenable because assuming for the sake of argument, that appellant actually purchased a mink for \$259.23 in the two week interval before the break-up of the business, then the charge against appellant should stand anyways because that merchandise purchased would have swelled the inventory of merchandise which Rothman has already been charged with abstracting.

**POINT 3.**

The inventory of \$6,444 is erroneously computed.

Appellant contends that the figure of \$6,444, computed to be the inventory of March 8th, 1923, two weeks before the wrecking of the business, should not be used because it is based on going values, that an accountant's report at that time indicated a loss in the business of the preceding six months, and that the inventory was made with a view to the dissolution of the partnership. No reference is made to testimony or law in support of that contention.

There is no testimony whatever in the case that the appellant and Kaufer at that time agreed to dissolve the partnership business. The fact is that the inventory of March 8th, 1923, was an incident to the audit and balance of that date, and it was only after the accountant's report of that date, indicating a \$2,000 loss, was submitted to the partners, that the accountant, to allay their disappointment, suggested the taking of another inventory to verify the accuracy of the inventory already taken, the accountant insisting that his audit was correct. There is no testimony whatever in the case that the partners agreed to accelerate the firm's dissolution. And the partnership agreement fixed September 1st, 1923, as the date of its termination.

Appellant broke up the business on March 17th, 1923, by abstracting most of the merchandise. When asked by counsel, "What was left?" his answer is "Merchandise there was no demand for, ready made garments, coats. They were old models; but was not interested to buy." By taking this high-handed action, and with most of the merchandise dissipated, how could

the Court have engaged the services of appraisers to appraise the assets for the purpose of a resale, in bulk, as appellant suggests? There were few left-overs to appraise, and appellant was the successful bidder for all left-overs.

And the Court, (S. C. 114) correctly stated the just and equitable rule, applicable, that:

“The master charged the defendant only with the goods he had sold and at the price he received, to which the complainant excepts. The master should have determined the value of the merchandise as of the day of the involuntary dissolution, and the value of the remnant in the receiver’s hands, and, after making due allowance for sales from the time the inventory was taken until the closing down of the business, charged the defendant with the difference, giving him opportunity to further discharge himself if he could. The inventory should have been taken as prima facie evidence of the stock and value. The burden of discharging himself of the difference was upon the defendant because of his responsibility for the confusion. The defendant is liable for the real value of the assets appropriated by him, not the price at which he sold them. *Philips v. Reeder & Prior*, 18 N. J. Eq. 95.”

Appellant was charged with only one-half of the loss due to the receivership proceedings including the loss due the enforced sale of the left-over merchandise and fixtures. It would have been equitable and just had he borne that entire loss.

*The second report of the Special Master, dated March 16th, 1926, (S. C. 118), establishes the correctness of the \$6,444 inventory, and appellant did not except to that report. The fact is that his counsel, in writing, consented to the order made on March 24th, 1926, (S. C. 119), whereby*

*it was adjudged that the report, and all the matters and things therein contained stand ratified and confirmed.*

#### POINT 4.

**The appraisal of the receiver's inventory of left-over merchandise at \$1,140 is erroneous.**

Appellant says that the inventory appraisal of the receiver, a master of this court, is not reliable because he, the receiver, did not know the value of furs left over and because that inventory was made sometime after appellant had removed the merchandise and therefore does not represent the true value of the merchandise left over in the partnership. There is no testimony whatever in the case that the receiver *valued* the furs. He merely testified to *making a list* of the left-over merchandise. The testimony as to the value of the furs listed in the inventory of the receiver was made by Kaufer, (S. C. 83). He was not shaken in his appraisal by cross examination (S. C. 84), neither was he contradicted by any testimony of Rothman or anyone else on the appraisal. The receiver's inventory and Kaufer's appraisal must therefore stand.

Appellant also says that no proofs were offered to show what disposal was made of any of the goods in the store or what precautions were taken so that none of the goods be disposed of. That assertion is contrary to the overwhelming evidence in the case.

Appellant Rothman testified (S. C. 47), that on Saturday morning, March 17th, he sold at wholesale to Philip Mazer a quantity of furs for \$1,600 cash, the market price being \$1,925, and that he received from a customer, S. Blank, \$390 for some merchandise, a deposit of \$100 having

already been paid into the business, the entire purchase price being \$490, and that he did not take out or sell any other merchandise; that after the merchandise was sold to Mazer, he left the store and went with Mazer by train, to New York to get the cash.

On cross examination, (S. C. 63), appellant mentioned deciding, around March 15th or 16th to take out and sell the merchandise, basing his action upon the report submitted by the firm's accountants, as of March 8th showing a loss of \$2,200; that his action was prompted by the advice of a lawyer Citret, whom he consulted, which was to the effect that he cash in on some merchandise, with the intent that Kaufer be brought to terms; that thereupon, he went to see Mazer in New York; that Mazer came over on Saturday, the 17th, and picked his merchandise, being unwilling to purchase any more than \$1,600 worth, that he, appellant, did not take the rest of merchandise that was found missing upon the receiver's taking possession of the business, and that he knew of the remaining merchandise being worth money and salable, but he utterly failed to ascribe a single reason for his liberal conduct.

But later on, appellant unwittingly gave himself away, on cross examination, in the following interesting testimony:

“Q According to your ideas, Kaufer had taken away \$5,000 of stuff of yours? A Yes.

Q You thought he trimmed you out of \$5,000 and you had an opportunity to take all the furs away and did not do it? A Yes.

Q And you only took \$1,600 worth? A Yes, sir.

Q *What was left?* A *Merchandise there was no demand for, ready made garments,*

*coats. They were old models; but was not interested to buy."*

It is unlikely that appellant, if he believed that Kaufer had defrauded him, would have left anything of value. What was left were odds and ends. This corroborates Kaufer's story that everything of value was taken.

Mazer, the man who received the merchandise abstracted, testified, (S. C. 75):

*"Q Do you know how you happened to go over on Saturday? A I came on a Saturday because it was more convenient.*

*Q You know that Kaufer was Rothman's partner? A Certainly.*

*Q Did Rothman tell you that Kaufer knew about this sale? A Rothman did not tell me, I knew Kaufer is a man what he keeps Saturday his own, and I did not ask Rothman for Kaufer."*

Appellant further testified that after packing the stuff on the truck he closed the place of business and went to New York with Mazer.

Kaufer testified that he did not stay at business on Saturday morning, March 17th, but in accordance with his usual custom, went to synagogue and remained at home until 6 o'clock in the evening when he went back to the store; that he found the door locked, and upon opening it, found an empty store, with the exception of the things that the receiver took charge of; that there was no merchandise in all the shelves and compartments, and the safe was nearly empty, that the books, checks and vouchers and a muskrat lining belonging to Kaufer and intended for a fur coat, was missing; that he immediately went to police headquarters and made a complaint against appellant, having been informed by Singer, upstairs, and neighbors across the street, that Rothman had taken away the merchandise;

that he unsuccessfully tried to see Rothman at his home and at the home of his father-in-law that same night and the following morning; that the police found Rothman Monday night at his home, and in the policemen's presence, Kaufer asked Rothman, "Why did you do it?" and he responded, "I took it. It is mine. I did it. I had a right to do it," and Kaufer further testified that on that night, he retained counsel on whose advice dissolution and receivership proceedings were brought.

A vigorous cross examination did not shake Kaufer's testimony a particle.

What merchandise did Rothman leave at the place of business at noon, on March 17th? When Kaufer first discovered the abstraction on Saturday evening, March 17th, he promptly closed the store and from that time on, to Monday evening following, he tried to get hold of Rothman. This he succeeded in doing on Monday evening, at about which time counsel was consulted and Chancery pleadings prepared, with the result, that on Tuesday morning, the late Vice-Chancellor Foster appointed Mr. Pallitta receiver of the firm's assets. Mr. Pallitta promptly went up to the store and Hollander's plant, taking charge of the firm's remaining assets.

There is not a particle of evidence in the record to contradict Kaufer's account of his movements on the Saturday and the two following days, in question.

It is therefore respectfully submitted that the decree of Vice-Chancellor Backes should be affirmed, and the appeal dismissed.

Newark, N. J., February 5th, 1927.

HERMAN KROHN,  
Solicitor and of Counsel with  
Complainant-Respondent.