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New Jersey Court of Errors and Appeals.

Between
PHILIP I. MARVEL,
Complainant-Appellant,

AND

WILLIAM E. JONAH,
Defendant-Respondent.

On Appeal.

BRIEF FOR RESPONDENT.

This is an appeal from so much of a final decree of the Chancellor as refused to grant an injunction restraining the defendant, a physician of the City of Atlantic City, from practicing his profession in that city for the period of three years.

The facts of the case which are of importance are as follows:

The complainant, Dr. Marvel, is fifty-six years of age, and since 1890 has been practicing continuously in Atlantic City and enjoying a large practice—so large, in fact, that he does "pick and choose," and has relieved himself of night work, and also declined to go outside of the island except for consultation. Indeed, his business has grown so large that since 1891 he has been compelled to have assistants, and since 1900 he has confined his personal practice as above stated (pp. 139 and 140). The first paragraph of his bill of complaint indicates the extent and character of his practice.

The defendant, who is in his fortieth year (p. 330, line 9), came to Atlantic City in 1905 (p. 332) as an

assistant to the complainant, and continued in that relation until 1907, when a partnership was formed between them (*Id.*, line 30). This was a ten-year verbal agreement under which Dr. Jonah the first year was to receive one-ninth of the profits, and so on with a progressing arrangement, until before the contract terminated he was to have received one-half of the profits (p. 333). The old firm had Dr. Durand as an assistant (*Ibid*). This contract would have expired in 1917 had it not been, by mutual consent, abrogated by the contract in suit (Case, p. 12), made the tenth of January, 1910, by which Dr. Durand also became a partner, and a very complete written document was signed by all three of the parties.

The appellant's counsel has either forgotten or purposely overlooked this previous partnership; and in his brief states quite frequently that until the making of the agreement of January 10th, 1910, Dr. Jonah was simply an assistant of Dr. Marvel.

It is contended that a more harsh, one-sided and oppressive contract was never made than is the agreement of January 10th, 1910. Under its terms Doctors Jonah and Durand are held down by a grip of iron, subject to every whim of Dr. Marvel, whereas the latter incurs no obligations or duties whatever. They are required to apply their whole time and attention to the practice; to do all the night work; their vacations are limited; in case of sickness for a given period, their places are to be supplied and the cost thereof to be charged to their shares of of the profits; any personal scandal or other similar matter affecting either Jonah or Durand shall give to Marvel the right to cancel and annul the agreement, and in the event that either of them shall fail to perform the covenants or protect the interest and reputation of Dr. Marvel, then the latter shall have the right to cancel and annul the agreement and oust the offending party from his association. No one of these or practically any of the other explicit covenants of the contract, applies to Dr. Marvel. He is under no obligations. He may be as scanda-

lous as he desires; he may do as little work as he wishes; he may violate any term of the contract, and yet he is subject to no injunction or even reproof. In fact the whole contract should be read to see how unilateral, oppressive and unfair it is in favor of Marvel, and against Jonah and Durand. We can perhaps understand this when it appears (p. 141, line 10) that it was drawn by Dr. Marvel's brother-in-law, a Philadelphia lawyer, who was careful to witness it.

This agreement was, by its terms, to continue in effect up to and including the 31st of December, 1918, so that it had some six years to run at the time of the filing of the bill in this cause.

It is not difficult to understand how these young men were ever persuaded to sign such a document. They did not have counsel, and Dr. Jonah's assent to it can only be explained by the fact that he is very careless in business matters and more regardful of the illness of his patients than anything else. Dr. Durand, on the other hand, was a mere assistant, and glad to become a partner on any terms.

The significant clause of the contract lying at the basis of this appeal is as follows:

> "Or if at any time during the term of this agreement either the said Dr. Jonah or the said Dr. Durand, or both, may commit a breach or violate any of the covenants of this agreement in such manner as to justify the said Dr. Philip Marvel in requesting the party or parties so offending to withdraw from this association, or to cause the said Dr. Marvel to cancel and annul this agreement, so far as the party or parties so offending are concerned, then in either event such party or parties so voluntarily withdrawing from this association, or ousted from this association, for breach or violation of its covenants, shall not be permitted to practice medicine in the city of Atlantic City, aforesaid, for a period of three years next ensuing such voluntary withdrawal or ouster. And the said Dr. Jonah and the said Dr. Durand doth hereby cove-

> nant, promise and agree that in case of either or both of them withdrawing for any reason whatsoever, from this association, during the term of this agreement, or in the event of either or both of them being requested by the said Dr. Philip Marvel to withdraw from this association or being ousted therefrom, on account of a breach of any of the covenants of this agreement, that they, the said Dr. Jonah and the said Dr Durand will not, either or individually or jointly, or as an associate with any other physician, practice medicine or surgery in the city of Atlantic City aforesaid for a period of three years next ensuing such withdrawal or dissolution of this association or ouster of either or both of the parties of the second part."

The bill of complaint sets up certain alleged violations of the agreement by Dr. Jonah, and asks for a dissolution of the partnership, for an account of the profits, and for an injunction preventing him from practicing medicine for three years in the City of Atlantic City. There was no objection to the dissolution and the accounting. In fact Dr. Jonah's answer consented to both, but the contest centered about the right to an injunction. It should be noted that the clause above quoted leaves it optional with Dr. Marvel to consider a violation of the provisions of the contract a ground for dissolution and injunction. In other words, he is given the right to elect to waive the effect of the violation, or to terminate the contract in the event of a breach on the part of his associates. So far as the right to an injunction arises by the contract from a breach by Durand or Jonah, the contract expressly requires and pre-supposes an election and notification on Dr. Marvel's part before the right to an injunction exists. He might well disapprove of breaches and yet be undesirous of terminating the contract; and so he and his brother-in-law were careful so to frame the contract as not to have its breach *ipso facto* create the right to an injunction, but such right existed only

after Dr. Marvel's expressed determination to avail himself of that privilege.

We must not overlook the fact that Dr. Jonah was not at the time this contract was made without a practice or an acquaintance. His position was quite different. He had been practicing in Atlantic City five years, and for three years had been a partner of the leading physician there. He was not a mere tyro seeking to gain a foothold; and yet that is the attitude the appellant seeks to place him in.

Two alleged violations of the covenants by Dr. Jonah are relied upon as a basis for the injunction, namely: his alleged failure to use the stationery supplied by Dr. Marvel; and his admitted failure at different periods to render daily accounts, to the secretary, of the work performed by him.

With regard to the complaint as to the stationery, only a word need be said. The conclusions of the Vice-Chancellor in that regard are unanswerable. The complaint was, that whereas Dr. Marvel furnished prescription blanks with the names of the three partners printed thereon, Dr. Jonah sometimes used a blank that had been given to him by a druggist, of a more suitable size for the case in which the blanks were carried, upon which his name alone appeared. The evidence showed, however, that Dr. Jonah more frequently used plain sheets of paper, or any convenient slip, in the emergency of writing prescriptions, and quite as frequently used the standard blank; and in view of the evidence, to suppose that this inconsiderable use of the donated prescription blank was designed to, or did in fact, divert the practice or amounted to anything, is too ridiculous for consideration, and will be dismissed.

It is true that in the year 1910, from September 27th to the end of the year; in the year 1911, from May 6th to October 31st, and in the year 1912, from and after March 16th to the filing of the bill, Dr. Jonah failed promptly to give to the secretary reports of the work done by him. Both of the lapses,

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previous to that in 1912, were, as Dr. Marvel concedes (p. 215), forgiven. Nor must it be supposed that the firm lost anything thereby. As shown both by Dr. Jonah and Miss Hendrickson, the secretary, and as is practically conceded by Dr. Marvel, Dr. Jonah at frequent intervals during these lapsing periods would have interviews with the secretary and give her the necessary information from the records, which he preserved in his possession, of the work done by him, to enable her to send out bills to the patients whom Dr. Jonah had visited.

Dr. Marvel does not question Dr. Jonah's honesty (p. 148, line 25), and it is undisputed that during the whole period the books of the firm show a credit to Dr. Jonah in excess of any amount possibly overlooked during the lapsed periods. The books show a credit to Dr. Jonah at the present time of about $5,000. beside collectible bills of $3,000. more (p. 342, line 20). (See also pp. 146 and 147, 184 and 229.)

The evidence makes it plain that Dr. Jonah became very much engrossed in his medical work, and, as he roughly expressed it on the stand, he "was thinking more of the health of his patients than what they were paying him"; and so he from time to time fell into the practice of keeping rough memoranda in books or on slips of paper of his work done, which were sufficient to enable him at intervals to notify the secretary and send out the bills. He was not methodical and they all knew it. Two issues were made about it, and both times the past was forgiven. It was never suggested by any one that he was rendering himself liable to dissolution or injunction.

Indeed, in the correspondence (p. 427) that immediately preceded the filing of the bill you will search in vain for any such suggestion by Dr. Marvel.

The defendant attached to his answer an account; and it is conceded that the effort that Dr. Marvel made to show that that is erroneous, or that the

firm has lost a cent on account of this laxity on the part of Dr. Jonah, utterly fell to pieces, and the little evidence there is upon the subject was stricken from the files, Marvel's counsel conceding they placed no reliance thereon (pp. 346 and 347).

The case then simmers down to the question whether the Court below was right in refusing to enjoin Dr. Jonah from practicing his profession in Atlantic City at the instance of Dr. Marvel, who claims a right to this relief by virtue of this harsh, oppressive and unfair contract; because of the violation of the covenants as to rendering daily reports, which violations have resulted in no loss; were due entirely to carelessness and overzealousness on Jonah's part in aiding the sick, and which lapses have been before forgiven, and which, until the bill was filed, were never suggested to be of sufficient importance to constitute a ground either for dissolution or injunction.

It must not be assumed, from what has been admitted, that Drs. Durand and Marvel have themselves lived up to the requirements of the contract with regard to promptness in rendering accounts. On the contrary, Dr. Marvel states (p. 125, line 30) that he was unable to keep Dr. Durand up to the strict requirements of the contract in this particular; and it appears from Miss Hendrickson's evidence that Dr. Marvel himself would sometimes be weeks behind in rendering his own reports (see pp. 185–6). Indeed in the demands and rigor of practice which these three physicians enjoyed, it was often quite impossible for any of them to make the daily report to the secretary that the strict terms of the contract required. Each had his own memorandum, however, and while Drs. Durand and Marvel were less indifferent than Dr. Jonah, all did err in this particular. Again, Dr. Marvel, notwithstanding his contract with Drs. Jonah and Durand, very soon after the making of the contract, became a stockholder and director in the so-called Emery-Marvel Sanitarium, which was looked upon and treated by

both Drs. Jonah and Durand as a rival institution or competitor, and the practice that Dr. Philip Marvel pursued of sending patients to that institution was deemed by both of his partners as an unfriendly and unfair proceeding (see pp. 109, 110, 343, 344 and 380). It further appears that Dr. Durand complained that Dr. Marvel, who evidently had in mind the absence of any provision in the contract requiring him to devote his entire time to the business, was absenting himself from practice, entering into outside enterprises and business schemes, and that his share of the work was not performed by him, but turned over to his associates (see p. 169).

Another cause of irritation and outrageous exaction on Dr. Marvel's part was the insistence by him of the use of a rubber stamp on all firm bills "Make bills payable to Dr. Marvel." It must be remembered that each of the three physicians prepared and sent out to his own patients the bills that their respective patients had incurred with him, and that these bills when paid would be deposited in an account kept in the name of Dr. Marvel. The secretary would receive and endorse these checks for deposit, but naturally Drs. Durand and Jonah felt humiliated by the use of this rubber stamp. Dr. Marvel testifies that the other physicians had agreed to its use in the presence of Miss Hendrickson. Both Durand and Jonah deny this, as does also Miss Hendrickson, but nevertheless no bill heads could be found without the rubber stamp.

These matters led to friction between Dr. Durand and Dr. Marvel, with the result that, without consulting the latter, a dissolution, after the filing of the bills in this case, was effected so far as Dr. Durand was concerned and an agreement to that effect dated the 10th of January, 1913 (Case, p. 32, line 30), was entered into, and Durand paid from firm funds as his share of the partnership assets $1,000. As soon as the making of this agreement was learned of by Dr. Jonah, he filed an amended answer setting it up as a breach of the partnership by Dr.

Marvel disentitling him to any relief in the suit under the partnership articles which Marvel himself had thus broken.

While, therefore, the defendant is quite willing that this contract should be terminated, he feels as did the Court below, that there is no reason why Dr. Jonah should be enjoined from practicing medicine, both because of the fact that Dr. Marvel has himself been guilty of several breaches of the contract and because it is inequitable and unjust that any such drastic relief as an injunction should be granted.

The appellant's brief improperly assumes that the contracts specifically provided for an injunction against practice in the event of a violation of any of the terms of the contract by the defendant. As we have already seen, the right to insist upon such a result is expressly made optional with Dr. Marvel in the contract. It pre-supposes an election and consequent notification by Dr. Marvel before a right to an injunction exists.

It is important, in view of the two lapses by Dr. Jonah from proper accounting, both of which were forgiven. And that while the third lapse led to the correspondence in June, 1912, nowhere does Dr. Marvel therein express an intention to avail himself of the right to terminate the contract and seek an injunction. His ultimate threat is a suit for an accounting, and you will search in vain for a suggestion prior to the filing of the bill herein that it was the intention of the complainant to elect to rescind the contract, and avail himself of the supposed right therein existing in his favor to enjoin Dr. Jonah. Dr. Jonah was not unaware of his own constitutional limitations and business defects, and of his more ardent interest in the lives and health of his fellows than in his own or his partners' income. Constant association for five years by Dr. Marvel with him had made him also familiar with these traits, and in the absence of a specific notification by Dr. Marvel of his election, more par-

ticularly in view of the two previous lapses, which had been forgiven, we insist that Dr. Jonah had a right to believe that Dr. Marvel preferred an association with him "with all his faults," and that "with all his faults he loved him still."

I.

We therefore insist, at the outset, that before the complainant could legitimately expect a dissolution and injunction because of a recurrence of this failure to account, he should have flown his flag, and apprised Dr. Jonah that a continuance of these lapses would result in the serious consequences provided for in the contract, but which, up to this time, had never been availed of.

Both his past conduct and his failure to avail himself of the strict terms of the contract, cast upon him the burden to suggest that the shortcomings of Dr. Jonah arising from his constitutional defects, gave him the drastic rights he now asserts, before he could legitimately assert them. His attitude had lulled Dr. Jonah into indifference, and it is undisputed that it was not until he consulted counsel just before the bill was filed, that he became aware of the seriousness of the situation, or of his apparent liability to be enjoined.

The situation in this respect is quite similar to that disclosed in *Smith* v. *Brown* (Sup. Ct. of Mass.), 42 N. E. Rep., 101, where Mr. Justice Holmes sanctioned the refusal of the lower court to enjoin the defendant's continuance of a drug business, in violation of his covenant on selling out an apothecary

shop to plaintiff, in view of the evidence that the defendant had signed the contract without being aware of the provision for an injunction, and of the further fact that the plaintiff, with knowledge that the defendant proposed to violate his covenant, failed to notify him to desist, and of the consequences of failure.

The books are full of instances where the courts have required a man to speak when, in the absence of his so doing, the other party has been lulled into security.

We can therefore understand why the complainant included in his bill a prayer for a dissolution. If he had, previous to filing the bill, acted differently, and had both elected and declared his election, the contract could then have been rescinded, and all that he would have needed in the way of relief from the Court, would have been an accounting and an injunction. Careful counsel, however, aware of the circumstances, felt the need of a decree of dissolution, and had not the defendant in his answer, for obvious reasons, have acquiesced in that prayer, it is very doubtful whether the complainant would have been entitled thereto. Indeed, we believe that it could have been successfully resisted.

Complainant's brief laboriously urges that the right to the injunction necessarily accompanies the right to an account and dissolution. This we deny. There is no doubt of the right to an account. We concede the propriety of a dissolution, but the question whether or not the complainant, who is already overburdened with practice, and admittedly has more than he can attend to, shall chop out three years from the solution by the defendant of the bread and butter problem at this critical period of his life, and practically arrest his professional usefulness for that period, because it would take almost, if not quite, three years for him to gain a foothold in any community in which he is not known, is an entirely different one.

The defendant has undoubtedly violated the provisions of the agreement requiring daily accounts. We do not justify him in this regard. A man, however, cannot add a cubit to his stature, and strive as hard as Dr. Jonah might, he never could transmute himself into the methodical business man that the complainant is. No one questions his honesty, or misinterprets his purpose. His conduct became *naiveté*. If such conduct be treason, then the complainant can make the most of it. In this particular he had twice before eggregiously departed from the contract, and twice been forgiven. Again he fell. Again he was prodded, but never once told that the recurrence of the old Adam in him would result in the serious consequences now sought to be involved.

It is unnecessary to refer to the use of the prescription blanks. If the use of these particular prescription blanks could be looked upon as an opportunity to advertise himself at the expense of his partner, then, as suggested by the Court at the argument, think of the vast number of neglected opportunities in the blank pieces of paper that were so used. It is quite significant that Dr. Durand, who was younger and much more harmed by any such practice than Dr. Marvel, never suggested any such attenuated theory as is here sought to be dragged in, and indeed, until the filing of the bill, the case shows that no complaint whatever was ever made of this matter. Admitting, then, that the defendant has failed to observe that feature of the contract requiring the making of daily reports of his work; how, during the life of this contract, has the complainant demeaned himself, for, of course, he must come with clean hands, and must, before he can get the relief he seeks, show full performance by him of his part of the contract, small as that part was. *Lawrence* v. *Gilroy* (50 Ill. App., 310), and *Harkinson's Appeal*, 78 Pa. St., 196, were cases of this character, where that duty was enforced.

II.

The complainant himself has failed to live up to the requirements of the contract.

He has himself studiously and continuously failed to live up to the letter of the contract requiring daily reports. He, doubtless, in his methodical fashion, during the leisure of his evenings, while Dr. Jonah was, obedient to the contract, slaving away, filled out his own personal account book, but it is uncontradicted that he would make his reports as infrequently as once a fortnight, instead of once a day, as the contract required. This conduct shows that the parties did not take the terms of the contract too seriously, and that they all considered the provision with regard to daily accounts to be more or less elastic.

III.

Dr. Marvel's insistence with regard to the use of the rubber stamp directing checks to be made payable to his order, was an unjustifiable, and in my opinion, an outrageous departure from the contract.

No self-respecting physician, acting as Doctors Jonah and Durand were, having their own patients, to whom they sent out their own bills, could tacitly tolerate any such requirement. Dr. Marvel claimed they had agreed to it. In this he was flatly contradicted by Doctors Jonah and Durand, and Miss Hendrickson.

IV.

Dr. Marvel violated the spirit, if not the letter, of the contract in becoming pecuniarily and personally connected with the Emery-Marvel Sanitarium.

This was a matter of irritation to his partners. It was like a red flag to a bull to Dr. Jonah, and the fact that the contract perhaps had no express provision against it, giving him practically a free sweep to do as he chose, shows how unconscionable the contract was. Imagine, if you will, Dr. Jonah having, against the protest of the complainant, become a director and pecuniarily interested in such an enterprise.

V.

Pending this suit, in which a dissolution is sought, and while therefore by the complainant's own admission the partnership is in existence, a dissolution is effected without the defendant's notice, by closing up with Dr. Durand.

The seriousness and importance of this cannot be over-estimated. If Dr. Jonah was a partner in a concern that was yet to be dissolved, what business had one of his partners to break with the third, and buy him out, permitting him to go to Europe? If Dr. Jonah is bound by the partnership agreement, then he is entitled to have been consulted with regard to the proposed release of Dr. Durand. You cannot spell into this contract any right in Dr. Mar-

vel to close with Durand, without consulting Jonah. This perhaps is the only oversight Dr. Marvel's brother-in-law was guilty of in the contract. But there was at least this right in Dr. Jonah, which Dr. Marvel was bound to observe, and to any bill seeking a dissolution of the firm Dr. Durand was and is a necessary party, and that difficulty cannot be overcome by purchasing his interest.

VI.

In any event there should be no injunction.

We admit it is useless to continue this partnership between Dr. Marvel and Dr. Jonah, and we admit that Dr. Jonah should account, but shall the desired injunction issue?

It is not a question of whether he should be sued at law if he should, in violation of his agreement, practice medicine in Atlantic City. The determination that he is not entitled to an injunction does not negative his liability in an action for damages. Frequently a court of equity in cases of this kind will send a party to his action at law for damages, and refuse him the drastic remedy of an injunction. As stated by Vice-Chancellor Van Fleet, in the leading case of *Sternberg* v. *O'Brien*, 3 Dick., 370 (heard on final hearing), where an injunction was sought to prevent the party from violating a covenant of this character:

> "The ordinary and usual judicial remedy for a breach of contract is an action at law, and in cases where that remedy will fully answer the purposes of justice the law courts have exclusive jurisdiction, and courts of equity are entirely without jurisdiction. * * * The defendant, it is true, has broken his contract, but that fact, standing alone, presents

> no ground whatever for the interference of this court; indeed, scarcely more than that would be presented by a case where the ground of action was a breach of warranty made on the sale of a horse. For a breach of contract the ordinary and exclusive remedy is an action at law unless it is made clearly to appear that the damages resulting from it cannot be adequately compensated in money. In my judgment nothing of that kind appears in this case."

In *Keeler* v. *Taylor*, 53 Pa. St., 467, the same distinction is made. After adverting to the character of restraints of trade that are permissible, the Court says:

> "But such partial restraints only make the bond good *at law*. Equity is loath even then to enforce them, and will not do so if the terms be at all hard or even complex (*Kimberly* v. *Jennings*, 1 Sim., 340. * * *). If it (the contract) were not void, however, a Chancellor would regard the hardship of the bargain and the prejudice of the public, and would withhold his hand from enforcing it, for such decrees are always of grace and not of right."

See also the learned opinion of Mr. Justice Mercur in *Harkinson's Appeal*, 78 Pa. St., 196, where the limitations of a right to an injunction as opposed to a suit at law are accentuated, where it is said that it must plainly appear in order to entitle the complainant to an injunction, that he cannot be fully compensated by an action at law for the violation of a covenant of this character. The opinion says:

> "So, too, it is usually requisite that the party aggrieved should show some appreciable damage as the result of the breach of covenant which he seeks to restrain: *Id.* Where damages will compensate either the benefit derived or the loss suffered equity will not interfere (*Grey* v. *Ohio & Penna. Railroad Co.*, 1 Grant, 412). So where either party may suffer by the granting or withholding an

> injunction the rule in equity requires the Court to balance the inconveniences likely to be suffered by the respective parties by means of the action of the Court, and to grant or withold the injunction according to a sound discretion; *Id.; Richard's Appeal*, 7 P. F. Smith, 105. A court of equity will not interfere if the damage is slight, and the nuisance is of a temporary character, so that damages at law would furnish an entire and adequate remedy: Bish. Eq., § 440. It was said in *Butler* v. *Burlesow*, 16 Vermont, 176, 'when there is an express covenant, and an uncontroverted mischief arising from the breach of it, equity will grant an injunction to restrain the breach.' In *Clark's Appeal*, 12 P. F. Smith, 447, Mr. Chief Justice Thompson said, 'injunction is a remedy in equity, to restrain or prevent such acts of wrong, as would, if done, result in irreparable injury to the property of the complainant. No decree should ever be made to be followed by writ of injunction, unless this element be clearly established.' There should be some irreparable injury, either committed or threatened, to justify an injunction."

It must be remembered that this contract is only partially executed. It still had five years to run, and in that respect the situation is different from that existing in almost, if not all, of the cases quoted in complainant's brief. They are, we believe, without material exception, cases where there has been a sale by one physician of his practice to another, accompanied by a covenant not to engage in practice, and after the full execution of the contract that covenant has been broken. Surely a very different situation exists in such cases from an unexecuted partnership agreement that is largely *in fieri*. The most analogous case is that of *Rakestraw* v. *Lanier* (Sup. Ct. of Ga.), 30 S. E. Rep., 735, where, in a very carefully considered opinion, the distinction is made between "that class of contracts "binding one to desist from the practice of a learned "profession, and those which bind one who has sold

"out a mercantile or other kind of business and the "good-will therewith connected, and agreed not to "again engage in that business or profession." The opinion should be carefully read. It contains a full discussion of the general principles, and shows that the modern view is that in order to support contracts of this character it must be satisfactorily established as a matter of law that it is founded on a valuable consideration, and is reasonably necessary to protect the interest of the party in whose favor it is imposed, and does not unduly prejudice the interests of the public. The views of Vice-Chancellor Van Fleet in *Mandeville* v. *Harman* (*infra*) are quoted with approval, and the distinction plainly marked between an executed contract with the sale of a profession or business, accompanied by such a contract, and unexecuted contracts, like the one at bar. The opinion then continues, reaching the conclusion that the order of the Court below, granting an injunction, was erroneous:

> "We test this contract by the rules before referred to, and find it supported by a legal consideration. Being limited as to space, although unlimited as to time, we find that it may properly be classed among contracts in partial restraint of trade. When we seek its terms to ascertain whether it is reasonable, made to protect the promisee, and not oppressive on the promisor, we find that no money was paid by the promisee, and no property sold by the promisor. We find that the promisor, by the nature of the contract, must have rendered service for all the benefits he received. We find that, under the terms of this contract, if the promisee, the defendant in error, should remove from the town of Oliver, from the State of Georgia; if he should become permanently incapacitated, by disease, from continuing the practice of medicine; if he should die,—the promisor, in any event, would not be at liberty to practice his profession in Oliver, nor within fifteen miles radius of that town. No matter what the changed conditions might be, it was so

> nominated in the bond that he should not exercise his calling within the territory prescribed. It must be clear, therefore, that the restrictions imposed upon the promisor in this contract were larger than were necessary for the protection of the promisee. Full protection would have been afforded to the latter if the time in which the restraint should apply had been limited to the life of the defendant in error, or to the time in which he was engaged in the practice of his profession in the county of Screven. Had this contract been so limited, it is obvious from the view which we take of the law that it should be upheld and would be enforced. But, when the terms of the contract prohibit one party from at any time in the future practicing his profession at a given place, without regard to the fact that the other party should not be engaged in the competitive business, without regard to the fact that he may have removed from the county and state in which such territory was located, without regard to the fact of the inability of the party, from age or physical infirmity, to continue his practice, it would seem to be unreasonable,—not necessary for the protection of the party in whose favor the restraint was imposed, oppressive to the party restrained, and opposed to the interests of the public; and such being the case, the contract cannot be enforced."

It is useless to go over all the authorities. The important question is, shall this complainant have this injunction? We contend that the New Jersey authorities are directly opposed thereto.

Mandeville v. *Harman*, 42 N. J. Eq., 185, is the leading case. If it be said that this case was decided on motion for preliminary injunction, we reply, the facts were undisputed, and the decision was a determination of the case. It was followed in *Sternberg* v. *O'Brien*, 48 N. J. Eq., 370, which was on final hearing, and was approved of in *Ellerman* v. *Chicago Junction Railways, etc., Co.*, 4 Dick., 217, 256, which was approved by this Court.

These cases are dispositive of the case at bar. Complainant's efforts to avoid them are futile, and if anything more was needed to clarify the situation, the evidence of Dr. Marvel supplies it. He cannot show that he will be or is in any way injured by the fact of the defendant's proposition to practice. His principal ground, as his evidence shows, for the injunction is because the contract gives him the right, and the only apprehension he seems to have is that the defendant *may* (not that he will) write some of his (Dr. Marvel's) correspondents, slanderous and untrue letters, concerning the complainant, which may result in a detriment to him. We invite careful attention to the entire absence of any proof in this case that a just and due regard to the rights of the complainant require the drastic relief here sought, as indicated by the decisions in this State. Dr. Marvel now has more business than he can attend to. His eminence is such as that he would laugh at the idea that Dr. Jonah could interfere with that practice. The mere fact that he and Jonah combined under this iniquitous contract would make more money for Marvel than Marvel can make for himself alone, will not entitle him to an injunction. The fact is that the old empiric rule of determining whether a contract of this character is reasonable, both as to time and space, in the modern conditions, no longer exist, and the true doctrine nowadays is that announced in the recent case of *Nordenfeldt* v. *Maxson*, Law Rep. (*App. Cas.*, *1894*, p. 535), to the effect that each case is a rule unto itself, and that the underlying principle sustaining contracts restraining trade is the necessity to the plaintiff, rather than any territorial limit or division of time. A very thorough discussion of the whole subject is also to be found in an article by Amasa M. Eaton, in 4 Harvard Law Review, p. 128, which ends with the following:

> " We conclude, therefore, that the true test in considering the legality of a condition or covenant in restraint of trade, is not whether

> the restraint covers the whole State or nation, but it is whether the restraint is reasonable, and in determining this question the court will inquire whether it is *necessary* for the protection of the complainant, and is not injurious to the public."

Applications for injunctions in cases of this kind are in fact pleas for specific performance. Mr. *Pomeroy*, in Sec. 934 of his *Equity Jurisprudence*, speaking of applications for injunction to restrain the exercise of one's trade or profession, says:

> "The jurisdiction of equity is generally exercised in respect to these contracts for the purpose of indirectly compelling their specific performance by means of an injunction preventing their violation."

For this reason, the distinction between a suit at law and an application for injunction in this class of cases has always been maintained; and while in the former the court will not now necessarily weigh the sufficiency of the consideration (*Hotchkiss* v. *Kocher*, 6 Ad. & El., 438), yet in the latter case, as in all claims for specific performance, the contract sought thus to be enforced must be fair and reasonable, and based upon an adequate consideration.

Thus, *Mr. Spelling*, in Section 489 of his work *on Injunctions*, says, speaking of contracts of this character:

> "Since, however, such a contract has a tendency to deprive a party of his means of earning a livelihood, it will not be looked upon favorably; and before equity will enforce it by injunction, it must be shown to be fair and reasonable in its terms."

The case of *Thayer* v. *Younge*, 86 Ind., 259, is a very important and interesting case. There the Court held that while an agreement not to engage in a particular business in a particular place will be enforced at law without inquiring into the adequacy of the consideration, the situation is entirely differ-

ent on an application for an injunction, as a court of equity may decline to act when the disproportion between the consideration and the restriction is such as to make the agreement hard and oppressive.

Of similar import is the leading case of *Kimberly* v. *Jennings*, 6 Sim., 340, which is referred to with approval by Vice-Chancellor Van Fleet in *Mandeville* v. *Harman*.

Mr. High, in his work *on Injunctions*, Section 1179, speaking of this branch of equity jurisdiction, says:

> "It is also to be borne in mind with reference to the exercise of the jurisdiction under discussion, that relief by injunction is allowed only when there is a sufficient consideration for the contract, and when the plaintiff himself has a legal interest in the contract."

Suppose the complainant brought this contract into court and asked for its specific performance upon some other phase of it, which, under ordinary circumstances, would entitle him to that relief, would this Court listen to him for one moment? Would it not rather say that the bestowal of the remedy of specific performance is in the exercise of a sound and wise discretion, and is only so exercised in favor of a person who relies on a fair contract for which an adequate consideration exists, and which is in other respects conscionable? What possible basis is there for excepting a contract which seeks to muzzle a man who is engaged in the healing art from this general rule? Is a contract that shackles Jonah and leaves Marvel as free as air an equitable one? Does an arrangement which enables Marvel to elect to prevent Jonah from practicing, because of a dereliction, and fails to give Jonah a similar right under similar circumstances, against Marvel, seem fair or reasonable? Will a court of equity enforce a contract which reads: "Heads I win and tails you lose"? The situation is entirely different, as already

indicated, in executed contracts of a sale of one's practice, and an agreement to remove from the territory. Here the complainant is seeking to enforce the performance *in futuro* of a contract which should be mutual. It presupposes the continuance of both in the field. By that contract, drawn by the complainant's lawyer, the complainant is practically under no obligations. He need not practice, he is required to produce no income, nor to devote any time, except by implication, to the joint business. The defendant, however, has the ball and chain upon him, and while the complainant may, like Mephistopheles, laugh and ask for an injunction for three years against the defendant, he may die the next day, or move from Atlantic City, or a thousand and one other contingencies may arise; and yet, if his contention is correct, he would be justified in his claim for the suppression of the defendant.

The complainant has utterly failed to show by evidence that he needs this protection. His bill of complaint, in its first paragraph, boastingly admits that "about the year eighteen hundred and eighty-nine, your orator's practice became larger than he could consistently care for, and that from that date until the present time, he has always had the assistance of one or more physicians." We have already seen that the Court of Chancery in *Mandeville* v. *Harman* and *Sternberg* v. *O'Brien* has twice put itself upon record to the effect that the case must show that the desired injunctive relief is absolutely necessary for the protection of the complainant.

In *Pickett* v. *Green*, 22 N. E., 737, the Supreme Court of Indiana granted an injunction, because, unlike the situation in *Thayer* v. *Younge*, 86 Ind., 259, it was found as a fact in the case that the violation had caused, and was likely to cause damage to the complainant, as well as the fact that the defendant was insolvent.

Here neither of these facts appear. There is no suggestion that Dr. Jonah is not amply responsible

to answer for any suit at law, or to respond for any damages the complainant may prove himself to have suffered by reason of the alleged violation of the contract, and as already stated, the evidence fails to show any proof of injury, actual or contemplated, and the sole reason, after months of contemplation, that Dr. Marvel could give as his evidence for wishing injunctive relief, was because his right thereto was "nominated in the bond."

Vice-Chancellor Van Fleet in *Mandeville* v. *Harman*, and Chief Justice Beasley in *Brewer* v. *Marshall*, 4 C. E. Gr., 587, in this court both showed that a similar course of reasoning would entitle a man to an injunction for a breach of covenant of warranty.

We have examined the cases relied on by the complainant in his brief. If you could reconcile *Timmerman* v. *Deever*, 52 Mich., 34, with principles established in the New Jersey cases (which you can't), it could nevertheless be distinguished upon the ground that there, as expressly stated in the opinion, the damages which the complainant would suffer, plainly appeared.

In *Linn* v. *Sigsbee*, 67 Ill., 75, there was no application for injunction; and in *Butler* v. *Burleson*, 16 Vt., 176, the contract was a mutual one, each physician being bound by all the covenants, including that not to practice after a breach.

French v. *Parker*, 14 Atl., 870, is a case of an executed contract, and a sale of a practice—quite a different situation.

In *McClurg's Appeal*, 58 Pa. St., 51, our contention is expressly recognized. The Court said:

> "This is not like a bill for specific performance of an unexecuted contract, where, if the bargain is a hard one, or founded on an inadequate consideration, a Chancellor would refuse to interfere, but leave the party to his legal remedy. This agreement is fully executed."

On every phase of the case, we confidently submit that this injunctive relief should be refused. Stripped of all unessentials, Dr. Marvel is mad, and he seeks an injunction because he is mad. He does not need it. He is asking the Court to enforce a most outrageous contract. He is asking it to shackle a young man for three years from helping the sick and earning a livelihood for himself and family.

It is useless to cite the cases of *Supplee* vs. *Cohen*, 83 Atl. Rep., 373; *Doherty* vs. *Allman* (1878), 3 App. Cas., 719, and *Osborne* vs. *Bradley*, 2 Ch. Div. (1903), page 446. These are all cases of building restrictions, where the courts have uniformly adopted the principle that for reasons of public policy and because of the inequity of acting otherwise, they will prevent by injunction, a violation of these restrictions, regardless of the question of damage to the complainant. Those cases are entirely distinct from the suit at Bar, where the effort is made to tie the hands of a physician for three years.

There is no pretense that the defendant is not amply able to answer any judgment that may be obtained against him in a suit at law; and this case, like *Sperry & Hutchinson Co.* vs. *Vine Bros.* (Court of E. & A.), 21 Dick., 339, is an instance where the appellant's damages are plainly a matter of ascertainment.

In every phase of the case, we consistently submit that this injunctive relief should be refused. Stripped of all unessentials, Dr. Marvel is mad and he seeks an injunction because he is mad. He does not need the Court's protection.

The following are the reasons given by him for the injunction:

> "The injury to me would follow in this respect. In the first place Doctor Jonah came into my office and has participated in my endorsement in every way that I could from the time he came and especially from the standpoint of a partner from the time of the signing of our partnership agreement, and when-

ever I have been away he has usually been considered the one really in charge. * * * And that naturally in that situation Doctor Jonah has derived a tremendous benefit in various ways, and that if he uses those benefits against me hereafter, he then is doing me a personal injury. He could not only take up practice that came to me primarily and was directed to him through me by using his acquaintance that he received in the practice and by writing to members of the profession with whom he has become acquainted whilst associated with me telling them of the dissolution, and whatever else he was a mind to tell them, and placing me in a position and attitude to which I would have no defense whatever unless by chance I might be told of it, and have them refer their work, when they are accustomed to refer it to me and the firm, to him individually. * * *

I want him enjoined in the first place because he entered into an agreement where there were liberalities made—because the agreement that we entered into declared that if he broke this agreement that he would leave the town for a period of three years.

Q. That is the agreement, but if you and he were good friends you could easily waive that? A. Yes.

Q. But from a practical viewpoint why do you want him denied the privilege of practicing in Atlantic City? It is so that you may get, it is not——? A. The benefit of my own clientele.

Q. Yes, of such practice as he would get? A. Yes, or such as will come back to me.

Q. Yes, as would come back to you? A. Yes.

Q. If he went away? A. Yes.

Q. That is the practical side of it, I suppose? A. Yes.

Q. The other side is that you and he are thoroughly estranged? A. We are.

Q. You can't see things the same way at all, and in place of your former close friendship has grown a feeling quite as intense of the opposite nature, and therefore you want

to stand by your agreement; that is about the substance of it? A. And there is another reason, that Doctor Jonah has misrepresented me all around the town. That is a personal reason, of course, I don't mean to go into anything outside of the other. * *. *

Q. Will you answer my question? Do you find your practice falling off? A. Yes.

Q. You do? Do you acknowledge that you are losing your practice? A. I acknowledge this: That I am not doing as much practice to-day as I did three years ago or five years ago.

Q. Do you—— A. Personally, I mean.

Q. I understand that. Is that because you haven't wanted to do it and have picked and choosed as you said yesterday? A. Partly so.

Q. Do you mean to say that if you got busy and devoted yourself day and night to the practice and the practice of your profession you felt the need of such extra patients as Doctor Jonah or Doctor Durand may have accumulated, or have you still your grip on your profession? A. I believe I have got my grip on my profession.

Q. I think you have, too, Doctor. I don't think that anybody will suggest for a moment that you are *passe* or losing your grip. As a matter of fact you have got all that you can do, haven't you, Doctor? A. I have had more than I can do.

Q. And all you wanted to do? A. I want to do as you would do. I want to take care of the work that comes to me; if I can't do it individually I want others to help me do it.

Q. And your fear is that some of the income that under this agreement would come to the firm from the services of Doctor Durand and Doctor Jonah will now go to them individually—is that it? A. Well, that is part of it.

Q. You haven't any fear of any depreciation in any income that would be due to your own services? A. None at all.

Q. And if you wanted to enlarge the scope of your activities and work harder and take less rest, which I am free to say I think you

deserve, you could do it, couldn't you? A. Yes.

Q. And Doctor Jonah being in Atlantic City, wouldn't interfere with you, would he? A. Well, there is another side to that.

Q. Well, now, do you mean to say that if you just put on the armor of activities and started out to get all the practice you wanted and worked as hard as you wanted that you would let this young man stand in your way? A. Of course I wouldn't let him stand in my way. * * *

Q. Now, Doctor, you answered a question for the Attorney-General, stating that you didn't do as much business—that is, you personally hadn't as much to do as you did three years ago. Why is that? A. For the reason that one of the understandings or stipulations under the agreement was that I should give up my night work and the other two men should take it; that is one of the reasons.

Mr. McCarter: Well, now, I don't think the reasons that led into this, your Honor, are important; here is the agreement.

The Vice-Chancellor: He says the fact is that during the two years past he has not done night work."

He has asked the Court to enforce a most outrageous contract. He is asking it to prevent a young man for three years from helping the sick and earning a living for himself and family. A physician's practice cannot be picked up in a day, and after a residence of eight years in Atlantic City, Dr. Jonah cannot go elsewhere and acquire a practice short of three years. Banishment at this stage of his career for three years from Atlantic City, where he is known, would practically place an embargo upon his practice elsewhere. The question, therefore, is, has Dr. Marvel presented to this Court such a case as that so disastrous and oppressive a result should be fastened upon Dr. Jonah? Can he show any reason or necessity for so unfortunate and unnecessary a

result? Is there any fair or reasonable balance between the benefit to the one and the dreadful harm to the other?

We respectfully contend the opinion of the Court below expresses not only the humane and practical, but the correct legal view of the case, and that from every viewpoint the injunction should be denied and the decree below affirmed.

ALLAN B. ENDICOTT,
ROBERT H. MCCARTER,
Counsel of Respondent.

June Term, 1913.

MacCrellish & Quigley, Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals.

PHILIP I. MARVEL,
Complainant,
Appellant,
vs.
WILLIAM E. JONAH,
Defendant,
Respondent.

On appeal.

Brief for Appellant.

On the tenth day of January, nineteen hundred and ten, Dr. Philip Marvel, Dr. William E. Jonah and Dr. Jay I. Durand entered into an agreement of co-partnership in the practice of medicine in Atlantic City and vicinity (page 97, line 10). Prior to the making of this partnership arrangement Dr. Jonah and also Dr. Durand had been engaged in the practice of medicine in Atlantic City and vicinity with Dr. Marvel as his assistants (page 94, lines 10–20). During that time Dr. Jonah had received a salary which gradually increased to approximately three thousand dollars during the last year.

At the close of nineteen hundred and nine the partnership arrangement was discussed between them, and

resulted in the drawing of an agreement, which was handed to Dr. Jonah and remained in his possession at least one day (page 334, line 10), as testified by him, and probably several days, as testified by Dr. Marvel. It was then executed by the parties.

Dr. Jonah was then thirty-seven years of age; Dr. Marvel was fifty-three years of age (page 139, line 20). The testimony shows that Dr. Marvel has been in the active practice of medicine for approximately thirty years (page 93, line 20); that he has acquired a large practice through his activities and ability as a physician, and also by reason of his large and favorable acquaintance with out-of-town physicians (page 97, line 20), who refer cases to him.

The evidence further shows that for twenty years past Dr. Marvel's practice has been such that required him to have one or more assistants to properly attend to it. At the time Dr. Jonah came with Dr. Marvel as an assistant he had had hospital experience but no experience in the general practice of medicine. He had no independent practice, and was a stranger in Atlantic City (page 209, line 20; page 369, line 40).

The agreement of co-partnership shows on the face of it that it was prepared with care and with the object in view of protecting Dr. Marvel as well as the other two partners in the proper distribution of the moneys to be derived from the practice, and also with the view of protecting Dr. Marvel in his practice if the partnership should be dissolved by reason of any act of the other two partners.

The partnership agreement was observed by Dr. Marvel in all its provisions throughout the existence of the partnership. It was observed by Dr. Jonah for the first few months of the partnership, and then Dr. Jonah, with greater and greater frequency, failed to comply with its provisions, in that he did not use the stationery provided by the firm, and did not render daily accounts to the bookkeeper, as the articles of

agreement provided should be done. Dr. Marvel importuned him to live up to its terms, and remonstrated with him when he failed to do so, and when verbal argument failed to produce the result, Dr. Marvel wrote him a series of letters looking toward the rendering of an account by Dr. Jonah, and these letters were answered by Dr. Jonah in a manner of impudent defiance. He submitted the letter of Dr. Marvel, in which Dr. Marvel demanded an accounting from him and stated that unless he complied with the demand proceedings would be taken against him, to his attorney, who advised him of the consequence thereof, and that he was committing a breach of the agreement. Notwithstanding such advice, Dr. Jonah neglected and refused to render an account, and the bill was filed (page 372, line 20).

In answer to the question of why he did not comply with the request, he answered, "I did not care much for his letters" (page 358, line 30).

He testified that about this time he was himself willing that the agreement should be broken (page 372, line 30).

The Vice-Chancellor at the hearing decreed that complaint was entitled to an accounting pursuant to the terms of the agreement; that he was entitled to a dissolution because of Dr. Jonah's failure to keep and perform the agreement, but denied that Dr. Marvel was entitled to have the injunction which the agreement provided he should have in case of such dissolution for failure to account.

The bill of complaint in the above-stated cause was filed for three purposes:

1. To Compel an Accounting by Defendant.
2. To Procure a Dissolution of Partnership Between Complainant and Defendant.
3. For an Injunction Against Defendant.

The agreement, page 6, provides:

> "It is further agreed that each party to this agreement shall render to the bookkeeper, or the

person employed for that purpose, a daily account of the work done or visits made that day by him, together with all moneys paid to him on account of said work done or visits made; and, it is also understood that, in order that the bookkeeper may keep an accurate and intelligent account, this provision for a daily statement must be more or less strictly adhered to."

The agreement, page 7, provides:

"Any misappropriation of the receipts, or refusal to account for the work done or moneys received daily, shall be considered a violation of this agreement."

The agreement, page 7, further provides:

"All professional cards letter heads bill heads and other stationery relating to the practice generally shall be furnished by the said Dr. Philip Marvel and shall be used exclusively by the parties to this agreement."

The agreement, page 9, provides:

"If at any time during the term of this agreement either the said Dr. Jonah or the said Dr. Durand parties of the second part shall fail to faithfully perform the covenants of this agreement, or shall fail to do their work conscientiously and diligently, or shall fail at any time to protect the interest of the parties to this agreement, and the interest and reputation of the said Dr. Philip Marvel, then, in that event, the said Dr. Philip Marvel shall have the right to cancel and annul this agreement and oust the said party or parties so offending, from this association.

"As a further consideration, moving to Dr. Philip Marvel, and as part of the consideration causing him to enter into this agreement, and in consideration of the apportionment and division of the net income hereinbefore mentioned, it is further understood and agreed that if at any

time during the term of this agreement, either the said Dr. Jonah or the said Dr. Durand, or both, may desire to withdraww from this association, for any reason whatsoever, and shall actually withdraw therefrom, or if at any time during the term of this agreement either the said Dr. Jonah or the said Dr. Durand, or both, may commit a breach or violate any of the covenants of this agreement in such manner as to justify the said Dr. Philip Marvel in requesting the party or parties so offending to withdraw from this association, or to cause the said Dr. Marvel to cancel and annul this agreement, so far as the party or parties so offending are concerned, then in either event such party or parties so voluntarily withdrawing from this association, or ousted from this association, for breach or violation of its covenants, shall not be permitted to practice medicine in the city of Atlantic City, aforesaid, for a period of three years next ensuing such voluntary withdrawal or ouster. And the said Dr. Jonah and the said Dr. Durand both hereby covenant, promise and agree that in case of either or both of them withdrawing for any reason whatsoever, from this association, during the term of this agreement, or in the event of either or both of them being requested by the said Dr. Philip Marvel to withdraw from this association or being ousted therefrom, on account of a breach of any of the covenants of this agreement, that they, the said Dr. Jonah and the said Dr. Durand will not, either or individually or jointly, or as an associate with any other physician, practice medicine or surgery in the city of Atlantic City aforesaid for a period of three years next ensuing such withdrawal or dissolution of this asociation, or ouster of either or both of the parties of the second part."

The evidence in the case conclusively proves that defendant failed to keep the covenant requiring daily accounts.

The evidence conclusively proves that defendant, when requested to account, neglected and refused to do so.

The defendant signed the agreement after having it in his possession somewhere between one day and two or more weeks, and, since the signing of it, has continuously had a copy of it in his possession, and must be charged with knowledge of the contents of it.

I.

As to an Accounting.

Defendant by his answer admits that he did not render his accounts as required by the agreement, and the partnership books conclusively proved this fact.

He admits that he was repeatedly requested to render his accounts, and that he did not do so.

The court decreed an accounting.

II.

As to a Dissolution of the Partnership.

In addition to the proof of defendant's failure to render his accounts as above stated, the evidence conclusively proved that defendant violated the covenant requiring him to use stationery provided by Dr. Marvel.

The importance of this violation had been brought to the attention of the court in showing how complainant's practice might be diverted by this method, and the bill charged that defendant did purposely endeavor to divert it.

The statements contained in defendant's letter of July twentieth, nineteen hundred and twelve, wherein he stated that he has visited forty-five patients, all of whom called for Dr. Jonah, and that he had kept out of

Dr. Marvel's territory, was proof of complainant's allegation, and served to show the importance to complainant of having defendant observe the covenant.

The agreement provided that if defendant should fail to faithfully perform the covenants of the agreement, Dr. Marvel should have the right to cancel and annul it, and oust defendant.

The court decreed a dissolution.

III.

As to Complainant's Right to an Injunction.

The agreement provides that if before the expiration of the term of said agreement defendant shall voluntarily withdraw or be ousted from said partnership by Dr. Marvel, he will not practice medicine or surgery in Atlantic City for a period of three years.

If complainant is entitled to the benefit of his agreement touching an accounting and dissolution, he is likewise entitled to the benefit of it touching the restraint, as the restraint is based on the dissolution, and the dissolution is based on the violation of the agreement. If not, why not?

The logic of the situation is as follows:

Defendant admits he refused to account; complainant is therefore entitled to a dissolution. Upon a dissolution restraint goes by the terms of the agreement.

Where complainant has lived up to the agreement, as in this case, a decree of dissolution founded upon a breach of covenant of the agreement with a refusal of restraint would in effect amount to a court making a new agreement for the parties.

In the case at hand complainant has done no act or thing to mislead defendant or cause defendant to change his position.

In the case of *Huffman* v. *Hummer, 18 Eq. 83,* which was a case of specific performance concerning real estate, Chancellor Zabriskie, speaking of the question of waiver, at page 89, says:

"A written contract, especially one required by statute to be in writing, cannot be waived or discharged by parole at law, nor in general in equity, but in equity this case is one of the exceptions to the rule. When the complainant has by parole waived or discharged a contract, and the defendant by such action has entered into obligations inconsistent with its performance, it is an equity that will bar the remedy by specific performance, but such parole waiver or discharge must be clear and explicit and proved beyond doubt. In this case the conversation of March fifteen relied upon as a waiver of the contract was not intended as such, and cannot be so construed."

The Court further said:

"Taken by itself, it was no discharge or waiver, but when accompanied by the words which the defendant himself testified were used by the complainant at parting, 'We will settle this some other time,' it is very clear that it was not intended as a discharge of the contract, and was not received as such. Few contracts would stand in this court if such an insistment in the negotiations about their execution should be held to discharge them."

(See, also, *Cramwell* v. *Clinton Realty Co., 67 Eq. 540-546.*)

In the case at hand, Dr. Marvel's every effort was directed to securing a performance of the contract, and as the Chancellor intimated in the above case, it would be unfortunate, indeed, if a party to a contract could not urge its performance without thereby waiving its enforcement.

In the case of *Maryott* v. *Renton, 21 Eq. 381,* the Court of Chancery dismissed a bill of foreclosure because of an oral agreement to extend the time of payment thereof, but it will be found that this case was

decided by virtue of an oral agreement which was based on a valid consideration, and the time of the extension was fixed in the verbal agreement.

On the other hand, in the case of *Truesdell* v. *Jones, 23 Eq. 121,* it was held that a verbal agreement to extend the time of payment of a mortgage based upon a usurious contract is void, and that the mortgage might be foreclosed before the expiration of the time fixed in said verbal agreement.

It has never been suggested that a mortgagee after the maturity of his mortgage, who had received interest payments thereon after such maturity, precluded himself from the right of foreclosure until a certain date of payment other than that mentioned in the mortgage should arrive, by reason of such mortgagee soliciting the mortgagor to pay the principal of said mortgage. So long as no new contract is entered into, and so long as the mortgagee by his statements or actions does not mislead the mortgagor to his detriment, he may proceed to foreclose his mortgage at any time after maturity without regard to how many interest payments have been made thereon after such maturity, and without regard to the persistency with which he has importuned the mortgagor to pay.

The head note to the case of *Sire* v. *Whiteman, 25 N. J. Eq. 102,* might indicate that the above statement is not correct, but a reference to that case will show that the mortgage under foreclosure was a third mortgage, the mortgagee being brought in as a defendant in the foreclosure of the second mortgage. The mortgagor paid off the second mortgage, and costs and interest on the third mortgage, and prayed for a restraint against the sale under the third mortgage. The principal under the terms of the third mortgage was not due. The third mortgagee claimed to be entitled to the benefit of the execution by reason of a default made in the payment of an interest installment long before. It appeared that on one occasion the mortgagor had defaulted in

the payment of the interest within the time specified, but that it was paid and the receipt was dated as of the date the interest became due, and from that time on the interest had at all times been paid when due.

The Court held that the acceptance of the interest after it became due was a waiver of the right of forfeiture by reason of that non-payment, and that the third mortgagee had not in act claimed a forfeiture.

The case of *Industrial Land Development Co.* v. *Post, 55 Eq. 559*, was one where a mortgagor had defaulted in the payment of an interest installment, and later had defaulted in a subsequent interest installment, and upon foreclosure, because of failure to perform the covenant concerning interest the mortgagor contended that the mortgagee allowing the first default to pass by without exercising his option to foreclose had thereby waived the right to foreclose for future defaults in the payment of the interest at the stipulated time.

The Court of Errors and Appeals held, however, that there was nothing in this contention; that by the terms of the mortgage the right to demand payment of the principal was reserved to the mortgagee upon *any default* in the payment of the interest, the Court saying:

> "This right accrued as each installment of interest fell due, and his failure to enforce it for one default did not operate to deprive the mortgagee of his option to call for the immediate payment of the principal for the subsequent default any more than it operated to relieve the mortgagor from the necessity of paying the subsequent installments as they fell due."

In the case at hand the urging by complainant of defendant to render his accounts, and the final rendition of them by the defendant at the end of the years nineteen hundred and ten and eleven, no more precluded complainant from insisting upon his right of future performance at the time specified in the agreement than it would preclude him from insisting upon the rendering

of such accounts ultimately. His obligation to account was a recurring obligation. In other words, in the language of the Court of Errors, if by reason of his importuning during the first years he precluded himself from the right of having the accounts rendered according to the agreement, then he had precluded himself from having the accounts rendered at all.

In the case of *VanDyke* v. *VanDyke, 31 Eq. 176,* and in a number of other similar cases, a judicial sale has been set aside where there has been fraudulent conduct on the part of the purchaser or judgment creditor, but unless there has been fraudulent conduct on the part of the party to a contract, he is entitled to the benefit of that contract, provided the contract is not in restraint of trade.

IS THE CONTRACT IN THIS CASE IN RESTRAINT OF TRADE?

The case of *Handerville* v. *Harmon, 42 Eq. 185,* was an application for a rule to show cause on bill and affidavits and answer and affidavits.

The Court, at page 195, said:

> "The conspicuous defect in the complainant's case is that the legal right on which he founds his claim to an injunction is not clear. No court of this State has ever declared that a covenant like that on which the complainant rests his claim is valid; on the contrary, it appears that the general legal presumption is against its validity of of such covenants. In this posture of affairs the duty of the Court is plain; for, in the language of Chief Justice Beasley, no rule of equity is better settled than the doctrine that a complainant is not in apposition to ask a preliminary injunction when the right on which he founds his claim is, as a matter of law, unsettled."

In that case, however, the Court correctly stated the rule that a limited restraint of trade "is valid when the restraint is reasonable, and the restraint is reasonable

when it imposes no shackel upon the one party which is not beneficial to the other. (*Ibid, page 189*).

In the case of *Trenton Potteries Co.* v. *Oliphant, 58 Eq. 507,* which was an application for an injunction restraining defendant from engaging in the pottery business within any State of the United States, or within the District of Columbia, excepting the State of Nevada or Arizona, for a period of fifty years, the Court of Errors and Appeals held that the restraint was reasonable, and ordered an injunction, stating the rule, at page 514, as follows:

> "Contracts of this sort which have been sustained and enforced by courts have been generally declared to be such as restrained trade, not generally but only partially, and no more extensively than is reasonably required to protect the purchaser in the use and enjoyment of the business purchased, and not otherwise injurious to the public interest."

Citing a number of New Jersey cases.

In the case of *Richardson* v. *Peacock, 26 Eq. 40,* this court held that where a party under agreement not to carry on a specified business, under color of another name engages in a business which is within the spirit of the agreement, he will be restrained from continuing it.

To the same effect is the case of *Finger* v. *Hahn, 42 Eq. 606.*

The case of *Sternberg* v. *O'Brien,* which was cited by defendant, was an application to restrain defendant, who had worked as a collector for an installment firm for four or five weeks, from engaging himself as a salesman for another installment firm, in the same city, the Court stated the rule governing such cases in the same language as has been above mentioned, but denied the relief on the ground that the restraining was broader than was necessary, and therefore the contract itself was in restraint of trade.

This will clearly appear from the Court's language at pages 376-377.

In the case of *Gillman* v. *Dwight, 19 Mass. 356,* defendant, a physician, transferred his practice and good will to another physician for a certain sum, and guaranteed that no other physician for a space of four years should establish himself in the same place as a competitor, and if another physician should establish himself in said village within said time, that defendant should pay a certain sum of money. Other physicians did establish themselves in the village within the period of four years, and it was objected that the agreement was void because against public policy. The Court by Bigelow, Justice, held, however, that the agreement was not open to the objection of being in restraint of trade.

It was further objected (along the line suggested in *Mandeville* v. *Harmon*) that contracts concerning business were not applicable to contracts between professional men.

Touching this contention the Massachusetts court said:

> "There is nothing in the nature of the business or profession to which the contract relates which takes it out of the ordinary rules applicable to contracts in partial restraint of trade. The cases are numerous in the books, in which similar contracts entered into by attorneys, solicitors, apothecaries, dentists and surgeons have been upheld and enforced."

Citing a number of cases.

The case of *Whittaker* v. *Howe, 3 Beav. 383; 49 Reprint 150,* was an application for injunction by the attorney against another to restrain the defendant from violating a covenant not to practice contained in an agreement of sale of his business. Defendant Howe and one Heptinstall were partners practicing law, and complainant Whittaker entered into an agreement with them by which he paid five thousand pounds, and be-

came associated with them for a period of two years, at the expiration of which said two years he was to succeed to the entire business, and Howe and Heptinstall covenanted not to carry on the business as attorneys and solicitors in any part of Great Britain for a space of twenty years without the consent of Whittaker. At the expiration of the two years Heptinstall withdrew pursuant to the terms of the contract and Whittaker induced Howe for a consideration to remain with him. Howe remained with him for some years, during which time he maintained his name on the door of the office, and finally Whittaker dispensed with his services. Howe thereupon contended that by Whittaker's subsequent acts in employing him, and in permitting him to have his name upon the window, he had waived the covenant against Howe's practicing within the period of twenty years.

The Court held that in permitting Howe to assist complainant in his practice after the expiration of the two years, and in permitting him to maintain his, Howe's, name upon the window after that period in no manner constituted a waiver of abandonment by Whittaker of the twenty-year covenant, and granted an injunction restraining Howe from practicing.

In the case of *Davis* v. *Mason, 5 Tr. Rep. 118, 101 Reprint 69,* defendant, in consideration that plaintiff would take him as an assistant in his business of surgery for so long a time as it should please plaintiff, agreed not to practice on his own account within ten miles of the place where the plaintiff lived for fourteen years from the time he ceased to be such assistant, and gave bond for the faithful performance of such covenant.

The Court citing the case of *Mitchell* v. *Reynolds, 1 Pr. Wms. 181,* held the bond to be good, and that it was not in restraint of trade as there undoubtedly were other surgeons who would practice in that locality and thus care for the interest of the public.

The case of *Timmerman* v. *Deever, 52 Mich. 34,* was

where the defendant, in consideration of the sum of five hundred dollars, agreed to remain in the city of Hastings and vicinity in the practice of medicine with plaintiff for a period not exceeding six months. At the end of which period he agreed to relinquish and yield up his practice and remove from the city and vicinity, and refrain from practicing therein for a term of five years.

The Supreme Court held that the complainant was entitled to relief, and that the proper mode of relief was by injunction.

The case of *Linn* v. *Sigsbee, 67 Ill. 75–80,* was a case where defendant, a physician, sold to complainant, a physician, his house and lot situate in the town of Chili, for the sum of two thousand dollars, and agreed not to establish nor to attempt to establish a medical practice within the township of Chili nor within six miles of his present residence. Defendant violated the agreement, and contended that inasmuch as there was no time limit mentioned in the agreement that the agreement was, therefore, in restraint of trade, and void.

The Supreme Court held that the covenant was limited to a distance of six miles from complainant's home, and was reasonable, and, therefore, not in restraint of trade.

The court further held that it would not inquire whether the consideration was adequate or equal in value to that which the party loses by restraining, stating:

> "The contract must be construed by the court and its reasonable character and the consideration for it determined,"

citing the case of *Mitchell* v. *Reynolds* and other cases.

The case of *Butler* v. *Burleson, 16 Vt. 176,* was a case between two practicing physicians. The consideration for the agreement was a mutual covenant, the one agreeing that if should buy the other out, he

would not practice as a physician or surgeon within twenty miles, and the other that if he should become the seller, he would not practice within ten miles. Upon a breach of the covenant the Court said:

> "The contract between the parties is plain, clear and explicit, and according to the terms of it the defendant agreed that at the expiration of the partnership, if he did not purchase of the plaintiff, he would not settle within ten miles of the plaintiff without his consent. * * * This contract is not forbidden by any principle of public policy. Dr. Burleson would be as useful to the public at any other town as at Berkshire, and the lives and the health of persons in other villages are as important as they are there. Communities are, therefore, not injured by any stipulation of this kind between two practicing and eminent physicians."

The Court further said:

> "When there is an express covenant and an uncontroverted mischief arising from the breach of it, equity will grant an injunction to restrain the breach."

In the case at hand there is an express covenant and an uncontroverted admitted mischief, to wit, Dr. Jonah's intent to continue the practice of medicine in Atlantic City, and thereby injure Dr. Marvel in taking a part of Dr. Marvel's practice away from him.

The case of *French* v. *Parker, in the Supreme Court of Rhode Island, 14 Atl. Rep. 870*, is a case between physicians, and is an exhaustive and well-considered case. In that case the defendant, a physician and surgeon practicing in Pawtucket, advertised his practice for sale. French, a physician practicing in Waterbury, saw the advertisement and purchased defendant's practice, including his house and lands, for the sum of fifteen thousand dollars. Defendant agreed not to engage at any time thereafter in the practice of medicine or

surgery in the city of Pawtucket, and afterwards opened an office in Providence, and advertised his card in the Pawtucket papers, and visited his old patients in Pawtucket. A bill for injunction was filed, and a demurrer filed thereto. The defense of the contract being in restraint of trade was set up and dismissed, the Court saying:

> "We agree in the general principle that where the restraint of a party from carrying on a trade is larger and wider than the protection of the party with whom the contract is made can possibly require, such restraint must be considered as unreasonable in law, and the contract which would enforce it must be therefore void,"

but held that this contract was not in general restraint of trade, and was good.

The case of *Manderville* v. *Harmon* was brought to the court's attention, and the court dismissed it in the following language:

> "In that case the defendant had covenanted not to engage in the practice of medicine and surgery in the city of Newark at any time afterwards. The suit was by the covenantee in equity for an injunction. The court refused the injunction on the ground that whether a restraint so unlimited as to time was unreasonable or not hard never been decided in that State. The court did not decide that such a restraint was invalid, although its intimations were adverse to it."

The case of *Kimberley* v. *Jennings, 6 Sim. 340; 58 Reprint 621,* was cited by defendant as an authority for the court refusing to enforce a harsh agreement. What the court, in fact, decided was that "where a party agrees not to do a particular act, and there are other terms in the agreement which are so vague that the court cannot enforce them, it will not grant an injunction to restrain the breach of the negative term."

In the case at hand no contention is made that the restraint is unreasonable, and it is respectfully submitted complainant is entitled to the injunction prayed for.

If complainant is not entitled to an injunction because of want of notice or other cause, then he is not entitled to a dissolution of the partnership for the same want of notice or other cause, as any element which precludes complainant from having the benefit of an injunction must likewise preclude him from having a dissolution, as the contract provides for injunction only in case of dissolution.

If complainant, because of want of notice or other cause, is not entitled to dissolution, then for want of such notice or other cause complainant is not entitled to an accounting, as any element which precludes complainant from having the benefit of a dissolution because of refusal to account must likewise preclude him from having an accounting, since the contract provides for a dissolution only in case of a refusal to account. Therefore, it logically follows if complainant is not entitled to an injunction because of want of notice or other cause, then complainant is not entitled to an accounting because of a like want of notice or other cause, notwithstanding the fact that the agreement specifically provides for the accounting, and that defendant admits that he has been repeatedly requested to account, and has neglected and failed to do so, which is an absurdum.

The defense in this cause is that the agreement is a harsh one. Complainant contends the agreement is a most liberal one. It secured to defendant:

1. An opportunity of gaining experience with a physician who had built up a very large practice.

2. An introduction to the hotels of Atlantic City and to the patients of Dr. Marvel, and to the correspondents of Dr. Marvel, which must necessarily be of great value, both now and in the future, to defendant.

3. An income, including the one thousand dollars a year for automobile expenses, of double what he had

received in any previous year, and this for a term of eight years.

4. An opportunity of practicing for a period of eight years in a field that it had required Dr. Marvel upwards of twenty years to gather.

5. At the end of eight years, with his increased experience and ability at that time to care for all classes of patents, an unrestricted opportunity to practice independently and take with him as much of Dr. Marvel's practice as he could command, which at that time, considering his age and Dr. Marvel's advanced age, must necessarily have been considerable.

On the other hand, what did he give up?

1. For a limited period the right to practice independently, but he had no independent practice.

2. An income of three thousand dollars a year, but he immediately received five thousand dollars per year and upwards instead.

3. The right to secrete the amount of business he did, but he acquired the right by the agreement of sharing in the business of Dr. Marvel and Dr. Durand, and acquired the right of compelling an accounting to him during those eight years, if such an accounting should be refused.

With whom do the equities in this case lie? Defendant, by performing the agreement for the short term of eight years, more than one-third of which has already gone, would have received all the benefits mentioned above. At the present time he has received the benefit of Dr. Marvel's introduction to the hotels, of an introduction to Dr. Marvel's patients, and to Dr. Marvel's correspondents. He feels that he has received sufficient from Dr. Marvel at this time to establish himself in a living practice against Dr. Marvel, and therefore concludes the agreement was a mistake. Defendant feels that the increased business that Dr. Marvel, from year to year, has turned over to him as a member of the firm has rendered him of such importance and such wide

acquaintance that he no longer needs the aid of Dr. Marvel, and is now ready and anxious to enter upon an active practice, not in conjunction with Dr. Marvel for their joint benefit, but as a competitor for the purpose of diminishing Dr. Marvel's practice to the utmost degree. He admits his animosity, and admits his desire to become Dr. Marvel's competitor.

He has wilfully and knowingly violated the covenants of the agreement, and now seeks to avoid the consequences of his agreement, which he has thus wilfully violated, by assuming an attitude of business ignorance and incapability.

Dr. Durand testified that the stamp was in use before the agreement was made, which of itself shows that Dr. Marvel must then have been conducting his business upon a business-like basis. Defendant nowhere contends that he was lax in his business methods before making the agreement, and the manner in which he figured out that patients of theirs sent to Dr. Emery Marvel's Sanitarium might result in their business loss, and his strenuous objection thereto shows that he is not lacking in business instinct or perception. It was the defendant who by his testimony first indicated in this case the importance of an introduction of the physician to the patients.

He having had it within his power to comply with the terms of this agreement, and thus reap the benefits of the contract, if he desired equity, was bound to do equity, to wit, live up to the terms thereof, and having knowingly and wilfully refused to do equity, he should not in justice have leniency, but should be restrained from violating the contract he made.

On the other hand, Dr. Marvel, from the execution of the contract until the present time, has lived up to its terms and fulfilled its minutest requirements. If defendant is now permitted to enter upon the general practice of medicine and take from a third to a half of Dr. Marvel's practice then *the result will be that Dr. Marvel, although he has done equity, shall not have equity,*

and at this age in life it is of utmost importance that Dr. Marvel should have the fruits that in a court of equity go with the doing of equity. In other words, *in this case a dissolution is decreed and an injunction denied. In addition to its making a new contract between these parties it places a premium on disloyalty and negligence.*

Another phase of this case is: Dr. Jonah voluntarily agreed that if he should refuse to keep the covenants concerning an accounting, and for that reason was ousted from the partnership, that he would not practice in Atlantic City for the period of three years. When he could, by his own acts, have honorably prevented restraint, he was not at all solicitous about his future, or desirous to avoid an injunction, as is shown by the fact that he was requested to account by letter, took advice from an attorney, learned the consequences of failure, and yet, when asked why he did not comply with the requirements mentioned in the letter, his only answer was that *"he did not much like the letter."* In other words, with full knowledge of the making of this agreement and its consequences, he was then so little concerned about the result that he would not even endeavor to comply with the terms of the agreement, probably because, as he said, *"he then thought the agreement was a mistake and wanted it ended."*

Under these circumstances, where the defendant had full knowledge and opportunity, but wilfully refused to render an accounting, why should a court of equity be solicitous for his three years' future. As was stated in one of the cases above cited, he would undoubtedly find employment elsewhere, and there will undoubtedly be enough physicians to care for the sick in Atlantic City during the three years of such restraint.

COMMENTS ON THE OPINION.

The Vice-Chancellor, in his opinion, after a recital of the facts, concludes as follows (page 455, line 20):

> "From the foregoing it will be observed that the defendant has clearly violated a covenant of the partnership agreement, and that the penalty clause of that agreement in terms bestows upon the complainant the right to oust the defendant for the failure 'to faithfully perform the covenants of this agreement,' and also provides that in such case defendant shall not pursue the practice of his profession in Atlantic City for the period of three years."

The Vice-Chancellor further concludes in answer to the contention that there was no consideration or no sufficient consideration for a covenant not to engage in business, as follows (page 456, line 31):

> "I think it is impossible to here determine that the benefits and disadvantages flowing from its (the agreement) mutual covenants were inadequate to support the engagement of defendant to refrain from practice at the place and during the time specified in the partnership agreement."

The Court further concluded that the conduct of the defendant was such as to justify Dr. Marvel in ousting Dr. Jonah from the association of partnership, and was sufficient to justify the Court in ordering a dissolution. The Court said (page 467, line 9):

> "I will advise a decree of dissolution of the partnership and direct an accounting for such work as has been performed, pending the litigation, and deny the prayer for injunction."

Summarizing the effect of the Vice-Chancellor's opinion, it is as follows. He finds:

1. That the defendant, Jonah, had committed a breach of the association agreement.

2. That such breach was sufficient justification for Dr. Marvel to oust Dr. Jonah from the partnership or association agreement.

3. That the covenant preventing the violator of the agreement from practicing his profession in Atlantic

City for a period of three years was one of the penalties following the ouster.

4. That such covenant was based upon an adequate and valuable consideration.

5. That the conduct of the defendant was such as to justify the Court in decreeing a dissolution of the association.

The Vice-Chancellor's refusal to restrain Dr. Jonah from practicing for three years in Atlantic City could only be sustained upon the theory that the provision in the agreement was not binding upon Dr. Jonah, and this, notwithstanding that the Vice-Chancellor himself concluded that Dr. Jonah had violated the terms of the agreement, and that such violation was sufficient cause and justification for Dr. Marvel taking tdvantage of the provision for ouster contained in the agreement, and was sufficient for the Court to dissolve the partnership or association.

The Court of Chancery based its opinion largely, if not exclusively, upon the conclusions in *Sternberg* v. *O'Brien, 48 N. J. Eq. 370–375.* The Court in this case said:

> "No matter when the writ is applied for, to warrant its issue in a case like the one now under consideration three things must be clearly shown: first, that a valid contract has been violated in a material point; second, that such violation has resulted, or will result, in serious injury; third, that a remedy at law is plainly inadequate to do full and complete justice. A court of equity, in exercising its prohibitory power, must always proceed with the utmost caution, and see to it that its power is not so exercised as to do more harm than good. The power exists to prevent irreparable wrong, and should not, therefore, be used in any case when its use will produce the very result it was designed to prevent. The rule is fundamental that an injunc-

> tion should never be granted when it will operate oppressively or contrary to the real justice of the case, or where it is not a fit or appropriate method of redress under all the circumstances of the case, or when the benefit it will give to the complainant is slight in comparison with the injury it will do to the defendant. The great office of the writ is to protect and preserve, not to destroy."

It is, of course, needless to say that the legal principles enunciated in an opinion must relate to the facts in the case upon which the opinion is decisive, and in the case of Sternberg *v.* O'Brien, the facts were widely different from those under consideration by the Vice-Chancellor in his opinion in the present case. The effect of the contract in the O'Brien case was to prevent the defendant, although employed in a single capacity and in a particular business, from taking employment as a coachman, waiter, or in any other capacity, from any person engaged in the installment clothing business in either Newark of Jersey City, without committing a breach of his contract. The defense was that the restraint was unreasonable, because it was greater than was necessary for the fair protection of the complainant, and the Court said, page 373:

> "It is manifest that the restraint, so far as it prevents the defendant from doing work for a rival of complainant outside of installment clothing business, does the complainant no good; he derives no benefit from it, and the only purpose its enforcement would serve would be to oppress the defendant."

The Sternberg case was decided upon the theory not that the covenant was illegal or greater than was necessary for the protection of the complainant, but upon the ground that the defendant had not worked long enough for the complainant to permit of the inference that his working for a rival concern would do any harm

to the complainant, and the Court further held in deciding the Sternberg case at page 378:

> "The money value of the loss which the complainant has sustained or can sustain by the defendant's breach of his contract can be computed according to well settled legal rules, with almost perfect exactness."

It is submitted that the Sternberg case is not controlling in the present case, neither in principal nor upon the facts. In the Sternberg case the Court said: "The power exists to prevent irreparable wrong, and should not, therefore, be used in any case when its use will produce the very result it was designed to prevent, *i. e.*, irreparable wrong." It is a pertinent question, therefore, what irreparable wrong can be done the defendant by preventing him from practicing his profession in Atlantic City for the period of three years. A wrong is a violation of a right. Therefore, before Dr. Jonah can have said to be irreparably injured by restraining him from practicing his profession individually, it must appear that he had a right to practice his profession in Atlantic City during that period. It will be observed that Dr. Jonah's entire professional career in Atlantic City was either as an employee or as an assistant of Dr. Marvel, and as an assistant his right to practice in Atlantic City existed only so long as he was an assistant of Dr. Marvel under the terms of the agreement in litigation in this suit. The Court decided that his right to partake of the benefits of that agreement had been forfeited by his own conduct. It logically follows, then, that his right to practice in Atlantic City had been forfeited by his own conduct. Furthermore, Dr. Jonah had no private individual practice; his practice at all times was that of Dr. Marvel or of the association, in which Dr. Jonah's interest was dependent upon his faithful performance of the association agreement. So that, not having given up any private practice upon entering into the association, and not having brought into the association any

private practice, he cannot be said to have any private practice, which was his own individually, as distinguished from that of Dr. Marvel or the association.

Again, the dissolution of the agreement was not the result of expiration of time; was not the result of misconduct on the part of Dr. Marvel, and was not the result of any breach of the contract on the part of Dr. Marvel, but was due entirely to Dr. Jonah's own wrong. The logic of the Court of Chancery is that a party to an agreement can violate that agreement in such a way as to justify the other party to it in declaring it at an end and yet be relieved of the provision attached to his breach of the agreement in order to give him a free field and permit him to do that which, while the agreement lasted, could not have been done. Had Dr. Jonah's conduct been accorded to the provisions in the agreement he could not have been ousted, nor could he have withdrawn, nor could he have practiced individually in Atlantic City. The testimony in the case and particularly the letters passing between Dr. Marvel and Dr. Jonah compel the conclusion that Dr. Jonah desired to practice his profession individually in Atlantic City, and that he deliberately set about violating the terms of the agreement in order that the agreement might be dissolved and he released from its burden. He has attempted to take advantage of his own wrong, and has violated, therefore, a fundamental and primary maxim of equitable jurisprudence. He has forfeited his right to the protection of the principles enunciated in Sternberg *v.* O'Brien, and upon which the Vice-Chancellor relied in support of his conclusions denying an injunction.

The Court attempts to defend Dr. Jonah (page 459) upon the theory that his violation of the agreement was not a dishonest violation, or rather that no pecuniary loss resulted. It will be noted that the agreement, which the Court held was a valid one and based upon a valid consideration, did not require that the failure to per-

form its covenants should be a dishonest or fraudulent failure to perform, or that the failure should result in pecuniary injury, and the remarks of the Vice-Chancellor are superrogatory, because he has already concluded that the violation was sufficient to justify Dr. Marvel in dissolving the agreement.

At page 460, line 5, the Court says:

> "But no specific warning was given that the consequences here sought to be visited on the defendant might result from his conduct,"

and the Court said:

> "It is doubtful whether Dr. Jonah was not in ignorance of the terms of the agreement."

Upon just what facts in the case the Vice-Chancellor based his conclusion that the defendant was ignorant of the contents of the agreement we are at a loss to point out. Dr. Jonah was a professional man of a high degree of intelligence; he had been employed by Dr. Marvel as an assistant when this agreement was entered into. It is inconceivable that a man of his intelligence would change his relationship in an important matter like this, involving his professional career in associating himself with two other physicians, without knowing the terms of his agreement. Furthermore, it is scarcely conceivable that at the time when Dr. Marvel was constantly calling Dr. Jonah's attention to his failure to perform his agreement, that if he was unaware of the terms of the agreement, he did not consult his copy, or, if he had lost his copy of the agreement, call upon Dr. Marvel or Dr. Durand for permission to see their copy, in order to determine whether or not he was violating the terms of his agreement, or what the penalty would be. He must certainly have known that there was some penalty attached to his failure to perform his duty, and if he did not know what those duties were, as a member of that association, that fact condemns rather than excuses him. A partner in a commercial partnership can scarcely hide behind the flimsy defense that he was

unaware of the terms of the agreement of partnership. In all the correspondence between Dr. Marvel and Dr. Jonah it nowhere appears that Dr. Jonah denied that he was violating the terms of the agreement, or denied that he was required to do all the things that Dr. Marvel demanded of him, nor does it appear that he ever stated that he did not know what the agreement was.

In short, the facts in the case admit of no other conclusion but that Dr. Jonah was acquainted with the terms of the agreement. The presumption is that a man reads that which he signs, particularly a man of high intelligence, as Dr. Jonah is undoubtedly. It is contrary to all human experience to assume that Dr. Jonah did not know the terms of this contract. He was not an imbecile; he was not shaken with disease or old age; he was not uneducated; he was not over-awed by Dr. Marvel, as appears from his attitude toward him.

The Vice-Chancellor (page 460, line 15), excuses Dr. Jonah upon the theory that his former defaults had been forgiven. It seems to us that the effect of this would be that the harder a man is in his business dealings the more is he entitled to equitable consideration. It would be hard, indeed, if a party to an agreement cannot forgive another party to the agreement for some default in his performance, without thereby waiving the right to have the agreement enforced by reason of subsequent defaults. We can well conceive how a Court of Chancery, upon application made to it for the specific performance of a contract such as this, where there has been only a single breach, and that not a serious one, might say that the breach was not sufficient. The Court of Chancery in this case, however, has said that the breach was sufficient, notwithstanding there had been other defaults forgiven.

It has been well settled in this State that condonation or forgiveness of matrimonial offenses, instead of depriving the offended party from taking the advantage of future breaches, renders those future breaches more

heinous, and, further than that, takes away from the first offense the amnesty of forgiveness, which, up to that time, had existed.

The Court again said (page 460, line 16):

> "It is urged by complainant that the remedy now sought flows by contract from the right of dissolution. That is undoubtedly the language of the contract, but in administering this form of relief, a court of equity is required to give consideration to the broader view than the naked terms of the agreement, and it thus becomes impossible to ignore the circumstances that the moving and fundamental cause for the relief here sought is a failure of defendant to render his accounts to the bookkeeper in the manner as specified in the agreement, and that this fault, unaccompanied by pecuniary loss or improper motives, and arising chiefly by reason of absorbing devotion to another and more important department of defendant's partnership itself, cannot justly be made the basis of the form of relief in a court of equity, which will be fraught with consequences so serious both to defendant and to the public, is the remedy here urged."

The effect of this line of reasoning is to permit the Court of Chancery to make a contract and to say which of the terms are binding upon the parties and which are not. What right has the Court of Chancery or any other Court to put itself in the place of the parties to an agreement and say that one part of the agreement is of more importance than the other? The "absorbing devotion" would be as much of an excuse for resisting the dissolution as it is to resist the imposing of the penalty of dissolution. Furthermore, the conduct of Dr. Jonah was not such as to have commended itself to the Vice-Chancellor.

Just what the consequences that are so serious to the defendant and to the public are, we do not know. There

are many physicians in Atlantic City, including Dr. Marvel and Dr. Durand, the former associates of Dr. Jonah who have been able to take care of the health of the citizens of and visitors to Atlantic City. It can scarcely be imagined that the withdrawal of Dr. Jonah for the period of three years would be irretrievable loss, or that those patients whom he had been treating as part of the association duties, would be without adequate medical attention, should Dr. Jonah retire for the period named in the agreement. Nor are we better able to say what serious consequences could be visited upon Dr. Jonah. His medical skill and professional eminence, connected with his absorbing devotion to that profession would seem to us to meet with better results in a city which is not said to be the greatest health resort in the world. It must be conceded that Dr. Jonah must either build up a new practice or pilfer from Dr. Marvel's practice. If he pilfers from Dr. Marvel's practice, then, undoubtedly, there is sufficient injury to Dr. Marvel to warrant the restraint as prayed for and denied by the Court of Chancery. If it is to build up a new practice that he desires to stay in Atlantic City, then, as we have said, it would rather seem as though his attainments might find a better field elsewhere.

The Court concedes (page 461, line 2) that patients would probably be treated by defendant which might otherwise seek the services of complainant, but says that Dr. Marvel's practice is of such magnitude that no loss can result to it by reason of the interference with it by Dr. Jonah. It seems to us that this is in effect saying that Dr. Marvel had no right in the beginning to exact such a covenant from Dr. Jonah. The Court, however, has conceded that the penalty is a valid one. We fail to follow the reasoning which argues that because a man's business is of such proportions that he must take someone else in with him to help him carry it on, that when that man retires under such conditions as would otherwise require the imposition of the penalty of ab-

staining from doing business, that no damage can be done because, peradventure, complainant's business was of such magnitude he did require assistance and could not attend to it himself. The logical result must clearly be that it is only when a man is able to take care of the business which would come to him himself, that he is entitled to restraint, and as soon as he has to employ a man to help him in the business, he is not entitled to the restraint. It is certainly unreasonable, because in the first instance, there is no one to restrain, and in the second instance, the courts won't enforce the agreement to restrain. The net result is that a contract not to engage in business is unenforcible. The association still continues, notwithstanding Dr. Jonah has retired. It may be that Dr. Marvel will have to employ other assistants to help him in his practice, or he may enter into another agreement of association. Just how this excuses Dr. Jonah is not quite clear.

The Court, it seems to us, nullified its entire argument in this respect when it said (page 461, line 7): "But complainant's practice is in magnitude far beyond his ability to cope with it *without the employment of the* services of others." The very circumstance which led up to the making of the agreement in litigation in this cause was the fact that Dr. Marvel was obliged to employ the services of others, and Dr. Jonah was one of those others. Dr. Marvel had built up a considerable practice by his skill and his ability and the confidence the people had in him. He was there for consultation, for advice and for taking care of such patients and at such times as his associates could not take care of them. The practice came to him, and in order to properly take care of it, he employed physicians at different times, finally employing Dr. Jonah and Dr. Durand, and afterwards making the agreement with them on a basis that was satisfactory to them at the time the agreement was entered into.

It is unreasonable to say that Dr. Marvel is not en-

titled to the protection of this agreement because he personally could not attend to all his practice. Dr. Jonah's very employment grew out of and was the result of this circumstance. Dr. Marvel can take care of his practice, as has been conceded by the Court, with the assistance of Dr. Durand, or of such other physicians as he may want to take in with him. Dr. Jonah has no other practice than that with which he was connected as a member of the co-partnership or association. It is conceded by the Court that part of that practice will probably follow Dr. Jonah, if he is permitted to practice. In other words, the Court permits Dr. Jonah to take advantage of his own wrong, to such an extent that he is obliged to withdraw from the partnership, and then refuses to restrain him from practicing his profession, and taking Dr. Marvel's patients because Dr. Marvel cannot take care of all his business himself.

The Court says, page 461, line 10:

> "I will not deny the defendant privilege to pursue his practice in the only field of his acquaintance."

absolutely conceding that if Dr. Jonah is allowed to remain and practice in Atlantic City, he will have the privilege of pursuing his practice in the field of his acquaintance, namely, within the practice of Dr. Marvel and his associates.

The Court of Chancery (page 461, line 20) adopts the theory that the Court will carefully compare the consequences to say whether the granting of relief will do more injustice than justice. Rather should the Court have said whether the refusal to make the restraint will be more an act of injustice with respect to Dr. Marvel's rights, than it will be an act of injustice with respect to Dr. Jonah's rights. It is respectfully insisted that Dr. Jonah has no rights whatsoever that he has not forfeited. Is it doing an injustice to Dr. Jonah to compel him to refrain from practicing as a result of his own

wrong as provided for in the agreement? What injustice does a man suffer when he is compelled to pay the penalty of his own misconduct, whatever type of misconduct that may be? The Court finds as a fact that Dr. Jonah has violated the contract and that as a result of that violation refraining from practice is the penalty, but refuses to enforce the penalty because it will do an injustice to Dr. Jonah. Is it not much more an injustice to Dr. Marvel, who has, by reason of no fault of his own whatever, but acting solely within the terms of the contract, been compelled to disassociate himself from a partner, because of that partner's refusal to perform the terms of the contract, that that partner should be allowed to practice in violation of the terms of the contract and withdraw from Dr. Marvel that part of the practice, at least, which Dr. Jonah had handled for the association and for Dr. Marvel? Where is the greater injustice done in such a state of affairs? It seems to us that the question answers itself.

Vice-Chancellor Leaming, in the case of *Supple* v. *Cohen, 83 Atl. Rep. 373,* in compelling the defendant to remove a bay-window which projected seventeen inches and the eaves projected sixteen inches over a restricted area of three feet, where there was no proof of interference of light or air, or anything else, said, at page 375:

> "Nor can it be here appropriately contended by defendants that the damages which will be suffered by them in vacating the part of the restricted space which they now occupy, will be disproportionate to the benefits accruing to the complainants. Notice forbidding the encroachment was served on defendants by complainants before the building was erected and the present bill was promptly filed. Defendants have completed their building, well knowing complainants' claim, and in face of the present bill."

In the present case Dr. Jonah violated the terms of his agreement irrespective of the written notice that was served upon him by the complainant.

It will be seen that the removal of these eaves in the Supplee case, or the moving of the house in order to get the necessary clearance way, was a great expense and a great disadvantage and annoyanve to the defendants. The corresponding disadvantage to the complainants was negligible, yet Vice-Chancellor Leaming compelled the removal instead of allowing compensation by way of damages, if there were any damages.

Courts of equity have drawn a distinction between affirmative and negative covenants in granting injunctions to restrain that which would be a breach of covenant. It is laid down by Lord Cairns in *Doherty* v. *Allman* (*1878*), *3 App. Cas. 719,* that if a covenant is negative the Court has no discretion to exercise. If parties, for valuable consideration, with their eyes open, contract that a thing shall not be done, all that a court of equity has to do is to see by way of injunction that which the parties have already said by way of covenant. It is not a question of the balance of convenience or inconvenience or of the amount of damage or injury. It is a specific performance by the Court of the negative bargain which the parties have made.

Where the covenant is a negative covenant not to do a particular thing, the Court has, speaking generally, no discretion to consider the balance of convenience or matters of that nature, but is bound to give effect to the contract between the parties. * * * Contractual obligations do not disappear as circumstances change.

Osborne v. *Bradley, 2 Ch. Div. 1903, p. 446-451.*

In a case wherein a land-owner has covenanted not to carry on any trade, business or calling whatever in or upon any part of the premises, it was held that the keeping of a girls' school was a violation of that covenant. The Court said:

"It was said that this case comes within the principle of those cases in which the Court has refused to interfere because no damage has been actually sustained. But a person who stipulates that her neighbor shall not keep a school, stipulates that she shall be relieved from all anxiety arising from a school being kept, and this feeling of anxiety is damage."

Kemp v. *Sober, 1 Sin.* (*N. S.*) *517; 61 Eng. Rep. 200-201.*

"If a covenant of this character (*i. e.*, negative covenant) is entered into with reference to the position of buildings upon a particular plot of ground as part of a scheme for building upon property, then the party who stipulates for and obtains that covenant does so *free from being embarrassed by the question whether any, and, if any, what injury or damage is consequent of a breach of the covenant.* * * * If the construction of the instrument be clear and the breach clear, then it is not a question of damage, but the mere circumstances of the breach of covenant offers sufficient ground for a court to interfere by injunction."

Manners v. *Johnson, 1 Ch. Div.* (*1875-1876*), *pp. 673, 679, 680.*

The principle hereinabove stated has been adopted in our own State in the case of *Western Union Telegraph Co.* v. *Rogers, 42 N. J. Eq. 311.* It was held that a hotel keeper who had covenanted not to permit any company other than the Western Union Company to operate a telegraph office in his hotel would be restrained from allowing a rival company to operate a competing office. In deciding this case the Vice-Chancellor said (page 312):

"The principal defense is that for this manifest and confessed breach of agreement the complainant has an adequate remedy at law. In

other words, it is insisted that the transaction exhibits nothing more than the ordinary violation of a contract, the damages for which are easily ascertainable and are therefore a proper subject to be submitted to a jury. The insistment then amounts to this: That it is the duty of this court to allow parties to violate their agreements at will and those who participate in such violation to enjoy the fruits thereof and oblige the injured parties to carry on a litigation at law for redress for his wrong. I do not think this court is as helpless in such case."

On page 313 the Vice-Chancellor says:

"It is urged that the complainant cannot be heard in this court, because the court never exercises jurisdiction unless it appears that the damages threatened are irreparable. This, it is true, is one well-settled rule, but another is equally well settled, namely, that a party will not be driven to his legal remedy where it may appear that the remedy will prove inadequate. In this case there can be no doubt but that the complainant could at law recover, but recover what? Most likely no more than six cents, or some other merely nominal sum. There is enough in the case to show that the complainant has many offices, of which this is one, but while this one is a part it is a small part, very small part, indeed; yet, however small, it has rights therein, and because so small in itself it would be impossible for any jury, the most fair-minded and enlightened, to ascertain the damages. Suppose the injunction be refused: how, then, can the complainant fix his damages at law beyond that which is merely nominal? He cannot take last year's transaction as a guide, for none can determine from those, since it is plain that the number of telegrams sent from or re-

ceived at a given point depends, not only upon the number of persons desiring to be accommodated and the activity of business generally, but also upon the extent and variety of the connections. But I think these observations are enough to show the application of the rule of law as now given.

Kerr on Inj. says: "By the term 'irreparable injury' it is not meant that there must be no physical possibility of repairing the injury. All that is meant is that the injury must be a grievous one, or, at least, a material one, and not adequately reparable by damages at law. The fact that the amount of damages cannot be accurately ascertained may constitute irreparable injury. It is no objection to the exercise of the jurisdiction by injunction that a man may have a legal remedy. The question in all cases is whether the remedy at law is, under the circumstances of the case, full and complete. When the construction of a contract is clear and the breach is clear it is not a question of damage, but the mere circumstance of the breach of contract offers sufficient ground for a court to interfere by injunction."

In the case of *American Ice Company* v. *Lynch, 74 N. J. Eq. 298,* the court, under a decree advised by Vice-Chancellor Leaming, restrained the driver of an ice wagon from continuing his employment and for one year after his discharge, in the territory covered by his route, or within five squares therefrom.

The Vice-Chancellor intimates in his opinion that Dr. Jonah was taken advantage of and that he was not aware of what he was doing.

In the case of *Artistic Porcelain Co.* v. *Boch, 76 N. J. Eq. 533-537,* Chancellor Walker, then Vice-Chancellor, said:

> "Several defences of the facts were urged at the hearing. One was that the defendant had been dragooned into making the contract. This contention is without force. He certainly was not subjected to any duress, and even if he dealt at some disadvantage with the complainant, being *sui juris,* he could have refused to deal at all. On this head no ground is presented justifying a refusal to enforce the contract."

It is insisted upon in the above case, also, that the defendant was financially responsible, and the complainant had an adequate remedy at law.

> "The innumerable instances in which a violation of a contract of the kind under consideration has been enjoined are rested upon the ground that form the nature of such cases just and adequate damages cannot be estimated for a breach of the contract, and that injunctive relief voids a multiplicity of actions. The objection is not tenable."

In the case of *Feigenspan* v. *Nizolek, 71 N. J. Eq. 382,* Vice-Chancellor Pitney, in writing the opinion in the Court of Chancery, upon the question whether the defendant should be restrained from selling the beer of any other corporation than that of the complainant, says:

> "It is perfectly well settled that in considering the question of what is an adequate remedy at law, the courts will take into consideration not only the question of multiplicity of suits, but also the pecuniary responsibility of defendant. Coming to the present case we have this element bearing on the question of adequate remedy at law:
>
> "First, the difficulty of ascertaining and proving in an action at law the amount of beer which the defendant has sold.
>
> "Second, the profit which the complainant

would have made on an equal amount of beer. On this item the difficulty rests in distributing the items of cost, consisting of the interest of the costs of the plant, the wear and tear of it, the cost of administration, the actual cost of material and manufacture.

"In the third place is the consideration of the multiplicity of suits necessary and proper to give the complainant proper satisfaction.

"In the fourth place is the uncertainty of the pecuniary responsibility of the defendant. The proofs show, incidentally, that it is slight.

"All these combine to render it well-nigh axiomatic that in such cases the remedy at law can, with rare exceptions, never be said to be adequate, and support the general proposition which I have previously advanced, *that the policy of the law should be to prevent a man from breaking his contracts rather than to leave the injured party to his damages at law.*"

The Court of Chancery concedes (pages 458, line 13) that a covenant between physicians is not void for unreasonableness as to time, when limited in time to three years. In other words, the Court admits that the covenant is not illegal or in restraint of trade.

It seems to us that by his own opinion the Vice-Chancellor has made a conclusive argument against his finding that an injunction should not issue.

We respectfully submit that so much of the decree as denies the injunction should be reversed.

BOURGEOIS & COULOMB,
Solicitors and Counsel of Appellant.

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New Jersey
Court of Errors and Appeals

Bill

(Filed, Sept 7. 1912)

IN CHANCERY OF NEW JERSEY

To his Honor, Edwin R. Walker, Chancellor of the State of New Jersey:

Humbly complaining shows unto your Honor your orator, Philip I. Marvel, of Atlantic City, in the County of Atlantic and State of New Jersey:

1. That your orator is a regularly licensed physician for the practice of medicine in the State of New Jersey, and for more than twenty years last past has been practicing his profession continuously in Atlantic City, New Jersey; that about the year eighteen hundred and eighty-nine your orator's practice became larger than he could consistently care for and that from that date until the present time has always had the assistance of one or more physicians in caring for and looking after his said practice.

2. Your orator further shows unto your Honor that for about four years or more prior to nineteen hundred and ten your orator had assisting him in his practice Dr. William E. Jonah and Dr. Jay I. Durand, two physicians regularly licensed to practice their profession in the State of New Jersey.

3. Your orator further shows unto your Honor that during the years from eighteen hundred and eighty-nine your orator's practice increased in value and during the year of nineteen hundred and nine it was worth considerably more than Thirty-Thousand Dollars per annum; that your orator recognizing the necessity of properly caring for and better protecting the said practice, and recognizing and being acquainted with the ability of the said Dr. William E. Jonah and the said Dr. Jay I. Durand, who had been employed by your orator as assistants for the purpose of caring for his then present practice as well as providing ample provisions for and properly taking care of such additional practice as should come to him, entered into a partnership agreement with the said Dr. William E. Jonah and Dr. Jay I. Durand, for the term of eight years, which said partnership agreement was reduced to writing and bears date the tenth day of January, nineteen hundred and ten and is executed by your orator, Philip I. Marvel, and by Dr. William E. Jonah and Dr. Jay I. Durand, a copy of which said partnership agreement is hereto annexed and marked "Schedule 1" and made a part of this bill; that the utmost good faith, harmony and cooperation are essential to the successful practice of medicine by a number of persons as co-partners, and your orator and the said Dr. William E. Jonah and Dr. Jay I. Durand, fully recognizing this fact, provided therefor in the aforesaid agreement of co-partnership.

4. Your orator further shows unto your Honor that said agreement of co-partnership provided, among other things, that the said Dr. William E. Jonah and Dr. Jay I. Durand, should give their full time and attention to the practice of medicine, aiding and assisting your orator, doing their

work conscientiously and to the best advantage of each and every of said partners and doing such work as your orator might designate or assign to them.

5. Your orator further shows unto your Honor that said agreement further provided that your orator should employ an experienced and competent secretary and bookkeeper, whose duty it should be to keep an accurate, correct and intelligent account of all work done and of all moneys received and of all accounts generally connected with the practice, and that each party to said co-partnership should render to said bookkeeper a daily account of the work done or visits made that day by him, together with all moneys paid to him on account of said work done or visits made, and that all checks received as well as moneys received should be deposited by your orator to the account of the general fund, to be separate and distinct from any personal or private funds of your orator, and that said bookkeeper should make monthly statements, showing approximately the moneys received and the amount of work done for the month.

6. Your orator further shows unto your Honor that said agreement further provided that any misappropriation of the receipts or refusal to account for the work done or moneys received daily or to report the visits made and the fees, checks or moneys received, should be considered a violation of said co-partnership agreement.

7. Your orator further shows unto your Honor that said co-partnership agreement further provided that all professional cards, letterheads, bill heads, prescription blanks and other stationery relating to or to be used in said practice, should be furnished by your orator and should be used exclusively by the parties to said agreement, and

the parties to said agreement were to use no other stationery save that furnished and provided by your orator.

8. Your orator further shows unto your Honor that said agreement further provided that in order that the best results might proceed from said co-partnership, all parties to said co-partnership agreement must co-operate and work harmoniously together, with the utmost good faith and for the best interests of each other and all the parties to the said agreement.

9. Your orator further shows unto your Honor that said co-partnership agreement further provided that if at any time during the term of said agreement either the said Dr. William E. Jonah or the said Dr. Jay I. Durand, parties of the second part, should fail faithfully to perform the covenants of the said agreement or should fail to do their work conscientiously or diligently, or should fail at any time to protect and further the interests of the parties to this agreement and the interest and reputation of your orator or should attempt to establish a practice independently of said co-partnership, or practice medicine independently of said co-partnership, then and in that event, your orator should have the right to cancel and annul the said agreement and oust the party or parties so offending from said co-partnership association.

10. Your orator further shows unto your Honor that said agreement further provided that if at any time during the term of said agreement either the said Dr. William E. Jonah or the said Dr. Jay I. Durand, or both, should desire to withdraw from the association or should actually withdraw therefrom, or should at any time during the term of said agreement commit a breach or violation of any of the covenants of said agreement in such

a manner as to justify or cause your orator to cancel or annul the said agreement or oust the offending party from said co-partnership, so far as the party or parties so offending were concerned, then such party or parties so voluntarily withdrawing or being ousted from said partnership for breach or violation of the covenants thereof, should not be permitted to practice medicine in Atlantic City, New Jersey for a period of three years next after such withdrawal or ouster; and the said Dr. William E. Jonah and Dr. Jay I. Durand covenanted that in the event of either or both of them being requested by your orator to withdraw from said partnership or being ousted therefrom on account of a breach of any of the covenants of this agreement, that they the said Dr. William E. Jonah and the said Dr. Jay I. Durand, or either of them, would not, either individually or jointly, or as associate with any other physician, practice medicine or surgery in Atlantic City, New Jersey, for a period of three years from the date of such withdrawal, ouster or dissolution.

11. Your orator further shows unto your Honor that upon the signing of said partnership agreement your orator procured and at all times thereafter maintained ample and sufficient stock of stationery with which to conduct said business, and in every other way conformed to and fulfilled said partnership agreement, so far as the same related to or concerned himself.

12. Your orator further shows unto your Honor that almost immediately after entering into said agreement, Dr. William E. Jonah disregarded and violated its provisions and set about covertly building up an independent practice in his own name, and instead of conforming to the requirements of said co-partnership agreement concern-

ing the use of stationery, as above set forth, commenced the transaction of his business on his individual, private stationery, and wrote his prescriptions on his individual prescription blanks; that your orator, upon learning this, remonstrated with him and called his attention to the provisions of the said agreement and to his violation thereof. and the said Dr. William E. Jonah thereby agreed to discontinue the use of his individual prescription blanks and his individual stationery and to use the general blanks and stationery furnished by your orator.

13. Your orator further shows unto your Honor that the said Dr. William E. Jonah very shortly after the making of said partnership agreement began to neglect to turn in a complete account of the business done and moneys received at the end of each day to the bookkeeper, although your orator and the said Dr. Jay I. Durand faithfully conformed to the agreement in this respect; that your orator remonstrated with the said Dr. William E. Jonah on numerous occasions, but without avail; that the said Dr. William E. Jonah would not render an accurate statement of visits made by him or of the persons treated and prescribed for by him or of the moneys received by him when outside of the office of said partners; that the only statements rendered by the said Dr. William E. Jonah were merely approximate statements and were made verbally and covered only such of his work as he chose to give, and did not include a complete account thereof.

14. Your orator further shows unto your Honor that from the first day of March, nineteen hundred and twelve until the present time the said Dr. William E. Jonah has rendered no account whatever to your orator or to the bookkeeper of the visits made, business done or moneys collected

by him outside of the office of the said partnership; that the business done by the said Dr. William E. Jonah in said office is recorded by the bookkeeper, but neither said bookkeeper nor your orator had any knowledge of the work done by the said Dr. William E. Jonah outside of said office; that your orator has remonstrated with the said Dr. William E. Jonah and requested him on numerous occasions to render an account of the work done by him, so that the accounts of the said Dr. William E. Jonah might be properly kept and the work done and moneys received by him be properly accounted for, so that proper bills of account might be rendered to the patients of the partnership who came under the direct treatment of the said Dr. William E. Jonah, but said requests and remonstrations have been without avail and no such report, statement or accounting has been furnished by the said Dr. William E. Jonah.

15. Your orator further shows unto your Honor that the failure of the said Dr. William E. Jonah to render such statement, makes it impossible for said partners to render or send out their bills as they should be rendered and sent out, and renders it impossible for them to collect moneys that are and should be due and owing to the said partnership.

16. Your orator further shows unto your Honor that the said Dr. William E. Jonah has devoted a very large portion of his time to the treatment of numerous patients at the various hotels in Atlantic City during the summers of nineteen hundred and eleven and nineteen hundred and twelve, but that the said Dr. William E. Jonah has neglected and refused and continues to neglect and refuse to state to your orator or to the bookkeeper the names and addresses of these various patients, and on one occasion during the summer

of nineteen hundred and twelve, when your orator demanded an accounting of the said Dr. William E. Jonah, the said Dr. William E. Jonah refused to make such an accounting and proposed to your orator that your orator and Dr. Durand accept and retain the portions of moneys that the books of the partnership showed to be due him from your orator and Dr. Jay I. Durand, amounting to about Two Thousand Dollars as an off-set for the moneys he had received and collected from these various patients for the services he had rendered to them, but for which he had yet to make the collection, which proposition was refused by your orator.

17. Your orator further shows unto your Honor that the said Dr. William E. Jonah during the year of nineteen hundred and twelve has violated said agreement as to the use of stationery and has been writing prescriptions on his individual prescription blanks, notwithstanding said partnership agreement and his previous promise to your orator to refrain from so doing.

18. Your orator further shows unto your Honor that the personal relations between the said Dr. William E. Jonah and your orator are greatly strained; that because of the attitude of the said Dr. William E. Jonah there is no coordinate labor between the said partnership; that the said Dr. William E. Jonah admits that he does not desire a continuation of said partnership, and your orator charges that it is because the said Dr. William E. Jonah desires to force your orator to exclude him, the said Dr. William E. Jonah from said partnership in such manner that the said William E. Jonah will not be bound by his covenants in said partnership agreement, that the said William E. Jonah has persistently violated many of

the covenants of said partnership agreement which were essential to the success of said partnership, such as harmonious work among said partners, the building up of an individual business instead of a partnership business, the failure to render accounts to the partnership bookkeeper and the use of individual stationery instead of the partnership stationery.

19. Your orator further shows unto your Honor that the said Dr. William E. Jonah declines and refuses to allow the secretary employed by said partnership association to make out bills for services rendered by him for said partnership association, or for any other services rendered by him, and refuses and declines to allow said secretary to use the bill heads of said co-partnership association for the purpose of sending out statements and bills for services rendered by him, and absolutely declines and refuses to turn over to the said secretary or to your orator checks received by the said Dr. William E. Jonah from patients treated by him.

20. Your orator further shows unto your Honor that at the time he employed the said Dr. William E. Jonah as his assistant, as set forth in Paragraph 2 of this bill, the said Dr. William E. Jonah had absolutely no practice whatsoever, and that all the practice he now has is part of the practice of the co-partnership association and was built up by reason of the prestige and reputation that your orator had obtained in his long years of practice in Atlantic City; that all the patients that the said Dr. William E. Jonah has now were obtained by him since he was employed by your orator as his assistant and belong to and are part of said copartnership practice and do not belong to the said Dr. William E. Jonah individually, yet

the said Dr. William E. Jonah pretends and gives out that said practice is his and that he is not obliged to account to said co-partnership association for the receipts thereof, nor turn over an account thereof to said co-partnership association or to your orator.

In tender consideration whereof and forasmuch as your orator is without remedy, save in and by the intervention of this Honorable Court;

To the End, that the said William E. Jonah may, but without oath, full, true, perfect and sufficient answer make to all and singular the allegations herein contained, as fully and particularly as if the same were herein again set forth and he thereunto particularly interrogated, and that he may be decreed to set forth and discover a full, true, perfect and particular statement of each and every patient treated by him since the formation of said partnership, including the name, address, character of service, amount of the fees charged, the amount collected and the amount paid over by the said William E. Jonah to your orator, and that he be decreed to pay over to your orator the amount found to have been collected by him from such patients and unaccounted for or not turned over to your orator, and that he be decreed to deliver to and surrender up unto your orator the books of account, lists of patients and books and papers of every kind and description used by said Dr. William E. Jonah in the performance of his said practice, and that it be decreed that the said co-partnership agreement between your orator and the said Dr. William E. Jonah be cancelled and the said Dr. William E. Jonah ousted therefrom and decreed to have no further interest therein or thereunder, and that it be further decreed that the said Dr. William E. Jonah be enjoined and restrained from practic-

ing medicine or surgery in the City of Atlantic City, either individually or as an associate, partner, assistant or employee of any other physician in the said City of Atlantic City for a period of three years from the date of said decree of cancellation and ouster, and that your orator may have such further and other relief as may be just.

May it please your Honor, the premises considered, to grant unto your orator not only the State's writ of injunction, issuing out of and under the seal of this Honorable Court, restraining, prohibiting and enjoining the said Dr. William E. Jonah from practicing medicine or surgery in the City of Atlantic City for a period of three years from the date of the decree of cancellation of said co-partnership agreement and ouster of the said Dr. William E. Jonah from any interest therein or thereunder, either individually or as an associate, partner, assistant or employee of any other physician in the said City of Atlantic City, but also the State's writ of subpoena issuing out of and under the seal of this Honorable Court, to be directed to the said William E. Jonah, commanding him by a certain day and under a certain penalty therein to be expressed personally to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to abide by and perform such order and decree therein as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray.

BOURGEOIS & COULOMB,
Solicitors for and of Counsel
with Complainant.

H. R. Coulomb,
Of Counsel.

Bill

Agreement

THIS AGREEMENT made and entered into this tenth day of January, A. D. 1910, by and between Dr. Philip Marvel, of Atlantic City, New Jersey, party of the first part, and Dr. William E. Jonah and Dr. Jay I. Durand, of the same place, parties of the second part:

WITNESSETH: That the said parties have and by these presents do agree as follows:

FIRST: The said parties have agreed to enter into an association for the purpose of the general practice of medicine, and have their main offices at No. 1616 Pacific Avenue, Atlantic City, New Jersey; the same to begin on the first day of January, A. D. 1910, and to continue up to and include the thirty-first day of December, A. D. 1918.

SECOND: Except as hereinafter provided in reference to vacations, the said parties of the second part hereby agree that they will give their full time and attention to the said practice of medicine, aiding and assisting the said Dr. Philip Marvel in the said practice, and will apply their whole time and attention to the practice of medicine, generally, in Atlantic City, N. J., doing their work conscientiously and to the best of their ability and to the best advantage of each and every of this association, and to the advancement of their general standing and reputation, both severally and jointly.

NIGHT WORK

THIRD: All night work which may be required, or all night calls which may come in, from time to

time, shall be attended to by the parties of the second part; it being the contemplation of this clause that the night work shall be more or less equally divided between the said Dr. Jonah and the said Dr. Durand; and should at any time any difference arise between the parties relative to attending to the night work, the said Dr. Philip Marvel shall settle and decide all such differences, and apportion to each his part of the said night work, from time to time.

VACATIONS

FOURTH: The said Dr. Jonah and the said Dr. Durand shall be entitled to an annual vacation for a period of six weeks during each year; the time of said vacation to be taken in the autumn or winter, and to be arranged by consultation with all the parties to this agreement so as to least interfere with the practice, generally.

SICKNESS

FIFTH: In case of the continued sickness of either of the said parties of the second part to this agreement for a period of time longer than one month, other than at such times as said parties may be on their vacations, such assistant or assistants as may be required to take care of the work, or to take the place of the party so disabled by sickness, shall be employed by the said Dr. Philip Marvel, and all costs and expenses on account of the employment of such assistant or assistants shall be deducted from the proportion of the party whose work the assistants are employed to perform.

CONSIDERATION

SIXTH: It is agreed that in consideration of the services rendered on the part of the said Dr. Jonah and the said Dr. Durand unto the said Dr. Philip Marvel, in aiding and assisting him in the said practice, and for and on account of all services which they may render, and for and on account of the practice they may attend to, and for and in consideration of the faithful performance by them of all the various covenants of this agreement, the said Dr. Jonah and the said Dr. Durand shall receive a certain proportion of the net income derived from the said practice, as follows, to wit:

For and during the first five years of this agreement, the said net income shall be apportioned and divided as follows:

The net income of each year up to an amount equal to ($33,000) Thirty-three thousand dollars, shall be apportioned and divided as follows, to wit:

23/33 of said net income to Dr. Philip Marvel;
5/33 do to Dr. William E. Jonah, and
5/33 do to Dr. Jay I. Durand.

The said net income for any particular year during the first five years and over and above an amount equal to $33,000, and up to an amount equal to $35,000 shall belong and to Dr. Philip Marvel entirely.

The net income for any particular year during the first five years of this agreement over and above an amount equal to $35,000 shall be apportioned and divided as follows:

1/3 of said excess to Dr. Philip Marvel;
1/3 do to Dr. William E. Jonah, and
1/3 do to Dr. Jay I. Durand.

For and during the next or last three years of this agreement, the said net income shall be proportioned and divided as follows, to wit:

The net income of each year up to an amount equal to Thirty-three thousand ($33,000) dollars shall be apportioned and divided as follows, to wit:

23/33 of said net income to Dr. Philip Marvel;
5/33 do to Dr. William E. Jonah and
5/33 do to Dr. Jay I. Durand.

The said net income for any particular year during the last three years of this agreement over and above an amount equal to $33,000, and up to an amount equal to $35,000 shall belong and go to Dr. William E. Jonah and Dr. Jay I. Durand entirely and to be divided equally between them.

The net income for any particular year during the last three years of this agreement, over and above an amount equal to $35,000 shall be apportioned and divided as follows:

1/3 of said excess to Dr. Philip Marvel;
1/3 do to Dr. William E. Jonah, and
1/3 do to Dr. Jay I. Durand.

OFFICES

SEVENTH: It is agreed that Dr. Philip Marvel shall be allowed as rental for his offices located at No. 1616 Pacific Avenue, as well as for a

garage located at the rear of said offices, the sum of $225 per month; such rental to include the use of all furniture, office fixtures, instruments, appliances and medical books now being in the said offices; the said offices to be properly heated and lighted by the said Dr. Philip Marvel; which rental shall be paid out of the gross proceeds derived from the said practice in determining the net income from the said practice.

In the event that at any time during this agreement it shall be considered to the best interest of the said parties that the present offices be increased or enlarged, or that at any time more of the now resident part of the house be given over to and for the use of the said practice, as offices, then, in that event, the said rental paid to said Dr. Philip Marvel, shall be proportionately increased.

Any new furniture, appliances, instruments or books which are needed to further the interests of the combined practice during the continuance of this agreement, shall be purchased and paid for out of the gross proceeds of the business in determining the said net income, and the same shall be the property of the allied interests.

It is further agreed that the said Dr. Philip shall employ or hire such persons to help as may be necessary to keep the offices clean and in proper condition, and all costs of such service shall be paid out of the gross proceeds of the said business.

It is further agreed that the said Dr. Philip Marvel shall or may employ, from time to time, such assistant or assistants as he may deem necessary to the proper handling of the practice, and the costs of all such hiring of assistants shall be

paid out of the gross receipts in determining the net receipts of the said business.

ACCOUNTS

EIGHTH: The said Dr. Philip Marvel shall employ a competent and experienced secretary or bookkeeper, whose duty it shall be to keep an accurate and intelligent account of all work done, and of all moneys received, and of all accounts generally, connected with the practice. The costs of such services shall be paid out of the gross pro- such services shall be paid out of the gross pro-

It is further agreed that each party to this agreement shall render to the bookkeeper, or the person employed for that purpose, a daily account of the work done or visits made that day by him, together with all moneys paid to him on account of said work done or visits made; and, it is also understood that, in order that the bookkeeper may keep an accurate and intelligent account, this provision for a daily statement must be more or less strictly adhered to.

All checks received, to be made payable to Dr. Philip Marvel, and all checks, as well as all moneys received by all parties to this agreement to be deposited by Dr. Philip Marvel to the account of the general fund, and to be separate and distinct from any personal or private funds of the said Dr. Philip Marvel.

The bookkeeper shall make a monthly statement showing, approximately, the amount of money received, and the amount of work done that month. Each party to this agreement shall have the privilege of drawing eighty-five per cent (85%) of the amount that will probably be coming to him at the close of each month, and, at the final

settlement, at the close of each year, the said amount so drawn by said party shall be deducted from the amount coming to him on account of the apportionment or division hereinbefore mentioned. The annual settlement and auditing of the books of account shall take place within a reasonable length of time after the first of the year. The auditing of said books, previous to the annual settlement, shall be made by a regular licensed accountant; the costs of said auditing to be paid out of the gross receipts, and the final settlement of the various parties to this agreement to be made in accordance with the statement of accounts as rendered by said licensed accountant.

Any mis-appropriation of the receipts, or refusal to account for the work done or moneys received daily, shall be considered a violation of this agreement.

In making the final annual settlement so as to determine the net receipts for that particular year, all bills or accounts remaining unpaid at the time of the annual settlement shall not be considered as proceeds of that year, neither shall accounts that are outstanding and uncollected be considered as part of the proceeds of that particular year in making the said final settlement, but only money or receipts that have actually been paid in during the year preceding each final settlement.

All professional cards, letter heads, bill heads and other stationery relating to the practice generally, shall be furnished by the said Dr. Philip Marvel, and shall be used exclusively by the parties to this agreement. All costs for furnishing such cards, letter heads, bill heads and other stationery to be purchased and paid for out of the gross receipts derived from the said practice.

AUTOMOBILE

NINTH: It is further agreed that in order to expedite and attend to as much business as possible, each of the parties to this agreement shall maintain, at his own expense, a proper and efficient automobile; said machine to be kept in good repair and fairly good presentation, and shall be kept in good working condition, generally.

For and on account of the acquiring, maintaining and repairing of said machine, so used by the various parties, to this agreement, the said Dr. Philip Marvel, shall be allowed annually out of the gross proceeds the sum of $2,000 and the said Dr. William E. Jonah shall be allowed the sum of $1,000, and the said Dr. Jay I. Durand shall be allowed the sum of $1,000. These various amounts for maintaining the said machines shall be paid quarterly to the said parties, and shall be deduced from the gross receipts of the business in determining the net income. It is further understood that all parties to this agreement shall have the right to house their machines in the garage hereby set aside for that purpose, and for which Dr. Philip Marvel has been allowed a certain rental.

It is hereby understood and agreed that in order that the best results may proceed from this association, that all parties to this agreement must work harmoniously together and for the best interest of each and all of the parties to this agreement; and in the event of any differences arising between the said Dr. Jonah and the said Dr. Durand in relation to the practice generally, such differences shall be submitted to the said Dr. Philip Marvel, and he shall decide the same as to him may seem proper and just.

Any personal scandal, criminal act, repeared

neglect of duty, or any overt act, materially affecting either or any of the parties to this agreement, or affecting their reputation as physicians in the said community, or affecting their reputation and standing as citizens of the community, connected with or committed by either the said Dr. Jonah or the said Dr. Durand, shall give to the said Dr. Philip Marvel the right to cancel and annul this agreement and oust the said party or parties so offending from this association.

If at any time during the term of this agreement either the said Dr. Jonah or the said Dr. Durand, parties of the second part, shall fail to faithfully perform the covenants of this agreement, or shall fail to do their work conscientiously and diligently, or shall fail at any time to protect the interest of the parties to this agreement, and the interest and reputation of the said Dr. Philip Marvel, then, in that event, the said Dr. Philip Marvel shall have the right to cancel and annul this agreement and oust the said party or parties so offending, from his association.

As a further consideration, moving to Dr. Philip Marvel, and as part of the consideration causing him to enter into this agreement, and in consideration of the apportionment and division of the net income hereinbefore mentioned, it is further understood and agreed that if any time during the term of this agreement, either the said Dr. Jonah or the said Dr. Durand, or both, may desire to withdraw from this association, for any reason whatever, and shall actually withdraw therefrom, or if at any time during the term of this agreement either the said Dr. Jonah or the said Dr. Durand, or both, may commit a

breach or violate any of the covenants of this agreement in such manner as to justify the said Dr. Philip Marvel in requesting the party or parties so offending to withdraw from this association, or to cause the said Dr. Marvel to cancel and annul this agreement, so far as the party or parties so offending are concerned, then in either event such party or parties so voluntarily withdrawing from this association, or ousted from this association, for breach or violation of its covenants, shall not be permitted to practice medicine in the city of Atlantic City, aforesaid, for a period of three years next ensuing such voluntary withdrawal or ouster. And the said Dr. Jonah and the said Dr. Durand doth hereby covenant, promise and agree that in case of either or both of them withdrawing for any reason whatsoever, from this association, during the term of this agreement, or in the event of either or both of them being requested by the said Dr. Philip Marvel to withdraw from this association or being ousted therefrom, on account of a breach of any of the covenants of this agreement, that they, the said Dr. Jonah and the said Dr. Durand will not, either or individually or jointly, or as an associate with any other physician, practice medicine or surgery in the city of Atlantic City aforesaid for a period of three years next ensuing such withdrawal or dissolution of this association or ouster of either or both of the parties of the second part.

Soliciting suggestions at all times, and consultations pertaining to the conducting of said practice and the associate business, generally, with the said parties of the second part, it is un-

derstood that the general direction, policy and supervision of the said practice and business is at all times finally in the hands and control of the said Dr. Philip Marvel.

WITNESS the hands and seals of the respective parties to this agreement of association, this tenth day of January, A. D. nineteen hundred and ten.

(Signed) PHILIP I. MARVEL (Seal)
WILLIAM E. JONAH (Seal)
JAY I. DURAND (Seal)

In the presence of
Geo. W. Coles.

It is further understood and agreed that if, for any cause whatever, the said Dr. Philip Marvel shall be away or absent from his said practice for a period of more than three consecutive months, in any particular year, the net proceeds derived from the said practice, from and after the period of three consecutive months of such absence of the said Dr. Philip I. Marvel and up to the time the said Dr. Philip Marvel shall return to his said practice, shall be equally divided between the parties to this agreement, share and share alike.

This provision is hereby added to and made a part of this agreement, at the time of the execution of the said above agreement.

(Seal)
(Seal)
JAY I. DURAND (Seal)

In the presence of

Notice

IN CHANCERY OF NEW JERSEY

Between PHILIP I. MARVEL, Complainant, and WILLIAM E. JONAH, Defendant.	On bill, etc.

To Messrs. Bourgeois and Coulomb, solicitors of Complainant:

PLEASE TAKE NOTICE, that on Monday the twenty-seventh day of January, nineteen hundred and thirteen, at ten-thirty o'clock in the forenoon, we shall apply to the Chancellor at the Chancery Chambers in the Court House at Camden, for leave to file an amended answer and cross bill, copy of which is herewith served upon you.

Yours respectfully,

Solicitors of defendant.

Amended Answer

(*Filed,* Nov 12. 1912)

IN CHANCERY OF NEW JERSEY

Between, PHILIP I. MARVEL, Complainant, and WILLIAM E. JONAH, Defendant.	Bill etc. Answer and Cross bill of William E. J

The answer of William E. Jonah, defendant, to the Bill of Complaint filed by Philip I. Marvel.

This defendant answering admits:

1. That the complainant is a regularly licensed physician for the practice of medicine and has practiced it for more than twenty years in Atlantic City, New Jersey, and as his practice enlarged he secured the services of one or more physicians to look after the same.

2. Defendant admits that he was associated with the complainant for about four years prior to nineteen hundred and ten, but alleges that on the first day of January, Nineteen hundred and seven, he entered into a verbal partnership agreement with the complainant and that they worked together as partners from that day until the tenth day of January, Nineteen hundred and ten, when the partnership agreement in issue in this case was entered into.

3. Defendant denies that in Nineteen hundred and nine complainant's practice was worth more than Thirty thousand dollars per year. Defendant admits that on the tenth day of January,

Nineteen hundred and ten, the complainant, Doctor Jay I. Durand and this defendant entered into a partnership agreement for the term of eight years and that the same was reduced to writing and that a correct copy of the same is attached to complainant's bill and marked "Exhibit 1."

4. Defendant admits that the articles of co-partnership provided, among other things, that this defendant, Doctor Durand and Doctor Philip I. Marvel should give their full time and attention to the practice of medicine generally in Atlantic City, New Jersey, doing their work conscientiously and to the best of their ability and to the best advantage of each of said partners, and that said Philip I. Marvel, in case of any difference arising between the parties relative to attending to night work, should settle and decide all such differences, and apportion to each his part of said night work from time to time.

5. Defendant admits that the agreement provided for a secretary and bookkeeper who should keep account, and that each party to the co-partnership should render a daily account of the work done, all visits made, together with all moneys received; that said moneys were to be deposited to the account of the general fund. Defendant alleges that it was also provided in connection with the keeping of said book of accounts, that "this provision for a daily statement must be more or less strictly adhered to."

6. Defendant further admits that it is provided in the agreement that any mis-appropriation of receipts, or refusal to account for work done, or moneys received daily, shall be considered a violation of the agreement.

7. Defendant admits that said articles of co-partnership provided that all professional cards, letter heads, bill heads, prescription blanks and other stationery relating to the practice generally, should be furnished by the complainant and used exclusively by the parties to said agreement.

8. Defendant admits that said agreement provided that the parties should work together in harmony and for the best interest of each.

9. Defendant admits that said co-partnership agreement provided that if at any time this defendant or Doctor Durand failed to faithfully perform the covenants of the agreement, or to do their work conscientiously and diligently, or failed at any time to protect the interests of any parties to the agreement, and the interest and reputation of the said Doctor Philip I. Marvel, then Doctor Philip I. Marvel should have the right to cancel and annul said agreement and oust the party or parties so offending.

10. Defendant admits that it was provided in said agreement that if at any time during the term of said agreement, either Doctor Durand or this defendant, or both, desired to withdraw from said association, or should actually withdraw therefrom, or if at any time during the term of said agreement either should commit a breach or violation of the covenants of said agreement in such a manner as to justify the said Doctor Philip I. Marvel in requesting the party or parties so offending to withdraw from said association, or to cause the said Doctor Philip I. Marvel to cancel and annul the said agreement, so far as the party or parties so offending were concerned, then in either event said party or

parties so voluntarily withdrawing from said association, or ousted therefrom for breach or violation of its covenants, should not be permitted to practice medicine in Atlantic City for the period of three years next ensuing said voluntary withdrawal or ouster. Defendant admits that it was further provided in said agreement, that Doctor Durand and this defendant, in case either or both of them, withdrew from said co-partnership during the term of said agreement, or in the event of either or both of them, being requested to withdraw or being ousted therefrom on account of a breach of any of the covenants of said agreement, would not, either individually or jointly, or as an associate with any other physician, practice medicine or surgery in Atlantic City for a period of three years next ensuing said withdrawal or dissolution of said partnership.

11. Defendant admits that the complainant furnished sufficient stationery with which to conduct their business, but denies that the complainant "in every way conformed to and fulfilled said partnership agreement, so far as the same related to or concerned himself."

12. Defendant denies that almost immediately after entering said agreement, or at any other time he disregarded and violated its provisions and set about covertly building up an independent practice in his own name. Defendant alleges that he did generally use the stationery provided by the complainant and that only occasionally did he fail to make use of the same.

13. Defendant admits that in some instances he has failed to keep and render complete accounts of the business done, but he alleges that this requirement of daily statement by the terms

of the co-partnership agreement were to be only "more or less strictly adhered to." And defendant alleges that said requirement was violated by both the complainant, Doctor Philip I. Marvel and by Doctor Durand, because none of the parties to the said co-partnership ever regularly and completely observed its provisions for a daily accounting.

14. Defendant denies that he has failed to make any return of the work done outside of the office since the first day of March, Nineteen hundred and twelve, but admits that he did not turn in a complete daily record of the work done outside of the office during all of said period.

15. This defendant says that the allegations in paragraph fifteen of complainant's bill, that it was impossible for said partners to render or send out their bills and to collect moneys due because of the failure of this defendant to hand in his complete accounts, is only partially true, because there was nothing to prevent bills being rendered to any person for any services rendered.

16. This defendant admits that during the summers of Nineteen hundred and eleven and Nineteen hundred and twelve, he devoted some portion of his time to treatment of patients at the various hotels in Atlantic City, and alleges that in the summer of Nineteen hundred and eleven he collected and rendered an account of his work to the bookkeeper. Defendant denies that one occasion during the summer of Nineteen hundred and twelve, when the complainant demanded an accounting, this defendant refused and proposed to complainant that he and Doctor Durand accept and retain the portions of moneys that the books of the partnership showed to be due defendant

from complainant and Doctor Durand amounting to about Two thousand dollars as an off-set for the moneys which defendant had received and collected from the various patients for the services he had rendered to them, but for which he had yet to make collection of.

17. Defendant answering as to paragraph seventeen of complainant's bill says that he has already answered the same in paragraph twelve.

18. Defendant admits that personal relations between complainant and defendant are greatly strained, and that there is no co-ordinate labor between said partnership and that he does not desire a continuation of said partnership, but alleges that the said attitude is not for the reason assigned by complainant in paragraph eighteen, but for reasons which will appear hereafter in his cross bill. This defendant denies that he has persistently violated said covenants in said agreement which were essential to the success of said partnership. Defendant further denies that he has ever attempted to build up an individual business instead of a partnership business, or that he failed to render accounts to the partnership bookkeeper, except as hereinabove stated, or that he used individual stationery instead of partnership stationery, except as is hereinabove stated.

19. This defendant denies that he declines and refuses to allow the secretary employed by said partnership association to make out bills for services rendered by him for said partner-association, or for any other services rendered by him, or that he refuses and declines to allow said secretary to use the bill heads of said co-partnership association for the purpose of send-

ing out statements and bills for services rendered by him, or that he declines and refuses to turn over to the said secretary or to the complainant checks received from patients treated by him.

20. This defendant admits that at the time he was engaged by complainant to assist him in his practice in October, Nineteen hundred and five, he was a comparative stranger in Atlantic City and had not practiced in said City. This defendant denies that all of the practice he now has is part of the practice of the said co-partnership association and was built up by reason of the prestige and reputation that Doctor Philip I. Marvel had obtained in his long years of practice in Atlantic City, or that all of the patients that this defendant now has were obtained by him since he was employed by complainant. Defendant denies that he ever pretended or gave out that said practice is his and that he is not obliged to account to said co-partnership association for the receipts thereof, or to turn over an account thereof to said co-partnership asssociation or to complainant.

21. This defendant further answering says, that except in the few exceptional cases hereinabove alluded to, he has faithfully observed the covenants and conditions of said co-partnership agreement and has devoted all of his time, energy and best efforts for the success of the same, and that through his efforts the business of said co-partnership has been increased and enlarged, and this defendant therefore prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

22. This defendant further answering says that since the commencement of this suit and the filing of the answer herein, the complainant, Philip I.

Marvel, has entered into an agreement with Doctor J. I. Durand, whereby the said Doctor J. I. Durand did on the tenth day of January, Nineteen hundred and thirteen, withdraw from the partnership heretofore existing between the complainant, Doctor J. I. Durand and this defendant, and the said Doctor J. I. Durand on the day aforesaid did by writing under his hand and seal in consideration of the sum of One thousand dollars to him paid by the said Philip I. Marvel, sell, assign, transfer and set over to the said Philip I. Marvel all his right, title and interest in the moneys which might be decreed to be due, if any, from the defendant by reason of said co-partnership from the day of the beginning thereof up to the tenth day of January, Nineteen hundred and thirteen; and did further by said agreement covenant to pay and deliver to the said complainant all moneys or evidence of debt by him received on account of services rendered by him, the said Doctor J. I. Durand, as a member of said co-partnership.

23. And this defendant says that on the day aforesaid the said Doctor J. I. Durand did withdraw from the said co-partnership in pursuance of an agreement made between him, the said Doctor J. I. Durand, and the complainant, Philip I. Marvel, and did on the said day quit and determined his services as a member of said co-partnership; all of which doing between the said Philip I. Marvel, complainant, and the said Doctor J. I. Durand, were without the knowledge or consent of this defendant.

24. That the complainant, Philip I. Marvel, has recently entered into an agreement with Doctor King of New York by which the said Doctor King

is to come to Atlantic City and engage in the practice of medicine with the complainant, Philip I. Marvel at an early date and that the contract made by Philip I. Marvel with Doctor King was made without the knowledge or consent of this defendant.

25. This defendant alleges that the said retirement from the co-partnership by the said Doctor J. I. Durand and the assignment of all his interests therein to the said Philip I. Marvel in pursuance of an agreement entered into by the said Philip I. Marvel and Doctor J. I. Durand, without the knowledge or consent of this defendant, and the employment of the said Doctor King without the knowledge or consent of defendant, as aforesaid, constitutes a further breach of the agreement of partnership by said complainant, Philip I. Marvel; and by reason thereof said partnership agreement has been abrogated and should be so adjudged by this Court, and the said complainant is not, because of said doings, entitled to any relief in his said suit against this defendant beyond an account.

26. The agreement referred to and entered into by the said Doctor J. I. Durand and Philip I. Marvel is in the words and figures following:

AGREEMENT made this tenth day of January, nineteen hundred and thirteen:

BETWEEN Dr. Jay I. Durand, of Atlantic City, New Jersey, of the first part; and Dr. Philip Marvel, of the same place, of the second part;

WITNESSETH, that whereas the parties hereto and Dr. William E. Jonah did on the tenth day of January, nineteen hundred and ten, enter into a co-partnership agreement; and

WHEREAS differences have arisen between

the said Dr. Philip Marvel and the said Dr. William E. Jonah; and

WHEREAS, the differences between the said Philip Marvel and said Dr. William E. Jonah are now being litigated in Court, and involve among other things an accounting by the said Dr. William E. Jonah; and

WHEREAS party of the first part hereto is friendly to both parties to said litigation, and does not desire to be or become either a party complainant or defendant in said suit between the said Dr. Philip Marvel and the said Dr. William E. Jonah; and

WHEREAS party of the first part hereto is entitled to a portion of the moneys involved in said litigation, if any moneys shall be decreed to be due from the said Dr. William E. Jonah: and

WHEREAS party of the first part is desirous of leaving Atlantic City temporarily in the near future, and party of the second part is desirous that no delay shall be occasioned in the aforesaid litigation between the said Philip Marvel said Dr. William E. Jonah;

NOW THEREFORE in consideration of the premises, and the sum of one thousand dollars to party of the first part by party of the second part in hand paid, party of the first part does hereby agree to sell, assign, transfer and set over, and by these presents does sell, assign transfer and set over unto the said party of the second part hereto, all his right title and interest in the moneys which may be decreed to be due, if any, from the said William E. Jonah by reason of said co-partnership from the date of the beginning thereof till the date of these presents.

AND party of the first part further agrees to endorse over and deliver to party of the second

part any and all checks and moneys that may hereafter be paid to him, said party of the first part, on account of services rendered by him as a member of said co-partnership.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

JAY I. DURAND (Seal.)

Signed, Sealed and Delivered
in the presence of

And this defendant humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

And by way of Cross Bill against the said Philip I. Marvel, complainant, this defendant shows that the said Philip I. Marvel has failed to keep and perform this part of said co-partnership agreement in the following particulars:

(A) Contrary to the true intent and meaning of said co-partnership agreement, the said Philip I. Marvel entered into the formation of another association or corporation for the practice of medicine and surgery in Atlantic City and for the care of sick patients and for that purpose he associated himself with Doctor Emery Marvel, Doctor E. J. Porteous and others to this defendant unknown and on March twenty-third, Nineteen hundred and ten, incorporated the "Private Hospital Association," and that the said Philip I. Marvel was one of the incorporators and directors of said corporation, having been elected Vice-President of the same and had his picture framed and hanging in the waiting room of the office of said association at #1801 Pacific Avenue in Atlantic City, New Jersey; that this was after

the establishment of the co-partnership between Doctor Durand, Doctor Philip I. Marvel and this defendant and before the filing of his bill in this case. That while so engaged with said rival association he endeavored to and did divert business from the co-partnership established by the agreement between Doctor Durand, Doctor Philip I. Marvel and this defendant; that Doctor Emery Marvel, brother of said Philip I. Marvel, was President of said rival association with office and rooms for patients at its sanitarium at #1801 Pacific Avenue aforesaid. That complainant, Doctor Philip I. Marvel sent patients of Doctor Durand, Doctor Philip I. Marvel and this defendant to the said sanitarium and during his, Doctor Philip I. Marvel's absence from Atlantic City, refused to allow Doctor Durand to attend the same.

(B) That the complainant, Philip I. Marvel, sent uncollected bills of the co-partnership of January tenth, Nineteen hundred and ten to his Brother-in-law, George Coles, Esquire, a practicing Lawyer in Philadelphia for collection and refused or neglected to render an account of the same when demanded by this defendant.

(C) That the complainant, Philip I. Marvel, neglected to render a full and complete account of his work done outside of the office, where visits had been made by him to hotels and cottages, and that at times he failed to turn in cash collected by him for a period of one-half year or more.

(D) That at the time of entering into the agreement of January tenth, Nineteen hundred and ten, said Doctor Philip I. Marvel represented to Doctor Durand and to this defendant, that his individual practice amounted to Twenty-five

thousand dollars and that he would, by diligent attention to business maintain the same. That since the contract of January tenth, Nineteen hundred and ten, his business decreased, because his time was so occupied with outside interests, investments, etc., and his association with the rival company referred to in paragraph (a).

(E) The complainant, Doctor Philip I. Marvel, interfered and embarrassed the work of said association by taking from Doctor Durand and his defendant, patients whom they were treating and by interfering with and changing unnecessarily the medicines which they had prescribed for such patients.

(F) That said Doctor Philip I. Marvel caused the cash of said association to be deposited in bank in his name, but that in violation of the spirit and intent of said contract, he allowed his wife, Rachel I. Marvel to sign checks and to draw the same from bank.

(G) That after said Doctor Philip I. Marvel had caused stationery to be printed in the form of bills making the same payable to Doctor Philip I. Marvel, Doctor Durand and this defendant, he caused a rubber stamp to be prepared and delivered to the secretary or bookkeeper with instructions to stamp the same in colored ink across said bill heads; that upon said stamp were these words "To avoid errors make all bills payable to Doctor Philip I. Marvel;" that while said conduct was not in violation of any special provision of said contract, it was unprofessional and caused patients of Doctor Durand and this defendant to make inquiry as to the cause of said procedure and had a tendency to reflect upon the fidelity and reputation of Doctor Durand and this defendant.

Amended Answer

(H) That because of the interference of the complainant, Doctor Philip I. Marvel, as aforesaid, and because of the use of said rubber stamp, and because of the association of Doctor Philip I. Marvel with the said rival company, and because of his time being too engrossed with matters foreign to the partnership business, there has been a lack of harmony not only between this defendant and Doctor Philip I. Marvel, but also between Doctor Durand and Doctor Philip I. Marvel, all of which is embarrassing to said firm in the practice of medicine in Atlantic City, and has made it impossible for said partnership to work together in harmony and for the best interests of the association.

ENDICOTT & ENDICOTT,
Solicitors for

and

ALLEN B. ENDICOTT,
Of Counsel for Defendant.

Receivable 1910

Name of Patients		*Amount of Bill*
Mrs. J. S. Clark	c/o Carter's Dry-Goods Store. Louisville, Ky.	$ 36.00
Miss Bessie Donnelly	Georgian—35 St. W. Pittsburgh, Pa.	3.00
John Hunt Estate	Williamsport, Pa.	30.00
A. K. Schreper	170 Broadway, N. Y. City	25.00
	1910 and 1911	
Mrs. Saterlee	Galen Hall	25.00

Amended Answer

Name of Patients		*Amount of Bill*
	1910 and 1912	
Mrs. Gel. V. Hobart	Dennis Hotel Palhem Manor, West Chester, Co., New York	76.00
	1911	
Mrs. A. E. Hirsh	Chelsea 23 S. 21 St., Phila.	40.00
Mrs. Haslacker	Wilkesbarre, Pa.	15.00
Capt. L. L. Morey	c/o Adj. General. Washington, D. C.	45.00
Thos. Pearsol	Chalfonte 85 8th Ave., Brooklyn, N. Y.	17.00
J. Wildberg	Pierrepont Hotel Avondale, Cincinnatti, O.	9.00
	1911 and 1912	
P. M. Alsasser	Marlborough 217 S. 23rd St., Phila.	90.00
Mrs. Bradbury	Ryanhurst Apts. c/o Mr. A. Lipman, 1112 Main St., Kansas City, Mo.	125.00
Geo. Bourgeois Atty-at-Law	Law Building	18.00
P. M. Alsasser	Molborough 217 S. 3rd St. Phila., Pa.	90.00
Mrs. F. W. Fristhmuth	Normandie, Phila.	52.00
Norman Gunsberger	Craigh Hall, Chicago, Ill.	400.00
Mr. Raphael	1028 5th Ave., Pittsburgh	30.00
Mrs. Wallestine	Pierpont Washington, D. C.—See Old Card	

Amended Answer

Name of Patients		*Amount of Bill*
	1912	
Julious Adler	Royal Palace Hotel Pittsburgh, Pa.	30.00
Mrs. Adams	Westminster Hotel	2.00
Miss Aiken	Brighton Hotel Amberson Ave., Pittsburgh, Pa.	2.00 10
Mr. Arnfeld	Ostend Hotel Pittsburgh	40.00
Mr. N. S. Albertson	2 N. Montpelier Ave.	6.00
Mrs. J. D. Anderson	Empress Apartments La Trobem, Pa.	3.00
Miss Arden	Dennis Hotel Garrison-on-Hudson, N. Y.	4.00
Mrs. T. Arnold	Hotel Marion 1419 Master St., Phila.	30.00
Miss C. R. Arnold	Chelsea Hotel	2.00 20
Mrs. Julia G. Arnold	Galen Hall Jenkintown, Pa.	3.00
Phillip Arnold	26 S. Iowa Ave. Care Arnold, Locheim & Co. Phila.	15.00
Chas. Alexander	890 N. 23rd St., Phila.	4.00
Mrs. M. E. Arnold	?	?
Mrs. Bradley	Heinz Pier	2.00
Wm. Bacharach	103 Albion Place Phila. Pa.	60.00 30
Mr. J. Berolzheim	Pierrepont Hotel Chicago, Ill.	25.00
H. E. Battersby	34 S. Bellevue Ave.	30.00
R. D. Brice	315 2nd Ave., Homestead, Pa.	6.00
Mrs. R. G. Beck	1509 Pacific Ave.	40.00
Mr. Geo. B. Bughman	Moorewood Ave., Pittsburgh	25.00
Mrs. Ballentyne	Chelsea Hotel	15.00
Wm. S. Bernstein	Seaside Care Bernstein Mfg. Co., Phila.	3.00
Beverly D. Beebe	Ostend Hotel Easton, Md.	15.00 40

Name of Patients			*Amount of Bill*
Mrs. A. Berg	35 N. N. Hampshire Ave.		
	887 N. 23 St., Phila.		20.00
Mrs. Rose Blumenthal	104 S. Maryland		
	2310 W. Tiago St., Phila.		10.00
Mrs. Blatt	4 St. Catherin's Place		6.00
Capt. Blanchard	Galen Hall,		
	Makon, Georgia		50.00
Mr. M. Booker	Santa Rita Apts.		8.00
Mr. Brolasky	Haddon Hall		6.00
L. F. Bowen	Paterson, N. J.		16.00
Miss Bamberger	143 S. N. Carolina Ave.		15.00
Mr. Brownfield	136 St. Charles Place		
	for professional services	$175	
	2 expenses trip to		
	Maine	25	200.00
A. Bruce	Galen Hall		
	Germantown, Phila.		25.00
Mrs. A. H. Burchfield	Marlborough		
	210 Tennyson Ave., Pitts., Pa.		15.00
Miss Ida Cohen and	Pittsburgh, Pa.		30.00
" Mildred Cohen	Victoria Ave.		
Mr. F. M. Chase	Dennis Hotel		
	Corn-Exchange Bldg.,		
	Wilkesbarre, Pa.		
	for professional		
	services	$225	
	for expenses to		
	Wilkesbarre	25	250.00
Mrs. E. Clark	Ostend Hotel		
	2204 W. Grace St.,		
	Richmond, Va.		3.00
Mr. Jesse Cunningham	Lenox Apts.		?
Mrs. " "	"		?
Gustave Daniel	Ostend Hotel		
	2202 Wallace St., Phila.		150.00
Mrs. Connell	Nixon Apts.		2.00
Wm. C. Dickins	Fick Bldg., Pittsburg, Pa.		30.00

Amended Answer

Name of Patients		*Amount of Bill*
Miss Dittenhoffer	C/o Mrs. Wm. Hanstein	
	Royal Palace Hotel	2.00
Mrs. Chiswell	Marlborough	
	Washington, D. C.	5.00
Mr. Dannabaum	109 S. Elberon	6.00
Mr. Doughlass	Marlborough	
	Detroit, Mich.	20.00
C. N. Dorsey	907 Fidelity Bldg., Balto., Md.	35.00
Mr. A. L. Drum	Marlborough	
	624 American Trust Bldg.,	
	Chicago	60.00
Mrs. Sallons Dunlap	Brighton Hotel	
	Bill to E. J. Berwind	
	1 Broadway, N. Y.	150.00
Mr. Delamater	Seaside	3.00
Mr. Driefuxx	Pierrepont Hotel	40.00
Mrs. Wm. Echstein	Wieners Hotel	
	1809 N. 11 St., Phila., Pa.	2.00
Mrs. M. T. Evans	Marlborough	
	6729 Penn Ave., Pittsburgh., Pa.	25.00
Mrs. J. N. Elsengrath	Dennis Hotel	
	4757 Grand Boulevard, Chicago	192.00
Geo. N. Elsasser, Jr.	Marlborough	
	217 S. 3rd St., Phila.	9.00
Geo. N. Alsasser, Sr.	Marlborough	
	217 S. 3rd St., Phila.	12.00
Mrs. Erhlich	32 S. Dover Ave.	8.00
Mrs. F. J. Fleming	Iroquois Hotel	
	Phila., Pa.	6.00
Mrs. I. J. Feldenheiner	Ventnor	
	4216 Parkside Ave., Phila.	30.00
Mr. G. H. Friedley	Seaside	
	57 St. & City Ave.	3.00
Mrs. N. C. Fisher	Chelsea Hotel	
	4915 Ford St., Pittsburgh, Pa.	3.00
R. D. Forgan	Chalfonte Hotel	
	1st Trust & Savings Bank,	
	Chicago, Ill.	60.00

Amended Answer

Name of Patients	*Amount of Bill*
Mr. Samuel Frank	Royal Palace 5.00
S. B. Fliesher	N. W. 8th & Chestnut St., Phila.
	19 S. Brighton Ave. 60.00
Mrs. L. B. Foster	110 S. N. Hampshire Ave.
	543 Neville St., Pittsburgh 2.00
Mrs. Frauenthal	Nixon Apts. 14.00
Mrs. Frank	143 S. N. Carolina Ave. 15.00
John Forsythe	Galen Hall
	169 Albany Ave., Kingston, N. Y. 125.00
Mr. Friedman	Pierrepont Hotel 6.00
Mrs. Friedley	Pleasantville, N. J. 2.00
Mrs. W. W. Farr	Montgomery Ave. & Beach 3.00
Mr. E. Fulton	2900 Pacific Ave.
	Weymouth, N. J. 350.00
Dr. E. Funderburg	Pittsburgh 3.00
Miss Galagher	Marlborough 10.00
Mr. Gorson	Royal Palace 9.00
Miss Gates	Brighton Hotel
	c/o Jno. Gates 634 Oak St.
	Cincinnatti, O. 17.00
Jos. Gerstley	Royal Palace
	2334 N. Broad St., Phila. 25.00
Wm. Giblin	Chalfonte Hotel
	150 W. 72nd St.
	New York 60.00
Wm. Gray	153 S. New York Ave. 11.00
Mrs. Richard Green	Worchester, Mass. 25.00
Chas. Green	7 N. Sovereign Ave. 4.00
	Phila. Pa.
Stanton Glaser	Imperial Hotel
	Atlantic adv. Illinois Ave. 20.00
A. B. Goldsmith	c/0 Dr. E. Zugsmith
	Jenkins Bldg., Pittsburgh 8.00
Miss Godfrey	145 St. Charles Place 4.00
Mr. Godfrey	" " " "
	1206 Girard St., Washington, D. C. 6.00
Mrs. Gottschalk	Ventnor
Wm. Gleen	19 N. Surrey Place 20.00

Amended Answer

Name of Patients		*Amount of Bill*
Mrs. O. N. Grether	c/o Dr. E. Zugsmith Carnegie Bldg., Pittsburgh	7.00
Mrs. F. J. Graves	Brighton Hotel	5.00
Mrs. Guggenheimer	c/o Mrs. Solomon 210 Pacific Ave.	20.00
Mr. H. G. Gump	Rudolf Hotell 312 S. River St., Wilksbarre, Pa.	50.00 10
Mrs. Isaac Guchenheimer	5605 Irving Ave., Pittsburgh	9.00
Mr. L. Goldman	Dennis Hotel 176 St. George St., Toronto, Ca.	100.00
Miss Hand	Seaside	3.00
Gertrude Hoffman		3.00
Mr. Hubbard	Galen Hall	3.00
Mrs. E. Harvey	Austoria Apts. Woolworth's Store, Bdwk.	20.00
W. H. Hart	Chalfonte Hotel 1780 Broadway, New York City	20.00 20
Mrs. M. H. Henderson	10 N. La Clade Place 131 Lincoln Ave., New Castle	40.00
Mr. and Mrs. E. A. Housen	Seaside Hotel Brookfield Centre, Ct.	121.00
Mrs. L. Hersog	Shelburne Hotel 5484 Everet Ave. Chicago, Ill.	15.00
Mr. Hess	Oriental Ave. c/o Dr. Valentine Levey, Phila. Pa.	3.00 30
Mrs. I. Hirsh	Dennis Hotel 450 Oakwood Boulevard, Chicago	50.00
Mrs. Herstein	46 S. Sovereign Ave.	8.00
Mrs. Hess	4 St. Katherin's Place	2.00
Mrs. John Hollbach	225 E. 30th St., Paterson, N. J.	5.00
Mr. D. Hyman	Marlborough Va. & 4th Sts., Buffalo, N. Y.	12.00
Mrs. Heidelberger	129 Atlantic Ave.	25.00 40

	Name of Patients		*Amount of Bill*
	Miss Virginia Holt	c/o A. C. Braxton 804 Mutual Bldg., Richmond, Va.	25.00
	Mrs. Holt	Marlborough Bill to Judge H. W. Holt Stanton, Va.	8.00
10	E. E. Hamilton	Brighton Hotel Phila.	60.00
	Mr. C. F. Izard	1904 Pacific Ave. 241 Hansberry St., Germantown, Pa.	25.00
	Mrs. Isaacs	Rudolf Hotel c/o J. Raphael 1028 5th Ave. Pittsburgh	25.00
	Mrs. Samuel Jackson	2100 Atlantic Ave.	30.00
	Wm. H. Hill	Chelsea Hotel 160 Windsor Ave., Buffalo, N. Y.	15.00
20	W. P. Jackson	135 Brighton Ave., Salisbury, Md.	3.00
	Mrs. E. Jenkins	Marlborough Pittsburgh, Pa.	6.00
	Mrs. Benj. Johnson	Seaside Hotel Benj. Johnson—Bill 1338 Chestnut St., Phila.	5.00
	Mr. Jones	Seaside Hotel, Pittsburgh, Pa.	25.00
30	Mrs. Kaufman	15 Surrey Place c/o B. Selig, 4258 Parkside Ave., Phila., Pa.	300.00
	Mr. W. S. Kilmer	Marlborough Binghamton, N. Y.	60.00
	Mrs. A. Kind	Ostend Hotel 2346 N. Park Ave., Phila. Pa.	10.00
	Mrs. Kleinordlinger	New Marian Hotel 415 Pacific Ave.. Pittsburgh	20.00
40	Mrs. Herbert M. Kaufman	Gladstone Hotel 132 W. 88 St., New York City	4.00

Amended Answer

Name of Patients		*Amount of Bill*
Mrs. R. Katze	Rudolf Hotel 450 Riverside Drive, New York City	15.00
Mrs. Zadock Katze	Shelburne Hotel 2400 Lincoln Ave., Balto. Md.	20.00
Mrs. Katzenberg	24 N. Brighton Ave., c/o Dr. L. Leopold, Phila. Pa.	6.00
Mrs. Katz	5 S. Jackson Ave., 1929 N. 12th St. Phila.	15.00
J. B. Reilley	Brown Mills, N. J.	10.00
Mrs. H. Krantz	32 St. Charles Hotel 183 Arggle Road, Brooklyn, N. Y.	3.00
Mrs. A. F. Knauf	Berwin Apts.	2.00
Mr. Knoblaugh	3300 Pacific Ave. Reading Station, Phila.	200.00
Mrs. Kahn Mr. Kahn	3805 Ventnor Ave. 215 Atlantic Ave., Balto., Md.	4.00 6.00
Mrs. M. S. Knowles	c/o Mrs. M. W. Adams, Jr. St. Martins, Chestnut Hill, Phila.	10.00
Mrs. Lieberman	111 Atlantic Ave.	11.00
Mrs. Alfred Lee	Union League, Phila.	10.00
Mr. Lambert	12 S. Iowa Ave.	9.00
Samuel Lando	Belair, Ohio	4.00
Martin Lauer	New Marion Hotel 439 N. Gay St., Balto. Md.	40.00
Alexander Loughlin	Brighton Hotel	10.00
Mrs. Lawrence	126 St. Charles Place c/o Jno. J. Donough, 57 Chambers St., New York City.	45.00
Mrs. O. P. Letchworth	Chalfonte Hotel	3.00
Mrs. J. Levey	Pierrepont Hotel, 2233 N. Park Ave., Phila.	2.00
A. B. Levey	9 S. N. Hampshire Ave. 881 N. 23 St., Phila.	50.00
Mr. John Ligett (estate)	Galen Hall, c/o Sidney Ligett, Moorewood Place, Pittsburgh	27.00

Name of Patients		*Amount of Bill*
Harry M. Lipper	210 Gramercy Place 1508 N. 17th St., Phila.	25.00
Mrs. M. W. Lipper	Royal Palace Hotel 1516 Girard Ave., Phila.	12.00
Mrs. Sylvain R. Livingston	20 St. Kathrine's 231 W. Broad St., Tamaqua, Pa.	16.00
Mrs. Livingston, Sr.	" " " "	15.00
S. Livington (Miss)	Brightwood Hotel Parkside Ave., Phila.	2.00
Miss B. Logue	19 N. Providence Ave., 3426 Powelton Ave., Phila.	2.00
Mr. Lowenstein	26 N. Vermont Ave.	5.00
Mr. Ray Lipman	1112 Main St., Kansas City, Mo.	150.00
Mrs. Frederick M. Leonard	835 N. Mass. Ave. 4243 Walnut St., Phila.	40.00
Mr. Levy	Seaside Ave., c/o Levy & Manuel, Att'ys., Phila.	2.00
Mr. S. F. Loucheim	31 S. Stenton Place c/o Arnold-Loucheim Co., Phila.	11.00
Mrs. Lieberman	Royal Palace Hotel 1516 Girard Ave., Phila.	20.00
Mr. G. A. Landmesser (Estate)	Marlborough 507 Market St., Wheeling, W. Va.	225.00
Mrs. Max Liveright	112 Pacific Ave. Lancaster, Pa.	5.00
Mrs. Sam'l. Leopold	129 Atlantic Ave., Phila.	6.00
Thomas Mays	Christiana Apts.	10.00
Hon. Mr. McHenry	Medico Chi Hospital, Phila.	170.00
Miss M. J. McCoy	229 Galen Hall	40.00
Mrs. John A. McEvoy	Continental Life Bldg., Toronto, Ga.	35.00
Mrs. Michell	5720 Julian St., St. Louis	14.00
Mrs. L. W. Moody	Swickley Hotel Mass. Ave.	20.00

Name of Patients		*Amount of Bill*
Mrs. Mulligan	137 S. Texas Ave.	40.00
Mr. V. M. Myers	20 Gaston St., Savanah, Ga.	25.00
Miss McCuley	Galen Hall	18.00
Mr. J. Mas-Baum	2307 N. Broad St., Phila.	50.00
Mrs. Mayer	128 N. Iowa Ave.	
	Dr. Leopold	25.00
Mrs. Moose	3 N. Middledgeville Ave.	10
	Dr. Leopold	3.00
Miss McFarend	Lenox Apts.	40.00
Mr. Josiah Marvel	DuPont Bldg., Wilmington,	
	Del	30.00
Mrs. Franklin McGalister	Haverford, Pa.	200.00
Miss McKeen	Marlborough	6.00
Mr. A. C. McCandless	332 Wynebiddle Ave.	
	Pittsburgh	10.00
J. W. Mott	Amsterdam Apts.	50.00
Rev. W. J. McDonald	66 Ridge St., Orange, N. J.	6.00 20
Mrs. McCuney	109 S. N. Hampshire Ave.	3.00
Mrs. Fannie Muhr	Royal Palace	12.00
Mrs. Millheiser	51 Gladstone Hotel	3.00
Mrs. Marks	300 Atlantic Ave.	3.00
Mr. McGavern	St. Charles Hotel	12.00
Mrs. G. L. Norris	66 Ridge Ave.	
	Grafton, Pa.	20.00
A. H. Nelson	163 States Ave.	20.00
Jos. Netter, Estate	1830 Diamond St., Phila.	30.00
Jacob Netter	" " " "	18.00 30
Alice R. Newbold	Galen Hall	15.00
A. C. Overholt	Scottdale, Pa.	
	Traymore	10.00
B. F. Overholt	Chalfonte-Scottdale, Pa.	10.00
M. S. Oberdeffer	Chicago, Ill., c/o I. Hersch	
	450 Oakwood boulevard	10.00
D. Oscher	837 N. 7th St., Phila.	20.00
W. M. Olmstead	Pomfort, Ct.	10.00
Mrs. Ober	Pittsburgh	
	1724 Wightman St.	25.00 40

	Name of Patients		*Amount of Bill*
	Mrs. J. H. Parmlee	7 N. Boston Ave.	30.00
	Mrs. Pazima	2005 Atlantic Ave.	15.00
	Mrs. Pond	See Old Address	4.00
	Mrs. J. B. Pulasky	Ansonia Apts.	10.00
	G. L. Peck	34 S. Mass. Ave. Sewickley, Pa.	100.00
10	Mrs. Blatt	4 St. Katherins Place	4.00
	Mr. Polin	115 Melrose Ave.	20.00
	Mrs. Quinn	426 St. Charles Hotel	3.00
	Mr. G. Rhinehart	29 S. R. I. Ave.	15.00
	Mrs. Roote	121 S. Illinois Ave.	2.00
	Enoch. Rauh	105 S. Nashville Pittsburgh	30.00
	R. Robinson	Chalfonte Hotel	3.00
	J. Raphael	22 E. 40th St., New York City	10.00
	Mrs. A. Rice	1020 Linden St., Scranton, Pa.	15.00
20	Mrs. Rothchild	Rhodesia Apts. See Old Account for Am't. Due	
	Mrs. Kirshboum	104 S. Victoria Ave. Phila.	10.00
	Mrs. Hannah Rubin	Pierrepont Hotel	60.00
	Mr. Rutherford	2900 Pacific Ave. Brighton Cottage	45.00
	W. E. Riebenach	Bartlett Building	10.00
	Mrs. Rosenfield	239 S. Ct. Ave. 1011 Chestnut St., Phila.	10.00
30	D. C. Ripley	c/o Ripley & Co. House Bldg., Pittsburgh	10.00
	Mrs. J. S. Robb, Jr.	Marlborough Berger Bldg., Pittsburgh	12.00
	Wm. Rosenbaum	Cecil Hotel 5896 Bartlett St. E. End	10.00
	Mrs. G. Rosin	231 S. Connecticut Ave.	12.00
	Miss Fallon Seligman	Tamaque, Pa.	5.00
	Miss C. L. Sands	Galen Hall Schwickley, Pa.	35.00
40	Mrs. Chiffer	115 N. Michigan Ave.	6.00

Name of Patients		*Amount of Bill*
Mrs. T. Schoenfaber	Royal Place Hotel 4017 Grand Boulevard, Chicago	10.00
J. A. Schwartz	304 Royal Palace Hotel 2245 N. Broad St., Phila.	25.00
Mrs. H. C. Scott	St. Charles Hotel 21 Hospital St., Montreal, Ca.	30.00 10
Jacob Scott	Galen Hall Lock Haven, Pa.	15.00
Alex. H. Scott,	Brighton Hotel 1806 Writtenhouse Sq., Phila.	40.00
Mrs. E. J. Seeman	LeLande Hotel 5820 Ky St., Pittsburgh	2.00
Miss E. Shaw	34 S. Mass. Ave.	5.00
Jas. Shields	348 Haddon Hall Frick Bldg., Pittsburgh	6.00
L. Sidenbach	130 Atlantic Ave. 1915 Girard Ave., Phila.	10.00 20
Mrs. R. A. Snowball	St. Charles Hotel Chatham, N. B. Ca.	20.00
J. F. Snyder	12 N. Florence Ave.	10.00
Mrs. G. E. Sponsler	Galen Hall Mifflingsburg, Pa. Bill to Limeridge, Pa.	75.00
Mrs. W. H. Spratt	Marlborough 105 Aberdeen Ave., Hamilton Ontario	8.00 30
T. H. Starke	Richmond, Va.	10.00
Mrs. Solomon	121 S. N. Hampshire Ave.	25.00
Mr. Stern	17 S. Boston Ave.	8.00
Mrs. Stockton	Dennis Hotel Princeton, N. J.	24.00
Mrs. O. W. Stark	Royal Palace Hotel Cincinnatti, Ohio	5.00
Mrs. Benj. Straus	Royal Palace c/o Haufman & Straus 4th Ave., Louisville, Ky.	9.00 40

Name of Patients		*Amount of Bill*
Mrs. E. H. Straub	Dennis Hotel 1724 Weightman St., Pittsburgh	12.00
B. Strouse	1317 Deenston Ave., "	36.00
A. C. Succop	5700 Elsworth Ave., "	16.00
Miss Sulivan	Brighton Hotel Bellgravia, Phila.	2.00
Mr. W. A. Sulivan	Chalfonte 101 S. Amherst	35.00
Miss M. Schloss	4216 Parkside Ave., Phila.	10.00
Mrs. H. A. Stevens	Brighton Hotel	12.00
Mrs. Sawyer	c/o Dr. A. Schitenden 109 Oak St., Binghampton, N. Y.	60.00
M. C. Schwab	1514 Mallers Bldg., Chicago	25.00
Mrs. Spier	207 S. Rhode Island Ave., c/o Dr. Leopold	10.00
Miss Alice Stevens	974 St. Mark Ave., Brooklyn, N. Y.	3.00
Mrs. Shelan	Brighton Hotel 21 Rutger St., Utica, N. Y.	9.00
Miss Scranton	St. Charles Hotel Brooklyn, N. Y.	25.00
Mr. Sunstein	Pierrepont Hotel Pittsburgh, Pa.	3.00
Miss E. Sulzberger	Grammercy Place 1303 Giard Ave.	9.00
Mrs. C. I. Shannon	Galen Hall McChestney Bldg., Pittsburgh	100.00
M. S. Taylor	901 Santa Rita Apts.	10.00
Irving Thompson	136 Virginia Ave., N.	10.00
Miss Thompson	Albermarl 91 Gainsboro St., Boston	20.00
Mrs. M. N. Tompson	Lenox Apts.	4.00
F. E. Thorn	26 N. Florence Phila., Pa.	18.00
Miss C. B. Taylor	Chelsea Hotel	3.00
J. N. Tompson	Galen Hall Wilkesbarre, Pa.	50.00

Amended Answer

Name of Patients		*Amount of Bill*
Mrs. A. Turner	Chalfonte Hotel	20.00
Mrs. Twells	619 Oriental Ave., Dr. Darcum	5.00
Rev. Vandergrift	431 Strand Hotel Bill to J. T. Dorney 1304 E. Montgomery Ave.	6.00
Mrs. Van Vleck	Marlborough Shore Hills, N. J.	4.00
Miss Van Dyke	c/o Miss Macauley, Galen Hall	15.00
J. Viasso	St. Charles Help, see card	
Miss Wagner	127 St. Charles Hotel, c/o Dr. E. Harris, New York City	100.00
T. C. Walbridge	Chelsea Hotel, Germantown, Phila.	300.00
W. G. Walbridge	Chalfonte Hotel, Litchfield, Ct.	24.00
Miss J. D. Walton	Brighton Hotel	150.00
Mrs. Wasserman	Hotel Majestic	65.00
M. P. Wilder	25 N. New Hampshire Ave.	50.00
H. E. Weiskopf	415 Pacific Avenue Pittsburgh, Pa.	6.00
Mrs. Jos. Wiesenfield	126 Atlantic Avenue, 1712 Lindon Ave., Balto., Md.	14.00
Miss Wilcott	Haddon Hall, Boston, Mass.	3.00
L. J. Wolf	Dennis Hotel, Garfield Bldg., Cleveland, O.	12.00
Mrs. Lee Wolf	204 S. Ventnor Ave. 4000 Pine St., Phila., Pa.	10.00
Miss Weinrich	216 Seaside Ave.	2.00
Mrs. S. G. Winternitz	1612 Madison Ave., Balto., Md.	15.00
Mr. Weaver	Berkshire Inn	50.00
Mrs. Weinberg	121 S. Vermont Ave., c/o Jacob Netter, 1830 Diamond St., Phia.	25.00

Name of Patients		*Amount of Bill*
C. A. Zigler	137 Penn Ave., Bailey Bldg., Phila.	21.00
Mrs. H. F. Wincoff	Hotel Scarsdale, New York City	20.00
Mr. Weedin	210 Pacific Ave.	2.00
Miss Wicoff	Dennis Hotel Princeton, N. J.	8.00
M. L. Young	Marlborough, New York City	100.00
Miss J. D. Zerman	Nixon Apts.	12.00
Mrs. Leonard Yerkes	7 S. Montpelier Wilmington, Del	9.00

The Accountant charges himself with the following cash collections for the period, January 1, 1912, to October 15, 1912:

M. Anathan,	Pierrepont Hotel	6.00
Mrs. S. Agnew,	Pittsburg, Pa.	2.00
Mrs. M. E. Arnold,	Germantown, Phila., Pa.	1.00
Mr. Berg,	35 Dover Ave., Atlantic City	2.00
Mr. Bernard,	Dennis Hotel	6.00
L. W. Bofird,	Hoboken, N. J.	1.00
V. Bondy,	Baltimore, Md.	2.00
C. M. Baum,		2.00
Mrs. Brunwick,	DeVille Hotel	8.00
Phoebe Boyer,	Shelburne Hotel	3.00
Mrs. Berger,	2120 Pacific Avenue	2.00
Mrs. Callahan,	Mercer Home, Atlantic City	1.00
Mr. Cohn,	220 S. Vermont Ave.	12.00
Lewis Cassady,	4th, Crosson Apts.	2.00
Mrs. J. D. Caulk,	Traymore Hotel	2.00
Mr. H. C. Cook,		2.00
Mr. W. V. Clegg		2.00
Rev. Duffy,	Youngs Hotel	5.00
J. F. Crandall,	Wayne, Pa.	10.00
Miss Cotter,	Chalfonte Hotel	6.00
Mrs. D. O. Dalzell,	Pittsburg	2.00
Mr. Douglass,	Seaside Hotel	6.00

Name of Patients		*Amount of Bill*
John Doe	Chalfonte	5.00
John Doe		1.00
	Forward	$ 91.00
	Brought forward	$91.00
W. H. Doremur,	St. Charles Hotel	6.00
Mrs. F. C. Dittrich,		1.00
Dennis Hotel,		3.00
Mrs. Ephraim,		2.00
Mrs. F. S. Eberle,		2.00
Mrs. Eberhart,	Pittsburgh, Pa.	12.00
Mrs. Ida Ernst,	145 St. Charles Place	4.00
Mrs. O. Foster,	Frontenac Hotel	1.00
W. D. Frishmuth,	Marlborough-Blenheim	4.00
Mrs. H. Friedman,	17 Sovereign, North	2.00
Mrs. F. F. Folsom,	Chalfonte Hotel	4.00
Dr. E. E. Friedenberg,	Pittsburgh, Pa.	2.00
Fido,	Arctic Avenue	1.00
Mrs. Follenbee,	Marborough-Blenheim	3.00
Margaret Gleisner,	111 Vermont Terrace	1.00
Mrs. Greson,	2819 Arctic Avenue	1.00
Mr. S. W. McGinnes,		2.00
Mr. Goldsmith,		7.00
Mrs. Gottschalk,	Imperial Hotel	2.00
Sarah Gillis,	7 S. Sovereign Ave.	4.00
Miss Gindlefinger,	Royal Palace Hotel	3.00
Mrs. "	Rudolph Hotel	6.00
Mrs. Haggerty,	Marlborough-Blenheim	11.00
Miss Horner,		5.00
Mrs. F. E. Hurlburt,	New York City	8.00
Mrs. Hopper,	Dennis Hotel	3.00
Miss Ida Hoffarth,	Pierrepont Hotel	4.00
W. H. Jones,	Chalfonte Hotel	4.00
Mr. Jennings,	St. Charles Hotel	3.00
	Forward	$202.00

	Name of Patients		*Amount of Bill*
		Brought forward	$202.00
	Miss Jones,	Royal Palace Hotel	4.00
	Mrs. Kasenour,		4.00
	Mrs. C. A. Kunkel,	Harrisburg, Pa.	2.00
	Mrs. Kent,		3.00
	Mr. Koster,		2.00
10	Mrs. Lee,	Stenten Place	6.00
	Mrs. W. H. Harting,	Haddon Hall	2.00
	Mrs. Lloyd,	Hammonton, N. J.	4.00
	Mr. B. B. Loomis,	Carlisle, Pa.	1.00
	Mrs. Michell,	St. Louis	2.00
	W. H. Morgan,	Reliance, O.	22.00
	Mrs. Jos. Murphy,	Shorham Hotel	2.00
	Mrs. Murphy,	Chalfonte Hotel	3.00
	Mrs. Meyer,	Pierrepont Hotel	2.00
	Miss Maguire,		2.00
20	Senator Martin,	Dennis Hotel	3.00
	Mrs. McClure,	Chester, Pa.	5.00
	Mr. R. J. Montague,		2.00
	Mrs. Mersmer,	Pierrepont Hotel	2.00
	M. Munson,		12.00
	Mr. J. Newman,	Pierrepont Hotel	6.00
	Mrs. J. Newman,	" "	3.00
	Sarah O'Reilly,	42 Oriental Ave.	1.00
	David Osher,	Philadelphia	3.00
	E. A. Prince,	112 N. Tennessee Ave.	2.00
30	Mr. Peters,	3. Turner Pl.	4.00
	Room #264 Royal Palace,		3.00
	Mr. Riester,		3.00
	Mr. Richards,	107 S. New Hampshire Ave.	3.00
		Forward	$315.00
		Brought forward	$315.00
	Mr. Chas. Rubin,	Brooklyn, N. Y.	10.00
40	Mrs. Richards,	c/o Reed Evans	9.00

Amended Answer

Name of Patients		*Amount of Bill*
Bernard Richeleiu,		2.00
Mrs. Rosenberg,	123 S. Ridgeway	3.00
Mrs. J. Rhoads,	Pittsburgh, Pa.	2.00
Miss Fallon Seligman,	Tamaqua, Pa.	2.00
Mr. Stover,		10.00
Room 115 St. Charles Hotel,		6.00
Mrs. H. C. Strouse,	Dennis Hotel	2.00
Mrs. Sayword,	Ostend Hotel	2.00
Mrs. W. H. Stauffer,	Scottdale	5.00
Miss Sullivan,	Wiltshire Hotel	2.00
Mrs. Strand,	Philadelphia	2.00
Mrs. Stemfeld,	Royal Palace Hotel	2.00
Mr. Sloan,		10.00
Mr. Scorgle,		2.00
Sarah Smith,		2.00
Minnie Simon,	1.00	1.00
Mrs. Smoot,	405 Dennis Hotel	3.00
Mrs. Shiver,	St. Charles Hotel	3.00
Mrs. Mary Steele,		2.00
Mr. Spragule,		8.00
Mrs. E. C. Thorn,	Rochester, N. Y.	2.00
Mrs. Vidiver,	St. Charles Hotel	6.00
Mr. Wank,	Pierrepont Hotel	2.00
Mrs. H. W. Weaver,	Royal Palace Hotel	4.00
Mrs. Weidner,		13.00
Mr. L. J. Wolf,		2.00
Mrs. Eunice Weltner,		2.00
	Forward	$436.00
	Brought forward	$436.00
Mr. N. R. Winters,		18.00
Mrs. A. C. Wintermitz,		15.00
Mrs. Williams,	Dennis Hotel	6.00
Mr. Higgins,		4.00
Mr. Robertson,		1.00
Mr. Grey,		2.00

Name of Patients		*Amount of Bill*
Mr. Curry,		2.00
Mr. Hallowhurst,		6.00
Mr. Holiday,		2.00
Mr. Adler,		2.00
Mr. Shaw,		2.00
Mr. Hohnes,		4.00
Mrs. Fry,	Chelsea Hotel	5.00
		$505.00
Less:		
	Cash collected by DR. DURAND from Mr. Johnes	4.00
	TOTAL CASH COLLECTIONS	$501.00

Replication

(*Filed*, Nov 20/912)

IN CHANCERY OF NEW JERSEY

Between
PHILIP I. MARVEL,
Complainant,
and
WILLIAM E. JONAH,
Defendant.
On Bill, &c.

The replication of Philip I. Marvel, complainant, to the answer of William E. Jonah, defendant:

The complainant joins issue on the answer of the defendant.

BOURGEOIS & COULOMB,
Solicitors of Complainant.

Case

IN CHANCERY OF NEW JERSEY

Between PHILIP I. MARVEL, Complainant, and WILLIAM E. JONAH, Defendant.	On Bill, etc. Final Hearing

Before his Honor, E. B. Leaming, Vice Chancellor, at the Chancery Chambers, Camden, New Jersey, on Wednesday, January 29th, 1913.

Appearances:

Messrs. Bourgeois & Coulomb, for complainant.

Messrs. Endicott & Endicott and Robert H. McCarter, Esq., for defendant.

Mr. Endicott: I want to file an amendment to the answer and cross bill. This has been served upon the complainant and it is consented that it be filed. That answer sets up that since the bringing of this suit new matters—since our last sitting, in fact, occurred the day that we were in session in Atlantic City. On that day, the 10th day of January, Doctor Philip Marvel purchased from Doctor Durand all of his interest in the partnership, he took an assignment, paid him a thousand dollars and Doctor Durand retired from the partnership. Now we set up in this answer that that act was a dissolution of the partnership, and the partnership being dissolved the complainant has no standing before this Court which would allow him any relief which he asks except the mere matter of an accounting.

Mr. Bourgeois: If the Court please, we will meet that, I suppose, when it comes time?

The Vice Chancellor: Yes.

Mr. Bourgeois: I will first offer in evidence this agreement I have just read.

Said agreement of partnership offered in evidence and marked Exhibit C-1.

HENRY R. LAWRENCE, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says:

By Mr. Bourgeios: Q. Doctor, you live where? A. 1721 Boardwalk.

Q. And your business is what? A. Druggist.

Q. Were you subpoenaed by Doctor Marvel to appear here today? A. Yes.

Q. And produced with you certain or whatever blanks, prescription blanks, that Doctor Jonah had sent into your drug store or had come to your drug store since the year 1910? A. Yes.

Q. Have you produced them? Have you them with you? A. Yes.

Q. Will you produce them, please? A. (Witness produces paper and hands to counsel.)

Mr. Bourgeois: Witness produces 44 prescription blanks having on them in printing at the upper left-hand corner the word "R." at the left-hand end "Copy R. on label," at the right-hand corner "Dr. W. E. Jonah."

Q. Doctor, I noticed at the upper right-hand corner, apparently with a stamp, the number "29010" on one of these. By whom was that placed? A. Myself.

Q. That is for the purpose of enabling you to refer to it in the future? A. Yes, sir.

Mr. Bourgeois: Now, if your Honor

please, I suppose Doctor Lawrence wants to take these back.

The Vice Chancellor: Let me look at one of them and give counsel some to look at, and if we all can remember them sufficiently I guess there is no reason to leave them.

Mr. McCarter: We have a blank that can be substituted, that will be convenient I think.

Mr. Bourgeois: Yes. Defendant produces a blank prescription blank similar to those produced by Doctor Lawrence and by agreement it is substituted in the place of the originals.

Said blank marked Exhibit C-2.

The Vice Chancellor: I understand the witness to testify that these came to his drug store in the regular course of business subsequent to January, 1910?

Q. That is subsequent to January 10th, 1910 —is that right? A. Yes.

Q. And were those prescriptions filled by you? A. Yes; filled at the store, yes.

Q. Well, I mean at the store? A. Yes.

The Vice Chancellor: Mr. Bourgeois, I would like to inquire at this moment how you contend that these prescriptions ought to be signed? There was no firm name, was there? I do not know whether anybody has the right to sign a prescription any other way than by his own name.

Mr. Bourgeois: Oh, no, no; I didn't mean that, but the agreement provides that stationery is to be furnished by Doctor Marvel and they are to use it. We are not objecting to the signing of the prescription

by Doctor Jonah. What are we objecting to is that he should not have used his individual stationery, he should have used the firm stationery.

The Vice Chancellor; The firm stationery provided—

Mr. Bourgeois: For this particular purpose.

The Vice Chancellor: For this particular purpose, has the name "Doctor Marvel" as the principal and Doctor Jonah and Doctor Durand's names under the word "associates."

Mr. McCarter: The language of that covenant is rather peculiar. I think it says all professional cards, letter heads, bill heads and other stationery relating to the practice generally shall be furnished by Doctor Philip Marvel and shall be used exclusively by the parties to this agreement. Now, whether that means that they shall not use anything else is perhaps questionable.

Mr. Bourgeois: The form of blank furnished by Doctor Marvel, which the defendant has produced is offered in evidence and marked Exhibit C-3.

CROSS-EXAMINATION by Mr. McCarter:

Q. Mr. Lawrence, you have one of the most prominent and largest and most successful drug stores in Atlantic City, haven't you? A. I don't know.

Q. Well, you do as large a business probably as anybody there? A. Probably.

Q. And you are on the Boardwalk? A. Yes.

Q. Now you have not produced all the pre-

scriptions that came to you during this period that were signed by Doctor Jonah, have you? A. No.

Q. He did send a number that were this blue type? A. Yes.

Q. And have simply from those you received selected these little white ones and produced them? A. Yes.

Q. Have you any idea how many there are all together? A. Oh, my no.

Q. Well, there are several hundred, aren't there? A. Yes, several hundred.

Q. Eight or nine hundred? A. I shouldn't wonder.

Q. Perhaps a thousand? A. Well, I don't know without I gave a list of all that Doctor Jonah had written.

By Mr. Bourgeois: Q. Doctor, I show you two lists of names and prescription numbers and ask you if they were made out in your pharmacy and what they represent? A. Yes.

Q. What do they represent? A. The prescriptions signed by Doctor Jonah on not only this blank but on the blue blanks or anything.

Q. Now, is there anything on those lists to indicate those that were signed on this particular blank of his? A. No.

Q. They are not separated? A. No.

Mr. Bourgeois: If the Court please, I would like to have the names of these on the record, if I may.

Mr. McCarter: What are they?

Mr. Bourgeois: The names of the patients on the record, whatever it is.

Mr. McCarter: It seems to me that may be immaterial.

Mr. Bourgeios: Well, it may or may not be.

Mr. McCarter: Well, I object to it as utterly immaterial.

The Vice Chancellor: You want to have those on the white slip indentified with reference to those on this list?

Mr. Bourgeois: We can not do that because the doctor did not separate them. What I want to do is to offer them in evidence.

The Vice Chancellor: Can't we save that time by letting him make up the names, sending them up to you and handing to the stenographer?

Mr. Bourgeois: Yes.

Q. Can you do that, Doctor? A. Yes.

Q. Could you take these in the other room and check up on this list those that we have here? A. Yes.

Q. I wish you would do that, so that you can take these back with you, and we will then let it be admitted as this list.

Mr. McCarter: Of course we do not stand on this but I can not see what possible relevancy to this suit the names have.

The Vice Chancellor: I would not like to exclude it. It may have some relevancy some of these patients may have some testimony to give in this matter, I can not say.

Mr. McCarter: Now, because Doctor Lawrence will likely want to go back we have also evidence that we would like to produce by him and if there is no objection we will just ask him now as our witness and let him go afterward.

Mr. Bourgeois: I have no objection.

By Mr. McCarter: Q. Doctor, were prescrip-

tions by your store furnished to what is known as the sanitarium of Doctor Emery Marvel on Pacific Avenue?

Mr. Bourgeois: That is objected to as irrelevant and immaterial.

The Vice Chancellor: I can not intelligently pass on it. I think it can be introduced; if it is not material it will not be considered, that is, if it is not connected up.

Q. Supplies and medicine?

The Vice Chancellor: I suppose the objection is that Philip Marvel had nothing to do with that sanitarium?

Mr. Bourgeois: Yes, and it is because we think that what transpired in the sanitarium has nothing to do between these parties.

The Vice Chancellor: Let it be received subject to its being made relevant.

Q. The question is, Doctor Lawrence, whether or not you in your store furnished any supplies or other merchandise of any kind to the sanitarium? A. Yes.

Q. And is it not a fact that Doctor Philip Marvel during this period since this agreement was made, which is dated the 10th of January, 1910, with your requirement guaranteed the account with Doctor Emery Marvel's sanitarium known as a private hospital? A. I don't know as I can recall. Let me see.

Q. Do you remember a telephone conversation? A. Yes.

Q. To that effect? A. To that effect but I can't say when.

Q. Well, what was the telephonic conversation any way? We will get the time later. Between

whom was it? A. Doctor Philip Marvel and myself.

Q. And what was the conversation? A. Asking me to open an account.

Q. With whom? A. With the sanitarium, and that he would see that I got—that he would guarantee the payment or something of the sort, I can't recall, I don't know, I never thought of it since, I don't know.

By the Vice Chancellor: Q. Do you know when it was? A. I haven't any idea, no; I know several years ago, it was not recently I know.

By Mr. McCarter: Q. Do you remember telling Doctor Jonah that it was—

Mr. Bourgeois: I object to that.

Mr. McCarter: I am trying to refresh his recollection.

The Vice Chancellor: I doubt the propriety of the question but go ahead.

Q. Do you remember telling Doctor Jonah within what period you thought it was?

Mr. Bourgeois: I object.

A. No.

The Vice Chancellor: Well, he could not remember.

Mr. McCarter: He says he doesn't remember.

A. No, I don't remember.

Q. And has that guarantee been in operation from that time down to the present? A. Nothing has been said since.

Q. Never been modified or broken or abrogated? A. Never been.

Q. Now, I hold in my hand a certified copy of the cerificate of incorporation, of the Private Hospital Association which is the corporate name of that enterprise—

The Vice Chancellor: What is it called?

Mr. McCarter: Private Hospital Association.

Q. (Continuing)—in which Doctor Emery Marvel, Doctor Philip I. Marvel and Doctor Edward J. Porteous appear as incorporators, and this appears to have been dated the 15th of March, 1910. Directing your attention to that date, Doctor Lawrence, what would you say would be your best recollection as to whether or not the conversation occurred since the incorporation of this so-called Private Hospital Association?

Mr. Bourgeois: I object as leading.

The Vice Chancellor: Well, I think the incorporation is properly referred to to aid his memory.

Mr. McCarter: That is all.

Mr. Bourgeois: How can the incorporation aid his memory?

The Vice Chancellor: Well, it may or may not. The sanitarium may have existed long before it was incorporated. It is for the witness to say whether it helps him or not.

A. I don't recall at all. I haven't the slightest idea when it was.

Q. Was anything said at the time by Doctor Philip Marvel, or afterwards or before, to you indicating that he was at that time interested in this so-called sanitarium of Doctor Emery Marvel? A. No.

Q. Well, it is now January, 1913? A. Yes.

Q. Have you no way of recalling at all whether the incident occurred within the past three years? A. No. I couldn't say that.

Q. Did you then open your account with the sanitarium or had it been running before? A. I

think the account was open at that time, I think that was the opening of the account, if I recall, but I wouldn't say positively, I think so.

By Mr. Bourgeois: Q. Doctor, what relation is Doctor Emery Marvel to Doctor Philip Marvel? A. I don't know; I presume they are brothers.

Mr. Endicott: We will save time by admitting that.

Q. Now, Doctor Emery Marvel has had this sanitarium ever—well, since about 1904 or 1905, hasn't he? A. I don't know at all.

Q. How many years have you known him to have it—do you recall? A. I don't.

Q. Did you ever call on Doctor Philip Marvel to pay any of the bills of the sanitarium? A. I did not.

Q. They paid their own bills? A. Yes.

Mr. McCarter: Just one question I would like to ask the doctor on cross-examination.

By Mr. McCarter: Doctor Lawrence, are you quite sure that the white prescription blanks that you have produced were all delivered at your store since the 10th of January, 1910? A. Why, I think so; I am sure so. I wouldn't want—yes, I didn't go back of that, I didn't go—1910, 1911 and 1912.

Mr. Bourgeois: They all seem to be.

The Witness: Just the three files, must have been, must have been since then.

The Vice Chancellor: Now, if you will check them off, Doctor. If you want to assure yourself that they are since that date you can perhaps have an eye to that as you go through checking them off.

CHARLES H. JACKSON, a witness produced in behalf of the complainant, alleging himself conscientiously scrupulous of taking an oath, being duly affirmed according to law, on his solemn affirmation saith:

By Mr. Bourgeois: Q. Doctor, you have a drug store in Atlantic City? A. Yes.

Q. Proprietor? A. Yes.

Q. And were you subpoenaed by Doctor Marvel to appear here today? A. Yes.

Q. And to produce with you all prescription blanks that had come into your drug store signed by Doctor William E. Jonah, and on his individual prescription blanks, since January 10th, 1910? A. Yes.

Q. Have you them with you? A. Yes.

Q. Witness produces eighteen prescription blanks and is shown another of the same kind and asked if that likewise was delivered to his store? A. Yes.

Q. So that it makes nineteen in all? A. Nineteen.

Mr. Bourgeois: Now, if your Honor please, these are blanks entirely similar to those that were offered in evidence marked C-2.

Mr. McCarter: I do not understand about that nineteenth, Mr. Bourgeois: It may have dropped from Heaven.

Q. This nineteenth blank that I have shown you, did you let Doctor Marvel have that sometime ago? A. Doctor Marvel got that, yes.

Q. Got that from your store? A. Yes.

Q. Now, we are going to hand it back to you, because you may want it in your records? A. Yes.

New Jersey State Library

Mr. Bourgeois: These nineteen blanks are offered in evidence.

Said blanks marked Exhibit C-4.

Q. Now, Doctor, did you prepare for us a list of these blanks? A. I don't think so.

Q. Wasn't there one of those prepared in your store? A. These special blanks?

Q. I mean the names of these people for whom prescriptions were filled on these particular blanks, or from these particular blanks? A. I don't remember whether I did or not.

Q. Well, you did prepare a list of all of those? A. Of all of them, yes.

Q. All that were filled by Doctor Jonah? A. all that were written by Doctor Jonah.

Q. Whether they were on this particular blank of his or whether they were on the firm blank a copy of which I show you? A. All that Doctor Jonah has written, whether they were on those or these or anything.

Q. Now, Doctor, could you take the list that you have furnished and check up these nineteen on it so we could tell those that are on Doctor Jonah's blank? A. Yes.

Mr. Bourgeios: And that will be satisfactory instead of holding him here.

The Witness: Do it right here?

Mr. Bourgeois: Well, you had better go into another room.

CROSS-EXAMINATION by Mr. McCarter:

Q. Have you the number of the whole, blue and white together? A. Well, I don't know how many there is; here is the list.

Mr. Bourgeois: It is on the list, Attorney General.

The Witness: Here is the list, I don't know how many there is.

Q. Well, just run through them and count them. A. That is for all of them, the whole?

Mr. Bourgeois: If your Honor please, I want to offer those names in evidence; it is important to me that they be offered.

The Vice Chancellor: Well, let the list be filed, then.

Mr. Bourgeois: Yes; the list can be filed so as to show the number, but I have another thought in my mind.

The Witness: 275.

Q. Is it customary for druggists to give one doctor's prescriptions to another doctor? A. No.

Q. In fact, it is very uncustomary, isn't it? A. Quite right.

Q. You not only gave Doctor Marvel, which he produced, one of Doctor Jonah's prescriptions but you also permitted Doctor Marvel to run over all of the prescriptions that you had? A. I did.

Q. Signed by Doctor Jonah, didn't you? A. Doctor Marvel?

Q. Now, answer the question. A. He looked at it, yes.

Q. Yes. Well, that isn't customary either? A. No; that isn't customary.

Q. How did that come? What influence or hypnotic power over you had Doctor Marvel that in this case you departed from the ethics of the profession and permitted that to be done? A. Doctor Marvel said that some person had been—I believe he said the Chalfonte—had a prescription which they claimed was not properly compounded, and he wanted to find that prescription but he didn't know when it was put up?

Q. What? A. He didn't know when it was put up or what store it was put up, and he wanted to see if he could find that prescription on the file.

Q. And so it was on that story that you not only let him have one of the prescriptions but examine through them all? A. He looked over the files to find that one prescription.

Q. And is the one that he produced the one that was improperly compounded? A. He finally asked me if he could take that one off the file and make a copy and put on and I let him.

Q. And when was that, Mr. Jackson? A. Well, I can't say the date.

Q. Beg pardon? A. I can't say the date.

Q. Well, a month ago? A. Oh, no, it was about the time it was written.

Q. And so he has kept it from that time until this? A. The date is on that. There has been a copy on my files.

Q. He has had the original since that time? A. Yes, he has had the original since that time.

Q. When was this conversation with you by Doctor Marvel in which he gave as an excuse for making an examination of your files of prescriptions that something had been improperly compounded, as claimed, at the Chalfonte? A. It was about the date that is on that prescription.

Q. That is, on number nineteen? A. On the nineteenth, one yes. That was compounded on the 26th of August.

Q. What year? A. 1912.

Q. And about that time? A. About that time.

Q. It was about that time? A. It may have been the same day or a few days after, but it was about that time.

Q. Well, this evidently had nothing to do with the alleged bad compounding because I see it is marked "Galen Hall"? A. Yes, he found that one and he requested that I let him have it.

Q. And so you did? A. I did.

Q. And it had nothing to do with this story of bad compounding, did it? A. Evidently not, but that is the way he looked at the file, he found that on it.

Q. Now, in the course of your experience—are you a doctor of medicine? A. No, sir, I am not.

Q. In the course of your experience as a pharmacist in Atlantic City, have you on any other occasion ever permitted one physician to examine your prescription blanks made by other physicians? A. I believe not.

Q. And in the course of your experience as a druggist, pharmacist in Atlantic City, have you ever before permitted one physician to take away from your store and keep for nearly a year—A. Never.

Q. A prescription made by another doctor? A. No, never.

Q. And what reason do you give for departing from that universal practice in this particular instance? A. I haven't any reason.

Q. You haven't any reason? A. No, I have no reason for that.

By Mr. Bourgeois: Q. Doctor, did you know that Doctor Marvel and Doctor Jonah were partners in the practice of medicine? A. I knew that they had their names on the same blank.

Q. And you know they had their offices at the same place? A. Same place.

Q. You knew that they were partners except the fact that you hadn't seen their partnership agreement? A. I didn't know anything about any partner agreement.

Q. But you understood that they were partners? A. Yes.

By the Vice Chancellor: Q. You knew them to be business associates, that is? A. Business as-

sociates, yes, and one would naturally suppose partners. I didn't know that they were partners but, as Mr. Bourgeois says, they had offices at the same place and their names on the same prescription blanks.

Mr. Bourgeois: Now, will you be kind enough to read the names of the patients and also your number from each of these prescription blanks. You are more familiar with Doctor Jonah's writing than I am and I think you can read them better.

The Vice Chancellor: Won't your purpose be accomplished by putting in that list, thus saving time?

Mr. Bourgeois: No.

The Witness: This first one hasn't any name; all of these has names to them.

Mr. Bourgeois: I think you will find—from the limited examination I have had of them—that Doctor Jonah didn't use these all the time but he used these for some particular patients.

The Vice Chancellor: If you can find that it may be of some force, but won't your check list do just as much good? Doesn't the list show everything this shows?

The Witness: When that list is tendered it will have these on. The numbers aren't on that list, merely the date, but I think they can be checked up properly from it.

Mr. Bourgeois: Well, if the Court please, Doctor Lawrence says it will take two or three hours, and I can see how it might, because they are not in rotation. Shall we have those lists prepared now or shall we let them send them?

The Vice Chancellor: Read them off if you think you had better.

By Mr. Bourgeois: Q. Just the number? A. 69,170, that has no name.

Q. The date? A. The date is 8/17/12. 69,169, 8/17/12, that is Miss Hartz.

Q. The date? A. The date is 8/17/12. 69,289, 8/21/12, that has no name. 69,530, that contains no date, for Mrs. Rosenthal. 69,529, 8/28/12, Miss Livingston. 69,545, 8/28/12, no name to that. 69,552, 8/29/12, for Mrs. Arnold. 69,600, 8/30/12, Mrs. Blanchard. 69,697, 9/2/12, for Mr. Leopold. 69,774, 9/5/12, Mrs. Goddard. 69,785, that has neither date nor name. 69,815, that has no date for it, for Miss McCandless. 69,832, for Mrs. Mastbaum, the date is 9/7/12. 69,835, 9/7/12, that has no name; and 69,834, 9/7/12, that is without any name. 69,958, 9/13/12, that is Mrs. Gunlefinger. 69,970, 9/14/12, Mrs. Weiner. 69,969, that is for Mrs. Weiner, 9/14/12. 69,447, 8/26/12, for Mrs. Blanchard.

Q. You will note that all those prescriptions that you have just read date later than July 1st of 1912. Were there any prescriptions of this similar character prior to that date? A. I wasn't able to find any.

Q. Did you look for them? A. I looked for them and I didn't find them.

Q. Then all of these are since the date that is given here? A. Yes, the date that is on there.

Q. Doctor Jackson, did Doctor Jonah learn that you had given Doctor Marvel this list, or that you had permitted Doctor Marvel to look over your prescription book? A. I don't think he did.

Q. Eh? A. I don't think he did.

Q. Didn't you know anything about it? A. I didn't tell him.

Q. No, I don't mean that. A. And as far as I know—

Q. Did he ever have any conversation with you about it? A. As far as him taking that prescription off of the file, no.

Q. No, about showing him prescription blanks that he had written? A. I don't remember that he did.

Q. Didn't he ever threaten to sue you?

Mr. McCarter: I object.

A. Well, that was if I should make him a list that he asked for.

Q. Now, won't you tell us what that was? What was the conversation you had with Doctor Jonah about the list that Doctor Marvel had asked for? A. Doctor Marvel asked for a list of the dates and names of the patients that Doctor Jonah had written for, and Doctor Jonah came in a day or two after that, before I had done anything with it, and he was insistent that Doctor Marvel should not have that list.

Q. He insisted that Doctor Marvel should not have the list? A. That he had no right and that I should not give it to him, and if I did give it to him he would make trouble and sue and I don't know what else.

Q. And be sued? A. Sued if I gave it to him. He afterwards modified that so he was willing that he should have it.

Q. Now, when was this conversation you had with Doctor Jonah? About when was it, when he seemed a little bit angry because you contemplated giving that list? A. It was probably a day or two after Doctor Marvel requested the list.

Q. Well, can you approximate when it was? A. Oh, no; it was around the 1st of September.

Q. Of this past year? A. Of this year.

Q. And as a result of the conversation with Doctor Jonah did you furnish at that time the list to Doctor Marvel or not? A. After Doctor Jonah said he would allow it.

Q. And when did Doctor Jonah say he would allow it? A. Oh, a day or two after that.

HENRY W. LAWRENCE, re-called:

By Mr. Bourgeois: Q. Now, Doctor, will you call the number, the name and the date of these prescriptions, please? A. Mrs. Birchfield, 39,107, 8/21/12. Mrs. Curtin, 32,256, July 4, 1911. Mr. Kroft, 32,250, 7/4/11. Mr. Daniel, 39,036, 8/17/12. Mrs. Matthews, 32,230, 7/2/11. Mrs. McClure, 32,228, July 2, 1911. Mrs. Powers, 29,010, 9/9/10. Mrs. Meyer, 35,126, 10/9/11. Mrs. Stevens, 33,998, 9/29/11. Baby McConnel, 33,897, 9/18/11. Mr. Fulton, 40,588, 12/31/12. Mrs. James, 32,416; I don't see the date on that. Master Alex. Brooks, 33,587, 9/1/11. Now, here is three for—

Q. Give the numbers and dates. A. Miss Elizabeth Rutherford, 41,587, 12/31/12; Mrs. Rutherford, 42,700, 1/16/12; Mrs. Rutherford, 41,578, 12/30/12. Miss Walton, 33,824, 9/13/11. Miss Walton, 35,158, 10/12/11. Miss Walton, 33,520, 8/29/11. Miss Walton, 34,010, 9/29/11. Judge Marvin, 33,863, 9/15/11. Judge Marvin, 33,884, 9/17/11. Judge Marvin, 33,843, 9/14/11. Judge Marvin, 33,842, 9/14/11. Mrs. Elsasser, 34,002, 9/28/11. Mrs. Elsasser, 33,860, 9/15/11. Mrs. Elsasser, 32,276, 7/5/11. Mrs. Elsasser, 32,522, 7/4/11. Mrs. Elsasser, 34,022, 9/30/11.

Q. Doctor, are they all of the blanks which you had of that Doctor Jonah's blank, or have you others without names on—that blank of Doctor Jonah's? A. That is all; there is some others without names on them, no names on at all.

Q. We had better have them so as to check up our list. Give the number and date of those, if you will. How does it happen that there is no name on them, Doctor? A. Well, because Doctor Jonah did not put their name on; Doctor Jonah put these names on these and these he didn't (indicating).

Q. Now, would the prescription in that case be sent out from the store or would it be made up and handed right to the patient right at that time? A. Most likely handed to the patient.

By the Vice Chancellor: Q. When you say no name is on them, they are all on this form of prescription blank with Doctor Jonah's name printed at the bottom? A. Yes.

Q. But some of them are signed by him and some are not? A. No; the patient's name is not on these.

Q. Oh, the patient's name. I beg your pardon. A. 35,265, 10/24/11. 33,437, August 25, 1911. 32,241, 7/3/11. 39,090, 8/20/12. 39,111, 8/21/12. 25,677, 1/8/10. 40,715, 1/17/13. 40,353, 12/3/12. 40,268, 11/22/12. 39,968, 10/12/12. 39,503, 9/8/12. 39,487, 8/7/12. 39,467, 9/6/12. 39,415, 9/3/12. 39,414, 9/3/12. 39,352, 8/31/12.

By Mr. McCarter: Q. Doctor, can you recall whether or not among the seven hundred and odd, which I think you said was the total number of blanks signed by Doctor Jonah during this time, some were on envelopes or old scraps of paper, or not on any particular blank? A. Yes.

Q. Then, as a matter of fact, you would say that sometimes Doctor Jonah would send in what we call this blue blank? A. Oh, yes.

Q. Sometimes just a scrap of paper or an envelope or something or other? A. Yes.

Q. And sometimes these white blanks? A. Yes.

Q. That was his custom? A. Yes.

By Mr. Bourgeois: Q. How many, Doctor, on scraps of paper, such as envelope backs, and so on, approximately A. Oh, I don't know, I couldn't recall at all but quite frequently, it was a frequent occurrence for one to come in without any—not on a blank.

Q. Now, could you tell at this time whether they were repeated to the same patients? Would they come in several days in succession to some particular patient? A. I don't think so.

Q. You don't think so. That is all. A. I don't think so.

CHARLES H. JACKSON, re-called:

By Mr. McCarter: Q. Doctor Jackson, what have you to say as to the practice of Doctor Jonah to sometimes use just scraps of paper, pieces of envelopes, or something or other, for prescription blanks? A. Often he would write them on that kind of paper.

Q. Are you able to estimate, from your recollection, as to the relative proportion of the— A. No.

Q. Of the blanks of that kind as compared with the blues or the little whites? A. No, I couldn't estimate on that.

Q. Very often, wasn't it? A. Every once in a while, yes.

By the Vice Chancellor: Q. In such cases, there

being no printed signature, how would the prescriptions be signed? A. It would be signed "W. E. Jonah."

Q. Where there is a printed signature there is no signatures in writing, is there? A. Not always.

FRANK S. GITHENS, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says:

By Mr. Bourgeois: Q. Doctor, you are manager of Galbreath's drug store in Atlantic City? A. No, proprietor.

Q. Do you appear here today under subpoena? A. Yes.

Q. And that subpoena requested you to bring with you all prescription blanks since January 10th, 1910, of Doctor Jonah, that had been written on his individual blanks? A. I didn't read it that way; it said 1913.

Q. How? A. January 10th, 1913, to January 28th, 1913.

Q. The subpoena said that? A. Yes.

Q. Let me see it, please A. I brought it along, I wasn't sure.

Q. I suppose, Doctor, you were misled by this and you didn't bring the blanks from 1910, did you? A. No, only from 1913.

Q. 1913? A. Yes.

Q. Now, Doctor Marvel had asked you about this long before, hadn't he A. Yes.

Q. And he had asked you to furnish a list to him? A. Yes.

Q. And you didn't? A. No.

Q. Then he asked you to furnish another list? A. Yes.

Q. Some one called you night before last, I think, about it? A. Not me.

Q. Doctor Jonah? A. No.

Q. Who answered the 'phone? A. I don't know unless it was one of the clerks did.

Q. Didn't Doctor Jonah answer the 'phone? A. No, I don't know anything about Doctor Jonah answering the 'phone; I didn't, though, Monday night. I haven't been in the store very much the last four or five days, because I have been sick.

Q. And you haven't brought with you any of those blanks except since the 10th of January, 1913? A. That is all.

Q. Have you brought any at all? A. Yes.

Q. Let me see what you have got. (Witness complies.) Will you read those into the record, please? That is, just the name, the date and the number. A. Yes.

Q. And on what blanks they are written. A. Yes, sir.

The Vice Chancellor: Well, you do not want the blue ones read in.

Mr. Bourgeois: Yes; these are all, as I understand it, there are none of these on the regular stationery.

A. (Continuing) This is an ordinary piece of paper.

Q. Let me ask you: Has Doctor Jonah used any blanks since January 13th, 1910, similar to C-3, which I now show you? A. I don't think so, I don't think there is any here.

Q. Now, will you read the names and—

The Vice Chancellor: 1913, you mean?

Q. Yes, since 1913. Read the names, the date. A. 12,713, 1-28-13, Mr. A. D. Smith.

Q. Signed? A. Doctor W. E. Jonah.

Q. And on blank paper? A. Yes.

Q. Now, the next? A. This is 12,813, Mrs. Stern, Doctor Jonah. 12,707, 1-27-13, Mrs. Rutherford.

Q. That is on what paper? A. That is on one of our own blanks.

Q. The other was on one of the Galbreath Pharmacy blanks? A. Yes.

Q. And this is on a Galbreath Pharmacy blank? A. That is just our own blank evidently written in the store.

The Vice Chancellor: I suppose during this period Doctor Jonah has not been with Doctor Marvel?

Mr. Bourgeois: Oh, yes; he has been there every day.

The Vice Chancellor: Still fraternizing under the same roof, are they?

Mr. Bourgeois: Yes.

A. (Continuing) 12,689, 1-26-13, Mrs. Rothchild; that is on our own blank. 12,676, 1-25-13, with no name on it, just a blank, plain blank.

Q. Signed by whom? A. Doctor Jonah.

Q. All these are signed by Doctor Jonah? A. Some are dictated over the 'phone and we just simply sign his name to them, in most of those cases we mark it copy.

Mr. McCarter: Let us have them over the 'phone. which are they?

Q. You can tell when you come to one that has not his name; you designate them. A. Most of them are in somebody's writing; tney are not all the same. 12,678, 1-25-13, Miss Hand, signed by Doctor Jonah.

By Mr. McCarter: Q. Plain paper? A. Yes. 12,661, 1/24/13, signed by Doctor Jonah on a plain blank.

Q. No name? A. No name. 12,662, 1/24/13, Mrs. W. E. Shackelford; it is on a blank piece signed by Doctor Jonah. 12,650, 1/23/13, Mrs. Kinney, signed by Doctor Jonah; that is on our own blank. 12,649, 1/23/13, Miss Walton, our own blank. 12,646, 1/22/13, Mr. Weaver, that is our blank. 12,643, 1/22/13, Mr. C. W. Kinney, our own blank. 12,637, 1/21/13, Mr. Fleishman, our own blank. 12,634, 1/21/13, Miss Katie Ackerman, our own blank. 12,626, 1/21/13, this is Mrs. Klimer, our own blank. 12,614, 1/19/13, Mrs. Jacob Loeb, our own blank. 12,611, 1/18/13, Mrs. Levy, our own blank. 12,609, 1/18/13, Miss Walton, our own blank, 12,607, 1/18/13, Mrs. Zerman, our own blank. 12,606, 1/18/13, Father Duffy, our own blank. 12,599, 1/17/13, just a plain blank. 12,598, 1/17/13; there is no name on this, it is our own blank. 12,597, 1/17/13, Mr. Sunstein, our own blank. 12,592, 1/16/13, Mrs. Jacob Loeb, our own blank. 12,591, 1/16/13, Mr. Loeb, our own blank. 12,590, 1/16/13, Mr. Loeb, our own blank. 12,589, 1/16/13, Mr. Wheeler, our own blank. 12,588, 1/16/13, Miss Gans, our own blank. 12,579, 1/16/13, Miss Rothchild, our own blank. 12,578, 1/16/13, Miss Rothchild, our own blank. 12,561, 1/14/13, Mr. Levy, our own blank. 12,544, 1/13/13, Mrs. Thompson, our own blank. 12,539, 1/13/13, Mr. Weaver, our own blank. 12,538, 1/13/13, Mr. Weaver, our own blank. 12,537, 1/13/13, Miss Walton, our own blank. 12,534, 1/12/13, Mrs. Rothchild, our own blank. 12,533, 1/12/13, Mrs. Rotchild, our own blank. 12,525, 1/11/13, Mrs. Thompson, our own blank. 12,524, 1/1/13, Mrs. Rothchild, our own blank. That completes the list.

By Mr. Bourgeois: Q. Doctor, I show you Ex-

hibit C-3 and ask you if you have ever had any prescriptions come into your store on that sort of a blank? A. Oh, yes.

Q. Any of them by Doctor Jonah? A. I think so, I wouldn't like to say specially but I think so.

Q. Now, Doctor, did anyone suggest to you or speak to you that you need not produce any blanks excepting those within the dates mentioned in your subpoena? A. No, but I just took that for granted that is what it meant.

Q. Nobody suggested that you need not bring the others at all? A. No; I haven't spoken to anyone about it even; I was the only person that knew anything about the subpoena, the way it read.

Q. And when Doctor Marvel was asking you for a list what did his request cover—just from January 13, 1913, or January 10, 1913, or January 10, 1910? A. Well, my recollection is that he asked me from June 1st, 1911.

Q. June 1st, 1911? A. Yes.

Q. And did you make up a list? A. No.

Q. Of all prescriptions that had been filled on Doctor Jonah's name since that time? A. No.

Q. Did you make up any list at all? A. I made up one list, some year, I think it was either August or September to a year, I think.

Q. Do you know if a list has been prepared in your store of the prescriptions that have been filled on Doctor Jonah's name since January 10, 1910, to the present time? A. No, there hasn't, not from that date.

Q. What date? A. I say not from the date of January, 1910.

Q. From what date has one been prepared? A. I wouldn't like to say but I think it was—I really

couldn't say when it was, it was a short time, about a year, though, is all.

Q. Have you that list with you? A. No, sir.

Q. Who has it? A. I think I have a copy in the store.

Q. Well, didn't your clerk get up a copy for you yesterday? A. No.

Q. Did not? A. No.

Q. No copy gotten up recently—has there been none? A. This is the only thing that has been done recently (indicating slips previously read into the record).

CROSS-EXAMINATION by Mr. McCarter:

Q. You have stated that some time ago Doctor Marvel requested from you a list and that you refused to give him such a list. Was that refusal inspired, suggested or in any way promoted by Doctor Jonah? A. Well, Doctor Marvel requested it and Doctor Jonah happened to come in the store a short time afterwards and I asked him about it and he refused to allow me to send it.

Q. Didn't you before that refuse? A. No, I didn't refuse before that.

Q. Then there was a list made out, was there not, later, that you had spoken of? A. Just about a year, I really don't remember the date, I know a list was made up.

Q. And given by you to Doctor Jonah? A. I think he saw a copy of it.

Q. Well, what became of the original? A. I couldn't say, I think it is in the store at the present time.

Q. But the original? A. I think so, I am not sure, I wouldn't like to say.

Q. And you don't know whether or not Doctor

Marvel has been given that list? A. He has not, no.

Q. I mean the list that was shown Doctor Jonah? A. He has not.

Q. Do you know whether Doctor Durand or Doctor Marvel always used the blue blank, C-3, or whether you were accustomed to receive from them prescriptions on either white scraps of paper, or otherwise, as well as on the blue? A. Well, I have received them on other pieces of paper outside of the blue.

Q. You have? A. Yes.

Q. Signed by Doctor Marvel? A. Yes.

Q. Philip? A. Yes.

Q. And by Doctor Durand? A. Yes, and then of course some has been telephoned.

Q. Telephoned the same way? A. Yes.

Q. Same as Doctor Jonah would telephone? A. Yes.

Q. Now, when you get a telephone prescription what practice do you pursue? Do you write it out yourself? A. Write it out ourselves, yes.

Q. And put down the name of the man who telephones it? A. Yes.

By Mr. Bourgeois: Q. Now, Doctor, how many blanks have you in your store of Doctor Philip Marvel that are not on the regular blank prescription form— A. Well, I am not—

Q. C-3? A. Well, I am not prepared to state how many; I have seen them.

Q. You have seen them? A. Yes.

Q. How long have you been in business in Atlantic City? A. Ten years.

Q. Then during the ten years you have seen them without being on this blank? A. Oh, yes.

Q. Now, Doctor, we want from you a list of the prescriptions that Doctor Jonah has written

since the 10th day of January, 1910, down to the present time. We want also from you a list of all those prescriptions, exclusive of these you have produced, that have been written on a blank of Doctor Jonah's, what I should say was an individual blank of Doctor Jonah's, similar to C-2, A. The original, you say?

Q. That is the original? A. Yes.

Q. That is the form of the original. I want the number of the prescription, the name of the person to whom it was furnished, if it has a name, and the date. A. Just the copy of it, just the number?

Q. Just the number; I don't want a copy of the prescription, I simply want a list of them, the names, the number and the date.

The Vice Chancellor: And who signed them, and on what kind of paper.

Mr. Bourgeois: Well, these are all with Doctor Jonah's name printed on, his blank.

A. You wish a separate list of them?

Q. Either a separate list or else I want you to indicate in the list which they are. Now will you get that up and have it for us tomorrow?

The Vice Chancellor: Why can't he send it up and save the necessity of coming here?

Mr. Bourgeois: I am satisfied he do that, but I thought he could send it tomorrow, because if we finish tomorrow then we can argue from it.

Q. Now, Doctor, do you understand what we want? A. Yes.

Q. I don't care for the prescription, I don't care anything about that, I want simply the name, the number and the date. A. Yes.

Q. That is, that are on Doctor Jonah's blank? A. Yes.

CHARLES H. JACKSON, re-called:

By Mr. McCarter: Q. Doctor, were you, during the period we were speaking of, accustomed to receive prescriptions signed either by Doctor Durand or Doctor Philip Marvel not on the blank which we call blue, Exhibit C-3? A. Yes, I have received them on other paper.

CROSS-EXAMINATION by Mr. Bourgeois:

Q. How many have you seen, Doctor, on other paper of Doctor Marvel?

The Vice Chancellor: During that period.

A. It would be very hard to tell or estimate, I couldn't do it.

Q. How is that? A. I couldn't estimate at all.

Q. Have you filled any prescriptions in the last three years on which Doctor Marvel's individual name was printed and nobody else's was printed? A. No.

Q. Have you filled any blanks on which Doctor Durand's individual name was printed but no one else's? A. No.

FRANK S. GITHENS, re-called:

By Mr. Bourgeois: Q. May I ask you those two same questions? A. I have never noticed that.

CHARLES H. JACKSON, re-called:

By the Vice Chancellor: Q. Let me ask the witness this: Whether the prescriptions to which he refers, that do not contain or that are not written on what we call the blue prescription blank, may not be prescriptions

that were written on entirely blank paper manifestly prepared under some conditions where access could not be had to regular prescription forms, wouldn't they be of that nature? A. That is the way, I suppose, they were always done, yes.

Mr. McCarter: I hardly think that is evidence, your Honor. A doctor can carry loose prescriptions with him and wherever a man can write he can write on them. I suppose a druggist's inference is hardly evidence.

The Vice Chancellor: There are some things which, it seems to me, are self-evident. We know that doctors are called upon at all times and all places for prescriptions but they are not always in possession of paper suitable for prescription blank and they use anything they can get.

Mr. McCarter: I do not suppose this druggist knows under what circumstances any prescription was written.

The Vice Chancellor: I am asking him whether they were on prescription blanks or whether they were on paper that was not designed for prescription blanks.

Q. That is the purpose of my inquiry. Could you say? A. Very often they would be on paper not designed for prescription blanks.

HENRY R. LAWRENCE, re-called:

By Mr. McCarter: Q. Have you, during the period we have been talking about seen prescriptions signed by either Doctor Marvel or Doctor Durand that were not written on these blue prescription blanks of which Exhibit C-3 is a sam-

ple? A. I have seen Doctor Durand's, I don't recall Doctor Marvel's but I know I have Durand's, I know of several, I can't say how many.

CROSS-EXAMINATION by Mr. Bourgeois:

Q. Did you ever see a prescription of Doctor Durand that was written on a blank that had his name printed on it— A. No.

Q. Alone? A. No.

By the Vice Chancellor: Q. Or Marvel's either? A. No.

HARRY H. DEAKYNE, a witness produced in behalf of the complainant, being duly sworn, according to law, on his oath says:

By Mr. Bourgeois: Q. Doctor, you are the proprietor of the Deakyne's drug store business in Atlantic City? A. Yes, sir.

Q. And you have been in that business how long? A. I have been at that corner nineteen years.

Q. Doctor, you were subpoenaed to appear here today? A. Yes, sir.

Q. And to produce with you prescription blanks of Doctor Jonah's which were written on blanks with his printed name on them? A. Yes.

Q. Have you them with you? A. I have only one which he told me were all that would be necessary to bring; my prescriptions are in books and the man who brought my subpoena told me that it would not be necessary for me to bring those books but that he wished this particular prescription which my subpoena calls for (producing paper).

Q. Will you read the prescription that you have? Well, let me ask you first if that is on a blank similar to C-2, which I show you? A. Yes, that is the same blank, sir.

Q. Now, will you give me the name, the date and the number of that prescription? A. 111534, August 20, 1912, for Mr. Myers.

By Mr. McCarter: Q. And what kind of a blank is that on? A. White blank.

Mr. Bourgeois: That is on C-2, that is Doctor Jonah's blank?

By Mr. Bourgeois: Q. Doctor, I show you a list of prescriptions apparently, and ask you if that was made out in your store, if you know? A. Yes, sir, I made this out myself.

Q. And what does that list show? A. This shows a list of prescriptions written by Doctor Jonah.

Q. Within what period of time? A. From March, 1912, to the first of October, 1912.

Q. Does not include from January, 1910, until the present time? A. Not this list; no, sir.

Q. Have you prepared a list that does cover the whole period? A. Why, I have a list, I prepared a list and sent a copy to Doctor Marvel and also sent a copy to Doctor Jonah, I think.

Q. I show you another list, Doctor, and ask you what is that? A. That is a list of prescriptions written by Doctor Jonah from June 1st, 1911, to October 27th, 1911.

By the Vice Chancellor: Q. On blanks similar to the one— A. All prescriptions that were compounded, whether they were—irrespective of how they were written.

By Mr. Bourgeois: Q. Have you made any list of all the prescriptions that have been written by him and that came into you drug store since

January 10, 1910, down to the present time? A. It seems to me that I prepared a list and wrote the body of the prescription itself some months ago.

Q. For all of them? A. Well, for quite a number of them (a long list I think I prepared, I think I sent Doctor Marvel and Doctor Jonah each a list, a copy.

Q. You didn't send us, Doctor. That would take a long time to do that. A. It would take a long while to do it but I started that, whether I ever finished it or not I don't know.

Q. Now, Doctor, whoever gave you instructions didn't give you full instructions. What I want is a list of all prescriptions that have been written on blanks by Doctor Jonah since 1910, January 10th, 1910. Then I want of those prescriptions those that are on a blank similar to C-2, that is the one that you produced here; I want the number of the prescription, the name and the date. A. Same as that, the number of the prescription, the date and name and the address?

Q. Yes, if you have it. A. Up to when, Mr. Bourgeois?

Q. Up to—well, I suppose you might as well have it up to the present time.

The Vice Chancellor: He does not seem to be using at the present time any of Doctor Marvel's paper, perhaps he may not have access to it, I do not know; there may be some bone of contention.

Mr. Bourgeois: I think they are living together, not harmoniously, maybe.

Q. Doctor, can't you get me that list and send it to the Vice Chancellor or to me tomorrow morning? A. I will try to, sir; it is a lot of work, it will take me all night to do it.

Q. Can't you telephone down and let one of your clerks be doing it? A. I can do that, yes. Now, only the list, Mr. Bourgeois—I want to understand you—only the list that has been written by Doctor Jonah on blanks similar to this (indicating) and you don't care for the ones that he has written on the regular blue form?

Q. No, I don't care for them at all, but if there have been since last September, last August, if they have been written on blanks, entire blanks, I want them. A. Any kind of paper at all?

Q. Entirely blank, not Doctor Marvel's, not Doctor Jonah's either, but if just blank paper why I want them.

Mr. McCarter: Why not have this list like all the others?

Mr. Bourgeois: It will be just the same then.

Mr. McCarter: Will that include then all the prescriptions which Doctor Jonah has signed which are on what you call the official?

Mr. Bourgeois: I will include the number of them all and the name, but, on the other hand, I don't know that that is important, if we have the number that he has actually signed; so far as I am concerned I am willing that Doctor Deakyne shall count the total number of prescriptions that Doctor Jonah has put in, just give us the number of them, and then those that are on Doctor Jonah's prescription blank or on a blank blank I would like to have you give us the name and the number and the date of them; there is no necessity of making him copy all the others that I know of.

CROSS-EXAMINATION by Mr. McCarter:

Q. Did you ever see, during this period, that is, since the first of January, or 10th of January, 1910, Doctor Deakyne, any prescriptions signed either by Doctor Durand or Doctor Marvel which were not on this blue style, Exhibit C-3? A. Yes; yes, I have seen them.

Q. Do you remember the fact that there were gotten up in your store and made a present to Doctor Jonah a batch of these prescription blanks that are marked in this case C-2?

Mr. Bourgeois: That is objected to as irrelevant and immaterial.

Mr. McCarter: I want to show that this witness or his store made a present of these to Doctor Jonah, that Doctor Jonah did not buy them.

Mr. Bourgeois: Well, we are not objecting to Doctor Jonah taking any presents he wants, if your Honor please, but it is the use of them we are objecting to, not how he got them.

The Vice Chancellor: I think it may be competent. I apprehend that if this has been a technical violation of the agreement, entirely unintentional, that it would not be possible to inflict the penalty of the agreement by reason of it, I should suppose that would be so, and it may be that circumstances can be shown of this very nature that will be relevant in that contention.

Mr. McCarter: That is the object of it.

The Vice Chancellor: I should think so.

A. I think it is possible that is true, because we are in the habit of oftentimes printing blanks for physicians and making them a present of them;

in fact, we do it frequently. I don't think it has been done in the last two or three years, I don't remember, but it may have been done previous to that time.

Q. Have you any personal knowledge of the transaction, so far as Doctor Jonah is concerned? A. I have none just now.

PHILIP I. MARVEL, the complainant, being duly sworn according to law, on his oath says:

By Mr. Bourgeois: Q. Doctor, you live in Atlantic City? A. I do.

Q. And you are the complainant in this suit? A. I am.

Q. And by profession a physician? A. I am.

Q. How long have you lived in Atlantic City? A. Twenty-nine years coming June.

Q. And how long have you practiced medicine in Atlantic City? A. Twenty-nine years coming June, with the exception of the greater part of two years.

Q. And during the greater part of two years what were you doing? A. Practicing medicine in Washington, D. C.

Q. Where? A. In Washington, D. C.

Q. Now, Doctor, where during the past five or six or eight years have you practised? That is, what scope has your practice covered? A. Covered pretty much the island of Absecon, or, in other words, Atlantic City, Ventnor, Margate and Longport.

Q. And at the present time it covers what? A. It covers the same; that is, that is my practice. I do some consultation work over in the country

but I don't attempt to take care of patients entirely.

Q. Now, Doctor, in 1910, you entered into a partnership agreement with Doctor Jonah and Doctor Durand? A. I did.

Q. Will you explain to the Court the circumstances as they existed, the conditions as they existed, rather, just at the time and prior to the entering into that agreement, with regard to your practice and your relation with Doctor Jonah and Doctor Durand? A. Doctor Jonah had been associated with me since the year 1905, October, 1905, I think, either 1905 or 1904 but I think it was 1905, and two years prior to the partnership I gave Doctor Jonah a tentative partnership in which I promised him a certain definite amount of the net receipts without any definiteness with reference to time whatever excepting as to the figures indicated what it should be each year. Doctor Durand came to me as an assistant the following June, which was in 1906, and he was associated with me as an assistant until June, 1909 and from June, 1909, until the 1st of January, 1910, he participated also in a fractional percentage.

Q. Of the profits? A. Of the profits. From —in January, 1910, we discussed the matter of partnership and, as any business man would—

Mr. McCarter: I object.

Q. No, not an argument, just what was done.

The Vice Chancellor: Just state the circumstances surrounding the situation.

A. Then we discussed the matter of a partnership arrangement and agreed to have articles of agreement drawn up which were done. Primarily we discussed it from the standpoint—

Mr. McCarter: I object, your Honor.

A. (Continuing) —of five years.

The Vice Chancellor: Yes, I think the scope of your discussion is relevant. The result of your discussion was the agreement, I suppose.

A. (Continuing) Well, I meant at the time of this agreement we first discussed the matter of a five-year agreement.

Mr. McCarter: That is objected to.

The Vice Chancellor: Everything that was discussed that finally culminated in the agreement can not be given but you can give us the surrounding circumstances. For instance, you can tell us whether or not at the time of entering into this agreement Doctor Jonah was under any contract with you by which he was engaged in Atlantic City, or either of them.

The Witness: He was not, neither of them were, and, in fact, they were invited, if the agreement was not to their pleasure—

Mr. McCarter: I object, your Honor.

The Vice Chancellor: You perhaps do not understand, Doctor, what the limits of my powers are. I am entitled to listen to the circumstances and the conditions which surrounded you at the time this agreement was made and nothing else. What you agreed upon was written down by you and that is final, but I may listen to such matters as will put me in your position at that time, in the position of the three of you at that time. We call them surrounding circumstances.

The Witness: May I ask the question that does not go on the record?

The Vice Chancellor: Oh, no; whatever you say must go on the record.

By Mr. Bourgeois: Q. Let me ask you questions, Doctor; I can straighten it up for you. Now, at

the time of entering into this agreement of January 10th, 1910, what sort of a practice did you have? A. With reference to amount or—

Q. Well, the scope of it and the character of it. A. My practice was largely that of visiting population, I had some residents on my list but it was a—largely a practice that was referred to me by physicians away from Atlantic City, and also, of course, by patients who had seen me before; it was almost entirely a reference practice.

Q. By "a reference practice" you mean what? A. Referred to me by someone else and particularly by physicians who were friends and acquaintances of mine.

Q. Now, your practice—state whether or not it consisted largely of residents of Atlantic City or whether they were nonresidents? A. Very largely nonresidents.

Q. And for what length of time were they in Atlantic City your patients? A. Anywheres from one to two days to months.

Q. And where would they mostly be stopping? A. At hotels and cottages, boarding houses.

Q. You say they might be there two days to months. State the character of Atlantic City or why it was that they were there only such a short time? A. In the first place, Atlantic City is a health resort where a number of people are specially referred there for the benefit of the climate; secondly, that friends of these patients come down with them, and there are a number of business men who by appointment meet in Atlantic City—if I understand your question?

Q. Yes, I want to know all those things, I also want to know— A. And then there is—also a number of patients are sent especially to me there

with instructions for to be examined, and opinions are asked, or, at least, I am asked to give to the physician who sent the patient an opinion of the case.

Q. By whom sent? A. By the physician.

Q. That is, out-of-town physician, you mean? A. Out-of-town physician, yes. Requests are made at times for diagnosis and opinions in the cases.

Q. At the time of making this agreement of January 10th, 1910, will you state whether or not you had a large or small acquaintance with out-of-town physicians? A. A very large acquaintance.

Q. And that acquaintance had been gained in what manner and over what period of time? A. Over a period of twenty-five years.

Q. And in what manner? A. By association; that is, by association in medical associations and in medical clubs, and through being an officer of one of these associations I was brought largely in contact—brought in contact with a large number of other physicians, and then, furthermore, I had taken a number of post-graduate courses in which I had met a large number of the representative physicians of the country, and through special invitations of patients I have met their family physicians in various ways.

Q. Now, state whether or not these patients that came to you in the manner you have related come to Atlantic City every year? A. No; some of them come very frequently, that is, I mean to say, some of them come at different seasons, others come year after year and others do not come for several years. For instance, a patient in my office three days ago had not been in the town for twelve years.

Q. And then the agreement of January, 1910, was signed? A. It was.

Q. Now, Doctor, after the signing of this agreement, C-1, what provision was made by you for keeping the accounts of the firm and also for the transacting of the business of the firm? A. What provision was made?

Q. Yes. A. The agreement makes a declaration that there shall be a separate business account kept, which I arranged to have kept.

Q. Well, I know, that is just for the accounting part of it but the agreement provides that you are to have stationery and everything. Now, I want to know what you did for the purpose of enabling this partnership to keep a record of the business done by each of them? A. I provided the stationery and a secretary and bookkeeper.

Q. Now, what stationery did you provide? A. I provided letter-heads and prescription blanks and billheads and envelopes and general material, and also blanks for the office desk for the accommodation of each one of the physicians in taking the names of the patients and their residence, and so forth.

Q. What system was devised by which you would be enabled to keep your accounts of all moneys due to you—that is, either for visits in the office or for visits out of the office? A. We provided a book in which the accounts were to be kept and the secretary was entrusted to keep those accounts, and each one who collected money was expected to give in an account of or the money to the secretary.

Q. And if services were rendered and the moneys weren't collected, than what? A. Than a report of that service was to be made, a record of that was to be made and handed to the secretary

or to be posted, either one, by the individual in the books provided for that purpose.

Q. And you had such books? A. I did.

Q. Now, did you render your reports to the secretary? A. I did.

Q. Did Doctor Durand render his reports to the secretary? A. He did.

Q. Did Doctor Jonah render his reports to the secretary? A. Part of them, not all of them.

Q. When did he first cease to render reports to the secretary? A. According to the books—

Mr. McCarter: Well, they will speak for themselves.

A. (Resuming) Well, that was all, so far as—well, he ceased rendering his reports in June, 1910, of the outside work, the inside work the secretary had a report of.

Q. Was it June, Doctor, or was it September, of 1910? A. September, 1910.

Q. Have you a book that will show that? A. I have.

Q. Will you produce it and let us see what it looks like. (Witness complies.) I want you to explain to the Court, first, charge book prior to September 24th, a little while, and show the Court how the accounts were kept.

By the Vice Chancellor: Q. What book is this? A. This is the weekly account book, in which visits and office calls and examinations and consultations, etc., are noted.

By Mr. Bourgeois: Q. It contains the work of whom? A. It contains the work of all three of us.

Q. Supposed to? A. Supposed to.

Q. Now, will you show to the Court and explain it.

The Vice Chancellor: You had better go back of September, 1910.

Q. August is all right. A. I am back of that now. This, as you notice, is under Doctor Jonah's name. These letters indicate visits that he made on those particular days of the week, and these "V" marks, character marks, these indicate that the account from this book has been posted to a ledger or to the card system indicating), both of which we kept.

Q. Now, you are referring to page 38— A. No, that indicates the number of visits that Doctor Jonah made that particular week.

Q. Then you are referring to the week of July 30th, 1910? A. From 24th to 30th; each letter there indicates the day of the week, Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, Saturday (indicating).

By the Vice Chancellor: Q. And the figures indicate the day of the month? A. And the figures indicate the day of the month.

By Mr. Bourgeois: Q. Now, the next page is what?

By the Vice Chancellor: This is written in by Doctor Jonah or by the secretary? A. No, that is written in by the secretary (indicating).

Q. From his report to her? A. I presume so, yes. In some places you will find Doctor Jonah wrote his own reports and in other places the secretary wrote them. I think I can find one where he wrote his own.

Q. And then from these the bookkeeper posts? A. Yes. Now, this is in Doctor Durand's handwriting, as you see (indicating).

Q. That is his week? A. That is his week. That is the secretary still; that is the secretary; very much all of these are (indicating).

By Mr. Bourgeois: Q. We will come to that later. A. That is the secretary's writing, and this is the secretary's writing (indicating).

Q. Whose work is that (indicating)? A. That is Miss Hendrickson's.

Q. I don't mean that; I mean which physician. A. It doesn't say there which physician—no, it says "Doctor Marvey ill and away a week"; doesn't say whose work that is.

Q. Now, turn the next page. A. This is the office account, as you will see, and the figure in front of the character "OC" means the number of offices made that day to that particular individual (indicating).

By the Vice Chancellor: Q. Number of what? A. Number of office calls to that individual, and then running down—that is correct, they seem to be all office calls.

By Mr. Borgeois: Q. I notice down in the middle of the page "D. M. J." what are they? A. Those are the initials indicating which doctor made the calls. For instance: "Those were made by me; those were made by Doctor Durand; those are made by Doctor Jonah, and those by Doctor Jonah (indicating), and so on. Wherever you see "J" it indicates that Doctor Jonah made the call, and wherever you see "M" it indicates that I did.

By the Vice Chancellor: Q. Is this different kind of service (indicating)? A. That is outside service.

Q. This under August 6th is inside service? A. Now, we will find a corresponding—

By Mr. Bourgeois: Q. Who keeps the record of this inside work? A. The secretary.

Q. She gets the name and puts in who sees them, does she? A. When these patients come to the house the secretary asks the patients for their names and addresses and puts it down on a book such as I have here to show, and then she

posts from that book at the end of the week; at least, she takes the list that we hand her and she compares the list that we hand her with the list that she has, checks us up in that way. Now, this is Doctor Durand, put down by himself (indicating). This is Doctor Jonah; these indicate visits (indicating). You see it is for the same period exactly that this office work was, 31st to the 6th of August, 31st to the 6th of August (indicating). As you note there, "Doctor Marvel away" (indicating). These are visits that Doctor Jonah made, and they were given over to Miss Hendrickson and she puts them down (indicating). This is Doctor Durand, and this is the office list of the two of them when I was away (indicating). This is still the office list, and this is Doctor Durand's visiting list (indicating).

By the Vice Chancellor: Q. Now, you are up to August 13th? A. Yes; and here is Doctor Durand and this is Doctor Jonah (indicating).

By Mr. Bourgeois: Q. This is outside work (indicating)? A. Yes, that is Doctor Jonah's outside work. This is Doctor Durand's. This—I have returned now, as is indicated there, and this is my work (indicating).

Q. That is your outside work? A. That is my outside work.

By the Vice Chancellor: Q. Under date of August 20th? A. 13th to the 20th. This is also mine, and this is the office work of all three combined (indicating).

Q. For that week? A. For that week. Then we start on—no, still that week, this too; this is the office work there and here (indicating).

Q. August 20th? A. Yes, sir; and we start in here with Doctor Jonah again, at the 14th, still in Miss Hendrickson's name; that is, Miss Hen-

drickson is still posting Doctor Jonah's work, she posted my work, too.

By Mr. Bourgeois: Q. Now, let us see what that is, Doctor, September 10th, there (indicating)? A. This is Doctor Durand's own posting and this is my work in Miss Hendrickson's handwriting (indicating), in fact, all mine was that, since 1910 I have done none of my posting unless it might be on one occasion when the secretary might be sick or something of that sort; I have done my posting in individual books and handed it over to the secretary and the secretary has transferred it from my book to this book and to the card system.

Q. You have Doctor Durand's work outside and your work outside for the week ending September 10th and Doctor Jonah's work outside— A. Yes.

Q. Now then, following that? A. This is mine (indicating).

Q. That is to the 17th, isn't it (indicating)? A. Yes.

Q. It is whose? A. This is the office, this is my work and this is Doctor Durand's, this is Doctor Jonah's (indicating).

Q. It is for the week ending September 17th? A. 17th. This is the beginning of the 24th, Doctor Durand; this is the office of both, or all three, I should say, and that is the office, and here is where Doctor Jonah ceased to give in his accounts in 1910, September 24th is the last date (indicating).

Mr. McCarter: Well now, I don't think that is an accurate way of putting it. That is where it ceased to be posted by the bookkeeper.

The Witness: Well, so far as our books are concerned, if you will see, his page is blank.

By the Vice Chancellor: Q. From there on that blank is left for his page at the end of every week—that is, his page of outside work? A. Yes, excepting when he was away from town; when he is away from home there is no account made of it, no blank pages. You see the blank follows right along (indicating).

Q. That continues clear to the present time?

Mr. Bourgeois: No, that continues until the end of 1910.

A. Now, here we come—this is the closing account, this is the way the account had to be closed in 1910 (indicating). There is introduced under Doctor Jonah's list, as he gave it to the secretary, "Bill to be." "Bill to be."

By Mr. Bourgeois: Q. Now, state what they were.

The Vice Chancellor: This is a summary, now?

A. This is a summary presumably of the work Doctor Jonah did of which he gave no return for.

Q. Is it a summary or a mere statement? A. Well, a mere statement. He says, "Bill to be;" bill to be."

By the Vice Chancellor: Q. What does that mean—"Bill to be"? A. That is his declaration as to what that patient should be charged without giving any—

Q. Oh, after the name of the patient it is "Bill to be $45"? A. Yes, without giving a declaration as to how much work was done or anything about it.

Q. This is what date now? A. This is the end of the year, work between September 24th and December 31st, 1910.

By Mr. Bourgeois: Q. How many pages are taken up with that statement of Doctor Jonah, charges to be made at the end of the year? A. I can't tell you that.

Q. I mean here, how many pages are there of it? A. Well, just go right back to the first.

The Vice Chancellor: He seems to have made a report to the bookkeeper, so far as this book indicates, at the end of the year. Now, Mr. Bourgeois wants to know how much space that report covers.

Q. How much space that report covers. Does it take any more than a page and a half? A. Oh, no.

Q. The whole report is included in a page and a half? A. Well, so far as I know it is.

By the Vice Chancellor: Q. Well, as it appears here? A. As it appears here it is.

Q. Well, on this book—this purports to be the summarized record of Doctor Jonah's work from September? A. September 24th to December 31st.

By Mr. McCarter: Q. I got the impression from something you said that this was supposed to be a summary of the time that is covered by these blank pages. Am I wrong about that? A. Well, it covers the office and all, I presume. Miss Hendrickson can straighten you out on that when she comes on the stand; that is her writing and—

Q. Let me ask you this now, if I may: For instance, now here under the name of Benjamin Strouse, on this work between September 24th and December 31st, 1910, is an entry "Bill to be $45." Is it your understanding that that "Bill to be $45" is only for service rendered between September 24th and December 31st or for all previous time? A. I don't know.

By Mr. Bourgeois: Q. Now, Doctor, during the time that Doctor Jonah failed to render his reports, during the period between September 24th and December 31st, 1910, did you ever have any conversation with him about it? A. I did.

Q. What? A. I reminded him that he was not keeping up his report and solicited him to do it asked him to do it a number of times.

Q. What statement did he make? What did he say to you? A. He would always answer that he would.

By the Vice Chancellor: Q. Let me inquire before you proceed along that line, whether from this time on this same blank page system appears in the book? A. No, not all the time.

Mr. Bourgeois: No, he starts in right the beginning of the year and then forgets later on.

By Mr. Bourgeois: Q. Now, you say you had several of those conferences? A. Yes.

Q. Did you have any near the end of that year? A. We did.

Q. What was the purport or what was said in that conversation or that conference? A. Well, the purport of it was that he should get his accounts up so as all of our bills could go out, because a number of patients were seen in common; that is to say, he would make visits for me on patients that I was looking after from time to time, and during my absence from home, or when my list was fuller on the day than I could take care of, I would assign so many calls to him and so many to Doctor Durand, and necessarily handed in his list of those calls, or should have done so, it was left to him to do so, and bills were held up because of the fact that they hadn't been handed in.

Q. Did Doctor Jonah ever render an itemized report of the work he did between September 24th and December 31st, of 1910? A. Never to my knowledge.

Q. Now, was it 1910 that Doctor Jonah went abroad? A. No, 1911.

Q. Now, what did he say at the end of the year about the future? A. He promised to have his reports made out regularly and to keep his work up with the others, that is, with Doctor Durand and myself.

Q. What with regard to his performance of the promise? A. He didn't perform.

Q. Did he perform a part? A. Yes, in part.

Q. Until what time? A. Until the 6th day of May, 1911.

Q. And will it appear in the record book that you have just examined? A. It does, yes.

Q. Will you show some of the record, please? Show prior to that time that he had been reporting, prior to the 6th of May; not every week but just show some of it. A. Well, we start with April. This is my list; this is Doctor Jonah's list turned in; this Doctor Durand's list (indicating).

By the Vice Chancellor: Q. This is outside work? A. This is outside work, and this is office work (indicating). The office work was always reported because—or at least taken account of by the secretary, we didn't have to report that.

By Mr. Bourgeois: Q. So if it wasn't reported it only destroyed the possibility of checking, I suppose—you still had it? A. We still had it. This is mine; this is mine and Doctor Durand's; this is Doctor Jonah's; mine and this was the office; this is Doctor Durand's and Doctor Jonah's; Doctor Jonah's and that is the office in common; this was Doctor Durand's and Doctor Marvel's, and this was Doctor Jonah's, and here, I think, ends the list that we made out for that year (indicating).

Q. That is the year 1911? A. Yes, 1911.

By the Vice Chancellor: Q. Then you leave

blank pages again? A. Yes; he was away just after that, just at that time.

By Mr. McCarter: Q. What did you say? He was away, did you say? A. He was away for a short time right after that or left about that time. Now, you see, we begin to get blank pages (indicating).

By the Vice Chancellor: Q. Under what date does the first blank page begin? A. May 20th to the 27th.

Q. A blank page is left for him and that has never been filled? A. Never been filled.

By Mr. Bourgeois: Q. For each week from that time on until the end of the year? A. Yes.

Q. Excepting when he was away? A. Excepting when he was away. He went away the early part of November and of course there wasn't anything after that, he left for Europe, I think he left Atlantic City the 31st of October, 1911, he was away during November and December.

By the Vice Chancellor: Q. So there are no blank pages during those months? A. No blank pages during that time.

By Mr. Bourgeois: Q. Now, Doctor, under what conditions did Doctor Jonah leave to take his vacation so far as you and the practice were concerned? A. Well, prior to Doctor Jonah's leaving I heard, just a few days prior, that he was going abroad.

Q. Where did you hear that? A. I heard it from my sister-in-law.

Mr. McCarter: Well, I don't remember that there is any complaint of this at all. I don't see what this has got to do with the case.

The Vice Chancellor: Is that one of the charges of the bill, that he did neglect his business?

Mr. Bourgeois: No, except that he didn't do this part of it and this going abroad was an action in which they had no conference.

The Vice Chancellor: This is leading up to it.

A. (Resuming.) And when I found that he was going abroad I went to Doctor Jonah and asked him what it meant, that we had had no conference about his going abroad, and he said "Why, you must have understood I was going abroad." I said "No, I haven't understood anything about it." Then he said—well, he wasn't well, that he was very nervous and that his wife had gone off and gotten the tickets, and said he had to go; then I remonstrated with him concerning his work, not only the neglect which he had given with reference to his reports but to his manner in the work, the lack of harmony and the evidence of—at least, both the lack of harmony and the evidence of loyalty that we had talked for several months. He then made a statement that if I would do certain things for him he would be loyal and that he would come back from his trip—he was going away to get better and he would come back from his trip, he would not only be loyal but he would see that harmony was promoted in the company.

Q. Now, what were the things that he wanted you to do? A. He wanted me to agree to boycott my brother; in a word, not to send my surgical cases to him, not to send any cases to his sanitarium, because he said, he and Doctor Durand couldn't go there to attend them.

Q. Did you give him the promise?

By the Vice Chancellor: Q. Wait a minute until I digest that. Your brother had a sanitarium? A. Yes.

Q. And if cases were sent there by you they would come under the treatment of your brother and you would get no more benefit of that—was that the idea? A. That was the idea.

By Mr. Bourgeois: Q. You wouldn't get the benefit of the surgical part anyway, would you? A. No, we wouldn't get the benefit of the surgical part any way.

Q. But while they were convalescent?

By the Vice Chancellor: It is your brother who is a surgeon? A. Yes.

Q. Now, if a case were sent there simply for quiet and rest they would get the treatment from the physician at the sanitarium— A. No.

Q. And your income would cease? A. No; I never sent a case there but what I followed the case and took care of the medical side of it when I was at home.

Q. Well, I wanted to get the full force of your testimony. He objected to your sending cases there? A. Any cases.

Q. You spoke of it operating as a boycott of your brother. He didn't want any cases to go there of any kind? A. Any cases.

By Mr. Bourgeois: Q. Now, then what did you say to him? A. I said if that was the only reason for the present state of his feelings and the disturbance in our partnership I would agree for one year not to send a case there, to which he agreed and gave me his hand and said things would be different the next year.

Q. Now, from that time did you send cases there? A. I did not.

Q. How long was Doctor Jonah away on that trip? A. I think he returned and began his work on the 7th day of January, 1912.

Q. And what was the understanding with him

as to the time he should have? A. He could stay away three months if it was necessary for him to get well.

Q. That is what you told him? A. Yes.

Q. Now, when he returned what was his conduct? A. Well, he seemed to be very much like his old self, as I may put it, he seemed to have taken hold of the work with just as much vim and interest as he had previously.

Q. Make his reports? A. Yes.

Q. And how long did that continue? A. He continued making his reports until the 16th day of March, 1912.

Q. And from the 16th day of March what about it? A. There was no reports whatever.

By the Vice Chancellor: Q. Was the blank page system inaugurated again in the book? A. Yes.

By Mr. Bourgeois: Q. Will you just show us some of the blank pages so we can see that they are there? A. You will notice his visit March 16th; March 16th you will notice is reported, a report was made; this was the office, this was Doctor Durand, the office (indicating); and beginning on the 17th of March there is a blank.

By the Vice Chancellor: Q. The beginning of the blank pages you said was when? A. Began September 27th, 1910.

Q. Now, reports resumed? A. In 1911.

Q. January, 1911? A. Yes, to May 6th, 1911.

Q. Then from May 6th, 1911, blank until he went to Europe? A. Until October 31st.

Q. That is when he went to Europe? A. Yes.

Q. Now, reports began again? A. Began January 7th and are intact until or including March 16th, 1912.

Q. And blank thereafter? A. Blank thereafter.

Q. Now, what about the end of the year, 1911? Is there a report from him similar to the others made up in the books? A. Well, I don't think it is made up in the book, the secretary—

Q. Will you refer to that and let us see what it is? A. Who was then—our secretary can give you a statement of what the report was at that time, I am not conscious that it was made up.

Q. Well, it isn't in this book, at any rate? A. Well, I was just looking to see if it is. No, I don't find it. No, it isn't in this book.

By Mr. Bourgeois: Q. Doctor, you can state this: Did Doctor Jonah for the year 1911 make a report of all his work, an itemized report of all his work during that year from which a settlement could be had? A. He did not.

Q. Have you ever had a complete settlement of the partnership affairs since you entered into this agreement? A. We have not.

Q. Why not? A. Simply because we couldn't; he would never furnish us reports; I solicited him and the auditor solicited him, the secretary solicited him and Doctor Durand solicited him.

Q. Now, Doctor, this bill was filed, I think, in the early part of September, praying for an accounting. Since that time has Doctor Jonah made his reports? A. He has not.

Q. Itemized reports? A. He has not. The only report that we have of Doctor Jonah's work is simply what he made in the answer.

Q. In the answer? A. In the answer, that is all.

Q. Now, have you examined to find out whether or not Doctor Jonah has reported all of the work he did in his answer? A. I have.

Q. Has he? A. He has not.

Q. To what extent has he not reported in the answer? That is, written your knowledge. A. Well, it is over a hundred names or more.

Mr. McCarter: Well, let us have the items.

Q. Have you a list of those? A. I have.

Q. Will you produce it, please? A. (Witness complies.)

Q. Now, Doctor, will you mention some of the accounts or the names of which Doctor Jonah has not accounted? Not all, not the hundred but just some of them.

Mr. McCarter: I think we ought to know how he found this out.

The Vice Chancellor: Before you make that objection, Mr. McCarter, let me get the force of this testimony. I understand that you have already shown that there are certain designated weeks that have been gone over in which there are no reports at all of any kind for the year 1911. For those weeks in 1911 which—

Mr. Bourgeois: 1912 also.

The Witness: And 1910.

The Vice Chancellor: Well, under the year 1910 the blanks were supposedly supplied at the end of the year. Now, in 1911 there was none supplied, and the part that is complained of in 1912 none have been supplied, as I understand. Now, what are these names that you are producing?

Mr. Bourgeois: The defendant has annexed to his answer an account which he alleges is a complete account.

The Vice Chancellor: Oh, these are omitted from the account in the answer?

I thought you were trying to supply what ought to go in these blanks.

Mr. Bourgeois: No, omitted from the answer, showing that we are entitled to a complete account.

The Vice Chancellor: An inaccurate answer?

Mr. Bourgeois: Yes.

Mr. McCarter: I don't object to that. The only question now is, he says "what names." I don't think that is the way to get it.

The Vice Chancellor: Well, probably not; unless he goes into it adequately enough to connect it with the answer it can do no good. A. Now, what is the question?

Q. I want to know what accounts of Doctor Jonah's have not been included in his statement of the account annexed to his answer. You have seen that answer? A. Yes. Well, we have made a list of names that occur on the office call book to Doctor Jonah from day to day, and a list of the names of Doctor Jonah's prescriptions at the various druggists, the file of which we have examined, at least the druggist furnished a list of, and we find on those two lists there is 123 on the office call book list and there is 71 on the druggists' list, making a total of 194 names that are not accounted for in his answer.

Q. Now, have you—

The Vice Chancellor: Well now, hold on a minute until I digest that a little. I want to be sure that I understand the witness accurately, and I sometimes waste perhaps a good deal of time in that effort but it pays in the long run, I think.

By the Vice Chancellor: Q. This information that you have now you derived by finding in your office a list of calls from patients from the outside that called to the office by 'phone? A. May I show you the books we keep?

Q. Let me see if I understand the testimony; I simply want to be sure I understand it. Someone in your office would keep a record of these calls? A. Yes.

Q. And the doctor would be notified of them? A. Yes; that is right.

Q. Now, you have in addition to that list what else, did you say? A. The list that I obtained from the druggists' files on the names—that is, the names on the druggists' files.

Q. People that he has prescribed for? A. People that he has prescribed for.

Q. Some of them would be necessarily, I suppose, these very people. A. Oh, yes; the two lists were compared and the deficiency in the list as compared with those he had reported in his answer there is 194.

Q. That is what I haven't understood yet. You would have your list of calls; now, you have your list of prescriptions— A. Yes.

Q. After scouring all the drug stores of Atlantic City. Do they correspond? A. Yes; then we have—

Q. First, do they correspond, the list of calls and the list of prescriptions? A. The number of them we know.

Q. The number? Do they correspond? A. No, not in number. That is to say, the names of a number on file—

Q. Many of them correspond? A. Yes; many of them correspond.

Q. But in aggregate number do they corre-

spond? A. I haven't counted the number but there are this many names independent—that is, there are so many names in the call book and on the prescription list that do not occur in the answer that Doctor Jonah made.

Q. Now, does the answer—I haven't seen this answer yet—does that give the names of the patients? A. Yes.

Q. And you find, in addition to the names there, these parties who have called and who have been given prescriptions—and the name has been delivered to Doctor Jonah to make the call and who have been given the prescriptions? A. Yes, —well, no, not exactly that, your Honor. There are two separate lists. In other words, in the first place, Doctor Jonah makes an answer in which he puts down a certain number of names of people he has seen. Now, we take a list from the prescriptions given and on file at the drug stores, take the names of those people and make one list, make a list out of them.

Q. Yes. A. Then we take the office call book and make a list of the calls that have been given to Doctor Jonah.

Q. Yes. A. Now, we take the summary of those two last lists, all of the names of those two last lists and compare them with the list in Doctor Jonah's answer and we find in these two last lists one hundred and ninety odd names that do not occur in his answer, no accounting for them from any standpoint whatever.

Q. Well? A. And we go back in 1911 and find a similar situation.

Q. You do not multiply, you do not add the prescription list to the call list? Have you tried to check them? A. We have checked them, that is what we have done. All the names on those two

lists that occur on Doctor Jonah's answer are checked off and we count only the names left that there are no names on his answer to correspond with.

Q. 119? A. 194.

Q. That covers what period? A. Covered the period of 1912.

Q. All right; I understand what you say now.

By Mr. Bourgeois: Q. Now, do I understand that if a name appeared on both the call list and also on the druggists' list and you found that name on Doctor Jonah's answer it would be marked off both these lists? A. Marked off of both.

Q. So that there is no duplication? A. No duplication.

Q. How many accounts did you find missing for the year 1911? A. 255.

Q. How many? A. 255, and this is only from June 1st to November 1st.

By Mr. McCarter: Q. November 1st? A. To November 1st, yes.

By Mr. Bourgeois: Q. Does that account that you have made up include these prescriptions that Doctor Jonah has written where no name is on the prescription? A. They include all of the names that were furnished by the druggists.

Q. But if there was no name on the prescription you wouldn't get it, would you? A. No; and then, furthermore, I would say that we haven't had any report from Mr. Galbreath's drug store in this last account; we had a report in the first account but had none in the last.

By the Vice Chancellor: Q. This that you call the first is 1912? A. Yes; we had an accounting—we had a list of 1912 but we have no list for 1911.

Q. So the 255 names are exclusive of one drug store? A. Yes. Well, they are exclusive of two drug stores. We haven't had any report of Watson & Davison either in the last.

By Mr. Bourgeois: Q. How many drug stores are there in Atlantic City, approximately? A. And we haven't had any report from Hays Deemer in the last—I don't know, perhaps one of the druggists could tell us—Mr. Deakyne.

The Vice Chancellor: Never mind, he will have to be sworn, I suppose.

Q. Now, Doctor, would the investigation you have made touching this account, would that show the transaction if Doctor Jonah had been consulted independent of your office and the prescription blank contained no name? A. Well, it might do it or it might not; of course, the record doesn't prove it.

Q. How would you get on to that? How could you? If the names weren't in the answer and he should be consulted independent of your office and the prescription blank did not contain the name of the patient, would there be any means of you finding that out? A. I don't know of any.

Q. Now, will you state whether or not, under the system which you had in force, or thought you had in force, these errors, the error of these accounts, 255 one year and 194 another year, could have occurred? A. It could not.

Q. Will you explain to the Court just the system you had from these books, so the Court can see. Now, first, Doctor, I want to call your attention to the prescription blank, C-3, and ask you what is the object of having the top part of that as on there, a place for—what is it? Read it, please. A. "Name, home address, present address."

Q. Now, what is the object of that? A. The purpose of that is that that shall be a memoranda for either the physician's memory or for the secretary to transfer the services rendered that particular patient on that particular day. The name of the patient should occur on the first line and the patient's home address should be on the next and then the residence of the patient while in Atlantic City and under our attention, and then when the transcription is written—

Q. I don't care about that. A. It is serrated there (indicating) so as it can be easily torn off, and this is retained by the doctor.

Q. Are these prescription blanks loose or are they tableted? A. Tableted.

Q. And the stub is retained by you? A. Yes.

Q. Now, I have noticed, Doctor, in this book of office and weekly calls that there seems to be addresses after the patients that you visited and after the patients Doctor Durand visited but in very many instances no addresses after the patients of Doctor Jonah. What is the object of having the addresses put in that book? A. So that accounts of patients leaving Atlantic City without paying their accounts—that we can follow them up with their accounts, and there has always been another reason for it.

Q. What? A. And that was to keep a record of the patients that we attended with their home addresses.

Q. Now, why is it important to you to have a record of all the patients that are sent to you for treatment? A. Well, there may be patients of the same name and from different places, and in writing it doesn't—they don't always indicate—it doesn't always indicate just where they come from.

Q. And without these addresses and names would you be unable to keep intact your practice? A. They are aids to us, of course, and without them we couldn't if one was a mind to appropriate to themselves.

Q. When a patient is sent to you by some out-of-town physician is it possible for you with your practice—I mean the extent of your practice, to give personal attention to all of them? A. It is not.

Q. To what extent can you give attention to them? A. Well, there are some parts of the year I can see them, there are other parts of the year that I have to turn over from three to four or maybe more to the other doctors, during the day.

Q. And how frequently do you personally come in contact with those patients that you turn over to your associates? A. Here of late not at all.

Q. Why?

Mr. McCarter: Well now, if he knows.

Q. If you don't know don't tell me, but if you know? A. Of late I haven't assigned any to Doctor Jonah but prior to the unpleasantness, you may call it, I would assign patients to them; sometimes I would, of course, see them afterwards, and sometimes I wouldn't unless I had some request either from doctor or from the patient. If I had a request by either to see them afterwards I would do so, or if I thought it was important for me to see them I would do so.

Q. Now, when a patient came to Atlantic City referred to you by some out-of-town physician did it sometimes happen that you were asked for a report of the patient's condition by the physician who sent them? A. Very frequently.

Q. State whether or not these addresses, the keeping of the addresses and the names would be

of aid to you in fulfilling that obligation or duty? A. It would.

Q. Now, then, will you explain to the Vice Chancellor this system of—oh, no, just one other question: The druggists have been asked if they have received prescriptions written by you in the past two or three years on other than this common form of prescription blank, and I think they answered they thought they had, or some of them had. What have you to say about that? A. I am quite sure they have.

Q. Now, under what circumstances has that arisen? A. When my blanks would run out or when I might be called upon to prescribe for someone on the street or elsewhere and didn't happen to have a blank with me I would take any piece of paper that might be convenient. I have prescribed on envelopes and on pieces of paper, on sheets of paper from hotels and on little slips from tablets.

Q. Has there ever been a custom or practice of such manner of prescribing by you? I don't mean in emergencies but for days at a time have you gone without any regular blanks? A. No.

Q. Just in emergency cases? A. Just whenever an occasion of that sort was presented.

Q. Now then, you may explain to the Vice Chancellor about those books. A. Will you tell me just what you want me to explain—that is, if I go wrong you can straighten me out.

The Vice Chancellor: I don't believe I have the question in mind.

Mr. Bourgeois: I want him to explain.

Q. Will you explain to the Court the system you had so that the different members of the firm would know the entire business that was done by the firm, not only the amount of it but the pa-

tient's name and the patient's address. A. This was the paper instituted in the office (exhibiting).

The Vice Chancellor: That had better be marked.

Said paper marked Exhibit C-5.

A. (Continuing.) And these will need to be marked too, because these were substituted for that.

The Vice Chancellor: This which you first identified is C-5.

The Witness: This is used for the same purpose.

Q. Explain to him what C-5 is.

Bunch of blanks offered and admitted in evidence and marked Exhibit C-6.

By the Vice Chancellor: Q. C-5 is what? A. This is for the name of the patient, the day and the month and year, (indicating).

Q. When he comes in? A. When he comes in. This is the home address, and this, of course, is the present address or the stopping address, and this is the examination where it was necessary or we felt it necessary to make a record of a physical examination, a blood examination, sputum, urine, etc., and ordinary treatments or special treatments. This we didn't use only in special cases.

By Mr. Bourgeois: Q. Now, that is, referring to C-6? A. Yes. This is used more particularly —well, I didn't go far enough with that; that was handed—

Q. That is, C-5? A. C-5 would be handed to the doctor by the patient when they entered the office.

Q. Where would the patient get it? A. This was made out by the secretary to the patient: these questions were answered and this, of course, was filled out by the doctor, the lower part.

Q. That is the examination? A. That is the examination, that form filled out by the doctor and then it would be posted from that if the doctor put that on a file in his office.

Q. Now, at the end of the day what would happen to it? A. The secretary would go over that and check up the books, check up her accounts.

Q. From the doctor's files? A. From the doctor's files. Now, I say that that never was carried out by either Doctor Jonah or Doctor Durand.

Q. By you was it? A. Yes. This was substituted for that.

Q. That is C-6? A. C-6 was substituted for that, when I found that I couldn't get the doctors to carry that out, then just the name was put on this of the patient, etc.

Q. C-6? A. C-6, and this is carried out by me to this day and that is put on my file and if the patient pays for that call that amount is put on that or was put on that until last July; since July I have had a different system for my charging up the moneys against me and still this is put on file for the secretary to compare her list with mine.

Q. Now, let me ask you: You say that you put the amount on this little stub? A. Yes, if I received $2—

Q. And the amount would be charged up against you—what do you mean by that? A. I mean to say that that went to the secretary to charge me for having received so much money that day and to credit the patients who paid that to me as having paid that account for that date.

Q. Won't you explain to the Vice Chancellor what system you three physicians had with regard to the disposition of the moneys that were

received by you in the office work. I don't want the books now, Doctor, I want you to just state. Was that money all turned in to the secretary? What became of it? A. No; usually the cash received in the office by either one of the three—sometimes we would turn it over to the secretary and somtimes we would retain it, but if we retained it we were supposed to give the secretary account of the fact that we had received so much money that day.

Q. So that it would be charged against you? A. So that it would be charged against us.

Q. And that is what you meant by saying this would be charged against you? A. Exactly.

Q. Now, you may proceed. A. Now, since June or July I have adopted this system; I went and got these boards, these desk rests with a clamp to them, and I cut the book up similar to this book and gave individual sheets, as you see here, and put on each man's desk this sheet and the board so that he could keep a daily record of his office visits and put the debtor or the credit in the column there as whether they were paid or whether they weren't paid. Each one of these represents a week.

Mr. Bourgeois: Now, let us mark one of these.

By the Vice Chancellor: Q. These are practically the same as an ordinary time book for the laborer, aren't they? A. Yes, just th same, that is what it is, the time book for the laborer and it is appropriated for this work.

By Mr. Bourgeois: Q. Now then, go on, explain, Doctor? A. Why, you will notice here, here was the money received (indicating), here is the—

By the Vice Chancellor: Q. Where is the money

received? A. There, showing down this column (indicating). You see this is Doctor Marvel's list and here is "Finns, paid, $21; Noxum, paid, $9," and "Bradshaw, paid, $9," and so on down. "$10"—I don't know—what is that name? "Gargau, $10." Now, the office—my office work done the same. Do you want to mark this particular one?

Q. Whichever you choose. A. Here is my office list as put down myself, there happened to be on this just two credits, "Murphy, $2" and "Conwell, Reverend Doctor Conwell, $5." And Doctor Canning's list occurs there with it showing what he did.

By Mr. Bourgeois: Q. Who is Doctor Canning? A. Doctor Canning is also another—at least, that is, he is assistant.

Q. To the firm? A. To the firm.

Mr. Bourgeois: I will have this marked Exhibit C-7.

Q. Doctor, what became of this weekly list, the one you have adopted since the 1st of July, at the end of the week or at the end of the day, whichever it may have been? A. Sometimes it is posted at the end of the day but more particularly it is posted at the end of the week; I mean to say, the secretary posts it to the card system.

Q. You say you did not succeed in getting Doctor Jonah or Doctor Durand to carry into effect that first system? A. No.

Q. How did you succeed with regard to the stub on the prescription blank? A. Didn't succeed very much better.

Q. And how have you suceeded with this last method? A. Not at all. Well, I think Doctor Durand has carried this out but Doctor Jonah, as far as I know—he may have carried it out

one or two days, but so far as I know it has been entirely ignored.

Q. And what system have you at the present time? A. This system (indicating).

Q. Oh, that present system. Doctor, there is one question I overlooked a little while ago when I was speaking to you about prescriptions. Have you since this partnership ever used a prescription blank that had only your own name printed on it? A. I have not.

Q. Do you know if Doctor Durand has? A. Not to my knowledge he hasn't.

Q. Now, do your books show the character of the work that is done? A. That is, do you mean—

Q. Will they show what a patient suffers from? A. No.

Q. They don't show that? A. No. I have a system of cards but they are not here—I didn't think to bring those up—where we take histories and file those histories, in cases where the histories is important make a history and file that history for a future reference.

By the Vice Chancellor: You do preserve a history of your cases on your cards? A. A number of them but not every one.

Q. Some cases don't require it, I suppose? A. Yes.

Mr. Bourgeois: Attorney General, will you produce the letter of Doctor Marvel to Doctor Jonah, under date of July 15th, 1912, and another one also of July 23d, 1912.

The Vice Chancellor: You may as well use your copy, if there is no dispute over it. It is typewritten, I suppose.

Mr. McCarter: Here it is, July 20th.

Mr. Bourgeois: Upon call defendant produces letter from Doctor Marvel to defendant, under date of 7/15/12, as follows: On the letter head of Doctor Marvel, Doctor Jonah and Doctor Durand, 1615 Pacific Avenue, Atlantic City.

The Vice Chancellor: That is since the bill was filed or before?

Mr. Bourgeois: Before. (Letter read.) I will ask that that be marked.

Said letter marked Exhibit C-8.

Mr. Bourgeois: Then I offer in evidence a letter on the same letter head from Doctor Marvel to Doctor Jonah, under date of July 20th, 1912. The reply didn't come yet.

The Vice Chancellor: This letter you are reading now is prior to the other?

Mr. Bourgeois: No, it is after; this is July 15th. (Letter read.)

Said letter marked Exhibit C-9.

By Mr. Bourgeois: Q. Doctor, how many times did you talk to him about sending these letters? A. I haven't the least idea.

Q. Well, you can state approximately? A. Well, I don't think it would be aggregating if I should say forty or fifty times.

Q. About accounting? A. Yes.

Mr. Bourgeois: I offer in evidence a letter from Doctor Jonah to Doctor Marvel, under date of July 20th, 1912. (Letter read.)

Said letter marked Exhibit C-10.

Mr. Bourgeois: Now, a letter of July 23d, from Doctor Marvel to Doctor Jonah, which I now offer in evidence, on

the letter head of the firm, dated July 23d, 1912. (Letter read.)

Said letter marked Exhibit C-11.

Q. Doctor, did you ever get any reply to this letter? A. I did not.

Q. Did Doctor Jonah ever come and have a conference with you regarding it? A. He did not.

Recess until 2 o'clock p. m.

Hearing resumed at 1:45 p. m.

DR. PHILIP I. MARVEL, re-called:

By Mr. Bourgeois: Q. Doctor, I show you a card which I will mark Exhibit C-12 and ask you what is that card? A. Why didn't you get one that included him?

Q. What is it? A. This card is the record in the place of a ledger account and this indicates each individual's work, the day on which the work was done and the character of the work and subsequently the charge made for the work and the receipt for it when paid.

Q. That would then correspond to an individual ledger account? A. Yes.

Q. Which contains the name of the patient? A. Yes.

Q. And this particular card, explain, it contains what? A. This contains the name of the patient, the home address of the patient and the, that is, the local address of the patient, and then it contains the number of visits that I had made on the patient and also the number that Dr. Durand made. It contains the year and the month in which it was made.

Q. And how are the visits made by you and Dr. Durand designated? A. At the head of the card is the name of the month and then under-

neath of that is the initial "M," "J" and "D."

Q. "M" stands for what? A. Marvel.

Q. "J" for Jonah? A. "J" for Jonah.

Q. "D" for Durand? A. "D" for Durand.

Q And that shows the number of visits made by each of you, does it? A. Yes, and then on the reverse side of the car it shows the division of the services as is charged up in the cash account.

Q. And covers what period of time? That is the form is intended to cover what period of time? A. This particular form?

Q. Yes? A. Why, this is supposed to cover—

Q. I don't mean that particular—I mean the form; what period of time does that cover?

The Vice Chancellor: When did you inaugurate the system?

A. When did we inaugurate the system?

Mr. Bourgeois: I don't mean that, Vice Chancellor; I mean a year or what does it cover?

A. The card is made up for a year, meaning twelve months, but we make it quarterly.

Q. When did you inaugurate this system of accounts? A. I am not sure, but I think in 1909.

Q. Before the present agreement? A. It is my recollection that we did before the present agreement.

Q. Have you carried this system into effect? A. Yes.

Q. And has Dr. Durand? A. Yes.

Q. Dr. Jonah? A. Only partly.

Q. Now in what has he not? A. There are a number of cards —

Mr. McCarter: Well, I don't understand, your Honor that Dr. Jonah kept these cards. They had a bookkeeper and I have no possible objection to having a full ex-

ploitation of the insufficiency of the bookkeeping, but I don't think it is fair to say Dr. Jonah has not kept the cards up. No one of the doctors kept the cards.

The Vice Chancellor: Mr. McCarter's point is well taken. I suppose, at the most, this witness can say Dr. Jonah has not supplied the data that is posted to this card.

Q. Who actually keeps those cards? A. The secretary.

Q. And from what does she get the data to do the posting? A. From the books; from the daily records.

The Vice Chancellor: From the books that were examined this morning?

A. Yes.

Q. Now I show you a bundle of cards and call your attention to the card of Mrs. Simon and ask you whether or not—ask you to read that? A. It is "M. Simon B. Fleisher, North-west corner Eighth and Chestnut Streets. Bill for sixty dollars rendered twelfth month, sixth day and twelfth year. Check for sixty dollars received twelfth month, tenth day and twelfth year," and all there is on the card is an indication of two urine examinations.

Q. Made by whom? A. The urine examinations, one is included in Dr. Jonah's list and the other is included in my list.

Q. Now does that—would sixty dollars be a charge for that service? A. It certainly would not.

Q. Were there other charges, other services rendered to make up that sixty dollars? A. I think there was.

Q. Did you attend this woman? A. No, this is a man.

Q. Did you attend this man? A. Not at this time. I have attended him a number of times.

Card referred to marked Exhibit C-13.

Q. I show you another card of Mrs. Feldenheimer, and ask you to read that? A. "Mrs. S. J. Feldenheimer, 101 South Amherst"—I presume it means street, Amherst Street, just Amherst—"bill thirty dollars rendered 12/5/'12 and check received 12/10/'12." Three office calls indicated in Dr. Jonah's list or under Dr. Jonah's initial.

Card referred to marked Exhibit C-14.

The Vice Chancellor: No detailed charges on the bill?

A. None whatever.

Q. I show you another card against Mr. John Forsythe, and ask you to state what is contained on that card? A. Mr. John Forsythe, Galen Hall. Bill for one hundred and twenty-five dollars rendered to Mrs. Mary L. Forzythe as executrix 12/5/'12. Check for one hundred and twenty-five dollars received 12/16/'12; under the initial of Dr. Jonah are indicated eleven office calls and under the initial of Dr. Durand—that was in May—and under the initial of Dr. Durand in June there is indicated one visit and I don't know what the other character stands for, it looks as though there had been an office call by Dr. Jonah to sister, I take it to be.

Q. Now would one hundred and twenty-five dollars be a proper charge for the services mentioned on that card? A. It would not.

Q. Would it be in excess or too large, too small? A. Very much in excess of ordinary office calls.

Card admitted and marked Exhibit C-15.

Q. Now, Doctor Jackson, I think it was, was asked this morning with regard to a conversation that you had with him at the time you secured possession of a prescription blank with Dr. Jonah's printed name on it. Will you explain to the Court how it happened that you went to that drug store and got that blank?

Mr. McCarter: Well, I think that is incompetent.

Mr. Bourgeois: If the Court please, after they have shown that he went there and got it, we have a perfect right to show, as I assume, why it was he went there. He went there for a proper purpose. We have a right to show it. They endeavored to make it appear that Dr. Marvel had gone there for some ulterior purpose.

The Vice Chancellor: I guess the explanation is proper enough. There is an inference that he mislead the druggist into disclosing records that otherwise would not have been shown. I don't know that that inference, even if accepted, could be used against Dr. Marvel in the case. At any rate, I do not apprehend it is my duty to decide the case on any motives that Dr. Marvel might have had in misleading the druggist.

A. A gentleman came into my office and said "I am a stranger to you but my name is Jones. I am stopping at the Shelburne and I would like you to go to the druggist and find out"—he said "one of your assistants attended my child and I would like you to go to the druggist and find out whether the prescription contained any poison or not." I asked which one. He said "I think the name was Jonah." I got the name of the

patient and the date on which the prescription was given and went to different drug stores not only to Mr. Jackson, but to other drug stores, and failed to find the name or prescription on the file of any of them. Two or three days afterwards he came in and he said "you needn't trace that matter any further. I find that I have made a mistake. It was not your assistant at all that saw the patient."

Q. Now while you were examining the prescription files of Dr. Jackson what did you find? A. I found this prescription blank of Dr. Jonah's with his name printed on the bottom and I asked Mr. Jackson if he would mind if I took that prescription blank.

Q. Why did you want it?

Mr. McCarter: I object.

The Vice Chancellor: I guess that is about as far as it is necessary to go.

Q. Prior to the time that you saw this prescription blank with Dr. Jonah's name printed at the bottom, had you known Dr. Jonah was writing prescriptions on such a blank? A. No. Well, I will modify that. Dr. Durand had told me, if I remember correctly, in 1909 that Dr. Jonah was using his own prescription blanks.

Q. I don't mean that. I mean since the contract of 1910? A. No, not since 1910.

Q. Now, Doctor, during the early summer of 1912 did you have a conversation with Dr. Jonah relative to the filing an account or his account in which he made some proposition to you about the moneys he had already collected? A. I did.

Q. Will you state that conversation?

The Vice Chancellor: That was after the accounts had been resumed again and discontinued, wasn't it?

Q. Was it after the sixteenth day of March? A. Yes, it was either in the latter part of June or the early part of July; I am not sure which, and I am not sure as to the positive date. But at one of the meetings at which I had asked Dr. Jonah to come over to the office and let us discuss matters. On this particular occasion he told me that he wanted to be released from the partnership. I asked him on what grounds. He said on the grounds that I did not like him. I said that he must understand that that statement was not true and then I referred to different things that I had done for him and we went over matters in a more or less general way and I repeated the question that I know full well that that is not the reason why you want to be released. Have you any other reasons? To which he replied no. Then I said I would take—no—then I said, "what offer have you to make for your release?" And to which he replied that you have not turned over to me any money for my account this year and according to the statement—I don't know whether he said that I had made or that he knew of but at any rate—according to the information that he had that the company was owing him in the neighborhood of two thousand dollars and that he would give that over to me and he would retain his own individual account of patients that he had been attending since March.

Q. And what was about his continuance? A. How is that?

Q. What was there about his continuing in business? A. And he would simply continue in business.

Q. In other words he proposed that—(Withdrawn.) Now, Doctor, what prescription blanks are you using at the present time? A. Prescription blanks that we had before our partnership

arrangements or had made, rather, before.

Q. I show you a blank and ask you if that is the kind? A. It is.

The Vice Chancellor: This is the blank they are using now, Doctor? A. Yes.

Q. A different blank is it? A. It i s different from the regular blanks that we have been accustomed to using. It differs only, if I may explain, in the fact—

Mr. McCarter: Let it speak for itself, Doctor.

Blank referred to marked Exhibit C-16.

C-16.

Q. Now since when have you been using that form of prescription blank? A. Since sometime in December I think.

Q. And why?

Mr. McCarter: December?

A. Since sometime in December, I think; perhaps November; I am not sure; in 1912. Because—

Mr. McCarter: I don't think, your Honor, the reason for doing that is material.

The Vice Chancellor: Not his own individual reason unless it was a matter of conference with the defendant.

Q. State whether or not there has been a sufficient quantity of prescription blanks, either of the form of C-3, I think it is, or C-16, on hand at all times for the use of all the physicians of your firm? A. There was on hand of the first mentioned until in either November or December when the supply ran out.

The Vice Chancellor: 1912? A. 1912. And then in order not to have other expenses incurred in getting those same blanks, I substituted the old blanks which was used prior to our partnership.

Q. And contains the three names? A. And contains the three names.

Q. And has there been an ample supply of the form C-16 on hand for use of all of you? A. There has.

Q. And is at the present time? A. Yes.

Q. Doctor, there was an allegation that the amount of business that you did did not amount to the sum of thirty-three thousand dollars prior to 1910. What means of information did Dr. Jonah and Dr. Durand have as to what business you did do during the year 1909?

Mr. McCarter: I object as immaterial.

The Vice Chancellor: I think the course of the objection would largely be depending upon what the pleadings are. What is the averment in the pleadings you refer to?

Mr. Bourgeois: They simply allege it amounted to something over thirty-three thousand dollars. They deny it amounted to that much.

The Vice Chancellor: What is the relevancy. What does it matter. They went into the agreement.

Mr. Bourgeois: I don't think it makes any difference. I will withdraw the question at this time.

Mr. McCarter: My objection was not to going into that question but to the form of the particular question. You observe the question reads what means of access had Dr. Jonah and Dr. Durand to find out what he did make? We do think that it is material that some apparent misrepresentation was made with regard to the amount of business that was done and that may come out before the case gets through.

The Vice Chancellor: Is there in the

pleadings a charge that this agreement was founded on a misrepresentation touching—

Mr. McCarter: I understand an issue was made upon the pleadings as to the fact, there being on the one hand a statement by Dr. Marvel that his business amounted to thirty-five thousand dollars a year.

Mr. Bourgeois: How much?

Mr. McCarter: Thirty-five thousand dollars a year, whereas, as a matter of fact, it had not amounted to that much. Now I suppose the particular question to which the objection was interposed was designed to show that possibly we had access to the books to find out whether we did find out or not.

The Vice Chancellor: Which I apprehend is a charge in your cross bill if it exists at all?

Mr. McCarter: I can't say.

Mr. Endicott: A plea of denial.

Mr. McCarter: It is a denial of their allegation in the bill.

The Vice Chancellor: If it is a denial of their allegation, I don't see how it is an issue unless you are trying to avoid your obligation as expressed in this agreement upon the theory that it was procured from you through fraudulent misrepresentations. I can't see how that is a proper inquiry but if your cross bill contains any such allegation—

Mr. McCarter: We are not seeking to set aside the agreement on that ground.

The Vice Chancellor: Only to avoid the agreement on that ground?

Mr. McCarter: I don't think so.

The Vice Chancellor: Then I think it is

an irrelevant inquiry even though it is asserted as a fact.

Q. Doctor, what facts are there within your knowledge that go to show that a three year period of restraint is a reasonable restraint with regard to the time within which Dr. Jonah should not practice law?

Mr. McCarter: Well, I think that—

The Vice Chancellor: That is too much for me. I don't know what class of evidence could be obtained that would be even proper to inform a Court as to a reasonable period. I shall assume the period is a reasonable one as expressed in the agreement unless something is shown to the contrary, I think, unless I may be mistaken about that. It seems to me that would be the duty of the Court. It would be a matter of defence, would it not, that the period was unreasonable? I should think so. However, if you think there is any doubt about that on either side I will not be arbitrary in the matter.

Mr. Bourgeois: There was a question made of it by the defence and I should have the privilege of asking Dr. Marvel.

The Vice Chancellor: Is there any plea of unreasonable restraint in the pleadings?

Mr. Bourgeois: Not in the pleadings, but I thought may be it might be argued so.

The Vice Chancellor: I suppose there must be some way to acquaint a Court with the extent of a period with reference to its being reasonable or unreasonable. That word reasonable has found its way into our adjudications in modern years as such an elastic term. I think it is up to the defence to defend against the unreasonable-

ness of it by any evidence if any is to be offered. It seems to me it is to be presumed that, if the parties agreed upon that period, it would be considered reasonable unless it is obviously unreasonable. However, we will come to that question, if it is necessary. I am a little uncertain about it in my mind at this time.

CROSS-EXAMINATION by Mr. McCarter:

Q. Dr. Marvel, what is your age? A. Fifty-six.

Q. So that you were fifty-three at the time this contract was made? A. I was.

Q. And how old is Doctor— A. Well, I was—yes, fifty-three; that is right.

Q. And how old is Dr. Jonah? A. I can't tell you.

Q. Well, you have some idea with regard to his age, haven't you? A. I presume he is in the neighborhood of between thirty-five and forty.

Q. And how old is Dr. Durand? A. He is in his thirties I think.

Q. What part of the twenty-nine years that you have been practicing were the two years or upwards that you spent in Washington? A. I was in Washington in the autumn of 1889 and winter of—in 1888 and winter of 1889 to June. I came back to Atlantic City and practiced with Dr. Boardman Reed until the following September when I returned to Washington, again returned to Atlantic City in January or February—I am not sure which, of the following year and have remained there since.

Q. So that practically since about 1890— A. I have been there continuously.

Q. —You have been continuously in Atlantic City? A. Yes.

Q. You have acquired and now enjoy a large and flourishing practice? A. Well, I enjoy a large practice.

Q. So much so that you felt that you could, to a certain extent, pick and choose and relieve yourself somewhat of night work, as your agreement provides, and also have declined, as you have testified, to take care of patients outside of the island proper? A. Yes.

Mr. Bourgeois: Outside of the island or outside of Atlantic City?

The Vice Chancellor: Outside of the island proper.

A. Outside of the island excepting by consultation.

Q. About how long is it since you were able to assume that attitude in the practice, which is a very comfortable attitude, I think? A. Well I have had the aid and assistance of other men since 19—since 1891.

Q. And has it been since 1891 that you have had the character of practice that you describe today? A. No.

Q. I am trying to get at when it was that you had acquired prominence and recognition enough from the public to be able to do what I have designated "pick and choose." A. Well, I would suppose that I could truthfully say that I have been changing the character of my practice and limiting it in one way and another since 1900.

Mr. Bourgeois: Attorney General, I think doctor may be misunderstood the one question as to when he came back to Atlantic City to practice continuously.

Mr. McCarter: Have it corrected.

By Mr. Bourgeois: Q. Mr. Stern says you said 1890. A. I went to Washington in the autumn

of 1888; came back the following March and was in Atlantic City until—I mean the following June—and was in Atlantic City until the autumn; went back to Washington and in January or February of the following year I came back—

Q. That would be 1890? A. —to Atlantic City. And the year following I took an assistant with me.

By Mr. McCarter: This agreement C-1 was drafted by your brother-in-law? A. Yes.

Q. Your counsel? A. It was.

The Vice Chancellor: Whom?

Q. What is his name? A. George W. Coles.

Q. Lawyer practicing in Philadelphia? A. Yes.

Q. It was him, I suppose, who witnessed—I notice that my copy of the agreement seems to be attested by George W. Coles. A. Yes, that is his signature.

Q. So did he come down to Atlantic City to have the document signed? A. He did.

Q. And did he bring it with him? A. The document was left in the hands of—

Q. I asked you if he brought it with him? A. I don't think he did.

Q. But he came all the way down just to act as witness? A. He had drawn the agreements—

Q. Now, Doctor— A. —and he was acting as my attorney.

Q. I understand, but what I want to know is whether he brought the agreements that he had prepared, and I assume were typewritten in his office, with him at the time they were executed and when he witnessed them? A. I don't think so.

Q. Think he came down on purpose? A. I think he did.

Q. I imagine in the early part of your practice

in Atlantic City you did not confine it practically to nonresidents so much as you now do? A. I did not.

Q. I beg pardon. A. I say I did not, and then I don't absolutely now.

Q. No. Now, you stated that one of the first acts that was done after the signing of the agreement was the opening of an account for the firm in the Union Bank. That account, I imagine, was in your own name? A. Yes.

The Vice Chancellor: That account was what?

Q. In your own name? A. Yes.

Q. I mean by that not the firm name or anything like that; it was the name of Philip Marvel? A. Business account.

Q. And Mrs. Marvel, your wife, had power to draw on that account, didn't she? A. Mrs. Marvel was acting secretary for the first six months.

Q. Well, is it not a fact that even after the six months expired, to which you have just referred, Mrs. Marvel did draw against that account? A. Possibly she did; I am not quite sure—but not for personal purposes.

Q. I didn't ask you anything, Doctor. Now you have stated that Dr. Marvel—Dr. Jonah, after a while became lax and careless and finally apparently indifferent about putting in accounts of his receipts or his visits, rather. Do you contend that you and Dr. Durand promptly entered up in accordance with the integrity of the system the accounts that you and he had? A. Yes, with slight variance.

Q. Slight variance? A. Yes.

Q. Well, what do you mean by slight variance? A. I mean that if I should happen to be away from home for a day or so my account might go

over until I returned before it was posted up and Dr. Durand has allowed his to go over for as much, possibly, as a week; certainly for two or three days.

Q. Well, then, it was recognized by you all that contingencies or circumstances might arise in which the literal integrity of the system was impracticable? A. We hadn't discussed before the—

Q. Please answer my question, Doctor. I don't want—

(Question repeated.)

A. Yes, but had been explained.

Q. Now who was the secretary during the life of the agreement? I judge from what you said a moment ago Mrs. Marvel was for a short time? A. Mrs. Marvel took charge of the banking part of the account and Miss Hendrickson took charge of the office account and in a way the general secretary, but Mrs. Marvel took charge of the banking part and also kept an account of that and drew checks for the firm's business.

Q. Well, now, won't you point me to any provision in the agreement which I show you which justifies, in your understanding, the employment of Miss Hendrickson as a secretary or accountant to look after and keep the books and also the employment of somebody else, under the guise of assistant secretary or what not, to run the bank account, as you say?

Mr. Bourgeois: I object. If the Court please, that amounts to a construction of this agreement and that is for the Court.

The Vice Chancellor: I think it is competent to let him point out if he thinks there is such a provision there. I don't know whether there is or not. If he

doesn't know of any such provision he can say so.

A. I know of none, excepting it refers to the fact I shall have the right to employ such person. When we opened our books—

Q. Where do you refer to that, please? A. I think it says I have the right to employ a secretary.

Q. Yes, well secretary was employed, Miss Hendrickson, wasn't she? A. But the secretary wasn't familiar with all the work and until she became familiar with it Mrs. Marvel kept the same relation with our accounts that she had had prior to this agreement.

Q. Now Miss Hendrickson from the start kept the accounts, didn't she, from the time she came there? A. She kept the accounts, but she did not always send out the bills.

Q. And it was she to whom reports were to be made? A. Yes.

Q. And it was she that wrote down when the patients came in? A. Yes.

Q. And it was she to whom the slips that were supposed to be deposited in the files in your several office hours by the respective physicians, were delivered for posting in the books? A. It was.

Q. And it was she that kept the books? A. Yes.

Q. Now have you produced all the books that she kept? A. I have about all of them here; I have produced them.

Q. For instance, you have cash books? A. Yes.

Q. You haven't spoken of them? A. Cash books are here.

Q. Which is the cash books?

(Witness produces books purporting to be cash books.)

Q. Did you open individual charge accounts with the several patients who owed the firm any money? For instance, suppose I would come to Atlantic City and had been treated by you or either of your partners and you had not sent me a bill—suppose it was yourself who had conducted your account regularly—would an account be opened on your books against Robert H. McCarter? A. It would.

Q. And when money was paid by me, although it might not be entered on the pages in the book to which you pointed Vice Chancellor Leaming's attention this morning, it would, of course, be entered in the account against Robert H. McCarter? A. It would.

Q. And be entered in the cash book? A. Yes.

Q. Now is it not a fact that very large sums of money have been received by the firm from patients that were treated by Dr. Jonah, during the periods that there are blank pages on that book that was shown the Vice Chancellor this morning, and that those payments have been credited in the cash book, charged in the cash book and also credited to the accounts of the individual people? A. I don't know how much; there has been some.

Q. Well, is it not a fact that during the year 1911 there has been collected from work done by Dr. Jonah and distributed between the partners a sum of money in excess of ten thousand dollars? A. I don't think in excess of; I think it is between nine and ten.

Q. Well, I have in my hand a statement which would indicate that for the year 1911 the receipts of the firm from Dr. Jonah were ten thousand one hundred and thirty-one; from Dr. Marvel twenty-one thousand six hundred eighty-six and from Dr. Durand eight thousand six hundred

fifty-seven dollars and thirty cents. Aren't they substantially accurate? A. That may be accurate. I don't know. Our auditor's account will show if it is or not.

Q. Have you got an auditor's account here? A. I have.

Q. Will you produce it?

The Vice Chancellor: Will you state, Mr. McCarter, whether that includes the services that are collected inside and outside both?

Mr. McCarter: I will find out. I understand it does.

Q. Isn't that right, Doctor? A. Includes both.

Q. Please look at the auditor's record for the year 1911 and see what that indicates from the books of the company, not confining now the books to the one book you showed the Vice Chancellor this morning, what Dr. Jonah's appearance in this enterprise brought into the enterprise for the year 1911?

Mr. Bourgeois: If your Honor please, the amount Dr. Jonah brought in, if it is the only object of this evidence, is immaterial and irrelevant. If it is for the purpose of showing that Dr. Jonah did in fact account—

Mr. McCarter: That is the object. I have no doubt that the Vice Chancellor thought that Dr. Jonah had not paid in any money at all, no money had been collected.

The Vice Chancellor: I gathered from the visits that were made to the office he accounted fully, but I gathered that from the patients he attended outside he did not report the amount of his attendance and that there was no way to know whether

what he turned in was the full amount or not. That was the inference I got. I don't know whether I was justified or not.

Q. What do you find? A. I find in 1911 from January until September, inclusive, he turned in five thousand nine hundred and twenty-five dollars.

Q. Now from September until— A. Now from October first to December, inclusive, he turned in forty-two hundred sixteen dollars.

Q. Those are the two figures that makes ten thousand one hundred and forty-one. Now it is a fact, then, is it not, Dr. Marvel, that notwithstanding the failure, for whatever cause, of Dr. Marvel—Dr. Jonah to live up to the integrity of the bookkeeping system by making reports of calls made by him, that, nevertheless, very large sums of money have come into the firm representing work that he did do? A. Yes.

Q. And the two or three of those cards that you produced and were marked in evidence indicating bills rendered and bills paid are very good samples of that very thing, namely, of bills sent to patients for some work done by Dr. Marvel that did not appear from your reports—Dr. Jonah that did not appear from his reports, which bills were collected and the firm has had the benefit of it? A. Yes.

Q. So that it isn't your contention, then as I understand it, that Dr. Marvel—Dr. Jonah has deliberately taken this money and failed to account for it, but the burden of your charge is that he has not, as the Vice Chancellor suggested a moment ago, kept such particular accounts with you as that you are able to tell whether or not the moneys that have been paid over represent all that he has or should have collected; is that

it? A. Chief contention is that he has persistently refused to turn in his accounts and give proper reports of what he has done.

(Question repeated.)

A. That is the chief burden.

Q. Hasn't he, Doctor, in the talks that he has had with you when you were prodding him and pleading with him in regard to this matter time and again called your attention to the fact that he was very busy, that he thought it more important to attend to the sick than he did to collect money and that he had memoranda on his papers or documents or books or loose slips or what not which he could refer to and excused or undertook to excuse—whether it justified him or not is another thing—his failure to live up in the way that you thought he should live up to the system for some such reason? A. He certainly led me to believe that he had records of the work that he was doing.

Q. You did not during this period doubt Dr. Jonah's honesty, did you? A. Not at all.

Q. Now I want to come, if I may, to the conversation that you and he had about the time that he took the trip abroad in November and December of 1911, I think it was. A. October, 1911.

Q. Now was that interview before or after he went? A. Just before he went.

Q. Won't you now please recall as well as you can all that occurred at that interview? I don't want your resume of it or your understanding of it, nor, of course, do I expect you to give the exact language, but, as near as you can recall, the burden of your talk. A. Well, as near as I can recall it, the chief burden of the particular interview was concerning Dr. Jonah's failure to bring up his accounts and the evidence that he

was giving in one way and another of his dissatisfaction and of the fact that he had undertaken to provide at least undertaken to arrange for an indefinite amount of time in vacation without having said anything to me about it.

Q. Well, was it at that interview that the account of what you call boycotting your brother came up? A. Yes.

Q. Now with that as a refresher, I want you to recall all that was said, so far as you can, at that interview. Give us now what led you to seek it and make your complaint. You complained, as I understand it, first because he had failed to keep up his accounts and secondly because you learn, inadvertently, that he expected to go abroad, and the latter he undertook to explain by the fact that his wife insisted on his going because his health was broken down. He was broken down? A. Yes.

Q. You agreed that he ought to go? A. Yes.

Q. He went with your sanction? A. He did.

Q. Leaving that out. A. He referred to the matter of my association with my brother, as he put it.

Q. What did he say about it? A. He said that I had diverted work, if I remember correctly, to a rival firm, I think was about the words that he used. I can't remember absolutely sure.

Q. I don't expect the exact words. A. That I had diverted work to a rival of his, at least to our company's disadvantage.

Q. Did he explain how it was to the disadvantage? A. I don't know; he may or may not have done so.

Q. Can't recall that? Go on. A. And that that was what was making him so dissatisfied and so disturbed and then it was that I replied to him,

as I stated this morning, if that was what was making him dissatisfied that I would agree for a period of one year not to send any cases there and give him a chance to show whether or not that was the read crux of his disturbance.

Q. Now he stated, did he not, either then or on previous occasions, that your brother, who was the head of that sanitarium, was *persona non grata* to him as well as to Dr. Durand and that you knew that both Dr. Durand and Dr. Jonah would not attend patients at the sanitarium and that he thought it was a violation of the spirit and underlying principle of the agreement between you that you should insist on having patients go there when the relations were such between your brother and your other two partners, as I recall; did he not? A. Well, he referred to matters in about the same manner. I don't know he referred in just the same way. That was the substance and that was the reason for me agreeing to what I did agree to.

Q. He also said, did he not, if he or Dr. Durand could not go there that Dr. Porteous was there and your brother, who wasn't all together a surgeon, was there and that, therefore, the concern lost business in not being able to have either Dr. Jonah or Dr. Durand follow up, as you call it, patients that were sent there? A. That was the burden of his objection.

Q. Now at that time was the fact that you were personally interested in this enterprise adverted to? A. Was it a fact that I was personally?

Q. I asked you if at this interview the fact that you had a personal interest in what I called the sanitarium adverted to by Dr. Jonah? A. I don't get the import of your question.

Q. Now you were a director, were you not, of

the Private Hospital Association? A. I was, yes.

Q. And you were vice-president of it? A. Yes.

Q. And director, and you were one of the signers of the certificate of incorporation? A. I was.

Q. And that had been incorporated within a month or two after the agreement C-1 had been made between yourself and your two partners? A. Yes.

Q. Now I wanted to know whether or not it is true that at the interview I have been speaking of Dr. Jonah referred also to the fact that you yourself seemed to be personally and financially interested in this what he called rival enterprise? A. I think he referred to the fact—at least I think he asked the question whether or not I was.

Q. Well now, isn't it a fact that complaint was also made that patients at the hotels of the firm were sent to the sanitarium and that thereby the firm was losing the good will of the hotels and thereby lost the patronage of these patients? A. Dr. Jonah so stated, but I have no evidence of any of my patients that I personally took away was ever complained against.

Q. That statement was made, however? A. That statement was made.

Q. That was one of the grounds also? A. Yes.

Q. Now you have said that you agreed to stop sending patients to the sanitarium for a year? A. Yes, sir.

Q. You evidently purposely confined that agreement to one year? A. No, I had in my mind at the time that there were other reasons than what Dr. Jonah had stated and I gave him this limit as a privilege to show me whether it was or not.

Q. I say you purposely confined the period to a year? A. Yes.

Q. After the year expired you commenced again to send them there again? A. I have not.

Q. Haven't sent them there since the year expired? A. I haven't sent any single patient during the year.

Q. When was the year up? A. In October, 1912.

Q. And you are quite sure that no patients have been sent there by you since then? A. Not directly by me.

Q. Or indirectly? A. Nor indirectly by me.

Q. Have you had patients there? A. I have.

Q. Sent there by whom? A. Went there on their own accord or on the recommendation of others and sent—one went there because the husband stated—the first patient I had there during the year was a surgical case; the husband of the patient asked me if I would object to the patient going to my brother's sanitarium.

Q. You observe, Doctor, I didn't ask the long conversations. I say not sent by you sent by whom? A. None sent by me.

Q. Sent by whom? A. Sent by the husband in one instance. The other patient was there, went to the hospital or went to the sanitarium and had them call me there. Still another patient that the doctor who came down and operated wrote to me to know whether or not it would be agreeable to me if that patient should go to my brother's sanitarium to be operated upon.

Q. Coming now to the lists that you have made out (withdrawn). Does your name appear on the stationery of the sanitarium as vice-president? A. Not to my knowledge.

Q. Your picture is in the hall or outer office of the place? A. Yes, but—

Q. And aren't you—don't you recall that your name does appear on the stationery? A. Never

to my knowledge. And so far as the picture is concerned it is a contribution of the nurses in the institution and entirely unknown to me until I was asked to see it.

Q. Doctor, you have become responsible for some accounts of that institution? A. I have not.

Q. Did you not guarantee or agree to guarantee or be responsible for some charges that were made by one of the druggists? A. Only as for an individual patient; not for the sanitarium in the least.

Q. Well, the patient was at the sanitarium, wasn't he? A. Yes, and I don't recall that—that is, I mean to say I don't recall the exact conversation that Dr. Lawrence referred to this morning.

Q. Now that sanitarium has been a bone of contention between you and Dr. Jonah from the start, hasn't it? A. Not so much as Dr. Jonah's attitude towards my brother.

Q. Well, whatever you want to call it. He and your brother didn't get on. I don't care to go into the reason of it at all. They weren't friends and that has been the matter of constant comment and complaint on Dr. Jonah's part that you persisted, as he felt, in in some way tying up the business with that thing when the matter was not only, as he thought, competing with an enterprise and hurting the enterprise of your own concern, but also failing to observe the spirit and reason of the agreement which required harmony and loyalty and friendship and good feeling between you all? A. He made such objection.

Q. And Dr. Durand the same way? A. Latterly, not formerly.

Q. When did Dr. Durand commence? A. In the latter part of 1911, I think.

Q. Taking up the account that is attached to the answer, I understand that you say that you have found for the year 1912, 194 persons that Dr. Marvel has apparently attended, Jonah, has apparently attended, for whom he has given no credit in the account attached to the answer and that of that 194 names 123 are taken from what you call the office call book; is that right? A. I think that is 123; that is about your number at any rate.

Q. Now, without binding you to that—although I think that is correct; I took it down at the time—I ask you what this office call book was? A. These are the books that the secretary has on the desk and whenever—these are the books that the secretary has on the desk and whenever there is a call that comes over the 'phone or a message left, doesn't matter what that message is or what that call is, it is written down in this book.

Q. So that if the butcher, the baker, the candlestick-maker, Mrs. Jonah or anybody else called up Dr. Jonah on the telephone that call, whatever it was, would be entered on that book, wouldn't it? A. If it was pertaining to the business of our profession it is and if the name and address is usually given; wherever the address is given it is put down and the purpose for the call is put down.

Q. Now, isn't every call that comes over the telephone to all the doctors put down in that book? A. It is.

Q. Every call? A. Yes.

Q. Now have you undertaken to segregate or classify the calls, whose aggregate amount is 123, for the year 1912 or have you taken every call that appears on that book as having been over

the 'phone upon Dr. Marvel—Dr. Jonah? A. I have had others undertake to segregate them.

Q. Well, what others? A. My secretary and my son and my daughter.

Q. Then the 123 names that you say are taken from the call book—and I am not binding you to that number if I don't remember; that is the number you gave, 123 names—are the result of segregation or examination and determination by three different people whose final result you give; is that it? A. Yes.

Q. Do you know whether, as a matter of fact, they took all the calls or what principle they adopted if they left any out? A. I know what principle they adopted. I don't know whether they have left any out or not.

Q. Well, did they act under your instructions? A. They did.

Q. What principle did you instruct them to adopt? A. I instructed them to go over the books first and check.

Q. You mean now the office call books? A. And check every name, every call that was credited to Dr. Jonah and then transfer those to a paper by themselves, to a list by themselves, and then take that list and compare that list with the names that appeared on Dr. Jonah's answer, as given in his answer, and the names that didn't occur on that, and then take a list of the names that occurred on Dr. Jonah's cards that he had turned in and also the names that occurred on Dr. Jonah's list that I got from the druggist and compare these lists together, that is, compare these lists individually with the list given on Dr. Jonah's answer and to count and mark the names that did not occur on Dr. Jonah's list.

Q. And all that did not occur on Dr. Jonah's list are those which constituted 123? A. No, those are not all; that is all of 1912.

Q. I mean for 1912. A. Yes; 194, not 123; 194. There are two lists, you see.

Q. I am speaking now, Doctor, of the—call list alone. A. Yes, all right.

Q. My memorandum, which I think is correct, says there are 123 names on the call list which do not appear in the answer? A. Yes.

Q. So that you did take or instruct your assistants to take every appearance on the call to which Dr. Jonah is credited on the call book without any segregation or differentiation? A. No, only the calls that came in with a definite name to be seen, a definite hotel or place at which to call.

Q. Well, you didn't tell us that a moment ago? A. No, I didn't. I omitted that.

Q. Now, for instance, will you point out in one of these books an instance where, if your principle was followed out, the name would be omitted? A. You notice that it is checked with a red mark.

Mr. Bourgeois: That is the book is checked with a red mark? Let the Vice Chancellor see.

A. You notice where Dr. Jonah, for instance, "Dr. Jonah, please see Mrs. Robert Patterson, Haddon Hall." That is checked.

Q. What does that mean, that is used or not used? A. That means that is put on a list.

Q. All right. A. And all through the book those names are checked; here is one isn't checked.

Q. "Please call up 2870." Which do you mean only those that are checked in red are those that have been counted? A. That is all.

Q. You are sure of that? A. Yes.

Q. That is if your instructions were carried out? A. That is the instructions.

Q. Now what did your son and how did your daughter know how to segregate the names in that book? A. How did they know?

Q. Yes. A. Only under my instructions my directions.

Q. Were you present when the whole thing was being done? A. No.

Q. For instance, suppose you weren't there, what principle did you tell your son or your daughter, who weren't connected with the business and who, a large part of the time, I assume, lived down in another part of the town all together or were away to school, college or something another, what principle would you tell them to adopt in selecting certain names and leaving out others? A. I explained to them what I wanted to know and that was what I wanted to have a list made of all the calls that had come over the 'phone or had been noted in this book to Dr. Jonah. In going over—well, you don't want me to tell that.

Q. So did they take all, every one of them? A. They went over first and checked, just as I have shown you here, the names of calls that specified either an individual's name, that is, I mean if it were a call or the number of the room at the hotel at which he was to call.

Q. Now, what I want to get at, Doctor, is this: Exactly what did you say to your son or your daughter—who I assume knew nothing about the business there—to guide them in making their segregation; that is what I wanted to get at. A. I said I wanted a list of all the calls that had come to Dr. Jonah individually and were recorded in that book.

Q. Yes, go on. A. Well, that was the—

Q. Then they made such a list; did they? A. Yes; I have the list here.

Q. Well, after they had made that list then what occurred? A. Then I asked them to take these lists and compare them with the list that Dr. Jonah had given in his answer and to check up a list—

Q. Let me see the list, please. (Witness hands list to counsel.)

Q. Now, the witness produces two lists— A. Three.

Q. —three lists. Now, do I understand that these— A. These are 1911.

Q. —that these lists, if they are correctly made, represent every call that appears in these separate— A. No, not every call.

Q. —call books. A. Only from certain dates, as you will see.

Q. I mean between the dates, every call. A. Every call where the name of the patient or the name of the hotel or cottage number is given for him to make a call.

Q. Well, now, Doctor, they don't know who patients are, do they? A. Certainly they don't, but it is generally put down there, what the substance of that call is.

Q. For instance, "Dr. Durand, please make some white capsules." A. Yes, if a similar application had been made for Dr. Jonah it would not have been noticed. Was not to take anything except where he was specifically called, either to see a patient or to see someone at a specified number.

Q. No; if they don't know the patients, might be an entry "call to see John Jones" or Peter Smith; how are they going to know who the pa-

tients are; that is what I am driving at. A. They don't.

Q. Now, therefore, I want to again ask you how it was that your son and your daughter, who knew nothing of the business, could, under your direction select names who you say were patient calls? A. They were to check only such names that referred to the individual or place and where, if there was any specific direction with reference to that name or place that did not imply a visit, they were not to check it.

Q. Well, you trusted to their carrying out that arrangement or those directions? A. I did.

Q. And if they carried it out— A. It is correct and if they haven't, it is not.

Q. And the same with regard to the next year? A. Yes.

Q. Did you and your associates do any free work, Doctor? A. Free work?

Q. Free work. A. Yes.

Q. Wasn't it quite customary for all of you to attend certain people or prescribe for certain people without making any charges? A. Yes.

Q. Dr. Jonah did that, didn't he? A. Yes.

Q. Dr. Durand did it and you yourself did it? A. We did.

Q. Considered it policy to do it? A. We did.

Q. For instance the hotels and others? A. Yes.

Q. The proprietors of the hotels? A. Yes.

Q. And other people with whom it was well to keep in touch and keep in their good graces; part of the business policy? A. Yes.

Q. The bell boys? A. Bell boys I think mostly paid; there may be some exceptions.

Q. And other employees around the hotel who it would be considered judicious to keep friendly? A. Well, I think the most of the employees around

the hotel usually pay something; of course, they don't pay regular rates.

Q. Now is there any system or plan about that or does each one exercise a judicious discretion? A. Each one exercises a judicious discretion.

Q. Now, Doctor, I want to ask you if this stub arrangement attached to the blank prescription, which you say it was customary to have your secretary fill in the name and address, permanent and local, of the patient when they entered the hall, if those stubs had been removed from the prescribed blank and were in the hands of the secretary as separate and distinct stubs? A. Did I say they had been?

Q. I asked you if they had been? A. No—yes; but after the prescriptions had been written, and those are stubs that have not been used by us. We separate, for instance, oftentimes in repeating prescriptions and seeing patients we don't take down———you may see a patient a dozen, fifteen, twenty times, don't take down his name and address on your stub, but the first time.

Q. So that the secretary would have a bundle of stubs upon which she was supposed, when a patient entered the office, to write down the name and address of the patient? A. For the office.

Q. For the office memorandum? A. Yes.

Q. Now, the doctors, when they made their visits, were supposed to have little books in which they were to enter their visits? A. Well, they were not compelled to have a little book; we each chose our different methods.

Q. But you had some method of keeping tabs on yourself, so to speak? A. Yes.

Q. And the dereliction that you complain of of Dr. Jonah particularly is the failure to transmit

his report from whatever little documents or loose scrap of paper or what not he had as a daily record of his visits, to the accountant or secretary at the time specified in the agreement, or memorandum containing the memorandum of those visits, is that right? A. Partly at the time and partly for not doing it at all.

Q. Now, as I understand your evidence, in the interview just before Dr. Marvel, Dr. Jonah, went abroad you kind of—to use a Tennysonian phrase "Kissed again with tears"; you made up, agreed to be good, both of you, and were entirely happy? A. Yes, to a certain extent.

Q. The past was sacred and that was forgiven and you were going to start again, so to speak? A. So far as—all excepting the accounts.

Q. Well, he undertook to keep his accounts after that and he did do it for a while, as I understand it? A. Yes.

Q. This monogram on your prescription blank is your monogram, is it not? A. It is.

Q. And is the same cryptogram or monogram that you have had on your prescription blanks for a good many years? A. Since 1891.

Q. And sort of a trade-name or trade-mark? A. Yes.

Q. Do I understand the basis of your objection to the use by Dr. Marvel, Dr. Jonah of the white prescription blank, that it failed to have the top memorandum on it with regard to the name and address, or the fact that it failed to have the other names on it, or the fact that it has his name alone on it? A. The latter. Neither.

Q. None? A. That is not the objection to it.

Q. Then there was no objection because it contained his name alone? A. There wasn't an ob-

jection to the blank; there was an objection to what he seemed to be trying to do.

Q. I am speaking now to the objection to the prescription blank. Why did you object to his use of the white prescription blank and why have you taken such pains— A. That had been provided in our agreement before that we should all use the same.

Q. Where do you find that? A. It was upon the impression that their names should occur upon all stationery.

Q. I didn't ask you to go into what was insisted upon before the agreement was made. The clause in the agreement which you have in mind, I suppose— A. Yes.

Q. —"all professional cards, letter heads, bill heads and other stationery relating to the practice done shall be furnished by the said Dr. Philip Marvel and shall be used exclusively by the parties to this agreement." Is that the clause you have in mind? A. That is the clause I have in mind.

Q. There is no other clause I would think. Not that I remember.

Q. Why did you object to the use by Dr. Jonah of the white prescription blank? Simply because you hadn't furnished it? A. I objected because of the fact that that indicated that he was practicing separate and to himself, which was not a fact.

Q. Well, if you had furnished a similar blank you would have been entirely content that he should have used it? A. No, it was agreed between us that all of our names should—

Q. No, Doctor; I know what was agreed; the agreement is before us. Now I want to know, then, why it was that you objected to that white blank? A. Simply the statement I just made.

Q. Because it had his name on it? A. Because it has his name alone on it.

Q. Then you do now admit it was because it had his name alone on it? That was why you objected? A. Not the sole objection.

Q. That was one objection? A. That was one objection.

Q. Did you think that the fact that his name appeared on the prescription blank in the way that it appeared on that would be in time to draw away business to him? A. How is that?

(Question repeated.) A. I don't know that was material in my mind, but I had a different thought.

Q. The prescription blank isn't left with the patient, is it? A. No, it is handed to the patient and then transferred to the druggist.

Q. Very infrequently handed to the patient; patient very ill handed to the nurse and in your experience I don't suppose the patient in ninety-nine cases out of a hundred ever looks at a prescription? A. I don't know.

Q. I say what would be your experience about that? In your experience how many patients out of a hundred would you say you ever looked at a prescription? A. Oh, I don't know.

Q. Very few? A. Not a very large number.

Q. They are written in language they can't understand and they are not interested and that is sent off to get the medicine which is the thing they are anxious to get? A. Yes.

Q. Now how would the name Dr. Jonah appearing in that little corner down below there in that white prescription blank indicate that Dr. Jonah was trying to get your practice, that is what I want to know? A. It would simply indicate,

wherever it appeared, that he was by himself, because that didn't state anyone else was with him or that he was in association with anyone else.

Q. Well, were you afraid that the druggist would begin to think that Jonah was getting your trade? A. No.

Q. You were afraid, if anybody was going to think so, it was the patients, wasn't you? A. I don't know that I gave that a thought.

Q. And then again, Doctor, I want to get you to tell me why it was you objected? A. I objected because it was breaking another of the covenants of our agreement.

Q. Namely "all the professional cards, letter heads, bill heads and other stationery relating to the practice done shall be furnished by Dr. Philip Marvel?" A. Yes.

Q. In other words, if Dr. Jonah had gotten up a precription blank exactly like your blue form, nevertheless you would have objected to that? A. I don't think so.

Q. Then it wasn't because he furnished it but because it was not the kind that you wanted? A. Because it was not the kind that the covenants called for; that is, our agreement, not the covenants, our agreement before; both men continued—

Q. One minute, Doctor; there is no agreement before, Doctor. The agreement is this agreement. A. There was a statement at the time of the agreement.

Q. In law there is no statements. We are to look at this agreement and I want to know now whether it was the fact that Dr. Jonah himself relieved you of the expense of purchasing the prescription blank which you objected to? A. I don't know that he did.

Q. Well, you didn't pay for those white blanks, did you? A. I did not.

Q. You know, as a matter of fact that he didn't, though, don't you? A. It was so testified this morning.

Q. Then it wasn't because you insisted upon being the epense bearer of the enterprise that you objected? A. Not at all—well, no it wasn't.

Q. It was because of the character of the prescription blank, wasn't it? A. That was a part, the prescription blank was a part of the declaration of the company.

Q. Was what? A. Part of the declaration of the company and when he began suing his blank Dr. Durand made an objection to it.

Q. I didn't ask you that. I asked you if it was because of the character of the blank and your answer is yes, isn't it? A. Certainly it was because of the character of the blank and the stipulation that it was to be furnished by me and, furthermore, that that represented the company not an individual.

Q. Well, is there anything on any of the blanks that indicate, the blank you did furnish, that indicated you were partners? A. Not on the prescription blank.

Q. Not anything to indicate there was a firm, is there? A. Not on the prescription blank.

Q. That is what I am talking about. On the contrary you have your large trade-mark there? A. Yes.

Q. And you have your name individually and the other two doctors' names individually? A. Yes.

Q. And because your name and your trade-mark and Dr. Durand's name was omitted from the white you objected? A. Yes.

Q. Is that it? A. Yes.

Q. Because you thought that thereby Dr. Jonah was diverting practice to himself and depriving the enterprise of business; is that right? A. That was largely it.

Q. Well, now, when did you discover he was doing this? A. At the time that I went up to Mr. Jackson's drug store.

Q. Which was when? A. It was in July or August; I don't know which.

Q. Of which year? A. Of 1912.

Q. Aren't you mistaken about that, Doctor? Didn't you know of it long before that? A. Before we entered into our last agreement, Dr. Jonah—

Q. I mean during the life of this agreement? A. No, I didn't.

Q. When was that Jones incident to which you referred? A. About the same time.

Q. Which was the middle of 1912? A. In August, 1912.

Q. Now in June or July, 1912, you and the Doctor had some peace talk in which you asked him how he would like to, on what terms he would like to get out and you say he suggested what? A. He suggested that I retain the amount of money that was coming to him from the firm and that he be privileged to retain his own accounts and to continue.

Q. Now, isn't it a fact the suggestion that Dr. Jonah made to you was that everything that was coming, whether on the books or not, to the firm, which he said was quite a large sum, and a thousand dollars besides would be turned over by him if you and he, by him to the firm, if you and Dr. Durand, if you would agree to separate? A. That was but it came much later through my attorney.

Q. No such offer was made to you personally? A. No such offer was made to me personally and at the time I said to him at once that there was a principle involved in this and I won't barter principle for money.

Q. What principle did you think was involved? A. Dr. Durand was a partner and his interest had to be taken care of and I had no right to barter his interest for money.

Q. But you did barter with Dr. Durand since then, didn't you, and paid him a certain sum and let him quit? A. I paid him a certain sum and let him quit, yes.

Q. Your principle wasn't involved on that time, was it, Doctor? A. I don't know that it was.

Q. And that was done entirely without Dr. Jonah's knowledge or consent, wasn't it? A. Dr. Jonah and I had ceased communications.

Q. And this case had not yet been tried and which is being tried on the theory that the partnership is still existing and you are asking to have it dissolved? A. Yes.

Q. Now, I want to know what principle was involved in failing to accept the offer, that you say was made to you through your attorney, by Dr. Jonah last year that wasn't involved in the deal that you did make with Dr. Durand later? A. Well, I think this principle: Dr. Durand had already declared that he was going to leave, he had freely separated himself from the company; he asked me if I wouldn't settle with him that he might go and it was under that request that we came to the agreement which we did.

Q. And look at this document and see if—this document and see if this represents a copy of the paper signed by Durand and yourself? A. This looks like it.

Q. And have you seen the supplemental answer? A. Yes, sir.

Q. —filed here today, or a copy of it? A. I have.

Q. And that correctly states the arrangement that was made? A. So far as I know.

Copy of agreement referred to marked D-1 for identification.

Q. Now you have stated that to differentiate your transaction with Dr. Durand, to which I have just called your attention, from the attempted arrangement that Dr. Jonah suggested with your counsel because Dr. Durand had expressed an intention to leave. You have had trouble with Dr. Durand, haven't you? A. Slight trouble, if you call it trouble.

Q. Well quarrels? A. We had one quarrel.

Q. In connection with the same partnership arrangement? A. That specific part of it; not with that.

Q. Well, the partnership arrangement? A. No, that specific part of it.

Q. And was that only part of the partnership arrangement? A. Yes.

Q. And haven't you had some difficulty with Dr. Canning, your office assistant, and has he given you notice that he is going to quit?

Mr. Bourgeois: I object; that is irrelevant.

The Vice Chancellor: I can't see that is relevant.

A. May I say absolutely no except as to the latter part.

Q. Now, Dr. Marvel, I want to ask you if this also isn't true, that another ground of complaint has been from your associates in this enterprise

that you were absenting yourself from the practicing and going into outside enterprises, mining, enterprises and other business schemes and that your own share of the work was not performed by you and that these younger men were shaking the tree and you were picking the fruit?

Mr. Bourgeois: Objected to as irrelevant. Nothing in the agreement prevents him going into outside enterprises.

The Vice Chancellor: I forget just where the question commenced. Is this asked touching a conversation between the parties? If you mean to ask whether they ever made that complaint of him, I would sustain it, but you asked whether that is not a ground of complaint which they have?

Mr. McCarter: I don't understand. Your Honor, my question is intended to elicit the information as to whether or not they had not complained, we say, to him of that very thing.

The Vice Chancellor: I don't think the question asks that.

Q. Isn't it a fact, Doctor, that that complaint has been made of you both by Dr. Jonah and Dr. Durand? A. It has been by Dr. Durand, but I have no knowledge of it having been made by Dr. Jonah.

Q. It is true, is it not, that during the life of the agreement, since January 10th, 1910, you have been away a great deal attending to other business and not attending to the practice in Atlantic City? A. It is a fact that I have not been away in the last three years as much as I was in the previous three years and further it is a fact I have not been away in any one year the full extent of the amount allotted to me.

Q. Will you please tell me what time is allotted to you by the agreement? A. Three months, I think, if I want to take it.

Q. Can you point me out any provision of that kind? A. Whether it is there or not it was so understood and they were each to have six weeks.

Mr. Bouregois: In the supplemental agreement, Doctor, I guess.

A. Well, I say it was so understood.

By the Vice Chancellor: Q. Don't seem to have gotten it down on paper? A. It was in the supplemental agreement.

Q. It isn't signed? A. But it never was fully signed.

By Mr. McCarter: Q. Nothing in there; nothing signed? A. Not in this particular agreement.

Q. In any agreement, any copy; I don't want to refer you to any incomplete copy. A. There was a copy prepared after this agreement which recited a term which each of us might be allowed for a vacation.

Q. Was that agreement signed by everybody? A. I think there was one copy signed but I am not absolutely sure about that.

Mr. McCarter: If there was any such copy I would like to see it; know of any such copy, Mr. Bourgeois?

Mr. Bouregois: I don't know of any.

Q. Is it a fact that you have, during the life of this agreement, been interested in a mining enterprise, a land company enterprise, a bug killers' enterprise, some tobacco enterprise, some steamboat enterprise, some farming in Delaware, a mortgage company, a Ventnor Syndicate, Oppenheim liquor business? A. Not all of them since I went into this agreement. That is I mean—

Q. How many of that list of varied interests do you admit have been occupying more or less of your attention during the life of your agreement? The land company, for instance, we will say that? A. The land company I have been in that ten years with Judge Endicott; that had nothing to do with this.

Q. The so-called Ventnor Syndicate, that has been pending during this, hasn't it? A. I am not absolutely sure whether that was 1909 or 1910.

Q. Well, still going, isn't it? A. Yes, so is the land company still going.

Q. Now the tobacco bug killing business? A. I went into that before signing this agreement.

Q. Still going? A. Yes.

Q. And during the life of the agreement you went South to attend to that, didn't you? A. I did. Was absent from my practice five days.

Q. Didn't you go West on the mining business as far as the Pacific coast? A. During my vacation.

Q. Whatever time it was you went that way? A. I took my vacation in that way, but I have been doing that for three or four years before, taking the same vacation.

Q. How much vacation, as you call it, have you taken for a year? A. Somewhere in the neighborhood of six to seven weeks; just fifty-eight out of my practice in 1911.

The Vice Chancellor: How many?

A. Fifty-eight days, and a good deal less in 1912.

Q. Do you remember having the stationery that you provided, or some parts of it, stamped with a rubber stamp "pay checks to the order of Dr. Marvel," or words to that effect? A. I should; that is what Dr. Durand and I had a fuss over.

Q. When was that done? A. That was done—we began using that stamp the latter part of 1910, I think.

Q. And that has been a source of trouble between you and your associates, hasn't it? A. Only in the last year.

Q. Is that the language? A. No, it is not Dr. Philip Marvel; it is simply Philip Marvel. I have the stamp here and I have also—

Q. 'To avoid errors make all checks payable to Philip Marvel. Statements rendered monthly.'' Now when did you say you started that? A. 1910, I think.

Bill head bearing imprint of stamp marked D-2 for identification.

Q. What had occurred that started you doing that in 1910? You had prepared quite expensive bill heads, engraved bill heads indicating that all three of the gentlemen were members of this enterprise, now I want to know what had occurred, either on Dr. Durand's part or Dr. Jonah's part that prompted you to rubber stamp your bill heads that way and direct checks to be sent to your order for work that had been done by Dr. Jonah or Dr. Durand with people perhaps you had never seen? A. In the first place checks coming in signed by the three men it was necessary to hold them up until they would all sign them. In the second place Dr. Jonah carried a check around in his pocket for several months. In the third place the auditor made the recommendation and the secretary either sanctioned it or agreed with it and we held a consultation and all agreed to have something of that sort arranged.

Q. You mean now to say that both Dr. Durand and Dr. Jonah agreed to a rubber stamp directing

all checks should be paid to you? A. I never had any knowledge that they disagreed until lately, in this last year. We held a conference and it was agreed that a stamp should be made, what was a copy of the stamp was made.

Q. What did you mean by saying a moment ago they agreed to it? A. I say we held a conference and on the recommendation of the auditor and insistence of the secretary we agreed on that stamp.

Q. You mean to say Dr. Jonah and Dr. Durand both agreed to that form of stamp? A. I certainly mean to say they never disagreed until latterly.

Q. Well, did they agree to it? A. Yes.

Q. Both of them? A. I say they did.

Q. When and where? A. At the time; just before the stamp was made.

Q. When and where was that? A. Well, I can't; it was at the office, I presume. I don't remember the exact details of it. I know we acted upon the recommendation and advice of the auditor.

Q. Now you have stated that the secretary suggested it? A. No, I said the matter was suggested by the auditor and concurred with by the secretary and Dr. Jonah and Dr. Durand and myself.

Q. The secretary is Miss Hendrickson? A. Yes.

Q. Do you now want to say Miss Hendrickson suggested that all checks— A. No.

Q. Agreed with, that she was consulted as to the propriety of having a rubber stamp put on your stationery to the effect that checks, all checks should be payable to you rather than to anyone of the other doctors? A. We talked this matter over in a general way; business account was in my name. Dr. Jonah was wearing a check around in his pocket until about ruined it and it had to be

some means of bringing the account somewhere where I would be responsible for it and this was the solution of it.

Q. I want to know if you now say Miss Hendrickson either suggested or assented to the idea that checks should be sent to your order alone? A. I didn't say she suggested it. It was talked over and in a general way assented to by all. She didn't do it in person perhaps.

Q. What do you mean by a general way? Do you mean to say that you suggested in the presence of Dr. Jonah and Dr. Durand and Miss Hendrickson that a rubber stamp should be prepared and put on all your bill heads to the effect that "to avoid errors make all checks payable to Philip Marvel?" A. That was the substance of it, yes.

Q. Now when was that, Doctor? A. That was in 1910 after the auditor's report.

Q. And Dr. Jonah was there and Dr. Durand was there and Miss Hendrickson was there? A. I don't mean to say they were all there at the same time. I said we discussed this matter. We didn't call a special meeting to discuss it. It was discussed by all in an informal way perhaps at different times. I am not sure about that; there was no special meeting called for it.

Q. Now, as a matter of fact, since the last year or eighteen months haven't both of your partners complained that was a humiliating thing to have on the stationery and that it implied to the trade to your clients and patients that the finances of this concern were only safe in your hands and that it would not be safe to make a check to the order of Dr. Durand or Dr. Jonah although Durand or Jonah had done all the work and that you

had never seen the patient? A. They made such a complaint in the latter part of June or July of 1912; not before.

Q. And never before that? A. I have no recollection of it being done before. They may have spoken of it casually before, but that is the time they brought it before me formally.

Q. When they did bring it before you either formally or casually did you tell them that they had agreed to do as you now say? A. I said that had been agreed and it was recommended by the auditor and until they showed me that it did the damage they stated it did it would remain. I was willing to listen to a committee of three or five business men or professional men and if they could show me I was doing them any damage I would consent to remove it, but not until then.

Q. Well, Doctor, if it had been agreed by these men that this should be done, why were you suggesting that it should be arbitrated by hotel men— A. Because they were complaining latterly.

Q. When did you say this agreement was reached? A. In 1910, early after Mr. Bushrod's recommendation.

Q. How early in 1910? A. I can't state that.

Q. Your trouble with Dr. Jonah about his accounts had not yet commenced had it? A. Yes, commenced in 1910, September 27th.

Q. Before or after that? A. I think before that.

Q. Before that? A. I think it was.

Q. Are there not several of the patients of the concern like Mr. Callaway and Mr. Jardine whom you have treated and who were pay patients whom you failed to charge? A. I have treated Mr. Callaway and Mr. Callaway's family since 1901 or 1902 and I never rendered him a bill.

Mr. Bourgeois: When?

A. Since 1801—1891 and 1892.

Q. Never rendered him a bill? A. No.

Q. How about Mr. Jardine? A. Mr. Jardine has had bills rendered two or three times but they still remain unpaid.

Q. Have you had presents from Mr. Callaway? A. I have.

Q. Sir? A. I have.

Q. During this time that you have been rendering him no bills? A. I have.

Q. As an horonarium for compensation for the services? A. Not at all.

Q. Act of friendship? A. Mr. Callaway is taking care of some, looks after some real estate of mine, receives a compensation for it, and he remembers me every Christmas with some slight token of his friendship.

Q. And haven't you very recently had a very expensive table from Mr. Callaway? A. What?

Q. A very expensive table? A. I have not.

Q. What was it? A. At this past Christmas I had, oh, this Japanese, a plant table, at least a stand to put a jardiniere on, teakwood, supposed to be teakwood.

Q. Now, haven't you received presents from other patients during this period which you have treated? A. Possibly I have. I think all of us receive presents every now and then from patients.

Q. I didn't ask you about others; I asked you if you haven't received from patients, which you make no charge and don't pretend to make any charge, and whom you have treated constantly, presents? A. Members of my family.

Q. Have? A. I have.

Q. And no account, of course, was made or sug-

gestion of making any account to the firm for them? A. No. Same thing is true of the other members of the firm.

Q. Haven't you—isn't your daughter wearing a ring now that you have marked upon the books as received for security for some bill? A. Absolutely no; that ring is in the safe.

The Vice Chancellor: Is what?

A. That ring is in the safe.

Q. Has it always been in the safe? A. It has.

Q. Never was used by any member of your family? A. Never was used by any member of m family.

Q. Now after you separated under the agree ment marked Exhibit D-1 for identification, being the agreement between you and Dr. Durand, you made a deal by which you would be associated with Dr. King, did you not? A. I have not.

Mr. Bourgeois: That is objected to.

Objection withdrawn.

Q. Did you not so state to Dr. Durand? A. I said I had employed Dr. King as an assistant.

Q. When does that employment commence? A. First day of February.

Q. Take Dr. Durand's place? A. Yes.

Q. Did you consult Dr. Jonah with reference to that? A. I did not.

RE-DIRECT-EXAMINATION by Mr. Bourgeois:

Q. Now, Doctor, about this professional treatment without charge. Do you know if Dr. Jonah treated a family in Atlantic City for sometime and received board for it without charge? A. I do.

Q. How long a time? A. I think somewhere in the neighborhood of two years.

Q. And where did he board? A. At the Seaside Hotel.

Q. And what family did he treat? A. Mr. Cook and his family.

Q. Was there any claim or objection made to that on your part? A. There has never been.

Q. Has Dr. Jonah ever objected to you treating the members of your family without charging them? A. Not to my knowledge.

Q. Has that ever been a cause of objection between you? A. No.

Q Now the stamps on the stationery; you say that checks were sometimes held by Dr. Jonah? A. I do.

Q. Have you some checks that were recently held by Dr. Jonah? A. I have.

Q. I wish you would produce them. (Witness produces checks.)

Q. Witness produces three checks—no more than that—six checks, aggregating, I think $46, and also produces his own check for $46 and I ask him when and where did you get these six checks that are made payable to the order of W. E. Jonah, M. D.? A. I got them out of the bank account as it was being made up to send to the bank.

Q. When; on what date? A. Part of them I got on January 10th and the others the date is on.

Q. This six are January 10th? A. Yes.

Q. Now when you took them out of the bank account what did you put in place of it in the firm account? A. I put my own check for the summary amount of those checks.

Q. And this cancelled check is attached to these? A. It is.

Mr. Bourgeois: I want to offer in evidence check of Hattie B. Stocking dated

August 6th, 1912, received on 10th of January—

Q. Is that the day it was turned into the firm account? A. It was either that day or the day before. It is when the account was made up.

Mr. Bourgeois: —another check dated July 13th, 1912, to the order of Dr. W. E. Jonah for $4, signed by Mary H. Steel; another check dated May 1st, 1912, to the order of W. E. Jonah, M. D., for $3 signed by James M. Ludlow; another check dated September 19th, 1912, payable to the order of W. E. Jonah, M. D., signed by Alfred Lee for $10; another check dated June 29th, 1912, payable to the order of W. E. Jonah for $15 signed Matilda Leonard; another check dated September 14th, 1912, payable to the order of Dr. W. E. Jonah for $2 signed by A. Eisenberg, and Dr. Marvel's own check for the amount of them.

Said checks admitted in evidence and marked Exhibit C-17.

Q. Now, Doctor, I show you three other checks aggregating $16 and your own cancelled check for a like amount payable to Philip Marvel and ask you where those three checks came from? A. They came out of the bank account that was made up to be deposited on December 31st, 1912.

Q. And you took them out and substituted your own check? A. I did.

Mr. Bourgeois: I offer in evidence check dated March 15th, 1912, payable to the order of Dr. Jonah for $2 signed A. C. Schlessenger; also a check dated July 5th, 1912, payable to the order of William E. Jonah, signed Blanche F. Wolf for $2;

also check dated June 24th, 1912, payable to order of Dr. Jonah for $12, signed Eleanor B. Burdick, and Dr. Marvel's check.

Said checks admitted and marked Exhibit C-18.

Q. All of these checks have been endorsed by Dr. Jonah. Now, Doctor, this mining stock, Western mining stock and the stock you owned in the tobacco concern, stock you owned in the steamboat, farming, mortgage company, and so on; was that anything other than an investment of moneys by you? A. That is all.

Q. In these different corporations? A. That is right.

Q. Was there any arrangement by which you were to refrain from investing the little moneys you did make while practicing? A. None whatever.

The Vice Chancellor: Were you an officer in any of the concerns? A. I was an officer in the land company.

Q. That is the St. Leonards? A. St. Leonards Land Company. I was a director in the steamboat company for a time but resigned and I am a director in the Ventnor Syndicate. I have never attended but two meetings.

Q. What is the Oppenheim Syndicate? A. That is a syndicate that had for its purpose the cure of the liquor habit.

Q. In other words in the medical line? A. Yes and I went in that, I think, before Dr. Jonah and Dr. Durand came to me, if I remember correctly.

Q. Doctor, suppose Dr. Jonah had desired to divert your business to himself would the use of his own individual prescription blanks have aided him in that purpose?

Mr. McCarter: I object; it seems to me that is a hypothetical question.

Mr. Bourgeois: If your Honor please, he can tell. He knows the business there and he can say whether it was or not.

The Vice Chancellor: No, he can explain how, but I would rather not have an answer to that question in that form.

A. In my judgment.

Q. But how? A. By simply bringing him alone without the names of either Dr. Durand and myself before the patient.

Q. And would it or not furnish you with a means of detecting that diversion? A. It would.

Q. Could you detect it if it was on his blanks or would you fail to detect it? A. Why it would enable me to detect it.

Q. If you got on to the blank? A. Yes.

Q. Suppose he had written the prescription then would it help you? A. No.

Q. Suppose he had written the prescription on your blanks and attempted to divert the business, then would you have had an opportunity to get at it? Could you reach the patients, in other words? A. It would depend entirely on how he tried to divert.

Mr. McCarter: This is all hypothetical.

Q. Now, Doctor, you answered a question to Mr. McCarter that Dr. Jonah was not in fact practicing alone when he used these independent blanks or his own individual blanks; what did you mean by that, explain it. A. I mean he was a member of the firm which was constituted by Doctor Durand himself, and me.

Q. But you didn't mean that as between Dr. Jonah and the patient that he was not practicing alone? A. No, I didn't mean that.

Q. Now has Dr. Jonah handed in all of the moneys that he has made during the year 1912? A. Has he?

Q. Yes. A. I don't know.

Q. How much moneys has he turned into the firm, if you know? A. The auditor's account states.

By the Vice Chancellor: Q. You mean the account annexed to the answer? A. No.

Q. 1912? A. If you don't mind, I would ask you to ask the auditor to give you the full account; he is here.

Witness temporarily withdrawn.

NICHOLAS S. ALBERTSON, a witness produced on behalf of the complainant, being first duly sworn, testified as follows:

Direct-examination by Mr. Bourgeois:

Q. Mr. Albertson, you live in Atlantic City? A. I do.

Q. And are an expert accountant? A. Yes, sir.

Q. Have you audited the books of the medical firm of Philip Marvel, Dr. Durand and Dr. Jonah? A. Yes.

Q. For how many years? A. Since—I was called in first August, 1911. Since I may say the 1st of October following.

Q. Have you ever requested that Dr.—have you ever made any request on any of the physicians to render an account of their work? A. I have.

Q. On whom? A. All of them.

Q. When? A. At various times after I learned the mode of conducting the accounts.

Q. Did they respond? A. Two of them did.

Q. Which two? A. Dr. Durand and Dr. Marvel.

Q. Will you state how much moneys—did Dr. Jonah respond? A. He did not; that is not fully.

Q. Was there a complete account and accurate account rendered during the year 1911? A. There was so far as I could get it from the books; yes.

Q. I mean was there any detailed statement rendered of Dr. Jonah's work? A. There was not.

Q. How did you arrive at the work he had done for the purpose of making out your accounts? A. I didn't arrive at his work.

Q. How did you make out your accounts? A. I made out the accounts all I had.

Q. How did you get the part you had of his? A. He got the same; he received his proportion allotted.

Q. I mean how did you get the data from Dr. Jonah so as to make out the account for that year? A. I never received any data from any of them; I received it from the secretary.

Q. And was the nature of that, was it an itemized report from him or just lump sums? What you got you know what that was? A. What I received is what I call the controlling books of any concern.

Q. You just saw the books? A. I just got the books.

Q. Now what was the amount of money that Dr. Jonah has turned into the firm during the year 1912? A. 1912?

Q. Yes.

The Vice Chancellor: As you ascertained from the books.

A. From the books.

Q. As you ascertained from the books? A. You say 1912 now?

Q. 1912. How much? A. $7,478.50.

Q. Now how much was turned in for the period between for the first quarter of the year? A. First quarter 1912?

Q. Yes, of 1912? $7,094.50.

Q. That is up until what, March 31st? A. Up till March 31st.

Q. Next audit was when? A. Next audit embraced next two months, April and May.

Q. How much was turned in for April and May? A. $467.

Q. Next audit? A. Embraced one month, June.

Q. How much? A. $139.

Q. Next audit? A. Three months, July 1st to September 30th.

Q. And that was how much? A. $242.

Q. And last audit? A. Embraced three months, October 1st to December 31st. $4,846.

Q. They total the amount you stated above, do they? A. Yes, sir.

Q. Now, Mr. Albertson, why did you have so many or so frequent audits of these books? A. The arrangement was for a three months' audit originally and then for an annual, a general statement annually.

Q. But why? A. Why this number?

Q. Yes, what object had you in view in having them so frequent? A. Well, there is one more audit; there is five in this bunch.

Q. Well, why was that? A. As near as I can recollect about the end of May, 1912, the situation between the partners was becoming very acute and I was asked by Dr. Marvel to come and close up the account to the 1st of June, which I did.

Q. Were you asked to do that with the hope of getting Dr. Jonah to render the account? A. I was; that was one of the specific purposes.

CROSS-EXAMINATION by Mr. McCarter:

Q. Mr. Albertson, you say that you requested all of the partners to render an account? A. Yes, sir.

Q. What did you ever request of Mr. Philip Marvel, Dr. Philip Marvel? A. That in the matter of their cash collections, what I would call in a commercial business coming over the counter—

Mr. Bourgeois: That is office business you mean? A. Office business—there had a laxity grown up, which I considered, from the standpoint of an accountant, should not be between partners; that in a business of any account where cash transactions were involved or any transactions each for the benefit of the other, that not only the spirit but the letter of the contract should be kept and the money should be turned in frequently.

Q. Well, what had you found Dr. Philip Marvel had failed to do in that respect? A. He had lapsed but a short time. I say that a short time. I say one month perhaps. May be only two or three weeks, but it was but a comparatively short time.

Q. By lapse you mean what? A. I mean by that that the moneys collected this week were not turned in this week. The next week were not turned in next week.

Q. Well, do you mean the moneys were not turned in or the account of the moneys was not turned in? A. Moneys, yes, sir; or account wasn't.

Q. Which was it? A. Both.

Q. Then why didn't you say so? A. Wait until I differentiate counsel. You remember I spoke of moneys coming over the counter, office business. I don't refer now in regard to any of them lapsing in their payment of moneys on outside practice, only on cash transactions then and there at the office.

Q. I understand that. What I am asking about was it a failure to turn in the money or failure to turn in an account of the moneys that had been in fact taken in the office business? A. Failure to turn in an account of the money and the money.

Q. Don't you know it was the practice of all the physicians to appropriate frequently—and it was agreed they should—moneys they received over the counter and that they should make an account of it? A. I don't know that.

Q. At any rate what you found had been the fact with regard to Mr. Marvel, Dr. Marvel, was that he had failed to turn in either an account or moneys? A. Yes, sir.

Q. For how long? A. Well, say a month or so; two weeks. I can not be positive of that. Short time only. Some more than with the others, for a longer period.

Q. And Dr. Durand? A. Same.

Q. And had you any suggestions to make to either Dr. Durand or Dr. Marvel with regard to more prompt accounting for their outside work? A. I had such suggestions, yes, sir.

Q. For both of them? A. To all three of them.

Q. I asked about those two? A. To those two; yes.

Q. So that there had been some, what you have been pleased to call lapses, by Dr. Marvel and Dr. Durand on the outside accounting as well as the— A. Yes, there had been but I couldn't tes-

tify on that point because I know nothing about outside work.

Q. You called their attention to the fact? A. I did.

By Mr. Bourgeois: Q. I want this witness to again look up and see if it is a fact that Dr. Marvel always turned in cash or turned in an account? A. After that account.

Q. When is this account? A. I say after I became conversant with the matter, after October 1st, 1911.

Q. I say you look up prior to that time and see if that wasn't the fact prior to that time? A. I wasn't the auditor prior to this time.

Adjourned to January 30, 1913, 9 a. m.

Hearing resumed on Thursday, January 30th, 1913, at the hour of 9:00 a. m., in the presence of the respective counsel heretofore noted.

NICHOLAS S. ALBERTSON, re-called:

By Mr. Bourgeois: Q. Mr. Albertson, yesterday in the cross-examination you stated something about Doctor Marvel not having turned in the cash over the counter? A. Yes, sir.

Q. What did you mean by saying that he didn't turn in the cash over the counter? A. Why, I found in checking up the accounts of the secretaries in the books that the moneys collected by the three partners had not been turned in to the secretary and eventually found its way to the bank account.

Q. Now, which moneys did you have reference to? A. I meant that in the office.

Q. Then you didn't mean to say that Doctor Marvel had not turned in an account of the moneys he had collected in the office? A. Oh, not the account but the money itself, the three partners.

Q. Now, after you discovered that the three partners had not turned in the cash then what did you do? A. I suggested very strongly to Doctor Marvel that that matter should be remedied, the money should be turned in and some method made whereby it should be brought up to date regularly.

Q. Now, in what did Doctor Marvel turn in his account of the moneys that he received in the office, did you say? A. Yes; he turned it in by his own check.

Q. I didn't mean that? A. What?

Q. I mean the account. A. The account, yes; it was kept in a memorandum book that I had access to and checked up.

Q. That is the memorandum book that went to the secretary? A. Yes; she kept that and I checked that up.

CROSS-EXAMINATION by Mr. McCarter:

Q. Well now, Mr. Albertson, you are an accountant, of course? A. Yes.

Q. Understand the difference between an account and money? A. Yes, sir.

Q. Now, I think as many as four times yesterday you stated that all three of the partners were behind in rendering accounts of the money that they had taken in, as you expressed it, over the counter? A. Yes.

Q. And they were also derelict in having put in the money; that they seemed to go on the principal that they could take that money and appropriate it on account of their shares. Now, if you say that so far as Doctor Marvel was concerned that dereliction only applied to rendering—putting in the money, why did you yesterday speak of accounts? A. Well, there may have been some confusion on that, inasmuch as I wasn't the bookkeeper.

Q. May have been what? A. There may have been some confusion in that, inasmuch as I was not the bookkeeper, because when I was checking over these and giving my testimony yesterday I said accounts when I may have meant moneys, or *vise versa.*

Q. The question is not what you may have meant. A. Well, what I did mean was that—

Q. Was what? A. That the money, the office money was not turned into the channel that I thought as an accountant it should go soon after it was collected.

Q. Well, you then now wish to say that so far as you observed there never was any failure on the part of Doctor Marvel to make an account promptly of the moneys that he took in over the counter? A. I now say that there was no failure to make the account, it was simply the money over the counter, which, of course, refers to the three partners, not alone to Doctor Marvel.

Q. Why did you say yesterday he was as much as from three to four weeks behind in an account of the moneys that he had received over the counter? A. I didn't mean that, I meant the money not the account.

Q. Well, what kind of accounts did you find that he rendered? A. Reports, as he testified.

Q. I don't care anything about his testimony. Now, I want your evidence, Mr. Albertson. A. The reports that he would turn in to the secretary would be transcribed into a book from which I made up my audit.

Q. Did you see his reports? A. I don't think I did.

Q. No. Well then, how do you know when he put in his reports? A. I don't know physically when the book was written up but the book was done when I was ready to go at it, understand.

Q. Well now, he didn't keep the book; the secretary kept that? A. The secretary kept the book.

Q. And the reports or accounts that you are now speaking of that he rendered ar things that you never saw? A. I never saw.

Q. How do you know now—what enables you, after having thought over this thing over night—been down to Atlantic City, I suppose? A. Yes, sir.

Q. How do you now say that he rendered his accounts when you never saw them and don't know when they were rendered? I suppose he has told you so, hasn't he? A. Oh, I haven't talked with him.

Q. Haven't talked with him? A. Oh, no, I haven't seen him.

Q. Then how do you know it? A. I know this: That the books wherein the accounts were transcribed from these reports was written up promptly every time I saw it; when it was done, if it was only done ten minutes before or ten hours before or ten days before I couldn't say, I know it was ready at that time.

Q. Well now, you would make these audits at the period you stated? A. Yes.

Q. And the audits would cover that intervening lapse of time? A. From the last time, that is.

Q. And these reports that you are speaking of this morning were supposed to be made how often? A. I can't say about that; I am not—I was not the principal. I can give you what I think they ought to have— when I think they ought to have been made, but as to the evidence when they were made I can't tell you that.

Q. Now, when was it that you first brought the three doctors, including Doctor Marvel and Doctor Durand about, whatever you did—prod them? A. Soon after the 1st of October, 1911.

Q. And when again? A. After the next quarterly audit, which occurred January 1st, 1912, three months later.

Q. And when again? A. Oh, I couldn't say about that; perhaps during the intervening time. Now, to what do you refer? To all of them?

Q. My question is plain. A. When again? What is the question? The last question was, when again. That would take in the first question. Well, I think I had better halt on that. When again—when I brought the three.

Q. About come to a stopping place? A. Yes.

By Mr. Bourgeois: Q. Who did you afterwards prod about it? A. Well, I spoke to Doctor Jonah about keeping up his part.

Q. Up till how recently? A. Oh, that is, I should say, not later than the first quarter of 1912, I should say.

By Mr. McCarter: Q. How did you make up your audits, indicating, for instance, the 1911, the receipts of the firm from Doctor Jonah's branch of $10,131? A. From the actual cash received into the firm, books of which were kept denoting how much of the total cash came from each one

of the three. That is to say, in the case of moneys received on what I would call charge accounts and the totals of the office practice, regardless of whether the money had been turned in or not.

Q. Now, of course, when you found that there had been received $10,131, that meant the cash had actually come in? A. Not hardly; that is to say, if Doctor Jonah had done, we will say, for instance, $50 worth of office practice during that period and had only collected and turned in $12 of it the other $38 would be naturally coming from him. I included that in the receipts by charging him with it.

Q. Well, you charged his account with it? A. Yes; that would mean that of course it was actually received although the tangible money had not been received.

Q. Now, you of course had occasion to examine and become familiar with this system of cards that they had in their bookkeeping? A. Not the card system as a system, to examine their card system to find out whether it was absolutely correct, I never did such a thing.

Q. Well, I didn't ask you that. A. Well, I am familiar with the cards.

Q. Where were the cards kept? A. Kept in a regular card case made by the usual manufacturers, in alphabetical, numerical order, just as any card system is kept.

PHILIP I. MARVEL, re-called:

By Mr. Bourgeois: Q. Now, Doctor, you have spoken to me about making a correction with regard to some of your testimony yesterday. You may make that correction at the present time. A.

I stated yesterday that my secretary, Miss Greenleaf, and my two children, a son and daughter, had made up these lists, or, at least, the substance of that. Miss Greenleaf made up the lists and my son and daughter only helped her to check them up. And then I made an omission in my testimony with reference to the conference that Doctor Jonah and I had in October, 1911, in which there was another matter discussed that had passed my memory yesterday, and that was the matter of X-ray, an X-ray machine which I had, it was in my possession and my property before I made the agreement with Doctor Jonah and Doctor Durand and which we had no room for, and it remained in my basement for more than a year because we had no room, for one reason, and secondly, because I had no one to operate it. I then directed it to be taken down to my brother's and to be used there, with the understanding that we should have the use of his assistant, who was capable of using it, in our practice, and that our patients should have the benefit of any advantage in the way of reductions, and so forth, that they saw proper to give us for the work and they have whatever came from the use of that and the time of his assistant, that that was a matter that belonged to them, just as much so as it would have if some outside person did the same work; in other words, we had no right or claim upon the charge that his assistant might make.

Q. Now, Doctor, in that connection, when a patient of yours or Doctor Durand's went to Doctor Emery Marvel's sanitarium— A. Before that may I say that I haven't quite finished?

Q. Oh, go on. A. In this conference I agreed with Doctor Jonah that I would have that X-ray machine taken out of Doctor Emery's and

brought up to our house and put up, which was done.

Q. Now, with regard to the treatment at Doctor Emery's sanitarium, when a patient went there from your office, for instance, for a surgical operation and that operation was performed by Doctor Emery Marvel, or some other surgeon, would the bills of that patient be rendered to you or would they be rendered direct to the patient? A. Direct to the patient.

Q. And after the surgical operation was performed if there was medical attendance required did Doctor Emery Marvel or his assistant take care of them or did you and your assistants take care of them? A. I took care of it, yes, me and my assistants took care of the medical side.

Q. And the services for which medical aid was rendered—did Doctor Emery Marvel have any control or any part in the rendering of bills or collecting of bills for the surgical—no, not for that but for the medical part? A. Not at all, except in this way: There have been cases when I have asked Doctor Emery Marvel to see one of those patients for me when I was out of town when Doctor Jonah and Doctor Durand had simply stated that they wouldn't see a patient in his sanitarium, but in a majority of cases I always asked my other assistants to go and see the cases, and I have in the majority of cases—I think Doctor Emery's books will probably show that in the majority of cases the services that he made for me was turned over to my account and charged up to my account.

Q. In other words, you got the benefit of his services? A. I got the benefit of his visits to those patients.

Q. Now, you were asked yesterday about Doc-

tor Durand's severing his relationship with you. Did he sever his relationship with you at your demand and request or at his own?

Mr. McCarter: I object, utterly immaterial. The contract is in writing by which they voluntarily broke the partnership. and I can not see how—if there is anything at all in the fact of the breach that is another question, but assuming now that there is a matter of moment in the fact that this partnership has been severed by the voluntary dissolution of one member of it without the knowledge or consent of the other member, assuming that to be momentous in this controversy, I can not see how who first suggested the dissolution or how it came about has anything to do with it.

The Vice Chancellor: I quite agree with you if it was dissolved by a written agreement.

Mr. McCarter: Well, it was.

The Vice Chancellor: If it was dissolved by Doctor Durand skipping out that is a different proposition.

Mr. McCarter: I preface what I say by calling your Honor's attention to the fact that D-1 for identification is a copy of the dissolution between those two, and it appears that Doctor Jonah did not know anything about it at all.

The Vice Chancellor: On what theory, Mr. Bourgeois, do you go back of the agreement?

Mr. Bourgeois: I am not going back of the agreement, it speaks for itself, and it says as follows: (reading partnership agreement).

The Vice Chancellor: Now, what is the importance of this inquiry? Under that contract it may be important to know whether he drew out or was kicked out by Doctor Marvel. What is the relevancy of it?

Mr. Bourgeois: The relevancy is to meet the cross-examination yesterday in which the Attorney General endeavored to have Doctor Marvel say—and I don't know how near he came to it—that they had voluntarily dissolved this partnership. Now, I propose to show that that partnership was dissolved because Doctor Durand withdrew from it and Doctor Marvel wanted to continue. It simply is to clear up the cross-examination of yesterday. And I propose to show, if your Honor please, when this agreement comes before you, this supplemental agreement isn't anything at all excepting Doctor Durand transferred to Doctor Marvel his interest in the moneys, nothing at all about the dissolution of the partnership, simply transferring to Doctor Marvel his interest in the moneys that would come in after whatever date it was, the day when we were to have the hearing before.

Mr. Endicott: Is your position now that there is no dissolution of partnership?

Mr. Bourgeois: I say that there is a dissolution of partnership because Doctor Durand has withdrawn from the partnership, as he lawfully might, and that is what I propose to show.

Mr. McCarter: It doesn't seem to me that the agreement of partnership gives to

either the option of withdrawing, I think it would have to be agreed to by all, but if they do withdraw and all agree to it then the penalty of being unable to practice for three years might attach, or if they are put out. I don't think the agreement is entitled to the construction Mr. Bourgeois puts upon it, that the articles of partnership made that terminable at the will of any one; but, your Honor, whether that is so or not after Doctor Marvel has assented without consulting Doctor Jonah at all, not only to the withdrawal but to paying him for partnership funds $1,000, and he has had the money, I say under those circumstances the preceding facts are of no value whatever, no use.

The Vice Chancellor: Well, I am not sure whether or not they will be. It is quite possible—I have not read the agreement yet that Doctor Durand and Doctor Marvel made—that the circumstances leading up to the execution of that agreement may be relevant. You have a cross bill here based upon a breach upon Doctor Marvel's part by reason of the execution of that agreement. I think you can show, Mr. Bourgeois, properly the circumstances leading up to it, if it will give any light or force but nothing but the circumstances, not the negotiations.

Mr. Bourgeois: Well, if your Honor please, there is no dissolution of partnership in this agreement at all. Well, now, let us have that right so your Honor will know. It is foolish for us to go on here and

have this difference of opinion about something with which your Honor is familiar.

Mr. McCarter: Well, you wouldn't let me offer it in evidence yesterday.

Mr. Bourgeois: I would have let you offer it is in evidence except it was on my examination. I am not going to object to your offering it in evidence afterwards, Attorney General.

Mr. Endicott: Is it now admitted in evidence?

Mr. Bourgeois: Is it now?

Mr. Endicott: Yes.

Mr. Bourgeois: No, it is not admitted in evidence. Do you object to my reading it before it is admitted?

Mr. Endicott: I would rather have it read first.

Mr. Bourgeois: I would just ask you, without regard to the agreement—at the present time there is nothing before your Honor of any agreement whatever—

Mr. McCarter: I beg your pardon. There is evidence by Doctor Marvel that there was an agreement in writing.

The Vice Chancellor: Some agreement or other.

Mr. McCarter: And he identified this agreement as being the agreement which preceded the separation between him and Doctor Durand, and that at that time a thousand dollars was either paid or agreed to be paid to Durand from the firm funds; that appeared and here is the identification.

Mr. Bourgeois: One of two positions absolutely is true; either that agreement is so far in evidence that I may read it to the

Court and you can find out what it is or else it isn't far enough in evidence to preclude Doctor Marvel's testifying about it.

Mr. McCarter: Mr. Bourgeois, what is the use of fiddling about that? Why not let it go in?

Mr. Bourgeois: As far as the cross bill is concerned, I am going to object to the cross bill feature of it; I do not think it has any place in this suit. But, aside from that, the cross bill doesn't amount to anything, it hasn't been answered and doesn't call for any answer; it asks for no affirmative relief that I know of, and every phase of this proceeding will be met by the answer. In other words, this is a suit by us to dissolve this partnership and for an injunction. Now, the answer will go either to the dissolution or to the refusal, or granting of the injunction. They don't need any cross bill for either of those two. They admit that they want a dissolution; they deny that we are entitled to have an injunction. Now, the reason for refusing an injunction is not a matter of affirmative relief, it is a matter of evidence to preclude us from getting that relief, so that this cross bill serves no purpose whatever and that has not been answered, it does not pray for answer.

Mr. McCarter: The only purpose I can now see is whether you object to our offering at this time the agreement.

Mr. Bourgeois: In my examination, yes.

(Question repeated.)

Mr. McCarter: We object to that.

The Vice Chancellor: That, I think, is

objectionable, but you can show, if you choose, the circumstances attendant upon or concerning the execution of this document which Doctor Durand says has been executed, or you can reserve that until after it is offered and then do it.

Mr. Bourgeois: Well, I will reserve it then.

Q. Now, Doctor, you were asked yesterday concerning these prescription blanks and in one of the answers you answered in the affirmative stating with an explanation. You weren't allowed to give that explanation. That inquiry was concerning the injury or supposed injury of the use of Doctor Jonah's individual prescription blanks. Now, will you explain what you then had in mind as to why you objected to the use of those individual prescription blanks.

Mr. McCarter: I think this has all been gone over.

A. With the use of those prescription blanks it conveyed to the patient, or whoever may have handled the prescription, that Doctor Jonah was in an independent practice, which wasn't a fact. Secondly, that there was no means, if there was a necessity for such a thing, of tracing to whom Doctor Jonah was giving his attention, whether he was reporting it to the office or not, and, in fact, no information whatever to anyone that he was a member of a company or that he had any practice other than by himself, and it was a means by which he might segregate to himself a certain amount of work without giving account for it.

Q. Now, how frequently does your office send out statements to your patients? A. Well, it states that reports, or, at least, that accounts

will be sent out monthly. In some cases it is true; in other cases it is sent out immediately after the service when the patient requests the same; at other times they are sent out about quarterly, and there are some instances in which they are sent out six months and in some instances yearly, and in some they have been longer than that.

Q. What effect did the neglect of Doctor Jonah have upon—that is, his neglect in not reporting have upon your sending out your statements? A. Necessarily we were in this position, that unless he reported his case I don't know whether he had attended certain cases or not, and in some instances we knew that he had attended certain cases and we had no record of it and we couldn't send out a bill, I mean a statement for part of the bill and say to the patient that Doctor Jonah will send his account later.

Q. Now, Doctor, when Doctor Jonah turned in at the end of 1910 these lump sums, these "Bill to be" and charges so much, as you showed us yesterday, was that, according to Doctor Jonah's statement, a complete account at that time? A. I presume—yes, it was supposed to be a complete account.

Q. And do you know if since that time he has further reported with regard to 1910 in this cross bill? A. I don't.

Q. I mean, not in the cross bill but in the answer? A. I don't know.

Q. You don't remember whether— A. Well, I mean to say that I have no—

Q. No, but I mean—well, that is all right, the answer speaks for itself. A. No account of it.

By the Vice Chancellor: Q. You are not able to state then whether in the accounts annexed to the answer there are included items that were not

included in the statement he rendered at the end of the year? A. I am not; I don't know that it specifies any particular year, it may.

By Mr. Bourgeois: Q. Now, Doctor, I call your attention to what apparently is a form of a supplemental agreement, annexed to the original agreement, which appears to have been signed by Doctor J. I. Durand and was concerned with the vacations for yourself. After the entering into of this original agreement was there a conference had between Doctor Durand, Doctor Jonah and yourself concerning your vacations? A. There was.

Q. What was that agreement?

Mr. McCarter: Now, one moment.

The Vice Chancellor: I understand this written agreement falls because it is not signed by all of the parties, and I guess it amounts to nothing. They agreed among themselves, failed to reduce it to writing, I suppose he can testify to it, can't he?

Mr. McCarter: My thought was not so. If parties undertake to stipulate and then it is understood that it is to be attached to—is attached to and then they refuse—can you show that verbally?

The Vice Chancellor: I think it will be competent, perhaps to show that by the other parties, for the other parties to testify that they did refuse, but until that document is signed I apprehend it has no existence and the testimony therefore would be competent of a parole agreement, if there was any claim that Doctor Marvel has taken more vacation than was proper.

(Question repeated.)

Q. I don't mean what was the written part but

what was the verbal agreement that was arrived at? A. The verbal agreement arrived at was to the effect that Doctor Jonah and Doctor Durand might each have a vacation of six weeks per annum, four weeks of which—this was the verbal agreement—four weeks of which would be spent in rest and four weeks of which should be spent in post-graduate work, and that I could have to the extent of twice the amount of time that they had or three months.

Q. I notice that the supplemental agreement to this original agreement provides for a vacation of three consecutive months for you. Did you or Doctor Jonah refuse to sign that agreement? A. Never in my presence.

Q. Did you sign it? A. I can't say positively that I did. My impression is that there was one copy signed but I am not absolutely sure of it.

Q. Signed by whom? A. I think it was signed by all of us.

Q. Has any objection ever been raised by either Doctor Durand or by Doctor Jonah to your taking a vacation? A. No, I don't think there has; there has been a request that I hurry home.

Q. No, I don't mean that; I mean did they ever claim that under the agreement you had no right to have a vacation? A. No.

Q. Now, Doctor, there has been some question raised about the reporting by you at the end of each day, or when you made your report to the secretary of the moneys that had been received by you in the office, the cash moneys. I want you to produce—have you any evidence to show what was done there? Have you your books? A. The cash book is here and Miss Hendrickson, Miss Greenleaf and Miss Currie, secretaries, who know very well when I would turn over my cash or turn over an account of it.

Q. Yes. Was there any book kept by you to indicate that or would it be simply turned over at the end of the day? A. Be turned over at the end of the day or at whatever time they would post my slips from the file, or any special accounts—that is, I mean to say, if I should receive a check for any of these accounts it would be turned over at once to them or very shortly thereafter. When I say "very shortly" I mean to say that I might possibly carry a check in my pocket a day that was received outside or possibly two days, but it wasn't my practice to carry checks for any length of time.

Q. What is this slip which you spoke of which you say would go to the secretary? A. Those that were marked yesterday in evidence as being made out by the secretaries, containing the name of the patient, the address, and so forth, and when they were handed to me—as a patient came in the office they were always asked if they had a slip from the secretary; that slip was taken, and when the patient went, I had finished a patient, that would be marked on that slip whether or not the patient paid for that service and that was the evidence of the secretary that that call had been paid for when she took those slips and checked up my accounts with her account on the desk.

Q. And that would be done how frequently? A. In the majority of cases I think it was done every day; there may have been times when the secretary didn't post her work every day, and then when she did post it.

Q. Doctor, can you tell us why these audits were made so frequently during this past year? A. Simply—

Mr. McCarter: Objected to as immaterial.

The Vice Chancellor: It may be relevant, I think.

A. (Resuming) To try to induce Doctor Jonah to bring up his accounts.

Q. Now, in your cross-examination you were asked whether or not—

By the Vice Chancellor: Q. Well, was that fact brought to his attention? A. In this way, Judge: That I would say to Doctor Jonah, "The auditor is going to make up his account again at such and such a date. Would you try and have your accounts ready for him?"

By Mr. Bourgeois: Q. You were asked yesterday whether or not Mrs. Marvel hadn't drawn against the firm account and you answered she possibly had. I ask you whether Mrs. Marvel ever drew against the firm account for other than firm purposes? A. I think there is one check that was drawn for other than firm purposes.

Q. And what was that purpose? A. That was to pay an account—pay a bill for some services done to the house where the office is.

Q. Where the office is? A. Yes.

Q. And whose bill was that? Who was it against? A. Who was it against?

Q. Yes; who was the bill against? Was it against you, I mean, or was it against some outside party or who owed the bill? A. I actually owed the bill but it was against my property there; that is for property service; I had no knowledge of it, however, until the other day in looking over the stubs of the check book we both noticed that there had been that one check drawn.

Q. And when was that one check drawn? A. I can't tell you. I have the check book here, that will show the date.

Q. Well, approximately when, Doctor? A. That was in the first six months.

Q. And what was the approximate amount of it? A. $100.

Q. Can you tell me whether or not that sum exceeded—Oh, no. Did you ever pay any of the firm's debts? A. I did.

Q. Of what amount?

Mr. McCarter: I object to that.

Mr. Bourgeois: All right.

Q. Now, Doctor, the agreement provides for the additional expense if more office room is had there. During this agreement was more office room required?

Mr. McCarter: Objected to as immaterial.

A. It was, had no place to put the X-ray.

Mr. McCarter: One moment, Doctor.

The Vice Chancellor: I do not know, Mr. McCarter, whether or not this will lead to anything material. It is a new line that may go somewhere, or it may be what we call a blind alley.

Mr. McCarter: Well, I think it is a blind alley. I can't see whether or not they needed more room makes any difference.

The Vice Chancellor: On the face of it I do not see either but I notice already the X-ray has been working in.

A. (Continuing) It was necessary for me to have additional room if I brought the X-ray machine up.

Q. That is, from Doctor Emery's sanitarium? A. Yes.

Q. And it was brought up? A. It was brought up.

Q. Now, what did you do— A. And the X-ray was intsalled in the room.

Q. Did you have a new room built or appropriate a new room? A. No, just appropriated it. Well, that room had been really appropriated during the fall before, because of the fact that ofttimes we needed more room when we were all three in the office or when we were both in the office examining different patients, and that was the primary purpose of adding that room, and the secondary use of it was to appropriate it for the X-ray outfit.

Q. Now, did you charge them any additional rent because of that?

Mr. McCarter: Objected to as immaterial.

A. I didn't.

The Vice Chancellor: I think it is more immaterial if you did not than if you did. I might suggest, Mr. Bourgeois, that I am not disposed to reward this gentleman for virtues, either of them.

Mr. Bourgeois: I know that but there was an effort made yesterday to make it appear as if Doctor Marvel had been unduly harsh with these two young men.

The Vice Chancellor: Well, it really doesn't matter much whether he was harsh or charitable. The question is whether there has been such a violation of the agreement as to make operative the penalty clause of the agreement.

Q. Now, Doctor, it was brought out in the cross-examination yesterday that at the time when one of your secretaries was new in the business that Mrs. Marvel had, for some period of time, assisted during that period of time. Did Mrs. Marvel draw moneys for her services?

Mr. McCarter: Objected to as utterly immaterial.

A. She did not.

Mr. McCarter: Now, I do not think, your Honor, that we ought to have a collection of Marvel virtues put in this case, it has got nothing to do with it.

The Vice Chancellor: That is my view of it. I do not know how it can be otherwise. Suppose Doctor Marvel has been more of an angel than a man does it make the conduct of his partner any worse?

Mr. Bourgeois: No, it isn't that, if your Honor please. The agreement provides that he shall employ a secretary or bookkeeper. Now then, they yesterday endeavored to show that he hadn't confined it to a secretary or bookkeeper but had actually had two people employed there a part of the time. Now, I am going to show that while there were two people actually there that one of them wasn't any expense at all, that there was no violation of the agreement.

The Vice Chancellor: If that is the purpose it is all right. I thought you were showing his generosity.

Q. Yesterday in the cross-examination you stated that the system you had was impracticable to be literally performed, and you answered yes with an explanation. Now, what was the explanation that you were not permitted to give? A. How is that?

Q. You were cross-examined about this system of returning your account daily and you said that they could not be always returned daily, and then Mr. McCarter says "Then that system was

impracticable of being literally performed?'' You said ''Yes, with an explanation.'' You weren't permitted to explain. Now, what was the explanation? A. I meant simply this: That it was oft times the case that one of us might be called suddenly to go out of town for some reason or other, with a patient or without, and it wasn't always possible for us to return the same night, consequently it was not possible for us always to make a return the same day, but it was never impossible for all of us not to make returns weekly, daily.

Q. Now, Doctor, you were asked yesterday about Doctor Jonah's age. Did Doctor Jonah have any practice in Atlantic City prior to his engagement with you, his employment by you?

Mr. McCarter: How does he know?

A. Not to my knowledge.

Q. Did you know where he had been before coming with you? A. Only as he stated to me.

Q. And where did he state he had been? A. He had been, I think he told me, a year and a half in the marine service, some year or two in the hospitals of New York, and something over three years in a hospital in Frankford, here in Philadelphia, with Doctor Noble.

Q. Yesterday in the cross-examination you were asked if Doctor Jonah wasn't in fact run down at the time he went off on his vacation when he went to Europe and you answered that he was. That examination was had with reference to your statement that he had not spoken to you about it. Was Doctor Jonah so greatly run down that his health would have precluded him from talking to you about this intended vacation?

Mr. McCarter: I object. There is no ground of his not having spoken of that

vacation as a ground for a breach of this agreement. That was all run in yesterday as one of the *casus belli*. Here was the fact that Doctor Marvel discovered that Doctor Jonah was going to Europe and he hadn't spoken to him about it. That is the first it ever came in. It isn't mentioned in the pleadings or anywhere else, and I brought out the fact that he was in fact run down and that Doctor Marvel thought he needed a vacation. That is all there is to it.

The Vice Chancellor: Beyond all that I should say the question doesn't need an answer. It answers itself. It already appears he was able to talk about it, does it not? At any rate, the conversation they had is already in evidence, so he was not too sick to talk; that is self-evident.

Q. Now, Doctor, did Doctor Durand ever furnish any report, that is, any complete report of the addresses of the patients he had treated during the periods when he failed to render his weekly reports or daily reports to the secretary, that is, after the 27th of May, 1910?

The Vice Chancellor: 27th of September, 1910.

Q. 27th of September, 1910, 27th of May, 1911. A. 6th of May, 1911.

Q. I know but he was off on a vacation a part of the time. 6th is all right, though—and the 16th of March, 1912? A. Do you mean Doctor Durand or Doctor Jonah?

Q. No, Doctor Jonah? A. You said Doctor Durand in your question.

Q. Change that and make it Doctor Jonah. A. He didn't; to my knowledge, at least.

Q. Did he ever furnish to the firm or to you—

Mr. McCarter: He was to furnish to the secretary, wasn't he? How does Doctor Marvel know what he furnished the secretary? I object.

Q. Where did this secretary do her work? A. In my office—or in the office.

Q. How far was that from your private office? A. Adjacent, next door.

Q. And how frequently did you go through the room where your secretary worked? A. Very frequently.

Q. How near did your secretary's desk stand to where you would go up to your apartments in the house, the upper part? A. Just a wall between the two.

Q. Just a wall between the two? How near to the door? A. At the door.

Q. Did you or did you not have personal knowledge of what was going on in the secretary's work? A. To a great extent.

Mr. McCarter: The secretaries are here, Mr. Bourgeois: Why don't you prove it by them?

Mr. Bourgeois: I think I can prove it by Doctor Marvel; I think he has sufficient knowledge to testify to it, and he is the man who is particularly interested in it.

The Vice Chancellor: Let him go ahead as far as he can.

Q. Did Doctor Jonah ever furnish to you for the periods covering September 27th, 1910, to the end of that year, May 6th to the end of that year, or March 16th—that is the end of the year 1911, or March 16th to the end of the year 1912, any detailed report of the number of visits he made to these various patients that he saw and didn't report weekly to you? A. He did not.

Mr. McCarter: I object to that; he was not bound to furnish them to Doctor Marvel.

Q. Did he ever furnish it to the secretary? A. Not to my knowledge.

By the Vice Chancellor: Q. How could you send out bills during that time? A. A number of the bills, Judge, had to be left for Doctor Jonah to send out at his own discretion, and a number of them, according to his own work, were simply lumped.

Q. There was only to be an annual settlement between the parties, wasn't there, under the agreement? A. That was all.

By Mr. Bourgeois: Q. Now, Doctor, I saw yesterday a blank paper that was introduced in evidence that had a stamp on it. I want a copy of it.

Mr. McCarter: Where is this provision about addresses that you rely on in your contract?

Mr. Bourgeois: There is no provision about addresses, just a system of work, that is all.

Mr. McCarter: There is no provision in the contract about addresses, that they had to give addresses.

Q. You stated yesterday in your cross-examination—

The Vice Chancellor: No; I suppose the contract goes no further than to authorize Doctor Marvel to supply blanks for use and he supplied blanks with the addresses on them, I understand, or blank addresses.

Q. Doctor, you were asked about this stamp and stated that it had been put there by general consent and later Doctor Jonah objected to the use of it. What ground did Doctor Jonah assign

as an objection to the use of that stamp? A. The ground that he assigned to me was that it reflected upon their fidelity, that it was vicious in the respect it destroyed their personality in the company and that their patients seriously objected to receiving a bill that had my name on it in that form.

Q. That is, Doctor Jonah made that objection to you? A. Yes.

Q. You were asked yesterday whether or not you hadn't forgiven Doctor Jonah for his failure to account during the year 1911, and you said that you had except so far as the moneys were concerned. What did you mean by that? A. The accounts.

Q. Yes, tell me what you meant by the accounts? A. Well, I meant simply this, that in this conference, to which reference was made, at that time, meaning October, 1911, that when I agreed to what I did agree I meant that so far as I was concerned I would carry out my part of the contract and give him an opportunity to carry out his, but it wasn't a settled or finished situation so far as our accounts were concerned.

Q. In other words, you didn't mean to forgive him the moneys that were due to the firm? A. I did not.

By the Vice Chancellor: Q. Your settlement was made at the end of 1910, wasn't it, a complete settlement? A. Only a tentative one, Judge, because he put in these statements, and I asked him then and I have asked him since for vouchers for his work.

Q. What about 1911? At the end of 1911 you made another settlement, didn't you? A. Yes. Well, there was never any statement made excepting as he turned his accounts into the au-

ditor, and I think the auditor has made notes on his account with reference to the fact of delinquencies.

Q. But so far as the amount due from him was concerned and from you to him, showing or ascertaining the balance or balances as they existed between the three partners at the end of 1910 and 1911— A. It was settled for.

Q. That settlement was made? A. Yes, sir.

Q. So that the settlements at the end of that time were regarded as conclusive so far as amounts were concerned? A. As far as the moneys collected.

By Mr. Bourgeois: Q. So far as what, Doctor? A. So far as the moneys collected; that is, as pertaining strictly to the money collected.

By the Vice Chancellor: Q. But there was no expiation of past offences or delinquencies in the manner of keeping accounts—is that the idea? A. No, there was none.

By Mr. Bourgeois: Q. Well, was there any waiver of a liability on Doctor Jonah's part to account for moneys that he hadn't up to that time accounted for? A. None.

Mr. McCarter: Let me say frankly and candidly, so there will be no misunderstanding about it. It is not Doctor Jonah's position, and I do not understand it is Doctor Marvel's position, that Doctor Jonah is not responsible and will not be for any money he owes his firm. There is not the slightest suggestion on our part that that is the petition. And the questions I put to Doctor Marvel yesterday, to which now the re-direct-examination is directed, were not designed to bring about or to suggest any such idea. They were de-

signed to bring about and I shall argue that, so far as the failure to promptly render the accounts, in the manner that has been described at the end of the year 1911, being a ground for breach of the contract, that was forgiven.

Mr. Bourgeois: Sort of condonation?

Mr. McCarter: Condonation, that is it exactly.

By the Vice Chancellor: Q. What did you say, that it was or was not forgiven? Past delinquencies in methods of keeping accounts were or were not forgiven? Was there a shaking of hands over the bloody chasm? Were all differences at that time— A. Yes.

Q. Disposed of and a new deal made? A. I said to Doctor Jonah that "if you mean what you say here is my hand," and he handed me his.

Q. That was in October? A. That was in October, 1911.

Q. But I had reference to the settlement at the end of 1911? A. None whatever; that settlement was between Doctor Jonah and the secretary and the auditor.

Q. When you came back in January, 1912— A. If I may be permitted—

Q. The accounts for the entire year were gone over and an adjustment made and each partner paid or credited what was coming to him?

Mr. Bourgeois: Well, I don't know about that. Is that correct, Doctor Marvel?

A. Not strictly. Prior to—

Q. Well, the agreement provided it should be so. A. Prior to Doctor Jonah's going away the secretary was at his house quite a number of evenings looking up accounts, and a number of

bills were sent out by him or by them together, I don't know which, and quite—that was previous to his going away—some moneys came in, then others came in during his absence and others in after his return, and when he returned the matter was taken up by the auditor and the bookkeeper and it was settled between them, and whatever proportion of the receipts for the year belonged to him was accredited to him and checks were given to him for the balance on account. As far as my going over the accounts was concerned, or so far as their having put up to me any question with reference to the accounts, it was not.

Q. Well then, he started in right away on January 7th rendering his regular reports and being what you may call a good boy? A. Yes.

Q. And he continued that until March 16th and then flunked again—that is right? A. That is the situation.

By Mr. Bourgeois: Q. Now, Doctor, yesterday you spoke of a list of names that had been prepared by the secretary and you had such a list. Will you produce it, please?

Mr. McCarter: Did you think he said "secretary" yesterday? I didn't think so. May be he said by himself. He talked about a son and daughter, I think.

By the Vice Chancellor: Q. Let me ask you, Doctor, an explanation of some things that do not seem quite clear in my mind. In these conversations you had with Doctor Jonah hasn't he given you any reason for his failure to make these reports in the manner you wanted? When you would ask him to do so didn't he state to you why he hadn't done so? A. Except in this: That he was very busy, or he was tired, or he was over-

worked, or something of a similar character, always promising that he would do it.

Q. Now, beginning January 7th he seems to have done so regularly up until March, wasn't it? A. Yes.

Q. And then from that time he stopped suddenly and did not make another report apparently from the books. Why? A. For sometime afterwards, I think it was in the latter part of May or possibly in June, the secretary called my attention to the fact—it was in May—

Q. Then you talked to him about it? A. Called my attention to the fact that he had let his work drop again; that was the expression or words to that effect, I don't know whether they are the exact words. Then I went to Doctor Jonah and told him what he was doing and asked him not to let his work go back again as he had in previous years.

Q. What did he say ? A. He said he didn't intend to, he would, and he always—I don't think there was a single time when I asked him to bring his work up but what he promised to do it.

Q. He seemed to have good intentions but bad execution? A. Bad performances. So far as Doctor Jonah's work is concerned, so far as his relations were concerned, up to that time in the office, that is, I mean personal relations, when we were in contact with each other it was pleasant.

Q. But you thought all the time there was really a shadow between you of some kind? A. I did.

By Mr. Bourgeois: Q. Now, Doctor, you have testified that a very considerable part of your practice is from nonresident patients. During what period of the year do you have most of that practice? A. In what is known as the spring and

Easter season and what is known as the summer season.

Q. Now, this list of names that were checked up and found not to have been reported by Doctor Jonah, have you personal knowledge of that at all?

Mr. Bourgeois: I want to offer them in evidence so the folks will have the benefit of them. Whatever explanation there is to these names we want, and I am trying to find out whether he has such personal knowledge.

The Vice Chancellor: What names are they?

Mr. Bourgeois: These are the names of the parties, persons appearing either on the call list or else upon the druggists' list which Doctor Jonah has not apparently accounted for.

Mr. McCarter: Now, your Honor, I wish to call your attention to the fact that yesterday afternoon, nearly the close of the case, Doctor Marvel said that he had ascertained that of the names and accounts attached to the answer purporting to be an account by Doctor Jonah of parties not included in previous accountings there were some hundred and fifty-five or two hundred names missing. In other words, it was not a full account. That he had ascertained that by having his daughter and his son and the secretary go through the call book, the telephone call book, and write down on a list the names of calls that appeared on the telephone call book, apparently all the names first; then that he had instructed them to segregate that list

by showing only or counting only such of them as gave the address and the name of the supposed patient, and all that he knew was that he had given those instructions and that these lists were the result that followed. Now, this morning, at the outset of his testimony, the Doctor corrected his testimony by saying, as I understand him, that he did not think his daughter and his son had anything to do with it or if they did it was all checked up in some way by the secretary.

The Vice Chancellor: No; he said they didn't have anything to do with it except checking these off.

Mr. McCarter: Well, whatever he said this morning. Now, I object to the use or offer of those documents.

The Vice Chancellor: I think the objection is well taken. The parties who made them will have to testify to them.

Q. Doctor, do you know when it was, what part of the year 1912 that it was that Doctor Jonah turned in this sum of $4,500? Now, I ask you if you know. A. Well, I know the time that he began turning it in.

Q. When did he begin turning it in? A. In the early part of December.

By the Vice Chancellor: Q. When you say 45 do you mean 48, 46? A. Well, the last.

Mr. Bourgeois: It was the last sum, $4,700, wasn't it?

The Vice Chancellor: October to December was $4,846 but I didn't know there was any one large item in that. The auditor's last audit included October to December, inclusive, and was $4,846.

Mr. Bourgeois: That is what I had in mind.

The Witness: I mean to say the major part of it, not the absolute part but the major part of it.

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. Doctor Marvel, you have stated that your wife acted as sort of associate secretary after this firm was organized while there was a strange and untrained secretary. Who was the secretary at the time the firm was organized? It was Miss Hendrickson, wasn't it? A. I don't think I made the statement that I had a strange secretary.

Q. Didn't you state or didn't your counsel state to you this morning that Mrs. Marvel acted without compensation to assist while a secretary who was not accustomed to the thing was getting broken in, or words to that effect? A. All excepting the one statement that you put in there, "wasn't accustomed to the work" which she had done—she wasn't accustomed to the work—to the arrangement of a new series, at least, wasn't accustomed to what was additionally added to the methods that we were following up in our bookkeeping.

Q. Well now, as a matter of fact, the secretary at the organization of the firm was Miss Hendrickson, wasn't it? A. Yes.

Q. And she had been there for more than a year? A. Yes.

Q. And she continued there down to the middle of last year? A. Yes.

Q. And was the secretary from beginning to end until last June? A. Mrs. Marvel continued in the same capacity for the first six months that she was in previously.

Q. And that was that she had the right to draw on the bank and take checks over to the bank. Did she keep the books? A. No; she kept accounts of all that she banked.

Q. She banked moneys, she kept an account of it, gave it to Miss Hendrickson? A. She kept an account of the names and of the checks.

Q. Now, you said you came across one check that your wife drew for one bill of the house? A. Yes.

Q. Did you come across a check for $1,000 that she drew within the last six months for an automobile for you—during the last year on the firm account, drawn by your wife for your automobile? A. I did not.

Q. Isn't it a fact? A. I don't know that it is.

Q. Isn't it a fact that you bought an automobile within a year? A. Yes.

Q. And did you go over all the checks of the concern and did you find a check for $1,000, drawn by your wife under your power of attorney upon the firm assets for your own autombile? A. I went over—

Q. I ask you a plain question, Doctor? A. I went over a great number of the checks myself and Mrs. Marvel over others, and I saw no such a check and have no such knowledge of such a check.

Q. Now, looking at these statements about which you testified yesterday, I ask you whose handwriting is that (handing to witness)? A. That is my daughter's handwriting.

Mr. McCarter: I would like to have it marked for identification.

Said paper marked Exhibit D-3 for identification.

Q. Now, your daughter is a young lady at

school and is not connected with the business, is she? A. She is not connected with the business and is not at school.

Q. Well, when did she make this D-3 for identification out? A. During the past week and—well, during the past two weeks.

Q. And this purports to be a list of the names forming the basis for your conclusion that there are a number of names omitted from Doctor Jonah's last account, isn't it? A. In part, yes.

Q. Now, did the secretary make that or your daughter? A. My daughter; the secretary made another list and my daughter copied it.

Q. This, then, isn't the original list but a copy? A. That is my understanding.

Q. Well, you handed us all the documents last night pertaining to this thing. Won't you find— A. All that I had with me.

Q. Won't you find any list of which that is a copy? A. No, I didn't hand you all; I recall that I have others here.

Q. Now, I have asked you to produce a list made by a secretary or anybody else of which this Exhibit D-3 is a copy? A. These are the druggists' lists that are included in it and these are the lists that were made from the book by the secretary and copied off that by my daughter.

Q. Now, Doctor, I would be glad to get at again the system that you say was adopted in reaching this list. You told us yesterday, as I understood you, that your son and your daughter, who knew nothing of the business, were instructed by you to go through these books, these call books, and to write down a complete schedule of the calls appearing therein to Doctor Jonah. Now, was that right or am I wrong about that? A. You are wrong. Well, I meant to say this—whatever I

may have said I meant to say that they were all three instructed.

Q. Well, who was the third one? A. Miss Greenleaf, the secretary.

Q. Miss Greenleaf, the secretary? A. Yes.

Q. When did she become secretary? A. She became secretary in September.

Q. Of what year? A. 1912.

Q. So this all occurred since September, 1912, didn't it? A. Yes.

Q. And it covered a period during the year of 1911? A. No, only covered a period from June 1st to November 1st, 1911.

Q. Well, I say, it covered a period from June 1st to November 1st, 1911? A. Yes.

Q. When Miss Greenleaf wasn't there at all? A. Yes.

Q. All right; very good. Now, after you had given these three the instructions to write the full list up—is that right—of calls? A. No, not the full list of calls, the full list of Doctor Jonah's calls so far as the boks showed them, as far as these books showed them, and as far as the druggists's list showed them.

Q. I am talking of the books alone, now please don't confuse them, because we have had so many different stories about it I want to get it right. So far as the books were concerned the directions were to the three of them, now, the secretary, the son and the daughter, to copy from these call books every time a telephone call appeared to Doctor Jonah, is that right? A. If the address was given or the name of the hotel was given.

Q. Now, was that in the original direction? A. Yes.

Q. Now, didn't you tell us yesterday that the original direction was to take all names and then to segregate? A. No.

Q. On a new list? A. No, you misunderstood me, or, at least, I didn't intend to state that, at least.

Q. Well, at any rate, whatever you said yesterday—

The Vice Chancellor: I think on the call books any calls there where somebody wanted to speak to Doctor Jonah he would not take one like that; it was only when a call stated that Doctor Jonah was wanted at such an address.

Q. Now, that was the instruction to the copyist to make that selection in the original list—is that right? A. That is correct.

Q. Now, we have got that right? A. Yes.

Q. Now, what did you say was in fact done after you had given that direction? A. Miss Greenleaf was—I am later informed that Miss Greenleaf made the lists and my son and daughter assisted in checking them up, and this list that is made here in my daughter's hand—

Q. D-3? A. D-3, was made in the effort to—for each of them to have a list so that they could check them off.

Q. Won't you point me in the other papers that you produced to the original of which Exhibit D-3 is a copy? A. The secretary is here and she can do that.

Q. Now, no, Doctor. You are undertaking to testify concerning this thing and I want to know where you produce a single document that is an original of the document that is marked D-3 for identification and which is in your daughter's handwriting? A. If I had the time to go over them I think I could. My understanding is that these are the lists that contained the names that

are also contained there together with the—it states here what they are.

Q. Never mind what it states, I want your understanding of it. A. Well, my understanding is that these together contain the names that have been referred to.

Q. Now, so much for that. Now, your instructions were that this list should contain only the names of people whose addresses appeared in the telephone call as indicating that they were patients, wasn't it?

The Vice Chancellor: Or hotel or cottage.

Q. Hotel or cottage address. A. Yes. The intention was to have only patients' names.

Q. Only patients' names, and the criterion to determine whether or not they were patients and it had been a medical call was the presence or absence of an address, either at a hotel or street number in the telephone call? A. And as to whether that same name or address occurred on the list that Doctor Jonah had turned in in his answer.

Q. Oh, I understand that, but we are now making up this supplementary list to get at medical calls that were not accounted for, and the rule that you adopted was that only such names should be selected as gave the addresses from this telephone call book? A. Yes.

Q. Now, I am looking at this Exhibit D-3 for identification, which seems to cover a period—in your daughter's handwriting—from June 1st to November 13th, 1911? A. Yes.

Q. Now, let us take the same call book for that period. You are familiar, I guess, enough with this to use the call book and I will use the list; and I call your attention to the entry under date

of June 24th, 1911. A. This you turn to is May but you want me to turn to June?

Q. June 24th, 1911. Do you find any name? A. June 4th—24th, 1911, yes.

Q. Now, June 24th, 1911—

Mr. Bourgeois: Are you going to offer the lists in evidence?

Mr. McCarter: I may, after I get through with them.

Q. June 24th, 1911— A. That is June 23d.

Mr. Bourgeois: Wait a moment, Doctor. If the Court please, so we can have that right, why don't I offer these in evidence so we can examine on them.

Mr. McCarter: Now, just a moment, please; just a moment.

The Witness: This has already been transcribed.

Q. I will pass by 24th for a moment.

Mr. Bourgeois: Now, if the Court please—

Mr. McCarter: You can't confuse this by talking now. I know you are trying to confuse it; I don't propose to be confused. You can't interrupt my examination, Mr. Bourgeois, by making an offer.

Mr. Bourgeois: Then I object to his cross-examining on something that is not in evidence. I am willing he shall have it in evidence, Attorney General, and cross-examine on it, but you objected to my offering it in evidence because I couldn't prove it by him. Now you want to cross-examine on it.

Mr. McCarter: Yes. He produced this document yesterday afternoon and he told one story—

The Vice Chancellor: Mr. McCarter, I think we can save a good deal of trouble right here. The evidence that he gave yesterday as to this deficiency can not be considered unless it is followed by proof. He is only telling what he understands about it. It is work done by somebody else not even under his immediate supervision. It can not be regarded as evidence. I can not consider it unless the parties who did this work prove it.

Mr. McCarter: If your Honor desires to take that view, I will simply say this: That name after name is here without any address at all. The whole thing is the biggest fake that ever was.

The Vice Chancellor: I think Mr. Bourgeois will agree it would be improper for me to make a finding upon the testimony of Doctor Marvel as to what he understands these accounts show. I think that is so. You do not contend that I could, Mr. Bourgeois?

Mr. Bourgeois: I don't think you could at all. When the objection was made to offering it in evidence I withdrew it.

The Vice Chancellor: After they are proved in such a way that they can be offered I will give you an opportunity to cross-examine on them.

Q. Now, taking up the question of vacations, and so forth.

The Vice Chancellor: I assumed it was merely preliminary when Mr. Bourgeois gave this general statement and the matter was to be proved in detail.

Mr. McCarter: We will desire at the

New Jersey State Library

proper time to make use of the evidence to indicate the—to say the least of it—the utter unfairness of the evidence to show that the account attached to the answer should be enhanced by 154 names.

Q. Now, Doctor Marvel, do I understand that the memorandum signed by Doctor Durand at the foot of Exhibit C-1 does or does not voice correctly the agreement that you say was verbally reached between you three with regard to vacations? Read it. A. It does.

Q. Didn't each doctor send out his bills for his own patients? A. He did a number of them but didn't all of them.

Q. Well, you sent out yours? A. No. Well, virtually so, yes.

Q. Doctor Jonah sent out— A. The secretary sent out my bills.

Q. Under your direction? A. Under my direction.

Q. And Doctor Durand's bills were sent out under his direction? A. Not all of them; I made his prices in a great many instances.

Q. But he attended to the job of getting out the bills for his particular patients, didn't he? A. In the last year almost entirely but prior he did not.

Q. And Doctor Jonah attended to getting out his bills? A. Yes; almost entirely.

Q. What vouchers would the accounts show if they had been rendered by Doctor Jonah? What vouchers would there have been? A. There would have been records on these books of Doctor Jonah's work just the same as Dctor Durand's and my own.

Q. There would have been his statement that he called on John Jones and Peter Smith? A. Yes.

Q. That you have denominated a voucher, haven't you? A. I think a record of the day and visits made by each individual.

Q. Now, you stated about money having been paid in during 1910 and 1911 though not technically reported each day by Doctor Jonah. Has Doctor Jonah drawn anything on account of 1912? A. Not at all.

Q. Have you had an examination of the books made to ascertain how they stand, so far as he is concerned? A. The auditor's account is here to show the account.

Q. Will you produce it? A. (Witness complies.)

Q. Please produce the auditor's account for the year 1912? Isn't it approximately five thousand dollars? A. I think it is.

The Vice Chancellor: What is approximately his share?

Q. His share or interest due Doctor Jonah on the books which has not been drawn?

The Vice Chancellor: Oh, that has not been drawn, yet?

Q. Yet? A. $4,846.

Q. Does that include—I do not suppose it does—the money or account for the month of January, 1913? A. No, it does not.

Q. And have you any data to indicate how much that sum of approximately five thousand dollars due Doctor Jonah and undrawn has been increased by the receipts during the month of January? A. I have our same system of books showing each man's division of the money.

Q. Same as before. Well, as quick as you can. A. Here are the accounts as received since January 1st, 1913, to date.

Q. Yes; total amount? A. I can't total the

amount, they are here divided—at least, I mean put down in divisions just as they have come in.

Q. Don't you know that they aggregate in the neighborhood of twenty-three hundred dollars? A. I don't know one thing about how much they aggregate.

Q. Does it appear there that there have been received during the month of January over twenty-three hundred dollars from the Jonah service? A. Whatever has been received, whether it is twenty-three or five thousand dollars is on this book.

Q. Oh, I haven't any doubt about that. Can't you tell us what does appear there? A. No, I can't because it hasn't been footed up.

Q. Well, it is just a question of addition, isn't it? A. Yes; just a question of addition; all that has been received from Doctor Jonah is in Doctor Jonah's column.

Q. That is, during the month of January? A. During the month of January up to date. Here is his column and the amount that he has received is in his column (indicating).

Q. Yes, pages commencing— A. Commencing the 1st of January.

Q. Commence at page 33 and go to page 36 of this—what is this book? A. This is the cash account book, daily cash account book.

Q. Now, I show you D-1 for identification, and you have testified that that seemed to be a copy of the agreement made between Doctor Durand and yourself. I show you another document apparently bearing date the same day. Please look at that and see if that is a copy of another agreement signed by you two? A. Yes; this agreement was signed, I think—I will read it over to be sure.

Q. Yes; if you have the originals I would rather use them. A. I haven't them here. That was the first agreement.

Mr. Bourgeois: That never was signed.

Mr. McCarter: It seems to be. We will have this one marked for identification, the one that he now recognizes.

(Said paper marked D-4 for identification.)

Q. Now, Doctor, won't you tell us again how the fact of the appearance of Doctor Durand's name and your own name upon a prescription list, a prescription blank that is designed to go and does go to and remain with a druggist, would enable you to check up any shortages in or failure to account on the part of Doctor Jonah if he should desire or through carelessness or criminality fail to account?

Mr. Bourgeois: If the Court please, that is objected to, because Doctor Marvel hasn't told us once how that might happen and it is putting something in his mouth that he hasn't said.

The Vice Chancellor: Well, I do not know whether that was included among the reasons he gave or not, I can not be sure about that.

Mr. Bourgeois: He gave this as a reason why the reports ought to be made at the end of the week, about the accounting, and he gave the prescription blank as a means by which Doctor Jonah might divert practice if he so desired.

The Vice Chancellor: Yes. Well, if he is making no other claim or objection to the use of the names on the prescription blank he can so state.

Q. Did you or did you not this morning undertake to say that the failure to use the three names on the prescription blank would be a means, if Doctor Jonah wanted to do it, not implying he did want to do it but if he did want to do it, by which he could have cheated the firm? A. No, I didn't mean to state that.

Q. Well then, what is the basis of your objection to the one name prescription blank? Now, let us get that. A. Just the same objection that would be if one member of the firm should object to another member of the firm's name being on the outside of the porch—not being on the outside of the porch. That is to say, that we were a firm in medicine, and we should be known as a firm, and every time one individual of that firm wrote on his own prescription blanks, own individual prescription blanks, or indicated in any manner whatsoever that he was an independent practitioner, he was in violation of our agreement; and, furthermore, that he was misrepresenting our practice to the extent that he was putting before them information that was not true.

Q. You think, then, that every time that a letter was written signed "Doctor Marvel" or signed "Doctor Jonah" or signed "Doctor Durand" individually that that hurt the firm unless it was written on a firm blank? A. That depended altogether whether that was a letter pertaining to our practice of medicine or not.

Q. Did any of the stationery that you have or had indicate that you were a firm? A. All three names occur on the stationery and it was declared time and—

Q. No, no; I asked you if any of the stationery that you had indicated that you were partners or indicated the association you refer to? Give me

anything that shows that except the three names there. Is there anything to indicate on any of the stationery that there was any relation to you beyond the fact— A. On the bill head it says "Dr. to Doctor Marvel, Doctor Jonah and Doctor Durand."

Q. Yes, and "To avoid errors make all checks payable to Doctor Marvel," but is there anything to indicate that there was anything more than a coincidence— A. Yes.

Q. Of relationship there? A. It would indicate more to me.

Q. To you, but what was there to indicate that you were partners? A. Yes; the firm paper, that is, the stationery used by the firm and the declaration from the office continuously that they were partners and not assistants.

Q. I am speaking of the stationery now, Doctor; I don't know what you talked about. I ask you what there was in the stationery to indicate that you three men were partners? A. The appearance of our three names together on the stationery.

Q. Now, as a matter of fact, the three individual names also appear, one below the other, in front of the office, don't they, just the three individual names? A. Yes.

Q. That frequently is the case where two doctors have offices in the same building? A. That is true.

Q. Then we now have it, that your sole objection to the use of the little white prescription blanks was because it might give the impression that Doctor Jonah was practicing alone when in fact he was a member of this firm—is that right? A. Well, there was also another impression given and that was to me, not to the outside.

Q. I asked you for your objection, now, for your objection? A. Well, my objection was, as I stated yesterday and again today, that it was against the covenants of our agreement, and, furthermore, it did what I have just said.

Q. Now, the method, as I understand it, the method of fixing up the bills, as I understand it, was that if you wanted to have your bills sent out to your particular patients you and the secretary would get together and do it; latterly, at least, if Doctor Durand wanted to do the same thing he would do it, and all the time Doctor Jonah would do that when they were sent out, am I correct? A. No. May I correct you there? Not all the time. I frequently made—when Doctor Jonah had made visits on patients that I was attending, I frequently made a statement as to what Doctor Jonah's charge should be.

Q. That was when Doctor Jonah was relieving you, but if Doctor Jonah had treated a patient and had run up quite a bill against that patient he would attend to sending the bill to that patiet, wouldn't he? A. As a general thing.

Q. And you would attend to yours the same way? A. Yes.

Q. And latterly Doctor Durand would do the same thing? A. Yes.

Q. The bills would be sent by none of the doctor's but by the secretary? A. As a general thing by the secretary.

Q. And the address would be given to the secretary where the patient resided or where the bill was presented, wouldn't it? A. And on the books too; so that when the bills were sent out, if not before, the addresses of the patients were known and registered? A. Yes.

Q. Is it not a fact that the time that Doctor

Jonah boarded at the Seaside, that was referred to in your evidence yesterday, was before this partnership? A. It was.

Q. Why didn't you say so, Doctor, instead of giving the impression that that was during this period? A. I beg pardon.

Q. Why didn't you say so when you testified about it rather than give the impression to the mind of us all, I think, that that was during the partnership period? A. I think I answered the question just as it was asked me if he ever did such a thing.

Mr. Bourgeois: I didn't know it, Attorney General.

By Mr. Bourgeois: Q. Now, Doctor, has there been any reason why Doctor Jonah hasn't the moneys due to him for the year 1912? A. He has, twice to my knowledge and I think three times, refused to accept a check for his part.

Q. Do you know of any association of physicians practising medicine under a firm name such as attorneys sometimes do?

Mr. McCarter: I object.

Q. Such as "McCarter & English" or "Bourgeois & Coulomb"?

Mr. McCarter: I object.

Mr. Bourgeois: If the Court please, I think that is quite pertinent in view of the cross-examination.

The Vice Chancellor: I think it may be competent.

A. I have.

Q. Often or not? A. I beg your pardon.

Q. Is it customary or not customary for them to associate as a firm, as a firm name? A. As far as my knowledge goes with physicians the names usually just appear in the same order in which ours appear.

By the Vice Chancellor: Q. You never knew any to do as attorneys-at-law do, like "McCarter & English"? A. I don't recall; there may be.

Q. I don't either, but I wouldn't know whether they were or not. I thought perhaps you would. Of all of your acquaintances you don't know of any such a practice? A. I don't recall at this moment any such firm, perhaps there may be in some instances. I just have vaguely in my mind of where father and son are associated together that way and yet I am not absolutely sure about that, I can not be clear on that question.

By Mr. Bourgeois: Q. Doctor, you have been asked about the drawing of a check for a thousand dollars by Mrs. Marvel during 1912 for an automobile. You say you don't know it. Will you be kind enough to investigate and ascertain what the facts are and let us know? Not while you are on the stand but afterwards. A. Oh, I will later, yes.

Mr. Bourgeois: Now, if the Court please, I want to offer in evidence the books we had yesterday.

By Mr. McCarter: Q. Doctor, isn't it a fact that partnerships between doctors are very unusual and that the personal element between physician and patient is more true and more necessary by the very nature of the relations than exists between any other customer and agent?

Mr. Bourgeois: If the Court please, there are two questions in one there. I wish they might be separated and answered separately.

The Vice Chancellor: If he has any difficulty in answering they may be.

A. Do you wish to separate them?

Q. If you can, answer the two questions in one.

A. I can answer it. I should say in the country it is true; in the city there are quite a number of partnerships.

Q. Yes, and is it not a fact that—oh, assuming now that this whole situation was over and you were starting new: I understand you have an arrangement with Doctor King. He will not be your only assistant, will he? A. Practically the only one I have got now.

Q. Shorthanded, are you? A. Well, I don't know; I may have time to recoup myself.

Q. Up till the 1st of January the office force consisted of yourself, Doctor Jonah, Doctor Durand and Doctor King? A. Yes. Doctor Durand was away from the latter part of November or the 1st of December, I am not sure which.

Q. Well, I know but— A. But he was still on the force.

Q. And you had your secretary too? A. Yes, sir; I hope I shall have her left.

By Mr. Bourgeois: Q. Doctor, supposing this partnership is dissolved and an injunction is not issued against Doctor Jonah restraining him from practice do you think you will need any assistants to take care of the practice he has been looking after?

Mr. McCarter: I object.

The Vice Chancellor: Objection sustained.

Q. What, if any, injury will result to you under the dissolution of a partnership between Doctor Jonah and yourself provided the restraint mentioned in the agreement is not accorded to you as against Doctor Jonah's practicing?

Mr. McCarter: Well now, that is speculative, I think.

The Vice Chancellor: I do not know. I

think that it may be competent if he will deal with facts rather than with fancies.

Mr. McCarter: There isn't any partnership here between Doctor Jonah and him. The partnership is a *tripartite* partnership, and I think that an answer based upon a dissolution of an alleged partnership between him and Doctor Jonah alone is irrelevant. Now, he has agreed to—the agreement doesn't provide for any continuance of two, doesn't provide, as I contend, for a dissolution by the simple abandonment by one; and there isn't a thing in that agreement to show or indicate that the agreement would persist with the two remaining doctors, and I never heard of a partnership of the kind, unless there was a new agreement, that provided for anything except for the life of the three partners that constituted it.

The Vice Chancellor: I think it must be assumed that the partnership is now at a practical end, both parties ask to be relieved from the agreement and, as I understand it, Doctor Durand has retired any way, so that the situation suggested by the question it seems to me may be important.

Mr. McCarter: I think it ought to include, your Honor, the severance of Doctor Durand too.

The Vice Chancellor: Well, that element can be brought in on further examination if necessary; it might be well to bring that in. But I would like to know whether the situation now existing is such a situation as we very often discuss among lawyers. We

talk about taking in a clerk and associating him with us and our business as a partner, junior partner, and we sometimes discuss the possibility of his overt right to split off and carry with him a very important branch of our practice, and that is the very question that I think we may have to consider. However, it may be that it won't be necessary to consider that. Can you answer the question, Doctor?

A. I think I can in part. I think there will be three parties—

Q. I didn't ask about Doctor Durand now; I am asking just between you and Doctor Jonah. A. I didn't have any reference to Doctor Durand. I have reference only to the remaining partnership or the remaining services that can be given by my practice, by those away from here who refers their patients and by the attitude of the patients themselves.

Q. I want to know the injury to you.

Mr. McCarter: By what?

Q. By a dissolution of the partnership without your being accorded the benefit of the restraint that the agreement provides for? A. The injury to me would follow in this respect: In the first place, Doctor Jonah came into my office and has participated in my endorsement in every way that I could from the time he came and especially from the standpoint of a partner from the time of the signing of our partnership agreement, and whenever I have been away he has usually, being the senior member, has usually been considered the one really in charge—

Mr. McCarter: I don't think this is answering the question at all.

A. (Continuing) I am coming to it—and that naturally in that situation Doctor Jonah has derived a tremendous benefit in various ways, and that if he uses those benefits against me hereafter he then is doing me a personal injury.

Q. Now, how could he use his benefits against you? A. In this way: That he could not only take up practice that came to me primarily and was directed to him through me by using his acquaintance that he received in the practice and by writing to members of the profession with whom he has become acquainted whilst associated with me, telling them of the dissolution, and whatever else he was a mind to tell them, and placing me in a position and attitude to which I would have no defense whatever, unless by chance I might be told of it, and have them refer their work, when they are accustomed to refer it to me and the firm, to him individually.

Q. Now, what with relation to the practical situation in Atlantic City? What class of patients has Doctor Durand principally directed his attention? A. Doctor Jonah, you mean?

Q. Doctor Jonah, in the past three years? A. Principally to the visiting practice.

Q. And where? A. In the hotels, in the cottages and in my office associated with me.

Q. Yes. Now, what proportion of that practice has come under Doctor Durand's particular attention—Doctor Jonah's particular attention and over which you at the present time have little or no control? A. I don't know just how much but these books that were referred to yesterday show quite a number of names that have called him independently.

Q. Has he made any special effort—

By the Vice Chancellor: Q. Do you know whether or not there are a great number of patients in Atlantic City now that are calling him independently? A. The books would show; I don't know how many because I don't know how many visits he is making a day or anything concerning that of late.

By Mr. Bouregois: Q. Has Doctor Jonah in the past three years made an effort among one particular class of people? A. To a great extent.

Q. Now, what class of people? A. The Jewish people.

Q. And they are generally in what hotels? A. In the larger hotels and the Jewish, so-called Jewish hotels.

Q. And which are they? A. The Peerpont, the Rudolf, the Royal Palace—well they go into all the hotels, I think, to some extent, but those are usually designated as the Jewish hotels.

Q. Now, when these people call for a physician do they call for you or do they call for Doctor Jonah?

Mr. McCarter: I object.

A. Sometimes for me and sometimes for him, and frequently when they call for him—

Mr. McCarter: He doesn't get the calls. I object to the introduction of this kind of evidence. This man don't get the calls.

Mr. Bourgeois: All right; we will have it by the bookkeeper.

The Vice Chancellor: Yes; the books would be the best evidence of that; I suppose you have a perfect record of it.

By the Vice Chancellor: Q. Well, you want him enjoined from practicing medicine in Atlantic City in order that you may have the benefit of

whatever he would get there in the way of practice, more or less? A. May I answer from my standpoint?

Q. Yes, from your standpoint is what I want to know. A. I want him enjoined in the first place because he entered into an agreement where there were liberalities made—

Q. That is academic but from a practical viewpoint why do you? A. Because the agreement that we entered into declared that if he broke this agreement that he would leave the town for—at least, quit practicing medicine in the town for a period of three years.

Q. That is the agreement, but if you and he were good friends you could easily waive that? A. Yes.

Q. But from a practical viewpoint why do you want him denied the privilege of practicing in Atlantic City? It is so that you may get, it is not—A. The benefit of my own clientele.

Q. Yes, of such practice as he would get? A. Yes, or such as will come back to me.

Q. Yes, as would come back to you? A. Yes.

Q. If he went away? A. Yes.

Q. That is the practical side of it, I suppose? A. Yes.

Q. The other side if that you and he are thoroughly estranged? A. We are.

Q. You can't see things the same way at all, and in place of your former close friendship has grown a feeling quite as intense of the opposite nature, and therefore you want to stand by your agreement; that it about the substance of it? A. And there is another reason, that Doctor Jonah has misrepresented me all around the town. That is a personal reason, of course, I don't mean to go into anything outside of the other.

By Mr. Bourgeois: Q. What would be the practical effect on your practice if, in the event of a dissolution of the partnership and no restraint against Doctor Jonah, he should go to these patients he has been treating and misrepresent you?

Mr. McCarter: I object.

The Vice Chancellor: No, I can not assume that.

By Mr. McCarter: Q. Now, Doctor, you have already provided yourself with one assistant, haven't you? A. I have.

Q. To help you in your work? A. That is, I have engaged an assistant.

Q. To help you in your work? A. Yes.

Q. Because you can't do it all yourself? A. Yes.

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

Q. You don't find your practice is running away, do you? A. There are times—

Q. Will you answer my question? Do you find your practice falling off? A. Yes.

Q. You do? Do you acknowledge that you are losing your practice? A. I acknowledge this: That I am not doing as much practice today as I did three years ago or five years ago.

Q. Do you— A. Personally, I mean.

Q. I understand that. Is that because you haven't wanted to do it and have picked and choosed, as you said yesterday? A. Partly so.

Q. Do you mean to say that if you got busy and devoted yourself day and night to the practice and the practice of your profession you feel the need of such extra patients as Doctor Jonah or Doctor Durand may have accumulated, or have you still your grip on your profession? A. I believe I have got my grip on my profession.

Q. I think you have, too, Doctor; I don't think

that anybody will suggest for a moment that you are *passe* or losing your grip. As a matter of fact, you have got all that you can do, haven't you, Doctor? A. I have had more than I can do.

Q. And all you wanted to do? A. I want to do as you would do. I want to take care of the work that comes to me, if I can't do it individually I want others to help me do it.

Q. And your fear is that some of the income that under this agreement would come to the firm from the services of Doctor Durand and Doctor Jonah will now go to them individually—is that it? A. Well, that is part of it.

Q. You haven't any fear of any depreciation in any income that would be due to your own services? A. None at all.

Q. And if you wanted to enlarge the scope of your activities and work harder and take less rest, which I am free to say I think you deserve, you could do it, couldn't you? A. Yes.

Q. And Doctor Jonah being in Atlantic City wouldn't interfere with you, would he? A. Well, there is another side to that.

Q. Well now, do you mean to say that if you just put on the armor of activities and started out to get all the practice you wanted and worked as hard as you wanted that you would let this young man stand in your way? A. Of course I wouldn't let him stand in my way.

Q. Then he wouldn't interfere with you, would he? A. Well—

Q. You would be both busy probably and have all you could do—isn't that a fact? A. I presume we would both have a good deal of work to do.

Q. Yes, and you would probably work harder than your years and inclination at this time in-

dicate would be proper? A. More than likely I would.

Q. Now, as a matter of fact, isn't it true that you have an agreement with Doctor Jonah that he shall not, upon a dissolution of the firm, practice in Atlantic City for three years, and you think he ought to live up to that agreement—isn't that the basis of your injunction?

Mr. Bourgeois: I object; that is not cross-examination.

Mr. McCarter: I think it is.

The Vice Chancellor: Well, Mr. McCarter, I doubt whether we have entered into a field that needs quite so much ventilation. I apprehend that motives do not enter into it at all. My notice of it was at first that the practical standpoint might be of service, as to what this would do to him if a partner quit him and stayed in Atlantic City, and as soon as he began to give the answers it went into the academic viewpoint and personal feeling of this man, but I thought and still think that it might be competent to show the practical situation as to how much this would injure his business if Doctor Jonah started an opposition business.

(Question repeated.)

The Vice Chancellor: That goes into the idea of motive. I think that is objectionable.

Mr. McCarter: Well, the thought I have is, of course motives do not enter into it at this time and whatever the basis of the claim be any benefit to the claimant to revenge would never be granted.

The Vice Chancellor: No; but I think you can examine him to any extent you choose upon the question of whether it would be beneficial to him to have an injunction issue but not whether it would be pleasant. If you think it will benefit the situation you may introduce the evidence. I do not want to exclude anything that you think will be beneficial.

Q. Well now, Doctor, isn't it a fact—no. Well, I think I am satisfied with the evidence already in. I will withdraw that question.

By Mr. Bourgeois: Q. Doctor, under this agreement that you signed there is a provision authorizing you to employ such assistants as are necessary. When you employ an assistant does it benefit you in a financial way?

Mr. McCarter: I object.

Mr. Bourgeois: The Attorney General on cross-examination has shown that Doctor Marvel has engaged Doctor King to come to assist him. We propose to show that when he has Doctor King come and assist him it is for his financial benefit, while he pays Doctor King yet it is for the benefit of his business and to him financially.

Mr. McCarter: Well, what has that got to do with it?

The Vice Chancellor: I do not see the relevancy of it.

Mr. Bourgeois: The fact that it is to Doctor Marvel's interest to keep intact all of the business, although it is more than he can take care of.

The Vice Chancellor: Well, that goes without saying, doesn't it? He employs a

clerk because the clerk will make his salary and more.

Mr. Bourgeois: The Attorney-General cross-examined so directly along the line to indicate that Doctor Marvel had all he could do. I think he is entitled to have this business remain intact and get the benefit of it.

The Vice Chancellor: That is true. No one could doubt it for a moment. If it were not so we would not have partners, would not have clerks.

Q. Now, Doctor, you answered a question for the Attorney General stating that you didn't do as much business—that is, you personally hadn't had as much to do as you did three years ago. Why is that? A. For the reason that one of the understandings or stipulations under the agreement was that I should give up my night work and the other two men should take it; that is one of the reasons.

Mr. McCarter: Well now, I don't think the reasons that led into this, your Honor, are important; here is the agreement.

The Vice Chancellor: He says the fact is that during the two years past he has not done night work.

A. (Continuing) Furthermore, there has been more work that could be assigned to the men individually when we began this agreement than could have been assigned to them before because of their acquaintance in the practice.

Q. And tell me whether or not the assigning—that is, did you ever assign any of your practice to them? A. Frequently.

The Vice Chancellor: What?

Mr. Bourgeois: His practice, what we call his practice.

The Witness: Yes.

Q. Tell me whether or not the assigning of the work you had formerly been doing to them reduced the amount of work that you actually did? A. It did.

By Mr. McCarter: Q. Isn't it a fact, Doctor Marvel, without going through a long list that practically for the past year or two Doctor Jonah has devoted himself to work and patients that have come to him and weren't your patients so-called? A. Doctor Jonah has done a great deal of work—

Q. Now, won't you answer my question? A. Well, I can't as you ask it. I say, he has done a great deal of work that has come direct to him; he has also in the past two or three years done a great deal of work that I have assigned him.

Q. But have you looked at the list of patients named in the accounts attached to his answer? A. Yes. That is, I have glanced over them, I haven't studied them carefully.

Q. Is there fifteen out of the aggregate that were originally your patients? A. If you will leave the list I will look it up and report to you later.

Q. All right, that will save time. Do that.

By Mr. Bourgeois: Q. Now, if these patients that Doctor Jonah has reported were patients that came to him as distinct from you was that or not an independent practice by him?

Mr. McCarter: I object to that. That is immaterial and it calls for a conclusion on the part of the witness, and it is not evi-

dence. There is no reason why a man could not do the work.

The Vice Chancellor: I do not see the force of it. You do not claim that he has been practicing independently, do you?

Mr. Bourgeois: No, but it may show the building up of an independent practice so when this partnership does cease that Doctor Jonah will have something to fall back on.

The Vice Chancellor: There is no claim that he has built up an independent practice, he has just been busy, and Doctor Marvel has got twenty, thirty or forty per cent of the proceeds and benefited under it fifty per cent, sixty per cent.

The Witness: How much of mine did he get?

Doctor Jonah: (The defendant) Not any.

Mr. Bourgeois: I offer in evidence the book we had yesterday, the weekly office book that had those blank pages.

Said book marked Exhibit C-19.

Mr. Bourgeois: I offer the cashbook showing the receipts up to January 1st, 1913.

Said book marked Exhibit C-20.

Q. Does that show beyond January 1st? A. It shows beyond and up to it, both.

Mr. Bourgeois: Well, I am offering it up to that date, because I anticipate that is all we can take into consideration now.

A. (Continuing) This shows from July, 1912, up to January 28th; this shows from July, 1912, to January 28th.

Mr. Bourgeois: Yes. Well, I only want that up to January the 1st, 1913.

The Witness: That is page 32 included.

The Vice Chancellor: There must be a rest somewhere, I suppose, in the accounting. Why do you select January 1st?

Mr. Bourgeois: Well, under the agreement I anticipate they are endeavoring to show in this examination that the moneys that Doctor Jonah had retained were not more than the moneys he was entitled to have if he had turned them in, and under the agreement he is only entitled to the moneys received up to the end of that year.

Mr. McCarter: There is no mystery about it. We are only offering the evidence of the failure of Doctor Jonah to have received any moneys which appear on the books to be due him during the year 1912 and during the month of January, 1913, for the purpose of indicating there is a dispute about the amount that is due. He hasn't sought to take out any money, he wants to leave plenty there to take care of any transaction injurious to them. He hasn't tried to steal—to take it away at all. We are not stipulating at any particular one date. The complainant is amply secured, and we will show that he is amply secured, and we are not claiming any advantage of it for any other purpose.

Mr. Bourgeois: I want to call your Honor's attention to the fact that the answer of the defendant was filed on November 12th, 1912.

Mr. Endicott: What point do you make of the date it was filed? Was it out of time?

Mr. Bourgeois: Oh, no, not out of time at all. I make the point of that to show—I

am going to show how much money was turned in after the answer was filed. I don't know whether it was out of time or was not. I want to offer in evidence also the cashbook of 1911. We have examined about that.

Said book marked Exhibit C-21.

At this point, by consent of counsel, Jay I. Durand was called on the part of the defense.

JAY I. DURAND, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath says:

By Mr. Endicott: Q. Doctor, you are one of the three which make up this partnership we have been talking about? A. I am.

Q. And the testimony here indicates that there has been some friction. I want you to tell us to what it was due. What was the difficulty between the partners? What was the complaint made, especially as to—

Mr. Bouregois: I think we are entitled to have a little more specific question.

Q. Well, all right. In what particular did Doctor Marvel fail to observe the letter and spirit of the contract?

Mr. Bourgeois: I object, on the ground that that asks Doctor Durand first to construe the contract—

Mr. Endicott: I do not want to lead him.

The Vice Chancellor: I think the question should be answered. Of course it involves construction of the contract but the

answer must be confined to what he has done.

Mr. Endicott: Well, I will withdraw the question.

Q. After your association with Doctor Jonah and Doctor Marvel did you have any knowledge of the formation of a corporation called the Private Hospital Association? A. Yes.

Q. Was Doctor Philip Marvel a member of that corporation? The record here shows he was a director and vice-president. A. I have no knowledge of that; I have been told so.

Q. Were any of the patients of your firm sent to that hospital? A. Yes.

Q. Can you name some of them? A. Why, I have particularly a poor memory for names. I know that there were some; I could probably think of some.

Q. Well, were there—

Mr. Bourgeois: If the Court please, this is all objected to, on the ground it is no defense to this suit at all. There is nothing in the agreement to prevent Doctor Marvel from buying stock in any corporation he wants.

The Vice Chancellor: No, that is true, but I think—

Mr. Endicott: We propose to show he was interested in a rival institution.

The Vice Chancellor: I think it is competent.

Q. Were there several of your patients sent there? A. Why, since the formation of this contract there have not been several of my personal patients sent there, patients of mine.

Q. I don't mean that, your patients, I mean pa-

tients of the firm? A. I think some of them were sent there.

Q. Did you have at one time some of your patients there whom you desired—some of the firm patients whom you desired to treat when Doctor Philip Marvel went out of town? Do you remember one occasion when Philip Marvel was going away, or was sick, rather, and you wanted to treat the firm's patients there and he objected and turned them over to Emery? A. I remember at that time there were several patients in the sanitarium and I was called there to see one of them, there were several patients that belonged to our firm, and when I got there I found that there were several patients there that needed attention, one of them to whom I had been called, and I called Doctor Marvel up and asked him if he wanted me to look after the other patients that were there at that time and he answered that he had left them in charge of Doctor Emery Marvel as one of them was a surgical case that he had been attending.

Q. When was that? A. I don't remember exactly; it was since the contract was made.

Q. Do you remember how many patients of the firm were in the sanitarium at that time? A. I believe there were four or five at least; I don't remember the exact number.

Q. And there have been patients of the firm there at other times, have there not? A. I think so; I think there have been some.

Q. When the patients of the firm were sent to the hospital was it always for surgical operations? A. No.

Q. Did you or Doctor Jonah treat any of the firm's patients at the hospital? A. Yes, I have.

Q. Lately? A. Not within the last—not lately, no.

Q. Were any of these patients of the firm who went to the hospital treated by physicians other than your firm? A. Yes, I believe they were; at least, I know they weren't treated by Doctor Jonah or myself.

Q. Do you know whether some patients of the firm after they went to the hospital were treated by Doctor Emery Marvel? A. I know the surgical cases at least were, and I know in the one instance that I recited that others were.

Q. Well, after Doctor Emery Marvel operated on patients of the firm he would treat them until they recovered or were removed from the hospital? A. That was the usual custom.

Q. That is the rule of the profession, isn't it, that the surgeon who operates shall treat a patient until the patient recovers?

Mr. Bourgeois: I object as irrelevant and immaterial.

The Vice Chancellor: Objection overruled.

A. Yes; that is the usual rule.

Q. And it was done at this hospital? A. Yes.

Mr. Bourgeois: I object. He says it was done in this particular case.

(Previous testimony of the witness read.)

Mr. Endicott: What I asked was whether or not it was done at this hospital in the particular cases that went there from Doctor Marvel's office or their office.

The Vice Chancellor: He says it was so and that is so everywhere, it is a general rule, if they send a surgical case to a sanitarium they will treat it as a rule.

Mr. Bourgeois: I think it is too general,

I think in these particular cases it wasn't the fact, that is the idea.

Q. Doctor, sometimes patients of your firm were sent from hotels to this hospital, were they not? A. Yes.

Q. Was that a cause of complaint from some of these hotel managers? A. It was.

Q. An X-ray was sent to this hospital, and was it used afterwards upon any of the patients of your firm? A. Yes.

Q. When so used in whose name was the bill sent out? A. At first they were sent out from our firm and later from the hospital.

Q. Did you protest against that practice? A. Yes.

Q. To Doctor Philip Marvel? A. Yes.

Q. What was his reply to that? A. Well, he said that either the sanitarium or the X-ray wasn't paying and he had told them they could collect the bills from that thereafter.

Q. Did he say anything about that practice being followed for the purpose of benefiting any physician?

Mr. Bourgeois: If the Court please, all these questions are leading; I don't know why it is necessary.

Mr. Endicott: You wanted me to be more specific. Now I am trying to be.

A. Why, I think I have answered that, Judge. I said that he said that either the X-ray outfit or the sanitarium—I can't be clear, distinct—wasn't paying anything just then and he told them they could collect the bills from the X-ray machine.

Q. Did your firm receive the proceeds of those bills? A. We did at first. We didn't—he told me, at least, that they were going—that the sani-

tarium would send out the bills from that on. After that I sent no X-ray patients there except the one case that the bill was sent and we had the discussion over it.

Q. Well, did he tell you that he had that practice followed for the purpose of benefiting Doctor Emery Marvel or the hospital?

Mr. Bourgeois: I object because it is leading.

The Vice Chancellor: I sustain the objection

Mr. Endicott: I think it is a little leading. I have tried to ask the question indirectly. I will ask it again.

Q. What reason did he assign for having these bills set out from the sanitarium instead of from the office of your firm? A. I think I have answered that twice, Judge. I have said that he said that the plant wasn't paying there and he had told them they could collect so that it might be more so.

Q. Is that the only reason he assigned? A. Yes, I think so.

Q. Now, it wasn't always so quiet and serene so far as you and Doctor Philip Marvel were concerned in the conduct of the business of this firm, was it?

Mr. Bourgeois: I object because it is leading and immaterial.

The Vice Chancellor: I think it is immaterial unless it is introductory to something else. I guess that is pretty well established already, though.

A. Yes, I have had quarrels with Doctor Marvel; that has been referred to several times here.

Mr. Endicott: I want to show the differences and what led up to them, the purpose

being to show the violations of this contract on the part of Doctor Philip Marvel.

The Vice Chancellor: I think you had better confine yourself to specific instances where Doctor Philip Marvel has been the transgressor.

Q. What was the occasion of your controversy with Doctor Philip Marvel at the Glaslyn, a boarding house or hotel?

Mr. Bourgeois: Now, wait just one moment I think, if the Court please, this agreement is not a tri-party agreement at all, as Mr. McCarter has been assuming. Under its provisions in three or four parts —three or four clauses of it show clearly that Doctor Marvel has the right, if either one of them does anything they ought not to do, to put that particular person out; in other words, it is several as to that.

The Vice Chancellor: Yes, I perceive that, but you do not contend, do you, that Doctor Marvel could demean himself in utter disregard of that agreement and yet enforce it against them?

Mr. Bourgeois. No, no; if we were going to enforce this agreement against Doctor Durand then I can see that anything that Doctor Marvel did in derogation of this agreement he might bring out as a defence.

The Vice Chancellor: I understand that counsel is trying to bring out specific instances in which Doctor Marvel demeaned himself in disregard of this agreement. I think they are competent.

Mr. Bourgeois: Even though it did not affect Doctor Jonah?

The Vice Chancellor: Of course it has to affect Doctor Jonah. I do not know what this is going to bring forth until after it comes.

Mr. Bourgeois: All right; go ahead.

(Question repeated.)

A. Well, that was purely a controversy, Judge, between Doctor Marvel and myself, it did not affect Doctor Jonah. I was angry over my treatment over a patient and he was angry of my treatment towards him.

Q. Wasn't it because of the failure of Doctor Marvel to call in either Doctor Jonah or you as a consultant and going out and calling in strangers?

Mr. Bourgeois. I object to that, because there is nothing in this agreement that says Doctor Marvel has to call in one of these young men and consult them. I think there is a provision there that they shall call Doctor Marvel in.

A. That wasn't the point.

By the Vice Chancellor: Q. State what the difficulty was? A. In that case I was called to see a patient whom Doctor Marvel had treated for years. I had treated her and been called in place of Doctor Marvel a number of times to that family, and I had become, through my connection with Doctor Marvel, really the family physician for that family. She became ill and we had a request from the family. I asked permission to bring Doctor Marvel in as a consultant. I brought Doctor Marvel in with me to the case and he saw the case in consultation with me, and later I went in to make a regular call on the patient and found Doctor Marvel and another physician having a consultation in the case, of which I

knew nothing, and it angered me and I showed my temper in the matter and it led to a quarrel. I do not see how it is material to this case simply to show that we did have quarrels.

By Mr. Endicott: Q. Do you remember when the rubber stamp was introduced and put on the stationery? A. I do.

Q. Were you consulted about that before it was introduced? A. No, I don't remember to have ever been consulted about that.

Q. You never authorized or sanctioned it? A. I don't remember to have authorized it.

Q. Did you object to it? A. I did.

Q. To whom? A. To Doctor Marvel.

Q. What objection did you make to him? A. Why, the objection that every time,—that a great many of the patients—through our having practiced in the town for years and becoming acquainted with outside physicians a great many patients came to us individually after these years who didn't know Doctor Marvel but were sent to us or called us through our acquaintance with other patients, and when they got a bill with a stamp on saying "Make the check payable to Doctor Marvel" when we had given them all the attention and they didn't know Doctor Marvel, every time the bills went out I received—I was spoken to by patients in regard to them; I felt that it belittled me and was a reflection on my honesty to have my bills paid to somebody else and I protested on those grounds.

CROSS-EXAMINATION by Mr. Bourgeois:

Q. Doctor, what led up to the rubber stamp?

By Mr. Endicott: Q. One minute. You have retired from the practice of medicine with this firm?

A. I have.

Q. When did that retirement take place? A. During January.

Q. You signed a written agreement at that time assigning your interest in the firm to Philip Marvel?

Mr. Bourgeois: I object; the agreement will speak for itself; it is a written agreement.

Mr. Endicott: It is only preparatory to calling for it.

A. I signed an agreement the agreement which has been introduced.

Q. Have you it here? A. No, I haven't.

Q. Where is it? A. I think it is among some of my papers at home.

Mr. Endicott: I should have asked for its production this morning but yesterday Mr. Bourgeois said we would have no difficulty about that.

Mr. Bourgeois: We won't have any difficulty about it.

Mr. Endicott: Well then, let us have it introduced.

(Paper produced which is marked Exhibit D-6 and handed to witness.)

Q. Was that the agreement, the original, a copy of which you now hold in your hand, signed by Doctor Philip Marvel and yourself both? A. This contract, so far as I know, I never saw Doctor Marvel's signature to. We had a previous contract and in order to meet a new condition that I did not oppose this contract was drawn up and sent to me for my signature and I signed it.

Mr. Bourgeois: We will admit that Doctor Marvel signed the agreement. I thought you had the copy that he signed.

Mr. McCarter: Referring to D-6?

Mr. Bourgeois. Yes, D-6.

Mr. McCarter: We offer that in evidence.

(Said paper previously marked Exhibit D-6.)

By Mr. Bourgeois: Q. Doctor, what led up to the use of the rubber stamp? A. After Doctor Marvel and Doctor Jonah began to have trouble the rubber stamp was ordered used. It had been used years before and had been discontinued.

Q. And why was it resumed? What was the nature of the trouble that called for its being used? A. I don't know except that after Doctor Marvel and Doctor Jonah got into the controversy it was ordered used by Doctor Marvel.

Q. Do you know if Doctor Jonah neglected to turn in checks that had been received by him for long, long periods of time?

Mr. McCarter: I object; that is not cross-examination.

Mr. Bourgeois. Yes, as to the use of the stamp it is.

The Vice Chancellor: I think so. He complained of the use of the rubber stamp being an unjustifiable demand upon him and Doctor Jonah; I think you can show by him that Doctor Marvel's conduct was justified, that would be proper cross-examination.

A. I knew of none until I saw or heard of the one introduced here yesterday. I did hear Doctor Marvel during one of our controversies told me of one check that Doctor Jonah did not turn in for years that had been lost in his papers, or for months had been lost in his papers; that one check I heard of I heard of no others until yesterday.

Q. Now, this X-ray machine, that was the property of Doctor Philip Marvel, as I understand, his individual property? A. It was purchased before the firm was made, I didn't pay any part of it.

Q. And can you tell me whether or not the hotel people objected when patients were sent to Galen Hall? A. From the other hotels?

Q. Yes. A. I do not remember any specific instance.

Q. What was there—what hotels objected to the patients being sent to Doctor Emery Marvel's sanitarium? A. I remember of being spoken to about it by one of the Whites at the Marlborough, by Mr. Haines at the St. Charles, by a clerk at the Dennis and a clerk at the New Marion; I was told it had been discussed in the hotel men's meeting.

Q. Now, when a patient was sent,—that is, a patient of the firm was sent either to Doctor Marvel's sanitarium or to Galen Hall, it was because it was supposed they would be better able to receive the treatment and rest they desired in those places than they would in a hotel, was it not?

Mr. McCarter: I don't suppose this witness can tell what prompted Doctor Marvel.

Q. Well, when you sent them? A. I don't remember ever sending a patient to Galen directly except for a special surgical treatment, I may have but—

Q. And that was because you thought that patient could be better cared for at Galen than he could at a hotel, wasn't it? A. Yes.

Q. And you did send some cases to Doctor Marvel's sanitarium, didn't you? A. Yes.

Q. Do you remember a Miss Saunders? A. I can't quite remember that case.

Q. During 1910? A. The name seems familiar but I can't remember the case.

Q. Then you can't tell whether or not you sent her to Doctor Marvel's sanitarium and treated her there on two different occasions? A. I can't remember the case.

Q. Do you remember a Mr. R. P. Goff, also in 1910? A. No, I can't remember that case either.

Q. Don't remember if you treated him there and sent him there to Doctor Marvel's sanitarium? A. I don't remember.

Q. Do you remember Judge J. Cooke? A. Yes. Was he from Youngstown, Ohio?

Q. I don't know where from? A. I think I remember a judge, I think that was his name.

Q. And also Mrs. Cooke? A. Yes.

Q. You sent them to Doctor Emery? A. No.

Q. You treated them there? A. I treated them there.

Q. Do you remember Mrs. S. DuPont? A. Yes.

Q. Did you send her to Doctor Emery's sanitarium? A. No.

Q. Did you treat her there? A. No.

Q. Sure? A. Yes, I am quite sure. I treated her and later Doctor Marvel was called as surgeon in the case and I think he moved her there, I don't believe I ever saw her after that time; I treated her in the hotel but I don't think I had anything to do with her going there.

Q. Didn't you treat her after the surgical operation was over and after the surgical treatment was over? Didn't you treat her there during her convalesence? A. It is possible, I don't remember.

Q. And do you remember Miss Laura Johnson? A. I can't place her just now, can't place the case.

Q. Maybe this will recall it: Do you remember

that you and Doctor Philip Marvel both treated Miss Johnson at Doctor Emery's sanitarium in 1910? A. I can't remember, I have an unfortunate memory. If I knew something about the case I could remember it but I can't remember names.

Q. Well, it was an operation apparently; that is all I can give you. A. I can't remember.

Q. Now, Doctor, isn't it a fact that when Doctor Marvel or you or Doctor Jonah sent a patient to Doctor Emery Marvel's sanitarium for an operation that after the operations had been performed and the surgical attendance had ceased that you or some of you, each of you, whoever sent the patient there, continued the medical attention to that patient? A. That was the theory on which we worked.

Q. Now, Doctor Jonah sent patients to Doctor Marvel's sanitarium along in 1909, didn't he?

Mr. McCarter: I object to what was done before. We have got enough in this case without going into ancient history.

The Vice Chancellor: Well, it does not seem to me it is very material.

Mr. Bourgeois: Well, if the Court please, I think it does seem material.

The Vice Chancellor: Well, introduce it then. Let him answer it yes or no. Go ahead.

Q. I will change the question. Doctor Jonah sent patients to Doctor Emery Marvel's sanitarium prior to the entering into of this agreement of January, 1910, did he not? A. Yes.

Q. Now, I want to recall Miss Saunders to you; I think she was treated for measles, went there with measles? A. I think I remember her.

Q. And you did treat her there, didn't you? A Yes.

Q. Did you say that you did not treat any cases that went to Galen Hall or that you have treated those that have been sent to Galen Hall? A. Why, I have certainly treated lots of cases at Galen Hall.

Q. That have been sent there for a surgical operation? A. Yes, I have had those cases.

Q. Now, I wan to recall Miss Sanuders to you; formed and after the patient had ceased to require the attention of a surgeon but did require medical attention, didn't you always continue as physician to that patient? A. Yes, and I usually gave them the surgical attention in those cases too afterwards, they were usually consulting surgeons called down from Philadelphia and when they went back we assumed charge of the case.

Q. In other words, there was no resident surgeon at Galen Hall? A. Yes.

Q. But Doctor Emery Marvel himself is a surgeon? A. Yes.

Q. Does he perform all the operations that are performed in his sanitarium or do other physicians, surgeons, also come there and perform operations? A. Yes, other surgeons have operated there for me.

Q. It has been suggested that Doctor Marvel has some stock in the Emery Marvel Sanitarium. Did you have some stock in Galen Hall? A. No.

Q. Did not? A. No.

Q. No interest in Galen Hall at all? A. No.

Q Did Doctor Jonah have? A. Not that I know of. I might amend that answer of mine. I have a thousand dollars worth of stock in a Galen Hall Medical Company, an entirely different company which operates a sanitarium at Wernersville, which I bought last year.

By Mr. Endicott. Q. Wernersville, Pennsylvania? A. Yes.

By Mr. Bourgeois: Q. But for the same purpose and sometimes you send patients there? A. I have sent patients there.

Mr. McCarter: I don't see what that has got to do with the case.

Mr. Bourgeois: I don't think either of them has a bid to do with it.

The Vice Chancellor: I don't either, we all agree, every one of us.

Mr. Bourgeois: We will stop. Thank you, Doctor.

By Mr. Endicott: Q. Were you offered some stock in the sanitarium of Doctor Emery Marvel? A. Yes.

Q. As a gratuity? A. At least without me paying cash for it.

Q. Did you accept the offer? A. No.

Q. Do you know whether Doctor Jonah was offered any?

Mr. Bourgeois: I object to that as immaterial.

A. I don't know.

Mr. Bourgeois: What difference does it make?

Q. You have said that the theory was that after an operation was performed at the sanitarium on a patient of your firm medical attendance after the surgical attendance had ended would be from some member of your firm? A. Yes.

Q. Was that carried out in practice? A. Why, I have known of at least one case where Doctor Emery Marvel retained a patient after an operation.

By Mr. Bourgeois: Q. Would you mind giving us the name of that patient? A. Miss Buck.

Mr. Endicott: Q. Within what period have you practiced or attended patients at the sanitarium of Doctor Emery Marvel? A. Why, I believe I have had no patients there for the last perhaps year and a half or two years, I don't remember accurately.

Q. The agreement recites that you received a thousand dollars, the agreement between Doctor Philip Marvel and you. How was that paid to you?

Mr. Bourgeois: That is objected to. Oh, well, I don't care.

A. That was paid me by check.

Q. Whose check? A. It was a check drawn on the firm account and signed by Doctor Marvel. A couple of hours afterward Doctor Marvel called me up and asked me not to deposit the check if I hadn't, as he had made a mistake in drawing it on the firm account.

By Mr. Bourgeois: Q. And then had you deposited it? A. I had.

Q. Now Doctor, just one question it may be is not cross-examination but I want to know: Did you remonstrate to Doctor Marvel because Doctor Jonah had not rendered his accounts from time to time? A. I did.

Q. Frequently? A. Yes.

Mr. Endicott: I suppose he is your witness for that matter?

By the Vice Chancellor: Q. It seems to me Doctor Jonah would be the one to remonstrate with, wouldn't he, rather than Doctor Marvel? A. I did that also.

By Mr. Endicott: Q. Were accounts rendered daily to the bookkeeper of the work done by each member of the firm? A. Not absolutely daily, no.

Q. You didn't always turn in your accounts? A. No.

Q. Sometimes not for weeks? A. I have been more than a week behind.

Q. Yes, several weeks? A. Yes, at times I have been two or three weeks.

Q. The same is true of Doctor Philip Marvel? A. I don't know so much about that; I think we both erred further than he did in that matter.

Q. He didn't turn in daily accounts, did he? A. I don't think he did daily; he turned over his calls to the secretary and she posted up for him; I always did my own posting and sometimes I would get busy and get behind on it.

By Mr Bourgeois: Q. You didn't have any lapses of three or four months at a time? A. Never as long as that.

Q. After you served your relations with Doctor Marvel or at the time you did was it at his request or your request?

Mr. McCarter. I think that is immaterial.

Mr. Bourgeois: I think it is not immaterial under that agreement.

The Vice Chancellor: I think the agreement authorizes Doctor Marvel to—well, I forget what it does authorize. It authorizes them to withdraw under a penalty and authorizes him to discharge for cause—isn't that it?

Mr. Bourgeois: That is right.

Mr. Endicott. With a penalty; the penalty follows in any event.

The Vice Chancellor: Well, I think it is competent.

A. Well, I would like to answer that rather fully. Doctor Marvel asked me to sign a contract assigning my interest in any money that Doctor

Jonah might hereinafter be required to turn in to him, as he said that it might cause a technical delay in this case if I didn't. I told him that I wished to withdraw absolutely from the firm, and that if he would allow me a thousand dollars in payment for my back accounts instead of the consideration named in that contract that I would assign all interest in the firm's accounts to him and start to Europe, as I wished to do, and with that agreement I signed the contract.

Q. And, Doctor, you were to go to Europe for what length of time? A. There was no length of time mentioned.

Q. What time do you contemplate going away? A. Somewheres from six months to a year.

Q. And after your return it is your intention to practice where? A. I shall probably practice in Seattle.

Q. And you had discussed that phase with Doctor Marvel previously, hadn't you? A. Yes, sir.

Q. And your furniture is already on the way to Seattle, isn't it? A. Yes.

By Mr. McCarter: Q. As I understand it, the first suggestion that was made was the suggestion that you should make some assignment to Doctor Marvel of your interest in whatever should be recovered on the accounting between Doctor Jonah and himself? A. Yes.

Q. That came first from Doctor Marvel or from Mr. Bourgeois? A. Why, it was—the contract was drawn up by Mr. Bourgeois and when I —

Q. The suggestion I mean came from him? A. Doctor Marvel asked me to consider that contract which Mr. Bourgeois had prepared and sign it.

Q. The contract had already been prepared then? A. Yes.

Q. And that lead up to the—that was the way

the thing was started, by the handing over to you of this proposed contract? A. No, it was after a conversation two or three days before with Doctor Marvel in which I asked him to make me an allowance on those accounts so I could start immediately to Europe.

Q. And this was a reply to that? A. He told me that he would consider that, think it over, and then he sent to me the morning that this case was to have been heard in Atlantic City and showed me this letter from Mr. Bourgeois saying that he feared the suit might be postponed on a technical ground and asking me to sign this contract, so I said to him "If you will make the consideration a thousand dollars instead of one as recited in the contract as shown me I will assign all my back accounts to you, all my interest in any back accounts in the firm, and that will enable me to start at once for Europe."

Q. Now, let me ask you this: Was the technical reason that Mr. Bourgeois suggested explained in the letter? A. Yes.

Q. And that was, was it not, that you were not a party to this suit? A. Yes.

By Mr. Bourgeois: Q. And, Doctor, you knew of this difficulty between Doctor Jonah and Doctor Marvel before this suit was instituted, didn't you? A. Yes.

Q. And it was your desire to be kept out of it entirely, wasn't it? A. It was.

Q. You didn't want to be in on either side? A. I did not.

ANNA M. GREENLEAF, a witness produced in behalf of the complainant, being duly sworn according to law, on her oath says:

Q. Miss Greenleaf, you reside in Atlantic City? A. Where do I reside?

Q. Yes—in Atlantic City? A. At Pine Hill.

Q. I say you do reside in Atlantic City? A. Yes.

Q. And you are in the employ of Doctor Marvel and Doctor Jonah and Doctor Durand? A. Yes.

Q. In what capacity? A. As secretary.

Q. Since when? A. The 5th of September.

Q. Of 1912? A. The 5th of September, 1912.

Q. I call your attention to a book that is marked "Time book," and I ask you to turn to the week at which your service commenced? A. My service began on the sheets September 7th.

Q. Week ending September 7th? A. Yes.

Q. Now, take the next date after September 7th, please? A. September 14th.

Q. Refer to the time sheets, please and tell me what they indicate? A. This indicates Doctor Marvel's—

Q. That is the first page? A. Yes—office calls.

Q. Yes. A. This is—

Q. Second page? A. —his house visits.

Q. The third page?

Mr. McCarter: It seems to me, your Honor, this is immaterial. It is after the beginning of the suit. We are not taking the account here. It seems to me immaterial. This suit has got to be decided on what occurred before the suit was commenced.

The Vice Chancellor: I think so.

Mr. Bourgeois: I had overlooked the fact; in fact, I didn't know that she hadn't begun until after the case.

Q. Now, Miss Greenleaf, will you tell us just what was done by you in making up or endeavor-

ing to make up a list of patients of Doctor Jonah's which were not included in the answer filed by him? A. Well, I took Doctor Jonah's office calls and posted them on the cards.

Q. That is, the calls that you had gotten from what source? A. Over the telephone or by people coming into the office.

Q. That would only be since the 5th of September? A. Yes.

Q. I want to know what effort you made to check up—to find out whether or not the account that Doctor Jonah had rendered in his answer covered all of the accounts that appear in the books? A. Well, may I say I haven't seen the answer, I don't know anything about that.

Q. You haven't? A. No.

Q. Now, tell me just what you did do with regard to those call books since 1910? A. Well, I hadn't anything to do with that, that was all done before I came.

Q. Yes, I know, but didn't you check it up or anything? A. I checked up from June.

Q. From June of what year? A. From June, 1912. I checked up his laboratory work, his past laboratory work, which hadn't been checked up.

Q. Until when? A. Until the present day.

Q. But not his out-of-town calls? A. No.

Q. Miss Greenleaf, let me ask you—I show you a list of names and ask you if you know anything about that of your own knowledge? A. I know these were copied from the list sent in by the druggists.

Q. Now, that is—I thought these were marked but this doesn't seem to be marked. The second list that you have in your hand? A. This was copied by me from Doctor Jonah's cards, from

the first of June, 1911, until the first of November, 1911.

Mr. Bourgeois: Now, I will ask to have that marked for identification.

Said paper marked Exhibit C-22 for identification.

Q. Now, I show you a typewritten list and ask you what you know about that? A. I know that I typed it.

Q. And is that from the same— A. No.

Q. What is that taken from? A. Just a minute, please. This is a list of calls of Doctor Jonah from the office book.

Q. And by whom was it prepared? A. By myself.

Mr. Bourgeois: I will have that marked.

Said paper marked Exhibit C-23 for identification.

Q. From what source did you make up this list that you have in your hand? A. From the office book.

Q. From the office book? A. Yes.

Q. Now, what of the names in the office book did you take and copy on this sheet? A. From the names that Doctor Jonah was to go to see or to call up.

Q. And how would they be designated? How could you tell which to take and which not to take? A. The names that were not material were very likely "Call up Mrs. Jonah," or call up somebody of that sort.

Q. They were not taken? A. They were not taken.

Q. Now, which names were taken? A. Well, patients' names.

Q. How would you determine whether a person was or was not a patient? A. By the cards, by go-

ing over the cards and familiarizing myself with the names, and by the patients saying they wished Doctor Jonah to call.

Q. Then you have here a list of those who are patients, have you? A. Yes.

Q. And that list extends from what period, did you say? A. From the third month thirteenth, 1912, to fifth month twenty-seventh, 1912.

Q. Now, how would you determine as to those where the call came in prior to when you went there?

Mr. McCarter: All this is prior to when she was there.

Mr. Bourgeois: I didn't think it was.

The Witness: I didn't go until the 5th of September.

Q. I know, but what does this extend to, what date? A. From March, 1912.

Q. March what? A. March 15th.

Q. 1912? A. Yes, until June 7th.

Q. Now, you weren't there at the time these calls came in for this list? A. No.

Q. How did you determine which of them were patients or not? A. I took them off of the call book, that is, the book that patients' names are entered into as they call up over the telephone.

Q. Now, would anybody else's name be entered in that book besides patients'? A. Yes.

Q. How would you know which to leave out? A. Well, your intelligence would tell you.

Q. And in what way would your intelligence indicate it? What would there be to indicate it? A. If Doctor Jonah's wife would call up and ask him to call up her I would naturally suppose it wasn't a patient.

Q. You mean it would appear in the book? A. I would put it in the book as a memorandum.

Q. I don't mean after you came; I mean on this call book before you came there? A. That wasn't entered on the sheet at all.

By Mr. McCarter: Q. What was entered on the sheet? A. Simply the calls for Doctor Jonah to either call up or to go to see patients.

By Mr. Bourgeois. Q. They were entered? A. They were entered.

Q. But you didn't find any entries to call up Mrs. Jonah? A. Or to telephone the garage, or something of that sort, they weren't entered.

Mr Bourgeois: I will offer this in evidence, if your Honor please.

Paper heretofore marked C-23 for identification marked C-24.

Q. Now, Miss Greenleaf, I show you a call book I think for this period that you have mentioned, from March 15th on—I will withdraw that question and ask you another question. Did you make up a list, a similar list to that that is contained in Exhibit C-24 of names after the 27th of May, 1912? A. If it is here I did, I don't remember now.

Q. I am calling your attention to the call book under date of June 7th, 1911, and ask you what is meant by these red check marks? That is June, 1911, isn't it? A. That is meant for Doctor Jonah to call.

Q. I think, Miss Greenleaf, I have made a mistake. Here, Doctor, this is March, 1911, instead of March, 1912. Will you get the one 1912. I had the wrong book. Now, I call your attention to the call book under date of 3/16/12, and direct your attention to check marks in red ink and ask you if you know what they mean, what they indicate? A. They indicate that Doctor Jonah is to go to see these people.

Q. No, the red check mark? A. That is all that is there.

Q. Did you compare the list you have which is marked as an exhibit with this book? A. Yes, on these dates.

Q. Now, when you compared them what did the check mark indicate? A. Indicated that he was to make—Doctor Jonah was to make a call.

Q. Well, there are others than Doctor Jonah that haven't the check mark? A. Now, here is the ones that isn't marked.

Mr. McCarter: I object to her interpretation of what the entries mean. She can tell us what she did or what she meant to mean by the red checks, your Honor, the other entries will speak for themselves.

Q. Who made the red check marks? You see all those check marks that are on this list. Does the check mark indicate that they were put on the list or that they weren't put on the list? A. They were put on the list.

Q. And none are red checked that are not on the list? A. Yes.

Q. Now, the black check marks before Doctor Jonah's name they indicate what? A. Well, those—

Mr. McCarter: Did she make the black check marks?

Q. Did you make the black check marks? A. Yes, I made the black check marks.

Q. What do they indicate? A. They indicated that Doctor Jonah was to see these people.

Q. And then what effort did you make to find out if he had seen the people? A. None.

Q. Well then— A. I gave him the message when I saw him or I called him upon the 'phone.

Q. No, Miss Greenleaf, this is before you came.

Mr. Endicott: That is the point of our objection. She is talking about before she came there.

The Vice Chancellor: Yes, but what Mr. Bourgeois is trying to do is to present a list rather than the books which will show all of the items of a class. Now, he is having some difficulty in doing it and I do not know whether he is going to succeed.

By Mr. McCarter: Q. Did you make the black check marks opposite the names? A. Yes.

Q. Although before you were there? A. Yes.

By Mr. Bourgeois: Q. Now, you made the red marks and the black marks? A. Yes

Q. Why? A. Because my red pencil was lost.

The Vice Chancellor: Then the black ones mean the same as the red?

Q. Is that correct? Let me ask you: On the 16th of March you have both the red and the black? A. I don't know anything about that, I don't know why that was done.

Q. Miss Greenleaf, let me ask you something, I don't know whether it is so or not, but did you, in connection with Doctor Marvel's son and daughter, go over and check up calls that came into Doctor Jonah which you found that he had made? A. I made a list of them.

Q. Made a list of those calls that he had made? A. Yes.

Q. Now, did you check off each of those calls in black pencil in front of his name so as to show which he had been to see? A. The ones that you refer to that his son and daughter assisted were from the druggists' list.

Q. Well, wasn't it also from this list, from the list here, the call list? A. I don't remember that it was from this list.

Q. No, not the list C-24, but wasn't it from the call book that you had them in? A. If I knew the date then I could tell.

Q. Now, the date here is March 16th. A. If I saw the sheet I could tell you, I don't recall now. This list was made prior to the time that his son and daughter assisted.

Q. Now, let me call your attention to the name on the list here, "Miss Buckley, Stenton Place." You see under date of March 16th, 1912? A. Yes.

Q. Now, on the book under date, 3/16/1912, "Doctor Jonah, Please see Mrs. Buckley, 101 South Stenton Place." That is the same person? A. Yes.

Q. That is checked with red ink? A. Yes.

Q. Also checked with a black pencil? A. The red was used over the black to make it more distinct.

Q. Now, let me ask you, did you first make an entire list of all the names?

Mr. McCarter: I object to that as very leading. Now, this is very mysterious how this thing got into life, we haven't been able to get to it. I don't think Mr. Bourgeois ought to lead the witness.

Mr. Bourgeois: I don't think I will get the facts unless I can.

The Vice Chancellor: I do not think you will but lead as little as you can.

Mr. McCarter: Ask her what she did. She is an intelligent woman.

Q. What I want to find out is whether or not you made a list of all the names where Doctor Jonah was to see people from this book? A. I did.

Q. And you took that and checked it off with black pencil?

Mr. McCarter: I do object to that style of examination.

The Vice Chancellor: I think that is objectionable. It would not carry any weight if she gave an affirmative answer.

Q. What was the object of placing a lead pencil mark a lead pencil check mark, in front of each name that Doctor Jonah was to see? Now, the black pencil mark, not the red one. A. Well, I I don't know of any significance of the color of the pencil. It just simply shows that that was checked off with the list that I made.

By the Vice Chancellor: Q. Are there any on the list that are not checked? A. On this list (indicating)?

Q. Yes, are they any checked on the list that were not on the list? A. They all correspond with this list.

Q. The check marks are to indicate those that were transferred to the list, I suppose? A. Yes.

By Mr. Bourgeois: Q. Well now, is that so?

The Vice Chancellor: I have got suspicion; I don't know.

Recess until 2 o'clock p. m.

Testimony resumed at 2 p. m.

PHILIP I. MARVEL, being re-called, testified as follows.

Direct-examination by Mr. Bourgeois:

Q. Doctor, since the recess period, have you examined the check book to find out whether or not there was any check drawn during the year 1912 to any firm for an automobile for you in the amount of a thousand dollars? A. I have.

Q. Do you find such a check? A. I do not.

Q. You find some drawn to your personal order? A. I find a number drawn to my personal order.

Q. Three in the sum of a thousand dollars? A. Yes.

The Vice Chancellor: I suppose we could confidently expect the check would be much larger if you were buying an automobile?

A. Rather surprised me that it was that large.

Dr. H. H. DEAKYNE, being re-called, testified as follows:

Direct-examination by Mr. Bourgeois:

Q. Doctor, you were to produce a list of prescriptions that came into your store by Dr. Jonah. Have you that list? A. I have a list, Mr. Bourgeois, yes, sir, the best I could get it out with the short time.

Q. Now for 1910, is that complete? A. That is complete, sir.

Q. I notice you have three copies of each of these? A. Yes, I said I would make three copies yesterday.

Q. I would like to have the originals kept separate. A. Number one.

Q. These are numbered, I understand, the pages at the top? A. Yes.

Q. Now, Doctor, I ask you to explain what you mean by the first page of this list of 1910. It seems to run from January 13, 1910 to June 5, 1910, and on the right-hand side it is marked "scrap"; what does that mean? A. First is the

number of the prescription according to our books; next is the date on which it is compounded; next is the name of the party to whom it was written for, the address of that party and the kind of paper it was written on.

Q. Then on the next page I also see "scrap" running from June 6, 1910, down to eighth, twenty-third, 1910? A. That is the same.

Q. And the next page from June 23, 1911, to December 16, 1911, also "scrap"? A. That is right.

Q. This means the prescriptions in that instance were written on scrap paper? A. It means they were not written on prescription blanks.

Q. Next page from 15th of January, 1910, to June 14, 1910, says "firm blanks." A. Firm blanks.

Q. And from seven, five, 1910, down to eighth, also firm blank blanks? A. Yes.

Q. And from eighth, twenty-eight, 1910, down to twelfth, fourth, 1910, also firm blanks? A. Also firm blanks.

Q. And the next page, from September 5, 1910, down to the twenty-second day of November, 1910, "personal." What does that mean? A. That means a white blank on which Dr. Jonah's name was printed.

Q. Such as was offered here yesterday? A. I didn't see that.

Q. I show you C-2 and ask you if that is the kind of blank? A. That is the one; yes, sir.

Q. Now, since yesterday have you made some investigations to find out when it was, if at all, that you gave to Dr. Jonah blank prescription tablets? A. Well, I asked my manager last night, Mr. Webber, and he says he had them printed for

Dr. Jonah and he thinks it must have been two or three years ago.

Mr. Bourgeois: I want to offer in evidence this list, if your Honor please, for 1910. It may be of use to us.

Said list admitted and marked Exhibit C-25.

Q. Now, Doctor, have you been able to get out a list for 1911? A. There is a list there but I have not been able to have it tabulated on account of it. That is the list and rest of it is on here.

Q. That has not yet been tabulated? A. This has not, none of this. That is a partial list there.

Q. What do these letters indicate which has after the number some "F," some "scrap" and some "Jonah"? A. F means the firm blanks; scrap, of course, means the same as that and Jonah means that Dr. Jonah's blank, white blank, or Exhibit number 2, I think.

Mr. Bourgeois: I want to offer that list in evidence.

Said list admitted and marked Exhibit C-26.

Q. Now I show you another list running from three, sixteenth, 1912, down to ten, nineteenth, 1910, and ask you what that list is? A. This is a list of prescriptions written by Dr. Jonah and we went over these last night and these are also marked "F" for the firm blanks, scrap and wherever Dr. Jonah's name occurs written on the white slip.

Q. This list of 1912 is in two sheets, is it not? A. Yes, two sheets.

Said list offered in evidence and marked Exhibit C-27.

Q. Now the others for 1911 and 1912, I understand, you have in rough here but have not been

able to tabulate them? A. Haven't been able to get to them; no, sir.

No cross-examination.

MISS MARY N. HENDRICKSON, being first duly sworn according to law, testified as follows:

Direct-examination by Mr. Bourgeois:

Q. Miss Hendrickson, you reside in Atlantic City? A. Yes.

Q. And for quite a long time you were secretary for Dr. Marvel, Dr. Jonah and Dr. Durand, were you not? A. Yes.

Q. And as such secretary you kept the books of account, their books of account? A. I did.

Q. I call your attention to the time, weekly time book, and ask you what that book shows, what record it contains? Just generally, state generally what? A. All of the work done by the different members of the firm with the exception of laboratory work.

Q. Does it contain the office work? A. It should.

Q. Of Dr. Marvel, Dr. Jonah and Dr. Durand? A. It should.

Q. Does it contain the outside work in so far as it is reported to you? A. It should.

Q. Did you have any means of keeping check on the outside work, that is to know if it was actually performed, excepting from the reports that were made to you? A. No.

Q. Now, I call your attention to the year 1910, the week ending Septhmber 24th, page is Dr. Jonah, and ask you what that page indi-

cates? A. That represents work as reported to be done by Dr. Jonah for that week ending September 24.

Q. That means outside of the office? A. Yes.

Q. Does that contain any addresses of the patients? A. Only one.

Q. The next page is headed Dr. Marvel and what does that indicate? That represents work done by Dr. Marvel during that week.

Q. And the next page also Dr. Marvel along with office. A. Office work.

Q. And the next page? A. Partly office work and partly work done by Dr. Durand that week.

Q. Next page is marked week ending October 1, 1910, Dr. Jonah, and the page is blank; what does that indicate, if anything? A. Page was left blank for the entry of Dr. Jonah's work when it was reported.

Q. And that means that the work was not reported, does it? A. Yes.

Q. Is that true of each of these succeeding blank pages? A. So far as I know.

Q. You were still the secretary then? A. Yes.

Q. Now turn to the end of the year 1910. I call your attention to the week ending (blank) but marked work between September 24 and December 31, 1910, name, Dr. Jonah, and down on in the page, on that page and the succeeding page several, a list of names such as "Mrs. Isaacs' bill to be twenty dollars." I ask you what that writing is. What is it? A. That was the entry as made on the book and I posted this work to the cards and sent the bill according to this.

Q. And it is entered in your handwriting? A. It is entered in my handwriting.

Q. Now where did you get the data from to know what the bill was to be? A. Dr. Jonah told

me how much the amounts were to be.

Q. But did not furnish to you an itemized report of the work done? A. No, I didn't have an itemized report for that work.

Q. And then on the next page for cash collected, and so forth; what does that indicate, in red ink? A. This was a payment of the amount charged to each of the men, to Dr. Marvel and Dr. Jonah. This is a credit of the amounts charged to the men up to the end of 1910.

Q. That means it was charged to them from what source? A. It was charged to them on account of moneys collected by them.

Q. And where would that money be collected? A. Partly in the office; partly outside.

Q. And it shows how much Dr. Marvel has collected? A. Shows how much he owed; how much still stood charged to him at the end of the year.

Q. That means that he had collected it personally? A. Yes, and that amount had not been turned over.

Q. How much was that? A. Well, credit for Dr. Marvel is eight hundred and fifty-six dollars and sixty cents.

Q. And the credit for Dr. Jonah? A. The credit for Dr. Jonah looks like ten dollars, second month, twenty-first, per settlement, and Dr, Durand, eighty dollars.

Q. And that is for the year of 1910? A. Yes.

Q. Now I call your attention to the year 1911, beginning with the week of May 6, and ask you if Dr. Jonah made any reports of his work for that year after that week, I mean his outside work? A. May 6, 1911.

Q. Yes. A. I can't see that he made any before the latter part of October, but I think you will find a report there at the end of October.

Q. At the end of October? A. Yes.

Q. Now let's go through and see what we have got. These blank spaces with Dr. Jonah's name, that means for his reports? A. Yes.

Q. Now let's turn to October and see what there is. October 28, Dr. Jonah, a blank. You are more familiar with it than I am, if you can turn to it. A. I was under the impression it was on the book for the end of that year, because Dr. Jonah went over the accounts before he went away.

Q. That is before he went to Europe? A. Yes. Now there—

Q. Under date of what? A. In the week of November 4th. Those bills memoranda were made from Dr. Jonah's slips.

Q. That is under the office work, is it, I guess it is office work, isn't it there? A. Well, it is under the office page, no office work entered.

Q. And at that time Dr. Jonah was away from Atlantic City? A. He left, I think, the first day of November.

Q. Now, Miss Hendrickson, within the next year 1912, I ask you if Dr. Jonah made any report after the sixteenth day of March of 1912, for his outside work? Will you look and tell me, please? A. Not to my knowledge.

Q. Dr. Jonah? A. Not to my knowledge up to the time that I left.

Q. You remained there until when? A. Twentieth of June.

Q. Now will you state whether or not you have ever asked Dr. Jonah to render his reports? A. I reminded him that his posting was not done.

Q. I notice in the book, in Dr. Durand's and also in Dr. Marvel's record of the office work a number of cases where they have marked two dol-

lars, five dollars, three dollars, whatever it might be; what does that indicate? A. In cases like that paid ten dollars, paid one dollar.

Q. Yes? A. Indicates patient paid the doctor at the time of the office call.

Q. And that was reported to you how? A. Usually entered on the desk scratch book.

Q. And you would get that from the desk or would it be handed to you? A. That book was in my care.

Q. That book was in your care? A. Yes, on the office desk.

Q. And from that you would enter the record of the moneys they had received? A. From that I posted to the day book.

Q. Let me ask you whether you got the record of the moneys Dr. Marvel took in daily? I mean took in in the office daily, except cases where he was out of town over night? A. Oh, yes, the office work was kept track of daily.

CROSS-EXAMINATION by Mr. McCarter:

Q. Is it not a fact, Miss Hendrickson, where, in instances here where no account of work is made, cash was paid in and would appear in the cash book? A. Cash was paid in to whom, Mr. McCarter?

Q. To the firm later? A. Oh, it might come in in the form of bills paid, bills rendered and bills paid that wouldn't appear on this book.

Q. This book doesn't purport to cover any payments received from bills? A. Not ordinarily; not unless it comes to the doctors themselves.

Q. If the doctors received payment of bills and appropriated to themselves charging themselves with it, that would appear on this book, otherwise it would not? A. Ordinarily, yes. Now I don't

know there is one just on that page. Yes, now there is one, Mrs. Lindsey paid Dr. Durand six dollars. Now that little check mark shows that was charged to him on the little charge ledger.

Q. Now do I understand that you have just said that Dr. Marvel always complied with the system in every respect? A. I beg pardon. The question was if the office account was made daily, as I understand it?

Q. Yes? A. Yes, the office account was kept track of daily for all of them in so far as in the time I was there; of course, I wasn't there in the evening.

Q. Well, now, see if I understand correctly. What, speaking of the office account or practice—say, if I were a patient; I would come into the waiting room where you sat and we will assume that the doctor is busy and Dr. Marvel is the doctor that is holding office hours. I would be given a slip of paper upon which my name and address would be written and would you keep a copy of that? A. Yes. With copies of this book I mentioned, desk scratch book, book kept in pencil. It should each day patients as they come in and the name and address and name and number.

Q. All right, if we have that here I would like to look at it. First time we have heard of that thing. Now when I come in I am given a slip of paper with my name and address on it?

(Witness produces book for 1911.)

Q. And you keep on the desk what you call a desk scrap book? A. Scratch book.

Q. Scratch book, in which you would at the same time enter my name and address? A. Yes.

Q. So that you would have a record which you would keep of my name and address and I personally would have the slip with my name and

address on it; is that right? A. Give to the doctor.

Q. As soon as I am ushered into the doctor's presence what I am supposed to do with the slip? A. Give that to the doctor.

Q. What is the doctor supposed to do with the slip? A. Puts it on the file on his desk. If the patient pays at that time he is supposed to credit the amount on the slip, put it on the file and leave it until I go in and gaather them and credit any payment which may have been made.

The Vice Chancellor: And make the charge on that slip also?

A. The charge is the amount as given usually unless it is marked paid on account so much.

Q. Now do I understand that that system, so far now as the office work is concerned, was literally complied with by Dr. Marvel, that he would always mark on the slip the fact of the payment or did you frequently have occasion to observe that that had been overlooked by him? A. Well, there were times when it was overlooked. It was a case of forgetfulness.

Q. I didn't ask you whether it was forgetfulness or what it was? A. There were cases when it would be overlooked.

Q. How would that finally be discovered? A. Well after I had posted the account to the card and sent a bill to the patient the patient would say it.

Q. So there were instances where the patient's name on it would be paid, would speak to the doctor, Dr. Marvel would fail to write on it paid and that would leak out later when a bill would be sent as the book would not indicate that it had been paid and the patient would claim it had been paid? A. That has happened.

Q. How often with Dr. Marvel? A. I couldn't say how many times, but it has been on several occasions.

Q. Now with regard to the reports from outside work by Dr. Marvel did he always live up literally to the reports being put in every day? A. The accounts ran by the week.

Q. I ask you whether he literally every day put in a report of the day's outside work? A. Not to me.

Q. Not to you? A. No.

Q. Well was there anybody else during your term of office to whom he would deliver such reports if it weren't you? A. There was not.

Q. How often during your term of office, which, as I understand it was from the beginning of the partnership until last June, how often would he make these reports? A. Onve a week when his work was turned over to me, just as you see it on that page.

Q. Then he would only make his reports to you once a week of his outside work; is that right? A. That was the usual custom; yes.

Q. Would he sometimes depart from the usual custom and delay it as long as a month or six weeks? A. No, not in turning over his call list to me.

Q. You never knew it to exceed in delay a week? A. I think not. I don't think it has ever been over a week unless Dr. Marvel were ill or away.

Q. Well, now, I am asking about facts. Of course, I wouldn't expect reports to be sent in when he wasn't doing any work, but haven't there been times, Miss Hendrickson, when Dr. Marvel delayed in making reports of work done by him more than a week after the work was done?

The Vice Chancellor: More than a week after the week's work was done?

Mr. McCarter: The doctor testified this morning he always put them in every day except when he was sick or away. I am asking now whether—I may be mistaken; I don't know—if you don't recollect— A. I don't remember, Mr. McCarter.

Q. Now do you know whether Dr. Durand lived up to making his reports of outside work promptly? A. Not in the sense if you use the word promptly to mean daily.

Q. Well, did he ever lapse as far as a month? A. Possibly. He has been a few weeks behind. I wouldn't say a whole month.

Q. And was this on more than one occasion where he was a few weeks behind? A. I think so.

Q. Now you spoke of that page of that charge book at the end of November, I think it, was, 1911, where some— A. I don't see that page here, but I was under the impression there was more than that, but, of course, I have been away for sometime.

Q. As a matter of fact just before Dr. Jonah did go away to Europe, 1911, do you remember that he did make some statement or report? A. I do.

Q. And what became of it you do not now recall? A. No; as I say, I was under the impression there was more of it on this book than appears here.

Q. On the page week ending November 4th— A. Yes.

Q. Was that all and a full account that he made at that time? A. It was not itemized, but I sent out a number of bills.

Q. Now I want to ask you about these bills. Notwithstanding the fact that Dr. Jonah would be

dilatory and slow and even neglectful of the reports every day did you and he every little while have sittings together in which he would dictate to you charges to be sent out in the form of bills and were those bills sent and collected often? A. They were.

Q. Settlements would be made based upon the cash thus received? A. Yes.

Q. How did he—what did he use to indicate or to—in making out those bills what memoranda did he use? A. He had little pocket slips that he had used.

Mr. Bourgeois: Pocket slips?

Q. Pocket slips? A. —that he had used just as memoranda and then very often I had a card account of the patient whom he had been seeing outside and who had later come into the office or possibly whom he had seen in the office before he visited the patient and in that way I would have a part account for that patient and in going over he would very often say "make that bill so much" although it might not be an itemized account.

By the Vice Chancellor: Q. I don't quite understand what he would have to refresh his memory. Suppose had been two weeks or three weeks without, attending to patients on the outside without making any report to you and he sat down to have you send out some bills, as Mr. McCarter suggests, how would he know how much to send out to these various people when he would tell you to send them out? A. I don't know except as he estimated on his own recollection.

Q. Well, did he have a book that he would take it out of? You speak of slips, I don't quite know what you meant by them? A. Well, he used just little memorandum slips, sometimes

used a list, call list book that physicians usually use.

Q. He used that at times? A. He used that at times.

By Mr. McCarter: Q. Then, if I understand you correctly, at these occasions when you and he would get up these bills he would refresh his recollection as to the charges for which no report had been made either from his little pocket call book or from little paper memoranda that he had? A. Yes, or, as I say, from the card.

Q. From the card that you had? A. Possibly an office call on it or a few office calls on it.

By the Vice Chancellor: I don't understand how he would refresh his memory from his cards because we are only discussing a period during which there would be no report and of course, would be nothing entered on the cards? A. Except if the patient had been in the office, office work was all entered.

By Mr. McCarter: Q. The card would state then, by looking at the card that would remind him he had some outside work and he would say "add so much for outside work" is that what you mean, Miss Hendrickson? A. That is it.

Q. That is about the way it worked? I see.

By the Vice Chancellor: Q. May I ask you to explain a little more fully by what you mean depending on his memory. How much would he depend on his memory to distinguish from taking it out? A. I had no means of knowing because I had no means of knowing the amount of services, so I had no means of knowing how much he depended on his memory.

Q. My idea was perhaps you could tell when he sat down beside you to help you make out bills or give you information from which to make out

bills whether he was depending largely on his memory or whether he was leaning on the books he had or data? A. I think in a great many cases he depended on his memory. It appeared so to me. I might have been mistaken.

By Mr. McCarter: Q. Do you recall many instances after those bills had been prepared and sent out in that manner where criticism came either for over or under charges by patients to whom the bills were sent? A. I don't remember more than one or two instances.

Q. I beg pardon? A. I don't remember more than a very few instances.

Q. Now I want to ask you another thing. I don't know whether it is strictly cross-examination; if it is not, make you out witness. Something was said this morning about a check drawn by Mrs. Marvel for a thousand dollars towards the purchase money of an automobile. Can you point (handing witness check stub) to an entry in the check stub where a check, in the past year, was apparently drawn by Mrs. Marvel to the doctor's order for a thousand dollars?

Mr. Bourgeois: I think all of the checks drawn for a thousand dollars are marked there in some way or another.

Q. (Witness points to stub of check.) Number 489 dated March 13, 1912, to the order of Philip Marvel, personal account, a thousand dollars. Whose writing is that? A. Name is written in Mrs. Marvel's writing. Where personal account in my writing.

Q. And who told you to write "personal account" there? A. I don't remember. If any one told me I suppose Dr. Marvel did.

Q. Check, as you recall it and to the best of your knowledge, is a check drawn by Mrs. Marvel

herself? A. I should say so inasmuch as the name is in her writing.

Q. Did she have a power of attorney during all this time to sign the name "Philip Marvel"? A. I couldn't say; I think so.

Q. She didn't keep the check book herself, did she? This is all—these stubs appear to be in your handwriting? A. Yes.

Q. And you regularly kept the check book in connection with the other books that you kept, didn't you? A. Yes.

Q. Do you remember any other check that she drew from February 10, 1910, which seems to be the date of the first check, number one hundred, in this book, and August 8, 1910, check 692, which seems to be the last one, besides that particular one? A. I don't remember; there may be others, but I couldn't—

Q. Don't recall any now? A. No.

Q. Do you remember the incident of her drawing that check? A. My recollection is that Mrs. Marvel came in and the doctor was busy and she was going up to the bank and asked me for the check book. I may be mistaken, but that is as nearly as I remember.

Q. And you found she had drawn the check? A. Check was drawn and my recollection is Dr. Marvel told me to mark that personal account under the name.

Q. Later? A. Possibly after it came out of the office; I couldn't say.

Q. Did you call his attention to it first or did he call your attention to it? A. I couldn't say.

Q. Now do you know anything about patients of the firm being sent to the sanitarium? A. It has been done.

Q. Did you know of any objection to that by

either Dr. Marvel—Dr. Jonah or Dr. Durand? A. In the latter part of my time there I did.

Q. And on how many occasions, if you can recall, to the best of your recollection, were patients sent there? A. I couldn't say.

Q. Quite frequently? A. In the earlier part of the time there were patients there quite a good deal of the time, one or more.

Q. How early did you begin to hear objections to that, if you can recall, by either of the other doctors? A. I think possibly a couple of years; possibly more than that.

Q. And there were patients sent after the objection was made, were there not? A. I couldn't say.

Q. Now attention has been called here to the use of a rubber stamp upon the billheads. Were you present at any time when Dr. Jonah and Dr. Marvel and Dr. Durand all agreed that that stamp should be used? A. I was not.

Q. Did you ever hear that Dr. Jonah and Dr. Durand had agreed to that until the evidence yesterday? A. No.

Q. Did you ever hear that Dr. Jonah and Dr. Durand had agreed to that until the evidence yesterday? A. No.

Q. Did you ever hear either one of them object to the use of that rubber stamp?

Mr. Bourgeois: In the presence of Dr. Marvel?

A. I can't say they objected in the presence of Dr. Marvel, but I know they objected.

The Vice Chancellor: I don't think it can bind him.

Q. How early, if you can recall, did you hear of the fact that they did object to the use of the rubber stamp? A. I couldn't say.

Q. Do you know by whose direction the rubber

stamp was used when it was used? A. Dr. Marvel told me to put it on the bills I was sending out at the time after it was gotten.

Q. Do you know when that was, about? A. I think it was in the early summer of 1910.

Q. Did the stamp have to be secured or was there an old stamp that was used? A. I think it was made.

Q. For the— A. At that time.

Q. At that time? A. I may be mistaken.

Q. Do you recall once during your clerkship of endeavoring to make a full list of the addresses of the patients of the firm and finding that from the data that you had in your set of books there was a considerable lack of addresses of the patients of Dr. Marvel? A. I do.

Q. And about when was that, Miss Hendrickson? A. I should say that was in the fall of 1911, but I may be mistaken.

Q. Now how did you make up or undertake to make up that list of addresses? From what? A. From the cards as accounts had been posted to the cards or from the ledger before the cards were used.

Q. And your inability to give the addresses of the patients of Dr. Marvel arose from what fact? A. From the fact they had not been reported with the work.

By the Vice Chancellor: Q. That refers to the addresses of call patients, I suppose, patients they call on out of the office? A. Yes.

Q. And not the patients who call at the office? A. Not for office patients as a rule.

RE-DIRECT-EXAMINATION by Mr. Bourgeois:

Q. Miss Hendrickson, I show you a little pocket

book and ask you if you have ever seen it before A. I am under the impression I have.

Q. And it is what? A. This is what we call Dr. Marvel's pocket list.

Q. And you would get that in your work wouldn't you? A. Yes.

Q. How frequently would you get it? A. Dr. Marvel used to turn this over to me once a week, as a general thing, when I posted the work; these check marks indicate this work was posted to the day book.

Q. Now how many of these books did he have; do you know? Did you say you did know or didn't know? Do you know how many books he had while you were there at that time? A. I couldn't say, Mr. Bourgeois. He used them one after the other one, one, of course, at a time, and one after the other as the work went on.

Q. I show you four other of these books running from January 3, 1909, to October 2, 1909, from October 3, 1909 to July 10th; from July 10th, to April 11, 1911; from April 9, 1911 to April 13, 1912 and from April 14, 1912, to January 18, 1912, and ask you if they are all Dr. Marvel's—what did you call them? A. We call them the doctor's call lists.

Q. —if they are all books of Dr. Marvel's call lists? A. They are certainly in Dr. Marvel's writing. That is as far as I know because they go beyond my time.

Mr. Bourgeois: I want to offer these in evidence, if your Honor please.

Q. Did Dr. Jonah have call books? A. Yes, I think Dr. Jonah had such a call book.

Q. And did he produce it to you at the end of each week? A. He did not.

Q. Did you ever see it in your own hands? A. Yes.

Q. And what period did that cover? A. I think from the seventh of January, 1912, until the sixteenth of March, he had all of that work entered on such a call list; that is my understanding.

By the Vice Chancellor: Q. How about those other periods where there are no entries on your book? A. I couldn't say.

Q. One from September, 1910, until January, 1911, and another from May, 1911, until October, 1911, and another from May, 1912, until, that is March, 1912, until this time. During those periods your books show a blank or blank pages where ordinarily would be entered charges made by Dr. Jonah for outside calls. Now during those periods would he produce his time book or not his call book? A. I didn't see it.

Q. It was not produced to you then? A. No.

Q. You would be the one to produce it to, wouldn't you? A. Yes, in order to post the work.

By Mr. Bourgeois: Q. I call your attention to the right-hand page of this call book, seems to be a double page, and under memoranda there is quite a little writing; what is that; what are they? A. I know what it is, but that is past my time, Mr. Bourgeois.

Q. I mean the earlier ones; lets take in your time. Those addresses? A. Yes.

Q. If they had the addresses, your patients, and he would call on them, of course, he wouldn't write the addresses down, if you know?

Mr. McCarter: I object to that; how does she know?

(Question withdrawn.)

Mr. Bourgeois: I offer these books so your Honor can see just how often Dr. Marvel did put in the addresses.

Mr. McCarter: I don't think the books

purport absolute verity. These are not books of the firm. These are his private memorandum books and I don't think we are chargeable with what they contain without the proof of Dr. Marvel what is the fact about it.

The Vice Chancellor: They show at least each day he made a record what he was doing and reported that to the office and I understand the complaint is Dr. Jonah didn't do anything of the kind.

Mr. McCarter: Yes, I understand that, but I understand this offer is to show that along here are addresses.

The Vice Chancellor: I understand they are part of the regular daily records in the books, those addresses.

Mr. Bourgeois: Yes.

The Vice Chancellor: And that these books were turned in as a rule weekly to the secretary. I think the firm is chargeable with the knowledge of the contents of the books.

Mr. McCarter: Don't seem to me that the fact that there are addresses in the books of patients meets the fact, as the witness has testified to, when she came to make the lists that there were a great many shortcomings in the system of addresses of Dr. Marvel.

The Vice Chancellor: Shortcomings are probably right there, although you don't see them.

Q. Miss Hendrickson, you say when you made up the account for Dr. Jonah in 1911, he had cards or there were some cards with names on that you

had taken from letters that had been received in the office. Is that right? A. I beg pardon.

Q. What did you say? A. I said there may have been cards for the patients who had been in the office to see Dr. Jonah and whose work I had posted to the card.

Q. I understood you to say something about receipt of some letters in the office? A. I think not.

The Vice Chancellor: I don't think she did.

Q. I misunderstood you then. Where did you finally get this account from Dr. Jonah in October, 1911? You didn't get it in the office, did you? A. We worked in the office a part of the time I was over in his apartnemt two or three evenings in order to get it worked up.

Q. How many evenings did you go over to his apartments to work? A. I think two or three.

Q. Now how many pieces of paper did Dr. Jonah have at that time that you saw containing memoranda of names or work that he had done? A. I couldn't say how many pieces of paper.

Q. Were there a good many? A. Yes, they were a good many.

Mr. Endicott: Q. were they on his cuffs? A. I didn't see any on his cuffs.

Q. Did they look as if they were fresh or had they been carried around a long time? A. Some were fresh and some had been carried.

Q. From the investigation you were making, could you tell how long some of them had been carried? A. Well, from the dates, of course, we could tell. He had some that were just jottings for his own personal use that had no dates on and it was evident they had been in his pocket for considerable time.

Q. Now what did he have them in? Did he have them in a book or folder or anything of that sort? A. Sometimes he had them on prescription blanks, just folded back.

Q. What kind of prescription blank, his individual ones or the firm blanks? A. I don't remember I ever saw them on his individual blanks.

Q. And then when they were not on the prescription blanks were they just loose or were they in a package and had some means of holding them together? A. A part of the time, as I say, kept the record in his pocket call list book, a part of the time, on these prescription blank slips and there were some on just little slips. Whether they had been fastened to something and had come loose I couldn't say.

Q. Just loose slips? A. There were a few loose slips.

Q. Now Mr. McCarter was talking to you about the system in the office where you would take the name and then hand the card to the patient and after they go in and take it to the doctor and the doctor would make the charge and so on. Did Dr. Jonah carry into effect that system? A. No; we never used the slips for anyone except Dr. Marvel.

Q. It was a system that applied only to Dr. Marvel? A. The slips, because there were quite a number of patients came in and sometimes the question would arise over their turn and their slips were numbered in their turn as they came.

Q. And you didn't use the slips at all for Dr. Jonah? A. No, not at all.

Q. What means did you have for checking of his work? A. I had the scratch book.

Q. And what means did you have of knowing what money was paid to Dr. Jonah? A. After

the office hour Dr. Jonah would come to the desk and take the book and credit the patients who had paid that afternoon.

Q. And this memorandum at the end of 1910, would indicate that Dr. Jonah during the year 1910, had received ten dollars in cash in the office, would it not? A. But that credit there doesn't imply that is all office cash.

Q. What does that imply? A. That covers cash that had been collected personally by the men either in the office or outside.

Q. Then it doesn't follow Dr. Jonah received that ten dollars in the office; may have received it outside? A. He may have received it outside.

Q. Or he may have received eight dollars outside and two dollars in the office in that year; is that right?

The Vice Chancellor: Is that all the credits or all the charges that have been made against him for money received in the office and outside?

A. I think not; that is the only credit shows there as a payment which is dated in February for the settlement of the account, but I feel there must be other credits for Dr. Jonah.

Q. Now, Miss Hendrickson, you say that Dr. Durand did not report weekly, sometimes went two or three weeks?

The Vice Chancellor: It may be well to look into that, I think.

Mr. Bourgeois: Yes, I think it must be as she says.

A. Why it was carried in a little charge ledger as the credit at the end of the year and red line is the settlement at the end of the year but there was a little charge ledger on which those charges were entered.

Q. Now, Miss Hendrickson, you say Dr. Dur-

and sometimes did not report until the end of may be two or three weeks? A. Yes.

Q. He finally did report? A. Yes.

Q. Always reported? A. Yes.

The Vice Chancellor: I understand he reported credits and not details.

Q. Well, did Dr. Durand—

The Vice Chancellor: Oh, I thought you said Jonah.

Q. Dr. Durand made his itemized report same as Dr. Marvel did? A. Yes.

Q. Only instead of handing his book in at the end of each week sometimes would go longer than a week? A. Dr. Durand posted his own work to the day book.

Q. Now you have spoken of this check for a thousand dollars. Is there any doubt that Dr. Marvel had a thousand dollars or more than a thousand dollars to his credit in the book at the time this check was drawn? A. Not so far as I know.

Q. Could you tell how much money there was in the firm at that time due to him?

Mr. McCarter: We don't make any point Dr. Marvel was misappropriating funds. The point is Mrs. Marvel was coming in and signing the firm checks. That is the point. We don't claim Dr. Marvel misappropriated money any more than he claims Dr. Jonah misappropriated money.

Mr. Bourgeois: Complaint is that he personally did not sign the check but his wife signed it.

Mr. McCarter: Well, we think it is a funny thing. I don't think my wife would come into the office and sign firm checks and I don't think Mrs. Endicott would. I don't think your wife would do it.

Mr. Bourgeois: How about if you directed her to do it?

Mr. McCarter: Well, I think I would want my partner to direct her also.

Q. Miss Hendrickson, are you familiar with the report of the auditors? A. I am not.

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. Now just a word, Miss Hendrickson. Won't you look at this page under week ending December 31, 1910, where there are three entries in red ink on the right-hand side and look at it for a moment and tell us what on earth that entry is, because I can't understand it? A. When the auditors made the statements of the accounts to the end of 1910, it showed that Dr. Marvel stood charged with eight hundred and fifty-six dollars and fifty cents cash collected that had not been paid into the business account. Dr. Jonah stood credited with ten dollars. As I remember Dr. Jonah had made a payment either in December or the latter part of 1910, or possibly in January. I can't recall, but as I remember he had made a payment against the charge against him, so there was only a balance of ten dollars due to him. Dr. Durand owed eighty dollars and this entry of red ink shows the credit and deposit was made on second month, twenty-first that month.

PHILIP I. MARVEL, being re-called, testified as follows:

Direct-examination by Mr. Bourgeois:

Q. I show you the call list books, five in number, of yours and ask you when, with relation to

the services rendered, were the entries made in those call list books? A. At the end of the day.

Q. On the day the work was done? A. Yes.

Q. I call your attention to the addresses on the opposite side of the page and ask you when those addresses were written in? A. At the time the patient's name was also written in.

Q. And at the time those books were handed to the secretary at the end of the week were the addresses as well as the names there? A. They were exactly as they are now, excepting her notations.

Q. You have heard the testimony of Miss Hendrickson regarding the check of a thousand dollars. Do you know under what circumstances that check was drawn? A. My recollection is that it was drawn under the circumstances that I ordered Mrs. Marvel to draw the check to my personal account.

Q. To your personal account? A. To my personal account.

Q. And that is where it went? A. That is where it went.

Q. Drawn to your order? A. Yes.

CROSS-EXAMINATION by Mr. McCarter:

Q. Now, will you look at the check, Doctor, and tell us whether as a matter of fact you weren't away when the check was drawn? A. I might have been away and still told her to draw it.

Q. Look at the check and tell us? A. The check doesn't happen to be there.

Q. Well, if you make a distinction between the check and check stub. We have all had nothing but the stub? A. We have the stub here and I

would say this is in Mrs. Marvel's handwriting so far as the day of the month and the date of the year and my name. The memoranda is in Miss Hendrickson's handwriting where it was charged to my personal account.

Q. I understand that. That is all in evidence. Now as a matter of fact when this check was drawn weren't you in Chicago? A. March 13, 1912. I think I can soon tell.

(Witness looks at call list books.)

A. The records show that on March 13th, 1912, I was in Atlantic City making visits and on that day I made sixteen.

Q. You weren't in Chicago that day? A. I was not.

Q. Now I want to direct your attention to the red ink memorandum to which Miss Hendrickson's attention was called in the book week ending December 31st, 1910, in which, as I understand it, you are credited with eight hundred fifty-six dollars and fifty-six cents? A. Yes.

Q. And am I correct in the understanding that that amount that you had drawn or had had, had enjoyed the use of eight hundred and fifty-six dollars and fifty cents, which had been collected by you, but with which, up to that time, you had not been charged? A. No, I was charged.

Q. Was Miss Hendrickson's explanation of that wrong? A. I was charged with that as it came into my hands in individual amounts, whether it was two dollars, five dollars, ten or twenty; in other words as patients coming to me in the office would pay for the individual visit at the time or would run a week's account and pay me at the end of that time or in settlement of the account, office account, when they were going

home; and it may be that may represent some accounts that had both office and outside visits.

Q. Now, Doctor, I would just like to have you answer my question. I want to know if it is not true at the time those entries were made each one of you doctors had had that much cash shown there for which you had not been charged? A. No, it isn't correct.

Q. Did you hear Miss Hendrickson's explanation of it? A. I did.

Q. Was she wrong? A. In so far as it does not correspond with what I say now she was.

Q. What was the object of having it put there? A. Simply to show that we had, at least that was the summary of the amount that I had collected.

The Vice Chancellor: Already shown on the books, as I understand; this is a mere summary settlement account from the books and figured out what the balance is each owes and you say there are charges and credits to it from week to week and the charges and credits are taken into account there is a summary of the balance? I understood it so from Miss Hendrickson; may be I was wrong.

A. That is what this amounts to.

Q. What object was there in having a resume of that particular thing? I can't understand it? A. I think I can enlighten you on that. Our auditor's accounts, so far as I can see, didn't show any credit Dr. Jonah turned in this year and this is the only memorandum we have of any actual cash that he gave account of outside of the checks and cards.

Q. Dr. Jonah's isn't the only name appears there. Your name and Dr. Durand's name appears there. If Dr. Durand had turned in eighty

dollars cash during the year, eighty dollars, why was that entry made on that book at that page? A. Same reason that mine was made. Dr. Durand had kept eighty dollars cash from time to time; that is had taken small accounts, as it was received and finally made a summary of what he had received and turned it in here as a declaration of how much cash he had received within a certain stipulated time.

Q. Credit Dr. Durand check eighty dollars in full settlement of twelve, thirty-one 1910; that is under the date of the settlement, isn't it? A. Yes.

Q. And below here are the three sums in which each partner is credited and says, "deposited, two, twenty-one, 1911." What does that mean?

The Vice Chancellor: Keep calling these red ink entries credits. Debits aren't they?

Q. Says credits? A. That means—this is the one Mr. Albertson—at least I think this is the time Mr. Albertson referred to that he insisted upon a check to be given for the amount against us, though we had accounted for it from time to time on the books, but he insisted that it would look better if we would give our individual check and then check out to us the amount back again.

Q. Now do I understand you then, notwithstanding the fact that you say you had already been credited or charged or whatever you want to call it with eight hundred and fifty-six dollars and fifty cents you then gave a check for it? A. I mean this whilst I had used that eight hundred and fifty dollars, I had debtored myself with it by the accounts that had been given. We were to close up the books and make it a business transaction from his standpoint, that we gave our individual checks at that time for the amount of

money and that amount of money was turned into our general account to come to our credit account.

Q. So that you repeated a payment that you had already made or been charged with?

By the Vice Cahncellor: Q. Have you got your ledger that has your individual account here? Let me compare it as of that date and see if it matches, see if it corresponds. The ledger in which your own individual account is kept. There is such a ledger, isn't there? A. Yes. Now here is the last page of the December account which I will try to explain. Now you will notice here that the little cash items—

Q. Let's see what date we are indulging in the matter? A. From December 1st to December 31st.

Q. Is that settlement as of the 31st? A. Yes, this settlement is as of the 31st. Now here in my column where the cash is entered up against me that I take from the office. Here is Dr. Durand's column. Here is Dr. Jonah's with no charges in.

Q. I thought that this ought to show—isn't these carried forward from month to month so as to show how much at any one time you owe? Isn't there any ledger account that shows on any given date what you owe? A. This shows what I owe.

Q. That is for December? A. That is for December, forty-one dollars.

Q. That shows the total of the debt credited from the first of January up until the last of December? A. That is the division of the amounts of the checks.

Q. Division of the amount of the checks. What in the world does that mean? A. That means this where all three of us or two of us did service to

the same patient, for instance here, here is a bill, full amount was fifty-three dollars, nine of it to Dr. Jonah, forty-four to me; here is a case where twenty-three dollars, fifteen mine and eleven Dr. Durand's; forty-six and eighteen, seventy-four. Here is the office cash account. You see it is marked what it was for.

Q. Now aren't these amounts carried over? A. Here is Dr. Jonah's ten dollars.

Q. Aren't these months carried forward? A. Yes, to the auditing book.

Q. They are just left on here? A. Simply added up each month.

Q. Left right here until the auditor comes along? This November balance isn't carried over to December at all? A. No.

Q. And there is no individual ledger account with you? A. Excepting right here. Here is the cash I receive, seventy-one dollars in the month of November, Dr. Jonah received ten dollars, Dr. Durand forty-eight.

Q. Let me see that red ink that has been causing so much trouble. I want to compare this with the end of December. These must be the auditor's figures? A. Well, I am not sure whether that is the auditor or Miss Hendrickson.

Q. I don't know whose writing? A. But the figures.

Q. I mean the calculation? A. Undoubtedly. I say undoubtedly, now I am not sure absolutely about that. Here this may help you out. This is where the auditor has closed up that year.

Q. This is at the end of the year 1910? A. Oh, I thought it was 1911.

Q. You have been looking here at 1911? A. December 31st; twenty-four dollars to Dr. Jonah that month.

The Vice Chancellor: Well, I can't understand it unless it means all the moneys charged against you for the different months during the year and placing against them the credits that you have received, credits for what you have received, and those are the balances. I don't know what else it is.

By Mr. Bourgeois: Doctor, let me ask you one question. Was there ever a time— A. This is supposed office cash when it was brought into the office and we can make that up easy enough at any time.

Q. Was there ever a time when you was in debt to the firm of Marvel, Jonah and Durand to the extent of eight hundred and fifty dollars that you had not charged yourself with? A. Not to my knowledge.

Q. Well, you would know it, wouldn't you? A. I certainly think I would.

By Mr. McCarter: Q. Then why did you draw a check for eight hundred and fifty dollars at that time and give it to the firm? A. I said my explanation of that was that I had used that money had come in to me in the manner in which I spoke of and had been charged up to me and well as I recall it Mr. Albertson said it would be much more like a business transaction to give our individual checks for the amount of money that we had kept from account, though we had given an account of it, and then let that be added to our individual amounts or divisions.

By Mr. Bourgeois: Q. Now whose handwriting is that red ink in? A. I think it is in Mrs. Hendrickson's handwriting.

Q. And you are simply now giving us your recollection as an explanation? A. Yes. The books

are here and they show the pages, show the individual amount of moneys which were reported by the different individuals and by a little bit of addition can show how much money each man kept from the account and gave an account for it.

RACHEL I. MARVEL, being first duly sworn according to law, testified as follows:

Direct-examination by Mr. Bourgeois:

Q. Mrs. Marvel, a question has arisen about a check that you had drawn and signed Dr. Marvel's name to it. Will you state whether or not you have a power of attorney to sign checks for Dr. Marvel? A. I have.

Q. And have had for how long a time? A. A great many years.

Q. The particular check to which they refer is dated March 13th, 1912, and appears to be in your handwriting except the "personal account"? A. Yes.

Q. Do you know if you signed Dr. Marvel's name to that particular check? A. I think I did. If I saw the check I could be positive. I daresay I did.

Q. Now what occasioned or how did it happen that you signed that check, if you did sign it? A. Because I was told to do so; told to draw the check.

Q. Have you ever drawn a check on that firm's account without you were specifically requested to do so by Dr. Marvel? A. Never.

Q. Have you ever drawn a check on the firm account for the sum, any sum unless the amount

was indicated to you or told to you by Dr. Marvel? A. Never.

Q. How many times have you ever signed Dr. Marvel's name to a firm check A. I couldn't tell you but the check books will show.

Q. They have talked here about one time when Dr. Marvel was in Chicago. Do you remember if Dr. Marvel ever, while in Chicago, directed you to draw a check on the firm account? A. I don't remember about Chicago. The doctor was away once and wired me to draw a check for a certain amount, which I did. I don't know whether it was Chicago or St. Louis. I couldn't be sure. Sent me a night letter explaining fully the amount I was to draw.

Q. And that was drawn to whose order? A. Philip Marvel.

Q. And what was done with the check? A. Deposited to his account.

Q. In his personal account? A. In his personal account.

Q. And then would be charged up to him in the book account? A. Exactly by the auditor, of course, in going over the books.

CROSS-EXAMINATION by Mr. McCarter:

Q. Now, Mrs. Marvel, how long have you had a power of attorney? Ever since before the firm was started? A. For many years before.

Q. After the new firm was started were you given any new power of attorney? A. Yes.

Q. A new power of attorney after the firm was organized? A. Bank was authorized my power of attorney was to extend as always.

Q. Now in which bank was what you call your husband's personal account kept? A. Union National.

Q. And was the firm account, so-called, kept—A. Same bank.

Q. And how were they differentiated? A. One was "personal account" and the other was "business account."

Q. Had there been two accounts previous to the firm? A. No.

Q. After the introduction of the business account was your power of attorney enlarged? A. Yes, it was extended to cover that.

Q. Well, in writing? A. I don't remember.

Q. Well what do you remember with regard to anything in connection with your power of attorney after the making of the firm? A. Well, I simply remember that I still had it and I used it as the check book shows.

Q. Yes, you used it quite a number of times on the business account? A. For business purposes.

Q. Now what I want to know is whether you simply assumed that the old power of attorney extended to the business account and operated on that theory or whether you went to the bank or were told by your husband that he had enlarged the scope of the power of attorney, if it needed enlargement, to include this new account? A. Well, now, I don't remember definitely about that.

Q. Well, isn't it a fact, Mrs. Marvel, that you just rather assumed that it applied to that and acted on that theory? A. Well, how could I assume it if the bank honored it.

Q. I am not criticising you or criticising the bank. I am asking you as a matter of fact if that is not the fact that you just assumed that power of attorney to sign your husband's name applied as well to what you call the business ac-

count as to his old account, which was— A. Well, I think the bank was notified in some way, but I can't say how.

RE-DIRECT-EXAMINATION by Mr. Bourgeois:

Q. I just wanted to call your attention to a form of a check which has "Philip Marvel, M. D." across the end of it and then beneath his name "Business account." Is that what you mean by business account? A. Yes, that is what I mean.

Q. All checks were simply signed Philip Marvel, were they not? A. Yes. Rachel I. Marvel, attorney.

Complainant rests.

Mr. Endicott: We are willing it shall be stipulated that they shall separate now in Court without any prejudice to the rights of either.

Mr. Bourgeois: If your Honor please, I am willing to agree with Judge Endicott that these two physicians shall separate now and the separating of them now and Dr. Jonah's practicing during this three or four, five or six days is not to be a waiver of the rights of either of them. In other words we are to have this determined just as if they had not separated.

Adjourned to February 5, 1913, 9 a. m.

Further adjourned to February 7, 1913, 9 a. m.

Hearing resumed on Friday, February 7th, 1913, at the hour of 9:00 a. m., in the presence of the respective counsel heretofore noted.

PHILIP I. MARVEL, re-called:

By Mr. Bourgeois: Q. Doctor, referring to the call list, pocket book, pocket memorandum book that testimony has been given about, did anybody else have those books excepting you? A. Yes.

Q. Of the firm? A. Yes.

Q. Have you a copy of the books that were used or to be used by other members of the firm with you?

Mr. Bourgeois: Witness produces two unused pocket call list books. One is marked or lettered, "Dr. W. E. Jonah. Compliments of F. H. Brennan, Academy Pharmacy, Atlantic City, N. J.," and asked to be marked as an exhibit.

Mr. McCarter: Objected to as immaterial.

The Vice Chancellor: I haven't found what its purpose is yet.

Mr. Bourgeois: It is for the purpose of showing that all of these members of the firm had furnished them the same pocket book on which to keep their records that Doctor Marvel had used.

The Vice Chancellor: I will overrule the objection. Let it be marked. The Doctor has not so stated yet, however.

Mr. Bourgeois: No, but I was just asking him.

Said book marked Exhibit C-1, 2/7/13.

Mr. Bourgeois: Let me offer also in evi-

dence a similar book lettered "Dr. J. I. Durand. Compliments of E. S. Reed's Sons."

Said book marked Exhibit C-2, 2/7/13.

Q. Now, Doctor, will you state whether or not books similar to those that have been marked in evidence were furnished for each of the members of the firm? A. They were not furnished by me individually but it had been my practice before Doctor Jonah and Doctor Durand came with me to keep my records in books of this character, and such a recommendation was made to them; at the same time, they were allowed to use other means if they wanted to, but this was my daily list and my way of keeping my accounts and was my recommendation to them that they keep theirs in the same way or find some better way.

Q. Now, how does it happen that these books are marked "Compliments of Brennan" and "Compliments of Reed's Sons"? A. The different druggists in the town, knowing that that was the way that I kept my accounts, were accustomed to sending me at Christmas one of these books, sometimes I would receive two or three, and the same custom or the same courtesy was extended to the men that were associated with me.

Q. I ask you where you got the two books that you have produced here, one Exhibit C-1 of today and the other being marked C-2 of today? A. I got them out of the cupboard or closet, cupboard, as we call it, in the right-hand corner of the office that Doctor Jonah occupied.

Q. Now, will you state again, please—I think you did state but am not sure if you did; state it again if you didn't—just how this call list book of yours was used in connection with your business?

Mr. McCarter: That is utterly immate-

rial. I don't suppose we can make Doctor Jonah break the contract by showing how studiously Doctor Marvel kept it.

The Vice Chancellor: I think that may be true, Mr. McCarter. At the same time I think it gives an atmosphere to the general surroundings there that may be essential in ascertaining the ultimate issue.

A. I have used Doctor methods—

Q. No, I say just how was this one used? A. I am coming right to that.

Q. Don't tell us that, tell us this particular one. A. This is—my books there represent a daily list of the work done by me outside of the office and each mark indicates a visit and other characters indicate the character of service or work that I did that day.

Q. Entered when? A. Entered every night with a very few exceptions before I would retire, and then at the end of the week—we regarded Saturday as the end of each week and Sunday as the beginning of the next, as the books show—on Monday morning it was my practice to hand this book to the secretary to be transcribed upon the regular books of the firm. This was my daily list of the work done.

Q. What duty, if any, did the secretary have with regard to this book so that she might make the entries? A. What duty had she?

Q. Yes. Suppose you forgot it, in other words? A. Forgot the book?

Q. Forgot to hand it to her? A. The secretary would remind me, would usually ask me on Monday morning if I had brought my book up. Sometimes I would, of course, be out before breakfast and probably not get home, and again I would forget to bring it up, and then I would bring it

up in the afternoon, or at the very latest, the next day.

Q. Tell me whether or not that book had any use aside from its use as one of the books of the concern? A. Well, it had no other use excepting in this: To me it was a means of making memorandas ahead when I should make other calls.

Q. Well, that was with relation to your business but I want to know if it had any other use whatever outside of your business use? A. None whatever.

Q. Now, do you know if Doctor Jonah ever did keep one of these books? A. I know that he—I don't know that he ever kept one constantly but I do know that he had at times carried such a book and made entries in such a book.

Q. And reported to the secretary from it? A. I am not absolutely sure about that; he may have done so or checked up his own accounts from it.

CROSS-EXAMINATION by Mr. McCarter:

Q. Doctor, let me see if I understand the practice. If you made a visit on Sunday, for instance, at the Marlborough-Blenheim upon Mrs. Jones, when would you enter that visit—at night? A. Sunday night after my day's work was over; I kept a memoranda in my pocket of the visits and then entered on that book from the memoranda that I carried in my pocket.

Q. So that this book would not be your book of original entries, so to speak. You would have a little memoranda which you would make during the day, at night you would incorporate that memoranda into this book and it would be written in ink again by you? A. It has been so declared, Judge, in Court.

Q. I don't care about what has been declared.

A. Well, it was simply my record of my work done that day and previous days.

Q. Well now, how long would Miss Hendrickson keep the book on Mondays, if you didn't forget to give it to her and she didn't forget to ask you for it? In other words, how long would she have it in her possession to make the entries from this into that elaborate system of books? A. I don't recall that she ever kept it more than that day; I usually had that book—she usually had the book ready for me to take the same day.

Q. Well now, it is quite customary among the druggists of Atlantic City not only to favor you with these call books but the other doctors too, isn't it? A. I think so.

By Mr. Bourgeois: Q. You say that you kept a memorandum of the calls that you made. What did you have to indicate to you where you were to make calls? A. That book; that is, calls—for instance if I was making a call on a patient today and wasn't to see that patient for two or three days ahead I would indicate at night when we made up my list by a dot on that particular day.

Q. Can you point out an instance of that to the Vice Chancellor? A. Here is Heston, and this indicates a visit, and that dot indicates that I was to see that patient on Wednesday or possibly Thursday, there may have been a dot in this line, but it would indicate that I was to see that patient on Wednesday; I didn't see the patient, however, until the following day. The same thing is here; the same thing is there (indicating).

Q. What is this memorandum you made on a slip of paper you spoke about? A. I think I have—

Q. Well, I don't care anything about it. A. Well, it is just a little card that I would make out

from this book the night before, the calls that I should make the next day, and then add to that any calls that came in during that day, and then when I went in at night I would transcribe from my card to this book all new calls and put down in that book all calls that were indicated in the book to have been made by the day before.

Q. And who made that card out for you? A. I did myself.

Q. Were they made out in the office? Were they there in the office? A. What say?

Q. Were the cards prepared in the office so anybody could have them, or was it just little memorandum paper—what was it? A. No, I had certain cards that I had made especially and offered to the other men to make their records on. I brought those cards up the other day but I am not sure they are here today or not.

Q. See if they are here. If they are we will produce them. A. (Resuming) Then those cards were filed. Here is one of the means (indicating). That would be my daily outside list and then that would be checked when I transferred them to that (indicating).

Q. And the card or book in which you made the original entry of the calls you made would be filed with your other books of the office there? A. How is that?

Q. I say, do I understand you that the card you used or the little book which you have in your hand, which you say you sometimes used, that had been used for this purpose—did I understand you to say that they were filed with the books of the company in the office? A. No, they weren't, they were in my office at home, put in a drawer to themselves.

Q. After they had been transferred to this book? A. Yes.

Q. And this is the only book that was for the use of the clerk, secretary? A. That is it.

ANNA M. GREENLEAF, re-called:

By Mr. Bourgeois: Q. Miss Greenleaf, I wanted to ask you if you have made an investigation to ascertain how much moneys were received from Doctor Jonah's outside work since the 16th of September of last year?

Mr. McCarter: One moment. 16th of September

Mr. Bourgeois: Well, I don't care—since the 1st of September, since the filing of the bill.

Mr. McCarter: I can't see the materiality of that, your Honor. We are not going into the accounting now.

The Vice Chancellor: What are you going to investigate now?

Mr. Bourgeois: I was simply going to show—the Attorney General has shown on cross-examination that Doctor Jonah has turned into the firm a large sum of money during the present year, which is true, some four or five thousand dollars or more, but I propose to show, if your Honor please, that that was turned in after the filing of this bill.

The Vice Chancellor: Well, it already appears that from October to December, inclusive, $4,846 was turned in.

Mr. Bourgeois: I didn't know that appeared. That is all I wanted to show.

JOSEPH H. MARVEL, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says:

By Mr. Bourgeois: Q. Mr. Marvel, you are a brother of the complainant? A. I am.

Q. Did you overhear a conversation between Doctor Jonah and Doctor Durand sometime since the 10th day of January, 1910? A. A partial one, yes.

Q. Where? A. They were in the office off of the office that Doctor Philip uses and I was in Doctor Philip's office.

Q. When was it? A. That was about the 20th day of January, 1910; I couldn't say the exact date but about that date.

Q. Do you know whether or not the agreement that is now in question had been executed at that time? A. I didn't see the agreement but I know that they had signed it by my brother-in-law telling me so.

Q. Did you hear a statement made by Doctor Jonah at that time? A. I did.

Q. What was the statement that you heard Doctor Jonah make and to whom was it made? A. The statement was made to Doctor Durand.

Q. Now, what was the statement? A. The statement was that he had signed that agreement but he would break the damn thing.

Q. What was the occasion of your being there? A. I was making a sale of the Mount Vernon and had took my papers up to Doctor Philip to sign them, and he had signed them and left them there and I went in the office to get them, they were on his desk, and while I was there I heard this conversation.

Q. You knew Doctor Jonah's voice? A. I did.

CROSS-EXAMINATION by Mr. McCarter:

Q. Now, when did you tell this to Mr. Bourgeois? A. I told it to Mr. Bourgeois this week.

Q. Since you were here before? A. Yes.

Q. You were here during all the other hearings, weren't you? A. I was.

Q. Never told him that before? A. No.

Q. You have known this suit has been pending for three or four months? A. I have. No, not three or four months. I beg pardon. I have known for two months.

Q. Well, two months, and when did you tell your brother, the doctor? A. I never told my brother.

Q. Never told him A. No.

Q. No. So that while Mr. Coles, your brother-in-law, told you that your brother Philip had signed a contract with Doctor Jonah and Doctor Durand a few days before, and you heard Durand and Jonah talking in an adjoining room, you in Philip's room, and you heard Durand say that he was going to break the damn contract, you never spoke of it to a soul from that time down to within the past week, is that right? A. That is correct.

Q. Now, who was in the room with you? A. Nobody.

Q. Well, what were you doing—listening to what was going on in the next room? A. No, sir. I went there to get my papers, I couldn't help but hear that voice.

Q. Did you know that Doctor Durand was in the room? A. I did.

Q. You know that Doctor Durand has gone to Europe too, don't you? A. I do.

Q. Yes. You didn't speak about this last week

when Doctor Durand was here, did you? A. I had no occasion to.

Q. You heard Mr. Bourgeois close the case for your brother, didn't you? A. No, sir.

Q. What? A. No, sir.

Q. Weren't you here when the case closed yesterday? A. No, sir; I was in Camden but not here in this Court.

Q. Have you told us all you heard? A. I have told you all I heard distinctly.

Q. Well, what did you hear indistinctly? A. They were talking together, I didn't want to stay and listen to it. If Doctor Jonah hadn't raised his voice a little louder I wouldn't have understood it.

Q. Now, what was it you heard him say? A. I heard him say he had signed it but he would break the damn thing.

Q. Have you given us the language? A. Yes.

Q. "I have signed it but I will break the damn thing"? A. Yes.

Q. How do you fix the time? You say it was about the 20th of January, 1910. That is three years or more ago. A. I think at the time, Attorney General, as I told you, I was negotiating the sale of the Mount Vernon. I had took my contract that I had drawn up up to get the doctor to sign it, and I left it there for him to sign, I had to have his signature, and I went to get it.

Q. What is "Mount Vernon"? Do you mean Washington's former home outside of the City of Washington? A. Well, it is named for him, perhaps. It is a hotel, Mount Vernon, on Pacific Avenue.

Q. Oh, you mean the Mount Vernon Hotel in Atlantic City? A. Yes, sir.

Q. You were negotiating a sale of the Mount Vernon Hotel? A. Yes, sir.

Q. Did your brother own it? A. He had an interest with me.

Q. Now, you have told us that the words that you overheard, to the best of your present recollection were, "I have signed it but I am going to break the damn thing"? A. No, I didn't put it that way.

Q. Well, what was it? Give it to us again. A. "I have signed it but I will break the damn thing."

Q. "I will break the dawn thing." Now, that is all you heard distinctly? A. That is what I heard distinctly.

Q. What he had signed you didn't hear? A. No.

Q. What he was going to break you didn't hear? A. No.

WILLIAM E. JONAH, the defendant, being duly sworn according to law, on his oath says:

Mr. Bourgeois: Now, if the Court please, I don't want to make Doctor Jonah my witness except for one purpose, not generally.

The Vice Chancellor: Very well; you may be limited to your own circumspection.

By Mr. Bourgeois: Q. Doctor, suppose the Court in this suit makes a decree dissolving the partnership between you and Doctor Marvel but does not pass on the question of whether you can or can not practice in Atlantic City under this agreement, what is it your intention to do?

Mr. McCarter: Well, one moment. Now, is that evidence? We will concede, if it

is material, that the doctor would desire the right to practice in Atlantic City. I do not think very many of us would be here taking your Honor's time, excepting on the accounting which your Honor wouldn't bother with, if that wasn't the fact.

The Vice Chancellor: Well, I do not know, Mr. McCarter, whether this would be of any value or not. This bill has asked to enjoin him from continuing the practice in Atlantic City in his own name after the dissolution. I certainly hope that if defendant has no intention to do so in any event that we may be saved the necessity of any further controversy here.

Mr. McCarter: Of course I have tried to indicate that the doctor wishes to have a right to do so but I do not think he ought to be asked to display his plans here in Court at all, and we will admit that it is quite likely that the will, unless he is prevented by order of the Court, practice in Atlantic City. We will concede that it would be considered a dreadful thing to him to be prevented from so doing.

The Vice Chancellor: In your answer I suppose you assert the right?

Mr. McCarter: I do not know whether the answer does or does not but we claim the right and I say so on the record.

The Vice Chancellor: Well, what more is necessary, Mr. Bourgeois?

Mr. Bourgeois: Maybe the Attorney General wishes to admit what I have in mind? We have spent two days on this case; I do not want to go up against the

proposition that there is no evidence that Doctor Jonah intends to practice.

Mr. McCarter: Well, we do not propose to try this case on any such proposition as that.

Mr. Bourgeois: In other words, if he is not restrained he intends to practice? The question comes up on the theory of granting an injunction. Now, an injunction won't go unless there is a threatened injury.

The Vice Chancellor: I think you will be entitled to know whether he means to in that view.

Mr. Bourgeois: I have assumed that we weren't spending this time uselessly but I would like to have it on the record.

Mr. McCarter: I do not know what more I can say in that direction than I have said. We are not trying to avoid any responsibility or being captious at all, but I do not think Doctor Jonah ought to be asked to display his plans here. We say distinctly that we would consider an injunction to prevent Doctor Jonah from practicing in Atlantic City a very detrimental thing and we do not want it, and we do expect, unless prevented by a higher power, to, among other things, consider the project of practicing medicine in Atlantic City.

The Vice Chancellor: I should think that would be ample, Mr. Bourgeois. You surely, upon the record as it now stands, can not be thought to be fighting a shadow. You have a claim of right upon his part which is all that you require, it seems to

me.

Mr. Bourgeois: All right, then I will withdraw it.

Mr. McCarter: Do you rest?

Mr. Bourgeois: We rest.

By Mr. McCarter: Q. Doctor Jonah, how old are you? A. I am in my fortieth year.

Q. Where were you born? A. In the State of Maine.

Q. Did you graduate at any college? A. I took an A. B. degree at Acadia, Nova Scotia.

Q. And after getting your degree at Acadia where did you study medicine? A. At Bowden Medical School at Portland.

Q. Maine? A. Yes.

Q. When did you graduate from the medical school at Bowden University? A. 1900.

Q. 1900? A. Yes.

Q. Now, after graduation at the Bowden University medical school what did you next do in the line of your chosen profession? A. Then I was appointed an interne in the Marine hospital service at Portland, Maine, which position I held from October until February, and then I became an acting assistant surgeon in that service.

Q. Still at Portland? A. Still at Portland.

Q. Go right on now and briefly relate to the Vice Chancellor your experience. A. Which position I held for about a year and a half, and then I left that position and went to New York and studied at the Post Graduate Medical School and did hospital work at the New York Hospital, the New York Lying-in Hospital, and was at Bellevue for a little while and I was in the Cornell Dispensary in Medicine for a little while, and from New York—

Q. That brought you down to about what time?

A. That brought me down to two years and a half after I graduated.

Q. Yes, then what did you do? A. Then I went over to Philadelphia and went with the Kensington Hospital for Women, with Doctor Charles Noble.

Q. And how long were you there? A. I was there a little over a year.

Q. And after that what did you do? A. After that I got sick, I broke down nervously and went away for about four months to the State of Maine to get rested and my health back, and it was there I had a telegram from Doctor Marvel asking me to come to Atlantic City.

Q. Did you ever hear from Doctor Philip Marvel of how he knew of you so as to send you that telegram? A. Yes.

Q. How was it? A. He learned of me through Doctor Noble.

Q. Prior to the receipt of that telegram had you ever met Doctor Philip Marvel? A. Yes.

Q. You had met him through Doctor Noble? A. Yes.

Q. Pursuant to that telegram did you come to Atlantic City? A. Yes.

Q. And when was that? A. That was in 1905, in October.

Q. And was a relationship between Doctor Marvel and yourself established at that time, 1905? A. In 1905, I think so, I went and became associated with him I think it was about the 14th of October, 1905, I worked there on a salary.

Q. As an assistant? A. Yes.

Q. Yes. At that time who else was there beside Doctor Philip Marvel and yourself, if anybody? A. At that time nobody.

Q. Nobody, and was the office the same as has

been later occupied by you or were you in different parts of the city? A. No, we had the same locality.

Q. And just tell the Vice Chancellor where that is. A. That is at 1616 Pacific Avenue, corner of Pacific and Mount Vernon.

Q. Now, that makes 1905 you became assistant to Doctor Philip Marvel. How long did that relation continue? A. That relation continued until in January, 1907.

Q. Was there any writing between you to establish that relation or just a verbal arrangement? A. Just a verbal arrangement.

Q. That is, you were paid a salary? A. Yes.

Q. And what did you do in general? What were your duties? A. Well, I assisted Doctor Marvel at that time in the general practice of medicine and of a great deal of the night work, taking what calls he gave me to take and got what I could myself.

Q. In other words, you did outside and inside work? A. Outside and inside work.

Q. You were a regular physician? A. Yes; and when I was first there I did some laboratory work the first few months.

Q. Now, in 1907 what happened to change this relation? A. In 1907 we formed a partnership.

Q. You and Philip Marvel? A. Yes.

Q. I don't care to go into the details of that? You had a certain interest in the business at that time? A. Yes.

Q. Was that in writing or only oral? A. That was in—we had writing, some papers written but the papers were never signed by either of us.

Q. Now, did that arrangement continue until the written agreement about which we have been

speaking in this suit, made the 10th of January, 1910? A. Yes.

Q. Now, who else was there if anyone under that original verbal partnership? A. There wasn't anybody.

Q. Was there any limit fixed to the duration of that partnership? A. That was a ten-year agreement.

Q. Ten-year agreement? A. Yes.

Q. And your compensation was arranged how under that verbal agreement? A. Under that verbal agreement we had an arrangement by which the first year I was to have I think it was a tenth or a ninth, I forget which.

Q. Ninth, this says here. A. Ninth.

Q. All right. A. And Doctor Marvel was to have eight-tenths; the next year I was to have an eighth and he was to have seven-eighths; then the next I was to have a seventh and he was to have six-sevenths.

Q. You mean the next year? A. The next year, yes, sir; a progressing arrangement down to equal partnership.

Q. Going down every year? A. Increasing, yes.

Q. So that if that arrangement had been carried into effect, starting in 1907 and increasing in the way you have stated, whenever the fraction would have brought you to a half you were to have gotten a half of the proceeds of the firm? A. Yes.

Q. Were you two alone then or did you have other help? A. Doctor Durand was there for three years or a little more right after the signing of this contract but he was on a salary.

Q. And was there any other assistant there during that preliminary deal beside Doctor Durand? Anybody in the laboratory? A. Yes, a Doctor Patterson was there for a little while and I don't recall anybody else.

Q. Now, I direct your attention to Exhibit C-1, being the contract in question, and I ask you how long that contract was in your possession or how long before it was actually signed you saw it? A. I saw the contract—I was given the contract I think it was January 9th, I think that was a Sunday night, and I signed it the next morning.

Q. Did you consult counsel or confer with anybody—

Mr. Bourgeois: I object.

Mr. McCarter: One moment; wait until I get through.

Mr. Bourgeois: Yes.

Q. —with regard to it previous to signing it?

Mr. Bourgeois: That is objected to as immaterial.

The Vice Chancellor: I think the objection is well taken. Is there any prayer for relief against this agreement on the ground of inadvertence?

Mr. McCarter: No, sir.

The Vice Chancellor: What is the purpose, Mr. McCarter, of your question?

Mr. McCarter: Well, I won't bother with it.

Q. Now, it has been testified by Doctor Marvel's brother, Mr. Joseph Marvel, that on the 20th of January, 1910, or thereabouts, he overheard a conversation indulged in between you and Doctor Durand, in which you made a statement that you had signed it and would break the damned thing, or words to that effect. Have you any recollection of ever having made any such statement as that? A. I haven't the slightest.

Q. No? A. No, sir.

Q. On the 20th of January, 1910, or in the month of January, 1910, had you the slightest idea that

this contract was a harsh one or one that you didn't like or didn't expect to fulfill? A. I hadn't.

Q. Now, complaint has been made here with regard to the use by you of a little private prescription blank of some kind which had upon it your own name. Do you remember getting such a blank? A. I didn't get them, they were given to me.

Q. By whom? A. By Mr. Weber in Deakyne's drug store.

Q. Do you remember the circumstances? A. Yes.

Q. Just detail them. A. I was in—this case was new at the time and I went in his store and he said, "You ought to have some prescription blanks that would fit your case." I said, "I don't want them." He said, "I am going to have some printed for you that will fit it." And he took the measure of the case and he had the little one printed.

Q. The larger one protruded? A. The larger one protruded, yes.

Q. That is, the official one, so to speak? A. Yes; and he had them printed and sent to the office.

Q. You never concealed or obscured the fact that sometimes you used them and sometimes you used any blank piece of paper and sometimes you used the official one, did you? A. No, sir.

Mr. Bourgeois: If the Court please, that is leading.

The Vice Chancellor: It is undoubtedly leading, if counsel wishes questions put in a different way.

Q. Well, did you conceal the fact that sometimes you used the blue, sometimes you used the white and sometimes when you had a red one you would

use that, or had a red, white and blue tablet? A. These things were all on my desk, everyone could see them and there wasn't any concealment of the thing.

By the Vice Chancellor: Q. Will you answer the question whether in fact you did make any concealment of it? A. I didn't.

By Mr McCarter: Q. How early or when was it that those prescription blanks were given you by that pharmacist? A. These blanks were given to me before the signing of this contract.

By the Vice Chancellor: Q. After you had in fact become a partner of Doctor Marvel? A. Yes, when we were partners, yes.

By Mr. McCarter: Q. Now, have you kept pretty busy—

By the Vice Chancellor: Q. May I inquire in that same connection whether during that period of your first partnership agreement there were any prescription blanks on which the firm name appeared or any stationery on which the firm name appeared? A. There was some; the blanks we had before these had Doctor Marvel's name here and the two names here (indicating), Doctor Jonah and Durand.

Q. Two-name paper was in use then? A. Three-name paper.

Q. No, prior to the signing of this last agreement? A. There was three-name paper then.

Q. Doctor Durand was also on? A. His name was on too.

By Mr. McCarter: Q. Although he wasn't a partner and you were? A. Yes.

Q. (Witness is shown Exhibit C-16 and asked if that is a form of the so-called official prescription blank that was in use during the preliminary partnership when Doctor Durand was an assist-

ant and you were a partner?) Your answer is what? A. Yes.

The Vice Chancellor: Then this is the same, is it not, that was used after the last partnership?

Mr. McCarter: No, sir; a little bit different in form. They are already in evidence and your Honor can see by inspecting them the difference.

The Vice Chancellor: Well, I see the difference. I did not gather before when they were offered that they related to different periods.

Mr. McCarter: Yes, sir.

Q. Now, Doctor Jonah, when you were out attending to the business of visiting the sick, the lame and the halt and the blind what method did you pursue as a practice with regard to keeping an account or memorandum of the services rendered by you? Just tell the Vice Chancellor your habit and when you used a book and when you didn't use a book and all about it. A. Well, sometimes I did use a book and kept the names, I wrote the names down in the morning or the names were there and marked with the dots where the visits ought to be made, as you will see.

Q. Now, this seems to be a book? A. Yes.

Q. Was this a book that was used by you? A. Yes.

Said book marked Exhibit D-1, 2/7/13.

Q. Now, when you did not use a book what was your practice? A. Then I used prescription blanks, wrote the names on the prescription blank.

Q. And it has been testified here that you would not promptly during certain periods report to the secretary the work that had been done by you is that a fact? A. That is a fact.

Q. Won't you explain to the Vice Chancellor how that came about? A. At times I would get very tired, and I am naturally careless about bookkeeping, don't like it, and I get very much depressed at times with my work and go on and do the work and never think anything about whether I am going to make a mark down for them until the time comes for sending out their bills.

Q. Did you have in your possession memoranda which eanbled you ultimately to have your bills sent out? A. Yes.

Q. You said something or other about being careless, naturally careless. What did you say about that? Just enlarge a little bit on that. A. I am naturally careless about—I am not systematic.

Q. Methodical? A. I am not methodical.

Q. You say you would be tired. Why tired? A. Well, my cases would often worry me very much, I always take them very seriously; I would oftentimes get very much depressed over them.

Q. In other words, your mind was more occupied upon what? A. On trying to get some fellow well than it was on how much I was going to charge him.

Q. Now, it was a matter of comment, I believe, between you and Doctor Philip Marvel on several occasions that you were slow about this thing? A. Yes.

Q. What was the practice of the enterprise with regard to having an annual audit and an annual settlement? A. There was an annual audit and an annual settlement.

Q. When would that occur? End of what year? The end of the fiscal year? A. Usually in January; January 1st is considered the end of the business year.

Q. So that at the end of 1910 or the end of 1911 were there audits and settlements? A. Yes.

Q. How would your bills be prepared and sent out? The other doctors would prepare and send out their bills, or have them prepared. Now, how did you do it? A. I would send out my bills by going to the secretary and taking the cards and my slips and sending out the bills. Sometimes I would have an itemized account of a case and sometimes I would just know that I had treated a certain patient for such a disease or had given them so much service and charged them accordingly.

Q. Now, Doctor, the Vice Chancellor has referred and Mr. Bourgeois has referred and Doctor Philip Marvel has referred to the fact that the books fail to show any record of your work. That one book with those blank pages is not the only book the firm kept, is it? A. No, sir, that is one.

Q. And because there are blanks in those pages in that particular book it does not follow there are blanks in all the books, the cash book and the other ones? A. No.

Mr. Bourgeois: Well, if the Court please, is that testimony?

The Vice Chancellor: Not yet; he is making an argument now.

Q. When you did come in and have your interviews with the secretary and make your reports which were tardy what entries and in what books would entries be made by the secretary? For instance, you made a report that Mrs. Heinzenheimer of the Royal Palace for $55. Would that you and owed the concern $55. Now, you would report that, made out a bill against Mrs. Heinzenheimer of the Royal Palace for $55. Would that be put in an account against Mrs. Heinzenheimer? A. Yes, it would be put on a card.

Q. And if the bill was paid there would be a credit made to her? A. Credit made to her.

Q. And the cash book would show the entry also? A. Yes, sir.

Q. And yet there might be nothing on that page of this particular book of the month or months or week or weeks in which that service had been rendered—is that right? A. That is true.

Q. Now, looking at the annual audits and comparing the results of the business with the experience under the old contract, has it been an improvement or a detriment financially that the new contract abrogating the old has made?

Mr. Bourgeois: I object, that is irrelevant and immaterial.

The Vice Chancellor (After argument): I think it is sufficiently in doubt, I think you are entitled to let it be made a part of the record.

Mr. Bourgeois: I object to it on the ground of the form, because we do not want his conclusion, we want the facts and let us draw the conclusion. Let him show what his income was those previous years.

The Vice Chancellor: I can see how it will be impossible to accurately determine what would have been the result under the old partnership if it had continued but I suppose counsel desires to go no further than to make a general argument that the new deal was less profitable than the old.

Mr. McCarter: That is my idea. Well, I will withdraw that particular question and get what I am driving at another way.

The Vice Chancellor: Well, I will let you make your record, Mr. McCarter, although I somewhat doubt its admissibility.

Q. Were you and Doctor Marvel doing a fairly good business from 1907 to 1910?

Mr. Borugeois: Now, that is objected to on the ground that it is not within the issue in this case.

The Vice Chancellor: I will not exclude the question although I am inclined to think it would be incompetent, but I will let it go in the record.

A. Yes.

Q. Can you, without taxing your memory too hard, tell us what your share of the profits was under that preliminary partnership for the three years during which it existed previous to the making of this written contract? A. I can not; I can tell the relative percentages.

Q. Well, we know the relative percentages, they speak in the contract itself that you have given us, but what I am driving at is your income roughly, I don't want it down to dollars and cents. What did you make the first year, 1907? Do you recall? A. No.

Q. Not at all? A. I don't remember.

Q. Or any of those years? A. No.

Mr. McCarter: Well, then, I can not show it that way.

Q. So far as you have been able to tell, Doctor —are you able to tell, Doctor Jonah—has the firm lost any money by reason of this habit of yours, this tardiness? A. No, sir.

Q. As a matter of fact, are you able to tell us about how much is in the coffers of the firm today or on the books as due you and which you have not drawn for the year 1911 or down to the present time? A. Practically $10,000 in cash and about $3,000 collectible bills.

The Vice Chancellor: That is still due to him?

Mr. McCarter: Yes, sir.

The Vice Chancellor: That is, there are outstanding uncollected bills of which his share will be about $10,000?

Mr. McCarter: Oh, no; that the firm has actually collected and that is in the hands of the firm treasurer.

Q. Doctor Philip Marvel today has, if I understand your evidence correctly—correct me if I am wrong—upwards of $10,000 which is your share? A. Work I have done.

Q. Work that you have done? A. Yes.

Q. Well, how much is there, as you understand it, in the firm treasury today on the present situation of things to which you are entitled? A. I think about $5,000.

Q. And how much from your own work, I mean your own energies, is due the firm which will be, if everything goes right, collectible? A. About $3,000 more.

Q. Reference has been made in the testimony to the fact that Doctor Philip Marvel became interested in the Doctor Emery Marvel sanitarium; I do not desire to go into the reasons that led up to it but were your relations and relations of Doctor Durand with Doctor Emery Marvel cordial or otherwise? A. Otherwise.

Q. How early after the making of this contract Exhibit C-1 did that situation develop? A. Before this contract.

Q. Before this. When did you learn of the fact that Doctor Philip Marvel was interested in that sanitarium project? A. During the first year of this contract.

Q. Now, what did he do and what objection—

what did he do that brought that matter to your attention and what complaint did you make of what he did do to him? A. He made a great effort to keep a great many patients in that institution.

Q. Now, how did you think that that injured the firm and what claim did you make about that to Doctor Philip Marvel? A. I told him that it would seem as if the business was Marvel and Marvel instead of Marvel, Jonah and Durand, and the mere fact that he sent his patients there and it was called Marvel's sanitarium, which was the common name for it would lead people to believe that that was one of our central offices, and people would sometimes go there and would telephone there when the calls should have come to our office.

Q. Did he know that you and your other associate, Doctor Durand, would not go to the Emery Marvel sanitarium? A. He know that I wouldn't.

Q. After your protest with regard to that did he continue or cease? A. He continued until—he continued for practically—for the first two years of the contract, that is, during the last year of the contract largely.

By Mr. Bourgeois: Q. How is that—has continued largely? A. Discontinued largely.

By Mr. McCarter: Q. Won't you just tell the Vice Chancellor now, leaving out altogether the fact that Doctor Emery Marvel was *persona non grata* to you, and also, as I understand you, to Doctor Durand—

Mr. Bourgeois: Now, if the Court please that is objected to.

Mr. McCarter: Wait a moment, let me finish the question.

Q. Won't you tell us how you assumed or how you explained to Doctor Philip Marvel that his association and conduct with regard to that sanitarium was detrimental to the interests of the firm?

Mr. Bourgeois: That simply calls for his conversation with Doctor Philip Marvel, is that right?

The Vice Chancellor: He directs the attention of the witness to the particular subject, I think that is all right.

Q. Now, just tell the whole thing. A. I regard that institution as a rival institution.

Mr. Bourgeois: I object to that.

The Vice Chancellor: What you said to Doctor Marvel, the question was, on the subject in the discussions between you.

A. (Resuming.) We had several conversations upon the matter.

Q. Well, what did you say? Just tell us the burden of your complaint; you are not expected to remember the words. A. I don't remember the words.

Q. You are not expected to do that. The burden of your complaint to him. A. The burden of my complaint was—to him was that he was deverting business from our office to help his brother, and he told me that it was necessary for him, that everybody was against his brother and he had to do it, and I told him if he wished to help his brother he could do it with his own check book and not from our firm.

Q. Anything more? A. And before I went to Europe in November—

Q. What year? A. 1911, he said he would stop.

Q. Yes, and did he stop? A. Oh, you have al-

ready told us he did stop it wholly? A. Yes.

Q. Now, won't you explain to the Vice Chancellor—rather explain to me, perhaps I don't understand it exactly—how would the sending of patients to the sanitarium hurt the business of your firm? A. Well, I had many complaints from hotels asking for his association there, and his taking patients out of the hotels and the mere fact that the patients were in this hospital with Doctor Emery Marvel's nurses and that association would give them the introduction to these patients and to the Emery Marvel sanitarium and his staff and would give them the acquaintance which would be denied to me if his patients were somewhere that it was possible for me to go and assist in the treatment.

Q. Did Doctor Emery Marvel have a staff beside himself? A. Yes.

Q. Doctor Porteous? A. Yes.

Q. And was this entirely a surgical sanitarium? A. No.

Q. How was it known and described generally—do you know? A. Marvel's sanitarium.

Q. Now, some testimony was given the other day by Doctor Philip Marvel with regard to alleged omissions from the list attached to your answer of some hundred and fifty-five or two hundred odd names. Did, you one evening with Judge Endicott and me, examine those books and that list to some extent? A. I did.

Mr. McCarter: Now, I don't want to take any particular time, your Honor, but while that thing has utterly fallen to pieces and, I suppose, in fact I think your Honor said, it is really out of the case, nevertheless there is left in the case the testimony that this list that the doctor made up

by a very careful count has left out a hundred and fifty-five or two hundred and twenty odd names. If that testimony has any weight whatever with the Court—

The Vice Chancellor: It has no weight with me; I can not say how it may impress others. I understand that that feature of the case has been abandoned.

Mr. Bourgois: I assume, if the Court please, if this partnership is dissolved and Doctor Marvel is entitled to an accounting that this answer is not the accounting. The bill prays for an accounting, it prays for an answer under oath, there is no oath to it, so I anticipate under the pleadings it would have to go to a master in any event.

The Vice Chancellor: It would have to go to a master in any event.

Mr. Bourgeois: The object of the testimony was to show that Doctor Jonah's methods of keeping his accounts was not accurate.

The Vice Chancellor: (After argument and motion to strike out testimony of Philip Marvel and Miss Greenleaf so far as it relates to the account as attached to the answer.) Well, I think it had better stand as a part of the record as long as it is already there, but it may be excluded from our consideration absolutely so far as I am concerned.

Mr. Bourgeois: In order that there may be no misunderstanding I will say that I attach no significance to that testimony, after it fell I considered it was done.

Mr. McCarter: Is the motion to strike it out granted?

The Vice Chancellor: It is a proper motion, yes.

Mr. Endicott: It is granted.

The Vice Chancellor: Yes.

Q. Now, with regard to the rubber stamp "Make bills payable to Doctor Philip Marvel," or whatever it says, it has been testified by Doctor Marvel that you and Doctor Durand, and I understood him to say the secretary as well, all agreed with him to the use of that rubber stamp. Did you ever agree to any such matter? A. I did not.

Q. Did you ever hear of any agreement having been made by the other partner, Doctor Durand? A. I never did hear of any agreement.

Q. Now, what did, in fact, occur between you and Doctor Marvel with regard to the use of that rubber stamp? A. I protested against its use.

Q. How early was it used in fact, if you can recall the first use, after the partnership, the written partnership? A. I think it was used in 1910.

Q. What did you say to Doctor Marvel when you protested? A. I told the secretary not to put it on my bills.

Q. Well, did you protest or have any talk with Doctor Marvel about it? A. Yes, and then I had a talk with him about it.

Q. What did you say to him? A. I told him that it shouldn't go on.

Q. Well, why? Did you give your reasons? Did you say anything about what your patients had said? A. Well, my patients hadn't said anything at that time.

Q. Well, did you ever have any complaint from your patients with regard to that thing and, if so, did you bring to Doctor Marvel's knowledge

the fact of such complaint? A. Yes, I have had such complaints and I have spoken to Doctor Marvel about the complaints.

Q. Now, tell us what you said to Doctor Marvel concerning this complaint of your patients in regard to the use of that rubber stamp? A. I told him that my patients had complained about it and it put me in a position that I was an assistant and interfered with my standing with my patients.

Q. Well, did he tell you at that time or any of these occasions that you had agreed to it? A. No, he didn't say I had agreed to it, he said it was going to stay on.

Q. What reason did he give? Any? Let us have the whole conversation of the complaint. A. He didn't give any special reason.

Q. Did it, in fact, stay on? A. It did.

Q. Something was said by Doctor Marvel concerning an offer or offers by him during the past year of some money to you. Did Doctor Marvel make any suggestion about paying you during the past year? A. No, sir.

Q. Did he offer to pay you any money during the past year? A. He did not.

The Vice Chancellor: There is one feature I wonder if I have properly apprehended and I do not want to misapprehend the situation. My understanding is that it has been the practice of all three partners to retain certain portions of the moneys they actually themselves collect and that whatever moneys they have obtained that way would be properly chargeable against them and that that has been the custom from the beginning; is that not correct?

Q. What is the fact about that, Doctor Jonah? A. Yes, that is correct.

Q. For instance, if you in your office hours take in some cash— A. Yes.

Q. You would sometimes retain that? A. Yes.

Q. Giving a note to the secretary? A. I would write on the book.

By the Vice Chancellor: Q. Charge it against you? A. Charge it against me, yes.

By Mr. McCarter: Q. So you would collect money sometimes and retain it? A. Yes.

The Vice Chancellor: I understand that was the practice of all the partners and that is where they got their ready money.

Mr. McCarter: Yes, sir.

The Vice Chancellor: For their personal use?

Mr. McCarter: Yes, sir, I understand so and I think the contract provides that they could do it.

Q. Now, I want to direct your attention to your trip abroad in the month of November or December, 1911, when your health was broken down. Had any suggestion been made previous to that projected trip of its being made by you to Doctor Marvel? A. Yes, I had told him early in the fall that I felt I was going to pieces and I would have to go away.

Q. Now, Doctor Jonah, it appears in the evidence that at certain fixed periods in this day book or whatever you call it, there are blanks where you did not make daily reports.

The Vice Chancellor: These blanks cover, Mr. McCarter, periods—if I may refresh the witness' memory in connection with your question, for it is a matter that I really want to be enlightened on—these

blanks include in the year 1910 from September 27th to the end of the year, in the year 1911 they include from May 6th to October 31st, in the year 1912 they include everything after March 16th. Now, you see those are blanks of five months and five or six months again and a longer period in the next year, very long periods when there seem to be no daily reports. Now, will that refresh the witness' memory?

Q. (The question is withdrawn and a new question.) Assuming that it is a fact that between September 27th and the balance of the year 1910 there were no daily reports made by you to Miss Hendrickson, the secretary, did you intermediate to that period at any time or times have sittings or interviews with her in which you did make reports from which bills were sent out? A. I did.

Q. Are you able to recall with any degree of exactness about how many? A. I could not recall that.

Q. Were there more than one? This is from September, now, to the end of the year 1910, the first year of the contract. A. I don't remember; I know I sent out the bills, it may have—it would take more than one sitting.

Q. Well, of course, but I mean would you have more than one effort to get bills out during that period? A. There might have been bills sent out at any time. You might come in the office and say today "send a bill to so and so," or you might come in a couple of days and say send a bill to somebody else.

Q. Well, you can't tell us then whether you would make reports from time to time or whether you made no report during that time, or can you

give us any explanation at all of what occurred at the first period between you, now, and Miss Hendrickson with regard to that lapse? A. I do not recall the instances of my sending out the bills at that time although I know that I did it.

Q. Well, now, take the second period, which was in 1911, the next year, and as I recall the dates it is between the 6th of May and the 31st of October—

The Vice Chancellor: That is right.

Q. That would be during the busy season of 1911. Were there any bills sent out in that period? A. Yes; I remember that more distinctly because I got all my bills out before I went to Europe during the month of October, and there was quite considerable money came in while I was in Europe to the firm.

Q. Yes; of course all that is entered on the cash book? A. That all came into the office, the secretary had power of attorney to endorse checks made payable to me and it went through the routine.

Q. Yes. Well now, the third and last period is between the 16th of March and the end of the year 1912? A. Yes.

Q. Did that whole time lapse without any bills being sent out or reports made by you for work done by you—of work done by you? A. Very largely.

Q. When did the trouble between you and Doctor Marvel become acute? A. About last June.

Q. June, 1912? A. Yes.

Q. Now, Miss Hendrickson seems to have testified that you would come in at different periods and make some reports and bills would be made

out—is that a fact—without giving the length of time or undertaking to recall the date? A. Yes.

Q. Are you able to estimate how long a time would elapse—I think that is what the Vice Chancellor is anxious to know—

The Vice Chancellor: Yes.

Q. How long a time would elapse when there would be no one but you and your loose slips that contained the information as to work that was done by you? A. You would collect some money all the while but for making a—what you might call a round-up, this last period was a longer period really, from March until—

Q. Well, I am talking about the two earlier periods first. How often do you suppose you and Miss Hendrickson would have these interviews, either at your house or at the office or elsewhere, in which you would make reports and she would make out bills? A. That might be—we might have had some at three weeks or it might have been two months at different times, that would vary, I can't remember exactly those periods.

Q. As I understand you, you would sometimes send out a particular bill today and another one tomorrow, something of that kind? A. Yes, that might occur.

Q. That would render a report from you? A. Yes, a special case.

By the Vice Chancellor: Q. Now, Doctor, supposing a patient came to Atlantic City and you were called to one of the hotels to treat her; would you as a rule collect the money yourself from her or would you have a bill sent to her from the office? A. The bill sent from the office as a rule.

Q. As a rule? A. As a rule; yes, sir.

Q. Sometimes you would collect yourself? A. That was exceptional.

Q. That was exceptional? A. Yes.

Q. Some patients, I should assume, would come to Atlantic City and would only remain there a short time. In a case of that kind what would you do in order to prevent their getting away before you got your money? A. We would simply get their addresses, that is all, and they would go away, we wouldn't get it before they went away.

Q. Would you send the bill to their home address? A. We would send the bill to their home address, yes.

Q. Then the rule was that those bills would be sent to them from the office? A. From the office, yes.

Q. Now, are you able to state whether, as a matter of fact, you did from time to time procure bills to be sent to all of your patients? Would you let any of them get away or escape paying by reason of not having bills sent to them? A. There may have been a few.

Q. Well, was it a matter of any frequent occurrence? A. I would say not.

Q. You looked out that bills were sent to your patients? You made an effort to do that, did you? A. I made an effort to collect my money.

Q. Now, I wanted also to inquire this: Supposing you collected from a patient and put the money in your pocket instead of having a bill sent to the patient—some patient perhaps would call you for a single dose, treatment— A. Yes.

Q. And it would be unnecessary for you to return, they would wish to pay you at once. Now, how would the office become apprised of that? A. I would write that down on one of these slips that

I kept in my pocket at times or one of the call list books.

Q. Would that always find its way to the books sooner or later? A. Sooner or later I would be charged with that amount.

Q. But you would faithfully make such a report, would you, of any money? A. That was my method. Now, I could, as anybody else, miss some one or two occasionally when you are busy that would be possible for anybody.

Q. But so far as you are aware you never have? A. I don't recall any case now, I may have.

Q. Your aim was to make a report of every dollar you received? A. My aim was to get it, all the money I received.

Q. Well, was it your aim to make a report the office of every dollar you received? A. Yes.

Q. Was it your aim to have a bill sent out from the office to every patient who did not in fact pay you? A. Except patients that we didn't charge.

Q. Yes, I mean from charge patients? A. Yes.

Q. I mean a charge patient, of course. A. Yes.

Q. Well, now, why didn't you make daily reports? A. Due to the fact that I am not methodical.

Q. Doctor Marvey made a point of it, didn't he, and urged you to do it? A. Yes, and I would do it for the time and then I would go to pieces. I have a record here, if I might show, the first ten weeks of the year.

Q. I see you did splendidly from New Year's on and then you went to pieces? A. From New Year's until sometime in March and then I broke.

Q. And having one made a lapse you couldn't pull yourself together? A. Then I can't get together.

CROSS-EXAMINATION by Mr. Bourgeois:

Q. Doctor, I understand that you always were able from the data that you had to determine how much moneys were due to the firm or what bills should be sent out—is that correct? A. Yes.

Q. I notice in the account appended to the answer, on page 4, the name of Mr. Jesse Cunningham, Lenox Apartments and a space where the amounts went, there is a character of a question mark. Will you tell me how that the amount wasn't furnished for that? A. I didn't furnish the amount for that because the amount of the bill would be so great the man is poor, that he never could—we simply had to lump that and I wanted to agree with Doctor Marvel on how to adjust that bill. I spoke to Doctor Marvel—the man's wife came in and wanted to give me a mortgage to secure it, and I conferred with Doctor Marvel and he said we would fix that special bill, he said "Oh, we can fix it anything that you think that they can pay," or some words to that effect.

Q. And is that same explanation true also in the other account immediately below it of Mrs. Jesse Cunningham? A. That is his wife, yes.

Q. Now, I notice on page 12 of the account "Mrs. Rothschild, Rodessa Apartment, see old account for amount due"? A. Yes.

Q. Why wasn't that amount filled in? A. I couldn't find the card when we were fixing that up, she owes an old bill.

Q. Well, would it not appear on some of the books of the firm? A. That would appear on some of the old cards that were in the safe, they used a card to keep these accounts and sometimes they are lost.

Q. Well, is there no other record excepting the

card? A. No other record to get that special account.

Q. Suppose you had kept the account as Doctor Marvel kept his accounts, first in the little call book— A. Yes.

Q. And then turn it into the secretary at the end of the week, during all the time you had been there, would this account then have appeared on the books of the firm other than the card? A. No.

Q. Why not? A. Not as a total account.

Q. No, but the work you had done would have appeared there? A. The number of visits would have appeared.

Q. Then you could have made up the acocunt from the number of visits—is that correct? A. Yes.

Q. Now, I noticed you treated the St. Charles help without compensation, as I understand, of the hotel? A. Yes.

Q. Now, Doctor, I don't quite understand from your testimony the object of this partnership. I understood you to say that you did not keep the accounts because you were too busy? A. At times.

Q. Yes, and you were so busy it impaired your health? A. At times; yes, sir.

The Vice Chancellor: Now, Mr. Bourgeois, I don't want to interrupt you—I won't any more—except I would like if you will be a little more accurate in the expression you use in your question, keeping the accounts might mean either of several things.

Mr. Bourgeois: Well, rendering accounts, I guess.

The Vice Chancellor: I do not think the

witness in his answer meant to say that he did not keep any accounts; he simply did not keep the accounts that were prescribed in the office. You can see what I mean if you will read your question. I understood him to say he kept an account of his own but he didn't report it to the office.

Mr. Bourgeois: That he kept an account of his own but he did not report his work to the office because he was too busy, and that he had so much work or so much business that it affected his health.

Q. Is that correct? A. Largely, I think I said, because I was not methodical.

Q. I understand, but I understood you to say also that you were so busy that you gave your time to the patients, the sick, as the Attorney General called it, and neglected to report the work you had done to the office—was that correct? A. That is true.

Q. That is true? A. Yes.

Q. Yes. Was your object in entering into this contract with Doctor Marvel for the benefit of the sick people or was it for your financial benefit and the financial benefit of the firm?

Mr. McCarter: I object; that is not proper.

The Vice Chancellor: I think that is proper cross-examination, Mr. McCarter, to test the witness.

A. I think our object primarily was for the benefit of the sick people.

Q. Primarily for the benefit of the sick people and the question of finances for the firm was only a secondary consideration? A. Absolutely.

Q. And is that the reason that you did not follow accurately and carefully and closely the ren-

dering of the reports of the work that you did? A. No, sir.

Q. Then why did you not make the reports for the work that you actually did? A. I did make them finally.

Q. Well, Doctor, would it not—let me see this book a minute—I show you Exhibit D-1, which appears to be a book for the year 1912, beginning with January 7th and extending up to July 27th apparently, and ask you whether or not it would not have been less work for you to have handed that book to the secretary at the end of the week and let her transcribe the record so she would have it than it would for you to allow it to go along for months and then go back over it and attempt to refresh your memory in making the bill? A. It would be very much easier.

Q. Why didn't you do it? A. Simply lack of method.

Q. Well, Doctor, Doctor Marvel asked you to do it many times? A. Yes.

Q. And you promised? A. Yes.

Q. Why didn't you do it then? A. I got doing something else.

Q. Well, the doctor asked you in some letters that he wrote you to do it and still it wasn't done. Now, why wasn't it done then? A. I didn't care much for his letters.

Q. I beg pardon? A. I didn't care much for his letters.

Q. Then you didn't consider the letters were worthy of consideration—is that the idea? A. Practically.

Q. Well then, why didn't you do it because of Doctor Durand—when he wanted you to do it? A. I did.

Q. Well, it doesn't appear to have been—any-

thing to have been entered in the books after March 16th, Doctor, of 1912? A. But I sent out the bills.

Q. Well now, who sent the bills out? A. The secretary.

Q. When were the bills sent out? A. Largely in November and December.

Q. That was of 1912? A. Yes.

Q. But in the meantime why didn't you make an effort to render this account straight between the 16th of March and the months of October and November of 1912? A. Just carelessness.

Q. Carelessness? A. Yes.

Q. Well, Doctor, didn't you conceive that the other two members of the firm had the right to know what business you were doing? A. It never occurred to me.

Q. Then you thought that as long as sometime you rendered the account that was all that was required of you? A. Yes.

Q. Well, suppose in the meantime they had been in want—in the meantime they might have wanted to collect your moneys, before October or November, how would they have done it? A. They always had patients enough there to keep them alive, I didn't collect mine.

Q. I see; then the idea was that you would let yours run along and they would live and furnish the expenses of the office out of theirs? A. No, but I turned enough money in so that there was always more due me than my accounts would give me a share of.

Q. Then because there was more due you than your accounts would give you a share of, you considered that you were relieved from accounting excepting at the end of the year? A. No, I wouldn't say that; no, I wouldn't put it that way.

Q. How would you? A. I would say that I didn't think I was bringing any hardship on them if I had a big balance there which they had the privilege to draw and oftentimes did overdraw their accounts, or on one occasion did overdraw.

Q. Well, Doctor, if you had put in or collected the moneys that were due to you their share of that money may be would have made their accounts good so that there would not have been any overdraft, might it not? A. It might have been possible.

Q. In other words, they were entitled to an interest in your earnings as well as you were entitled to an interest in their earnings, that is true, isn't it? A. That is true.

Q. And you couldn't tell how much was due to them or to you unless all of the moneys were collected, could you? A. You could tell how much was due from the cash on hand.

Q. Yes, but I don't mean that, I mean from the business, from all the business? A. From all the business?

Q. Yes. A. No, there never was any way to estimate that.

Q. And your profits were apportioned, as I understand, from the amount of moneys that were actually received? A. Collected.

Q. Except your drawing account, that was upon anticipated results, wasn't it?

Mr. McCarter: Well, the contract speaks for itself.

Mr. Bourgeois: All right, we will let it speak for itself.

Q. Now, when you sent out the bills what record would the secretary make of the bills that were sent out? A. She would take the card—

Q. Yes. A. And put the name and address and

the date that the bill was to be sent and the amount.

Q. But that is all there would be, simply a lump sum? A. A lump sum as a rule.

Q. I beg pardon? A. That is with this last bunch that was sent out.

Q. Now, suppose you had been called on to prove one of your accounts against a decedent's estate? A. Yes.

Q. How would you have done that? A. I have done it in three cases which Judge Endicott—I happened to have those special patients who died, a detailed account of those people who died.

Q. In other words, when you got hold of a patient that you thought was going to die all right you made a particular effort to keep an itemized account with him, is that the idea? A. It happened so in the patients who died, and the accounts I had Judge Endicott looked after.

Q. Now, Doctor, what means was there from the system of bookkeeping that you did for either Doctor Durand or Doctor Marvel to ascertain what amount of business was being done by the firm? What means could they have adopted, say in July of 1912, to find out how much the aggregate business of the firm had been up to that time? A. You could not tell.

Q. Could not tell? A. No.

Q. If you had rendered your reports they could have told? A. No.

Q. Why not? A. You could tell the number of visits made but the cash value of it you couldn't.

Q. Would there have been no means at all of telling the cash value? A. Not absolutely.

Q. Don't you have any system at all, any custom or rule as to what your charges shall be? A. There is a general rule.

Q. A general rule? A. Yes.

Q. Well, then, if you had the amount of work that you did— A. Yes.

Q. Either of your partners would have been able to have told practically what amount of business had been done, would they not? A. Approximately, yes.

Q. Now, if you had rendered your reports weekly, Doctor, wouldn't the possibility and the probability of oversights if which you have spoken have been reduced? A. Yes, sir.

Q. How often did the firm attempt to send them out? A. There wasn't any time.

Q. Didn't they send them out monthly or semi-monthly? A. No, sir.

Q. Or quarterly? A. No, sir.

Q. Weren't? A No, sir; each man sent out his bills when the inspiration moved him.

Q. What record have you of laboratory work that was done for your patients? A. What record have I?

Q. Yes. A. That is all in the laboratory book.

Q. Is there always a complete record of it? A. Yes.

Q. How would you know how much to charge your patients because or on account of that particular class of work? A. The laboratory work?

Q. Yes. A. Before I would send out my bills I would look that over.

Q. In all cases did you? A. I think—as far as I remember.

Q. Well, do you remember if you ever did in any case, Doctor? A. Yes, indeed, I did.

Q. When you sent these bills out that you speak of at various times were they sent out with or without this stamp of which so much has been

spoken? A. Always sent with the stamp, I couldn't find any without the stamp.

Q. In other words, while you objected to it you used it? A. Yes.

The Vice Chancellor: I understand the stationery was all stamped; he said he couldn't find any stationery without the stamp.

Mr. Bourgeois: Well, I know, but I wondered whether or not he used other stationery or used their stationery.

The Witness: Yes.

Q. Used their stationery? A. Absolutely.

Q. Now, why did you use the firm stationery? A. Because I was sending out the bills of the firm, I was sending them out with the firm's secretary and it would not occur to me to go and have stationery printed to send out my bills.

Q. Is that the only reason, because you were sending out the bills of the firm through the firm's secretary? A. That I would use—

Q. Yes, that you would send them on their stationery? A. Yes, it was the firm's—it was my billhead.

Q. It was the firm's business? A. Yes.

Q. And that is the reason you sent it? A. Yes.

Q. Well now, why didn't you use the firm's prescription blank? A. I did very largely.

Q. Yes, sometimes, but why didn't you all the time, Doctor? A. There wasn't any special reason why I didn't; the small one fitted my case a little better and they were both at my desk, sometimes I would use one and sometimes the other and sometimes a scrap of paper, sometimes an envelope or a letterhead.

Q. But you objected to Doctor Philip Marvel sending patients to Doctor Emery Marvel's place, didn't you? A. Yes, sir.

Q. For fear that it might raise the impression that the firm was Marvel and Marvel instead of Marvel and Jonah, as I understood you to say? A. Yes, sir.

Q. Did it ever occur to you when you were writing these prescriptions on the blank of Doctor William E. Jonah that it might raise the presumption that Doctor William E. Jonah wasn't with Doctor Marvel? A. Never.

Q. Never thought that maybe it would raise a presumption that it was Doctor Jonah alone?

Mr. McCarter: Do you mean to the druggists or patients?

Q. Do you give your prescription as a rule to the druggist? A. Do I give them to the druggist?

Q. Yes. A. A good many.

Q. Yes, but as a rule? A. It depends on the part of the town I am in, I carry a great many to the druggists.

Q. As a rule do you yourself turn yourself into an errand boy and deliver your prescriptions to the druggist or do you deliver them to the patients or to the nurse in charge? A. I would think about half and half.

Q. Half and half? A. Yes.

Q. To which drug store did you deliver them when you delivered them? A. Did I?

Q. Yes. A. I delivered a great many to Jackson, the latterly, because I have a good many patients in that end of the town and they can't get their medicine quickly, as I come by Jackson's drug store it was purely an accommodation to those people to leave my prescription in there, and down in Chelsea way I have often left them into Crawford's drug store.

Q. Yes, you leave most of them in Galbreath's,

don't you? A. In the middle of the town now I leave them in Galbreath's.

Q. Now, what I want to know is whether or not you did not fear that these prescription blanks with your individual name on them and not the firm name at all, that you delivered to your patients or to the nurses of the patients, might raise the inference that you were practicing medicine independent of Doctor Marvel? A. Never.

Q. Did it ever raise the question in your mind that it might be an injury to Doctor Marvel? A. Never.

Q. But it did raise the question in your mind that if Doctor Marvel should attend a patient at Doctor Emery Marvel's sanitarium it might be an injury to the firm? A. Positively.

Q. Yes, I see everything but the difference.

Mr. McCarter: You have spoken of the firm?

Mr. Bourgeois: I mean the firm of Philip Marvel and Doctor Jonah and Doctor Durand, I don't mean the firm name.

Q. Now, you said to the Attorney General that you would return—intended to return dollar for dollar for the work you had done? A. Yes, sir.

Q. But I understanding you to admit that following the course of bookkeeping that you did follow that you could not positively know that you had made a charge against every patient that you saw? A. There might have been some of the patients, I will admit that.

Q. In what have you kept your accounts, Doctor, since the 27th day of July, which appears to be the last charge in this visitor's call book? A. I kept them on slips of paper.

Q. And where were the slips of paper kept? A. I kept them in my pocket.

Q. Continuously? A. Not all of them.

Q. And where would those be kept that were not in your pocket? A. Sometimes I kept them in my grip that I was carrying about and sometimes in my bureau drawer at home.

Q. Well now, do you think you remember all the places that you kept them, or may there have been some places which you have forgotten? A. No, I am sure.

Q. You think you remember the places where they were kept? A. Yes, I think so.

Q. And those that you carried around with you in your pocket, how long would you carry them sometimes? A. Oh, a week, possibly ten days.

Q. And after the week or ten days then what would become of them? A. That prescription blank would be filled up or the prescriptions would all be used up and then I would put them in a drawer.

Q. And who had access to the drawer? The maid and all of the people in your home? A. In my home nobody went in that drawer, my wife didn't trouble.

Q. I didn't think your wife would but I wondered if the maid had access to it, I want to see how securely they were kept, Doctor? A. Well, they weren't under lock and key, in the drawer in my room, in the top bureau drawer, as a rule.

Q. Now, do you recall some of the checks that we had the other day, that you got one of them I think on the 6th of May and it was turned in on the 31st of December. Now, where had those checks been in the meantime? A. Those checks had been in letters, envelopes, or with this package of stuff to take up to the office.

Q. Well, those particular checks, if you recall, looked as if they had been carried around for a long period of time—had they? A. There might

have been some of them that had been in my pocket, I think a couple of them had been in my pocket.

Mr. McCarter: Dollar checks, weren't they?

Mr. Bourgeois: I don't think it was a dollar.

Mr. McCarter: As much as three or two.

Q. You say they were in your pocket? A. Some of them, I think there were three of those checks I had in my pocket book.

Q. And where were the others? There was some seven or eight or nine of them? A. There was some in some letters.

Q. And where were the letters? A. The letters, some of them, were in my desk in the office, and some of them at my home.

Q. Had the letters been opened? A. Some of them and some of them hadn't.

Q. Did you keep the checks in any place else except in your pocket book and in your desk at the office and in the desk or bureau drawer at home? A. They were the only places I had.

Q. You don't think you could hunt around and find some more somewhere? A. I don't believe I could.

Q. Now, was that system devised by Doctor Marvel or is that yours? A. That wasn't a system.

Q. Did you ever send any bills out, Doctor, containing only your own name? A. No, sir. I may explain, I may have written a receipt for somebody in the office, "Received of so and so," on a blank piece of paper, I may have done that.

Q. Now, Doctor Jonah, take these letters that had the checks in that remained unopened. Would you know when a letter came in whether it con-

tained a check in payment of a bill or an inquiry concerning some business appointment? A. Sometimes I would open them and sometimes I would not.

Q. And how long would they remain on your desk without opening them? A. I think there have been letters there a month not been opened.

Q. And did they always pertain to checks or would they sometimes pertain to inquiries touching your business—that is, the medical end of it? A. Might be a reference patient; a patient would come and I would look over the mail and find the letter.

Q. In other words, some physician out of town might refer you to some patient coming into town? A. Yes.

Q. And you wouldn't bother about opening the letter but when the patient came if they would hunt you up you would find it? A. If the patient said I had a letter I would look around and find it.

Q. And if they didn't come to you that was the end of it? A. Some days I would take a lot of letters and open them up.

Q. And you would find references to some patients that had come and gone? A. I wouldn't say that, they wouldn't get away that soon.

Q. Now, you were asked about your fees for the years 1909, 1910. Isn't it a fact, Doctor Jonah, that your fees in the year 1909 amounted to $3,000? A. 1909, I don't know.

Q. Isn't it a fact that your fees for the year 1910 amounted to upwards of $6,000, $5,000 plus $1,000 for the up-keep of the automobile? A. I think that is practically true.

Q. And do you say that you don't remember if $3,000 wasn't the maximum amount that you re-

ceived in any one year prior to 1910? A. Yes, I don't remember, but I don't believe it was the maximum amount.

Q. How much do you think the maximum amount was? A. The only way I have of getting at that —in 1909 we were supposed to have done $45,000 worth of business.

Q. Yes. A. I was supposed to have—

Mr. McCarter: 1909?

The Witness: 1909.

Mr. McCarter: In 1909 you got a seventh.

A. (Continuing): Then in 1909 I was supposed to have had a seventh of the net income of $45,-000.

Q. Now, that $45,000, of course, was gross receipts? A. That was gross receipts, yes.

Q. And deducting the expenses of the office— A. Yes.

Q. You had Doctor Durand there at that time? A. Yes.

Q. And you had your expenses of the office? A. Yes.

Q. Carrying it on and so forth? A. Yes.

Q. Deducting the expenses of the office wasn't the amount of money that you received for 1909 $3,000? A. Well, $3,000, that would be one-seventh, that would give the total of $3,000 as one-seventh—that would make the net income $21,000; I don't believe the expenses were $24,000, it would be impossible to have $24,000 expenses.

Q. Now, before coming with Doctor Marvel you had had quite a varied experience, as I understand? A. Yes.

Q. It had principally been in hospitals? A. Yes.

Q. Had you ever had any independent practice before coming to Doctor Marvel? A. No.

Q. And you had been practicing a total of how many years—two and a half or four and a half, was it, when you came to him? A. Oh, I had been a graduated doctor about five years.

Q. Well, you had spend that period of time in hospitals? A. Yes, in hospitals and study.

Q. And that was seven years ago, or eight years ago, which? A. This is in the eighth year.

Q. What I am trying to get at is what was your age when you were admitted as a medical doctor —when you were graduated—twenty-five? A. As a medical doctor?

Q. Yes. A. I was twenty-seven years old.

Q. And I have forgotten how old you said you are now? A. I am in my fortieth year.

Q. When you came to Doctor Marvel his was the first general practice that you had had, wasn't it? A. Yes.

Q. And you found him possessed of a large practice? A. Yes.

Q. And immediately you became active in it? A. Yes.

Q. Now, I suppose his practice gave you introduction to hotels and patients? A. Yes.

Q. Of standing? A. Yes.

Q. And to nurses? A. Somewhat.

Q. Did you consider it of value that you should have an introduction to the trained nurses, for instance, those of Atlantic City? A. I never considered it, the trained nurses.

Q. Did you consider it of value to be introduced to Doctor Marvel's patients?

Mr. McCarter: When are you speaking of now? 1905, when he came there?

Mr. Bourgeois: Yes, when he came there.

Mr. McCarter: Five years before this contract.

A. Yes, I think it was of value.

Q. You think it was of value? A. Yes.

Q. And you think that continuing with him and his practice continued to be of value to you, didn't it? A. Yes.

Q. Now, in what does the value of that introduction lie? A. Well, it is in the acquaintance that you get with certain people, that is all, and, of course, during all this period you are working, and, you might say, every man has a natural—it is a natural increment which comes with his efforts and he must of necessity do anything to increase his own acquaintance.

Q. In other words, you considered that by b' placed in this position where you could meet Doctor Marvel's patients that it gave you a better standing as a physician? A. I would say yes.

Mr. McCarter: What time are you speaking of now Five years before?

Mr. Bourgeois: Yes, and continuing.

Q. Well, that is so up to the present time, isn't it? A. I don't think it is any value now.

Q. You don't think it is any value at all now. Well now, did you think it was of any value at the time you entered into the agreement of 1910? A. No.

Q. Then why did you enter into that agreement? A. It was a mistake.

By the Vice Chancellor: Q. Doctor, have you been purposely derelict in keeping your accounts in the hope that it would bring a crisis? A. I was not.

By Mr. Bourgeois. Q. Were you fearful that if you failed to keep your accounts accurately that it might bring a crisis? A. It never occurred to me until Doctor Marvel told me he would put me in the Courts.

Q. And then what did you fear? Were you fearful that it would bring a crisis and the partnership would be dissolved? A. I was fearful at that time, I saw an attorney.

Q. Yes. A. I hadn't had anything to do with them very much before.

Q. Now, after he saw you and told you that unless you did render your accounts that he would be obliged to go into Court to compel you to account,— A. Yes.

Q. Of course you knew that that was a ground for a dissolution of this partnership, didn't you? A. It didn't occur to me for some time, the legal aspect of it

Q. Well it did when you went and saw your attorney? A. Yes, I wanted to know what it all meant.

Q. Now after you found what it all meant then were you fearful that your continued refusal to account would cause a disruption between you and a dissolution of the partnership might occur? A. I wasn't anxious for a continuance of it then.

Q. Were you anxious for a dissolution of it then?

Mr. McCarter: When? Just before the suit was commenced?

Mr. Bourgeois. Yes, when he went to see his attorney.

A. I think I ought to say yes, I was.

Q. And with that anxiety or desire you still continued to refuse to account, didn't you?

Mr. McCarter: It was a matter in the Court.

A. The condition was this, that at that time— it had been through the summer, when I was busy, I had a lot of patients that I had to look after and if I had taken the time to have gotten out these

accounts and so forth I wouldn't have had time for my patients.

Q. Well, Doctor, did you feel that you had more patients to care for than Doctor Marvel had? A. No, sir.

Q. Well, he seemed to be able to render his accounts daily, why couldn't you? A. Yes, sir, he is more methodical.

Q. Well you knew at the time you entered into this agreement that it required some method to keep partnership accounts, or didn't you know that? A. That part of it never occurred to me.

Q. Well now, the conditions—I mean the acute conditions between you and Doctor Marvel arose as between you in June of 1912? A. Well, that was an exacerbation.

By the Vice Chancellor: Q. Is there any medical disease known as color blindness on the business end? A. I think there is.

Q. I think you have got it? A. Yes.

By Mr. Bourgeois: Q. The letter written by Doctor Marvel to you was in July, wasn't it? A. I think there were several letters written there. Which one do you mean?

Q. The first one that was written by Doctor Marvel sometime in July, I think prior to the 20th. A. I think it was the 15th.

Q. The earliest one? A. 15th.

Q. July 15th, and immediately after receiving that letter, at least, almost immediately, you consulted Judge Endicott, didn't you? A. I am not sure whether it was after this one or the next letter.

Q. Well, the next letter is dated when— the 20th? A. Well, it was during this letter writing.

Q. All right; it was during the letter writing

that you consulted Judge Endicott. Now, you then became aware of the legal status, your legal status under this agreement, didn't you? A. Yes.

Q. And from that time on you rather preferred that the agreement should be dissolved, the partnership should be dissolved— that is true, isn't it? A. Yes.

Q. Now, the bill in this case was filed the first of September, and I think you did not furnish the information to Judge Endicott for the answer until sometime in October or November. Now, Doctor, after you knew that the failure to account would likely result in a dissolution of the partnership why didn't you make an effort to render your account between the 20th of July and the first day of September when the bill was filed? A. I did make an effort and did work on this matter.

Q. Well, did you ever tell anybody anything about it? A. That I was working on it?

Q. Yes. A. Judge Endicott knew I was making up the bills, and it was—I think it was known in the office that I had some accounts.

Q. Were you told then if you didn't render your accounts that it would be a ground for dissolution? A. It says so in one of those letters.

Q. Oh, then you did know that at that time? A. Yes.

Q. And as I recall it, the answer was so long delayed that a decree was entered and then opened up again? A. No, I think there was an agreement between counsel to wait, and without notifying the opposing—my lawyer you tried to get a decree, I think that is the state.

Q. Now, you have spoken of the officers, where they were, at 1616 Pacific Avenue. That

was the home of Doctor Marvel, I think, was it not? A. Yes.

Q. He lived there the year through until what year, 1911, was it? A. No, I think he moved away from there in—I don't know whether he moved away in 1910,—

Q. Summer before last, wasn't it? A. Yes, that is right; yes.

Q. And after that time he simply had his offices there excepting in the winter time? A. Yes.

Q. Then he moved back to the house in the winter? A. No, this was the first winter.

Q. I call your attention to the statement for 1909 and ask you if you have seen that before and if that is the settlement—the auditor's report by which you settled? A. I don't know how much money I did get in 1909, I never asked for any accounting in that partnership previous to this, I took whatever money was given to me without saying anything about it.

Q. I call you attention to 1909, to the amount of moneys, total that you have received, $3,700? A. Yes.

Q. And ask you if that is correct. That is not —that is the total of your two, Doctor Jonah and Doctor Durand (indicating), that is the total, the total you received appears to be $3,000, doesn't it? A. Yes.

Q. Now, I want to ask you for 1909 of the forty-six thousand dollars' worth of business done how much of that was done by Doctor Marvel and how much by you?

Mr. McCarter. I object.

The Vice Chancellor: What is the purpose of this, Mr. Bourgeois, of going back of the agreement? You strenuously objected to Mr. McCarter's doing it and suc-

ceeded apparently in shutting it out. Now, you are cross-examining on it.

Mr. Bourgeois: I will withdraw the question.

Q. Now, Doctor, you excused your use of the blank prescription blanks on the ground of the business prescription blank being too large in size. Did you ever complain to Doctor Marvel that the prescription blanks furnished by him were too large in size? A. I think you misinterpreted, I didn't offer that as an excuse.

Q. I understood you to excuse your use of the others on that ground? A. I said that was the excuse that the druggist offered for having them made

Q. And you adopted the druggist's excuse? A. Not always, these weren't used always.

By the Vice Chancellor: Q. You said they were by reason of their size, as I understood it, a little more convenient? A. A little more convenient to carry.

By Mr. Bourgeois: Q. Well, was that the reason you used them? A. That was, occasionally I used them, I didn't always use them.

Q. No, you didn't always use them; it would seem as if you used the others a part of the time. A. I used the others, I wouldn't use these ten per cent of the time covering the three years.

Q. Used which? A. I wouldn't use these blanks (indicating).

Q. What portions of the year would you use those blanks of yours? A. It might be any time.

Q. Well, was it? A. I haven't any special knowledge of when I did use them.

Q. You say that the old blanks were used by the firm after the partnership agreement was entered into. Did you object to the use of the old

blanks, those with your name at the bottom? A. Not that I remember.

Q. As soon as new blanks could be printed were they not printed and used? A. After we exhausted the other supply.

Q. Well, you didn't exhaust it, did you? Haven't you got some of them still on hand? A. I think there may be a few of them on hand; I think Durand objected because his name was spelled wrong, if I remember.

Q. And as soon as the other supply was exhausted the others were introduced and continued to be used? A. Yes.

Q. Now, the secretary called your attention on a number of occasions to the fact that your account hadn't been posted? A. Yes.

Q. Let me ask you whether when she would call your attention to the fact that your account had not been posted you wouldn't hand her your visiting call book and let her post it? A. Sometimes I did.

Q. Well, why didn't you in every case? Why didn't you do it during the month of July and the months previous to March, 1912? A. I don't know as there is any special reason, didn't have any special reason of any kind.

Q. Well, I can't quite understand, Doctor, if all these lapses are because of your disregard of the money end of it, why you should resist an injunction? A. What was that?

Mr. McCarter: I object to that question.

The Vice Chancellor: I guess it is properly objected to.

Q. How frequently, Doctor, did you send out bills? A. How frequently? Well, I should say that I sent out some bills possibly every week.

Q. Well, which bills would you send out every week? A. There might be somebody—

Q. That asked for it? A. That asked for a bill.

Q. And what record would there be in the office of the work that you had rendered to that patient? A. If it were at a time when I was keeping this book and passed it over it would be put on the book and on the card, otherwise I might have to resort to my slips or remember how much services I had rendered to the patient.

Q. And in that event there would not be anything in the office so that the others could ascertain what services you had rendered? A. How many visits I had made?

Q. Yes, anything of that sort? A. No.

Q. And the only account whatever would be your memory when you were sending out bills to the patient? A. No, sir, that is carrying it too far; I would have my memory in connection with the slips.

Q. And did you always have the slips or sometimes were they mislaid? A. I would have a slip with all the names on.

Q. But not with the detailed services. A. Sometimes not with the detailed services.

Q. Now, you say that when you would make these—have these sittings with the secretary there would be a record in the office. What record would there be in the office? A. The secretary would put these, as I told you before, the names and addresses on the card with the amount of service that I was charging them.

Q. I show you the small time book at the end of the year 1910, and call your attention to these various charges, "Benjamin Strouse" for instance, "bill to be 45." What did that mean? Did that mean that the bill had actually been rendered for or that is what you should make a bill

for? A. This meant that the secretary was to send Mr. Strouse a bill for $45.

Q. And at that time would you give her any other data excepting just what is before me? A. No, they have the amount of the bill—

Q. And that is all? A. And the address.

Q. I mean, that is all pertaining to the service that was rendered there? A Yes.

Q. And that is true with all of these cases where it says "bill to be"? A. Yes.

Q. Now, that was true with the end of 1911 too, wasn't it? The same method, wasn't it, pursued there, October, 1911? A. You mean—

Q. In October, 1911, there were accounts, I think. A. It was October, that is right, I went away, these were put at that time directly on the cards.

Q. Then they weren't entered in the book at all but just on the cards? A. They were entered on the cards which acted as a ledger account, I think that is what you would call them.

Q. And in 1912 the account is in the answer? A. Yes; and the most of the bills that were collected—there are some, I might say, there are some accounts that I have found since this answer was filed, cards that had been mislaid in the safe of bills that are collectible of all members of the firm.

Q. Did you find any other excepting those cards in the safe? A. No.

Q. None others? A. No.

Q. Now, Doctor, isn't it a fact that Doctor Philip Marvel has sent no patients to Doctor Emerys sanitarium since the year 1911, October? A. I think he has sent some.

Q. Can you mention a single one that Doctor Philip Marvel has sent to Doctor Emery's sani-

tarium since the time he had the conversation with you prior to your going on your European trip? A. I don't remember the names but I think there were three or four.

Q. Your estrangement with Doctor Emery, as I understand, occurred prior to entering into the contract of 1910? A. Yes.

Q. But after that time Doctor Durand sent patients there? A. He did for the first few months after entering into this contract.

Q. After that time did he cease? A. Yes.

Q. And it was after that time that you had the conversation with Doctor Philip and said that was the cause of your failing to keep accounts? A. State that again, please.

Mr. McCarter: He hasn't testified to that.

(Question repeated.)

A. No.

Q. Did you have a conversation with Doctor Philip about that? A. About what?

Q. About the relations between him and Doctor Emery? A. Yes.

Q. Did you have such a conversation just prior to your leaving for Europe in 1911? A. I had a conversation about the sanitarium in 1911.

Q. At that time did you state that that was the cause of your dissatisfaction? A. No; I told him it was the cause of all the trouble in our firm.

Q. Cause of the trouble, and at that time did Doctor Marvel say to you that if that was the trouble he would cease to send them there? A. He did.

Q. And did you then promise that you would keep your accounts? A. Did I?

Q. Yes. A. I said we would go on and work together.

Q. And work together? A. Yes.

Q. And that included the keeping of the accounts, did it, or didn't it? A. Yes.

Q. It did include reporting of accounts? A. Yes.

Q. Now, you went on until the 16th of March. You returned home about the 7th of January, didn't you? A. Yes.

Q. And during the months of January and February and to the forepart of March you rendered the reports. Now, why did you cease to render them then? A. Then at that time I got very busy, at this special time you speak of, and I had some cases that were worrying me very much and I got behind, it was in March, I was very busy at that time.

Q. Did you call Doctor Marvel in to help you if you had more than you could do? A. Yes; I had him in consultation in one case, I remember.

Q. And was that all? A. I just remember that one special case that he was in to see, but it was the worry of the whole thing when I got very busy.

Q. Were you busy continuously from the 16th of March until the 1st of September, or was there a lull in the business along in June? A. There was a lull.

Q. Why didn't you straighten up your accounts in June? A. They had gotten so far back that it was hard to tell.

Q. Well, it had to be straightened up sometime. You could do it better then than later? A. Yes.

Q. Well, why didn't you? A. I don't know as there was any special reason.

Q. No; no. Now, when you would get so

pressed with work that you could not keep up your accounts, why didn't you say to Doctor Marvel that you had more than you could do and have him relieve you of some of the work so you could keep your accounts up? A. I don't know as I could answer that question, there isn't any—he usually had as much as he could do.

Q. When did you first become convinced that the entering into this agreement was a mistake? How far back? A. I don't know as I could answer that question.

Q. Well, did you think it was a mistake—you thought it was a mistake in 1912? A. Yes.

Q. What about 1911? Did you think it was a mistake then? A. No, I think I can answer that more particularly; I had never seen the agreement from the time I had signed it until Durand brought it to me sometime in May.

Q. Of what year? A. Of 1912; I never had seen it from the moment I had signed it, it was in the safe; he brought it to me and asked me if I had known that I had signed my life right away. I said, no, I didn't think I had, and he read the contract to me.

Q. That was in May of 1912? A. Yes.

Q. Then, as early as May of 1912 you knew what the agreement was, didn't you? A. Yes.

Q. Because Doctor Durand had called your attention to it? A. He brought it to me.

Q. Then you knew what the purport of that agreement was before you went to Judge Endicott in July, didn't you? A. I read it at that time, yes.

Q. Then I ask you, having knowledge of what the contract was as early as May of 1912, why didn't you render your account when Doctor Mar-

vel wanted you to do it? A. Well, I had rendered the accounts before the same way and I expected to do the same thing again.

Q. In other words, you thought you would disregard the agreement and let it go to the end of the year? A. No, I didn't fix any time, special time; I knew that some day I would get these bills out and get the money in.

Q. Well, Doctor, when Doctor Marvel wrote you the letter which seemed to be rather peremptory, why didn't you then get busy and get the accounts in shape? A. Well, I didn't care much for his letter.

Q. Do I understand then that you, during the year 1911, didn't think that the agreement was a mistake? A. 1911?

Q. Yes, during the year 1911. A. I knew—we had had some friction during 1911 and that I would have been quite happy to have been away, I was very unhappy.

Q. But you didn't think at that time that the agreement was a mistake? A. Yes. The agreement in itself would not have been a mistake if all members of the firm had worked harmoniously for each other's good.

Q. Then you did or did not think during 1911 that the agreement was a mistake in fact from your standpoint? A. From my standpoint, yes.

Q. It was? A. Yes.

Q. Now, during the year 1910 did you consider the agreement to have been a mistake from your standpoint? A. I don't recall that I had any special thought of it in 1910.

Q. When you considered the agreement to have been a mistake during the year 1911 did you consider it a mistake independently of the fact that

you would have been able to gain a practice if you hadn't entered into the contract? A. Positively no.

Q. Why did you think it was a mistake? A. Because Doctor Marvel was associated with that other rival firm.

Q. Why did you think it was a rival firm? In what respect did they interfere with you? A. They practiced medicine, surgery, they are competitors, so to speak.

Q. Did you ever know of them securing a single patient of yours as their patient? A. Yes.

Q. Who? A. I remember one patient—I forget his name now—who went there looking, thought my office was there, because previous to this contract, if I am permitted to answer—

Q. Well, don't answer previous to the contract: I only meant since the contract, Doctor. Have you ever known a single patient of yours to be lost to Doctor Emery Marvel or Doctor Porteous by reason of having been sent to the sanitarium since the making of this contract in 1910? A. Yes.

Q. You say that the hotels objected to it? A. Yes.

Q. Did the hotels object to your sending patients to Galen Hall? A. No.

Q. Then why should they object to sending them to Doctor's Marvel's sanitarium when they didn't object to you sending them to Galen Hall? What interest in other words, had they in it? A. The only patients I took to Galen Hall was operations.

Q. Well, suppose that is true: They lost their board just the same, didn't they, whether they sent them to Galen Hall or to the sanitarium? A. Yes; the hotels don't object to removing patients

from them if you are going to have a surgical operation.

Q. Now then, they didn't object to removing to Doctor Emery's sanitarium the surgical cases, as I understand? A. No; I never had any conversation with them about that.

Q. Well, what conversation did you have? Well, I don't care for that. Did you ever bring to Doctor Marvel's attention which of the hotels had objected to your sending patients from the hotels to the sanitarium? A. I didn't send any.

Q. Or that he sent? A. I think I did call his attention to that.

Q. Did you tell him which hotels? A. I don't recall that.

Q. Was your objection to them going to Doctor Emery's sanitarium the fact that the hotels would cease to be friendly with you? A. That was one thing.

Q. That was one thing? A. Yes.

Q. Well, now, if they had ceased to be friendly to you would that have affected your interest to a greater extent than it did Doctor Philip's? A. No.

Q. Both the same? A. Except he would have a come-back in the sanitarium.

Q. Then whether or not they should be sent there was a question of business policy, I suppose, wasn't it? A. Absolutely.

Q. And doesn't the agreement provide that questions of business policy shall be decided by Doctor Philip? A. Yes, with consultation with the other two partners.

Q. Yes, and you consulted with him. A. He didn't consult with us.

Q. We didn't consult with you but sent them

there and when you folks objected then stopped? A. No, we had objected long before.

Q. Well, did Doctor Durand object while he was sending them there? A. Did he object while who was sending them there?

Q. While Doctor Durand was sending them there? A. No; he sent them there for a while and found it was bad business and quit it in the early part of the contract.

Q. Was it bad business or was it simply a personal feeling on Doctor Durand's part? A. Durand told me—

Q. No, I don't want what he told you; I want to know if you know. He can say I don't know.

Mr. McCarter: I think we ought to have an answer to that question.

Mr. Bourgeois: I don't want any hearsay evidence.

Q. (Repeated) Was it bad business or was it simply a personal feeling on Doctor Durand's part?

Mr. Bourgeois: That doesn't ask for any hearsay evidence, that asks if he has any knowledge of his own; if he hasn't that knowledge he can say "I don't know."

The Vice Chancellor: Can you answer that question without going into any conversation with Doctor Durand?

A. May I hear the question again?

(Question repeated.)

A. I would say both.

Q. Both? A. Yes.

Q. Then do you know when there was a personal feeling against the sanitarium on Doctor Durand's part—when it arose? A. During the first year of this contract.

Q. Up until that arose did Doctor Durand send patients to the sanitarium? A. Yes.

Q. Is your knowledge as it went to the sanitarium the result of business relations or because of personal feeling? A. It started over business.

Q. Entirely? A. Yes.

Q. Then when did you first have a feeling that this was bad business policy? A. Ever since this contract I thought so.

Q. I beg pardon? A. Ever since this contract and before that.

Q. And before, if you thought it was bad business for Doctor Marvel to have sent patients to Doctor Emery's sanitarium, before you entered into the contract, why did you sign the contract which makes no mention of it at all? Why didn't you have it in there? A. I didn't write the contract?

Q. What? A. I didn't write the contract.

Q. Well, but you signed it, when you signed it it became yours? A. Yes.

Q. Wasn't that the time, Doctor, for you to have objected, if you had any objection?

Mr. McCarter: Well, that is a legal question.

Mr. Bourgeois: No, it isn't; I want to know what he thinks about it.

A. I might say this: That I thought that that clause where we were to work for each other's interest would make it necessary for each man to devote his time to one firm and all his interest to one firm and not to two.

Q. Now, where was Doctor Philip when he said to you he had to help his brother, everybody was against him? Where did that conversation take place? A. It took place in the room now that we call the electric room, the old dining room.

Q. And when? A. That was prior to my going to Europe.

Q. Oh, that was in October, then, of 1911, was it? A. Yes.

Q. You say that Doctor Marvel did not offer to pay you any moneys. Do I understand by that that during the year 1912 you have been unable to get from the firm the moneys that were due to you? A. No, sir.

Mr. McCarter: Not at all; that simply contradicts the statement that Doctor Marvel made.

Q. What did you tell Doctor Marvel in the early fall about your trip abroad, in 1911? A. In the early fall?

Q. What did you tell him? A. I told him that I was going abroad in the fall, that I found I was breaking down.

Q. Now, when was it you told him that? A. I don't remember the exact date but I am sure that it was four or six weeks—

Q. Did you tell him—

By Mr. McCarter: Q. Four or six weeks what? A. Before I went.

By Mr. Bourgeois: Q. Where were you when you told him—do you know? A. I don't. During that interim I often talked with the people in the office, members of the family, about going abroad and about getting up a route for a trip.

Q. I understood you to say that you gave the bills to the secretary and she sent them out and the checks came in during your absence? A. Yes.

Q. And that she had power to sign your name? A. Yes, to endorse checks.

Q. Did she have a power of attorney A. I wrote a note to the cashier of the bank asking him to honor for deposit to the business account of Philip Marvel checks endorsed by her.

Q. Then, as I understand it, the secretary had the power to sign your name and Mrs. Marvel had the power to sign Doctor Philip's name? A. She just had to endorse the checks for deposit.

Q. Yes, and sign your name to them? A. So that the business could go on, the checks would not be held up.

Q. That was firm business, firm checks? A. Yes, and she was the firm secretary.

Q. That would come payable in your individual name? A. Yes.

Mr. McCarter: And while he was abroad?

The Witness: Yes.

Q. Doctor, coming to the personal phase of it: Don't you have a feeling of animosity against Doctor Jonah.

Mr. McCarter: I object. I suppose we can assume that when two people can get into Court and spend days there they are not enamoured of one another.

Mr. Bouregois: I want to find out if that is not the reason that he has not filed his account and so on.

A. No; I would say that was not so.

Q. Have you no feeling of animosity against him at all? A. At the present time, yes, sir.

Q. You do at the present time? A. Yes, sir.

Q. And how long have you had that feeling of animosity against him? A. That varied; sometimes I would have it and sometimes I wouldn't.

Q. To what extent did you have it? To the extent of injuring his business? A. No, sir.

Q. Not to the extent of injuring him in his business? A. No, sir.

Q. Doctor, there was an article printed Doctor Marvel in the Atlantic City Review sometime

ago; did you see it? About his being sued in Philadelphia, I think. A. I did see it.

Q. Headline, "Suit against local Doctor."

Mr. McCarter: I object. I think before you put that article in you had better show that he knew something about it.

Q. Is that the paper you saw it in? Is that the article? Is that the article you saw (exhibiting to witness)? A. Yes. There was one in this paper and one in the Press.

Q. Now, Doctor, you purchased 50 copies of this paper, didn't you? A. I did.

Q. It is under date of January 23d, 1913.

Mr. McCarter: I object.

Mr. Bouregois: I think it has some bearing, if the Court please.

The Vice Chancellor: I doubt it, Mr. Bourgeois, anything that occurs during the progress of this suit. Is it just a recent issue?

Mr. McCarter: Certainly. The suit was commenced in September, this is January.

The Vice Chancellor: I can not think that will aid us. If Doctor Marvel and Doctor Jonah are intimate friends now I think it is time to dismiss the suit.

Mr. Bourgeois: That is not what I have in mind. I had in mind it probably would have some bearing in making clear to you Doctor Jonah's present attitude so far as his intentions are concerned and so far as his feelings are concerned with regard to whether or not Doctor Marvel had a ground for desiring this restraint.

The Vice Chancellor: Anything up to the time suit was brought would be competent. I think it is an important inquiry, Mr.

Bourgeois; if it can be established, by a line of examination of this nature, that the failure of Doctor Jonah to keep these accounts was with a view of injuring a man he hated I should think it would be very important, but how he feels now I can not think has anything to do with it.

By Mr. McCarter: Q. How do you know that Doctor Durand's objections to the sanitarium were both on account of bad feeling and for business reasons? Did he tell you so? A. He told me so.

Q. What did he tell you?

Mr. Bourgeois: I object.

Mr. McCarter: Now, I think he made that competent.

Mr. Bourgeois: That don't admit hearsay evidence.

The Vice Chancellor: I don't think so; now, I don't think it is competent. I will hear counsel if you think it is important enough to spend any time over.

Mr. McCarter: My idea is, your Honor, that counsel has no right to elicit from a witness an answer by a cleverly framed question which necessarily involves a statement of some other person and then exclude the statement.

The Vice Chancellor: Assuming that is true, haven't you gone now as far as necessary when you have elicited the general fact that he told him so?

Mr. McCarter: No, sir; I think he is drawing a conclusion. We are entitled to know just what was said. I don't attach any importance to it, I think there has been a good deal of time wasted here, but I think

that when counsel elicits from a witness a partial statement or a conclusion we are entitled to the conversation, the same as we are entitled to have the whole conversation when part of it is spoken of.

The Vice Chancellor: Well, it may be but I can not think it will add any light to the general issue.

Mr. McCarter: Well, your Honor overrules it?

The Vice Chancellor: Yes, I think so. I do not think it will afford any light on the general issue.

Q. You had no animosity against Doctor Durand during this period, had you? A. No.

By the Vice Chancellor: Q. I would like to ask the direct question, if I may, Doctor, and I would like you to answer it with great frankness, if you will, and that is, whether your failure to keep these accounts in the manner that your partners wished, daily or weekly reports being posted in the books, was in any way due to your animosity toward him? A. It was not.

Q. It was entirely due to your breaking down, as you called it, in your efforts to keep them? A. Yes.

Q. Does that truly express it? A. That does.

Q. That you tried to do it and could not live up to that standard—is that the truth? A. The truth is I would get to a certain stage and has this thing and then I would get behind and then I couldn't catch up.

Q. You really tried to? A. I tried to a certain stage and then I would go to pieces and then I didn't try.

Q. Well, it was your desire to do it? A. It was

very much easier for me to do it, when I did it I got along a good deal better.

Q. Well, is that true, that you really wished to do it rather than wished not to do it? A. I wished to do it when I was keeping it up and until I got behind, then when I would get behind I could not seem to force myself or to get together unless under some great strain that I must get these bills out.

Q. But it was not a matter of design on your part to get behind? A. It was not a matter of design that I fell behind.

By Mr. McCarter: Q. Doctor Jonah, did you know what arrangements had been recently made between Doctor Durand and Doctor Marvel, evidenced by the two agreements that are in evidence, before they were consummated? A. No.

Q. Were you consulted in regard to them? A. No.

Q. Now, I want to know if it ever occurred to you, down to the time that the letter was received in July, I think it was of 1912, that this habit of yours with regard to keeping the accounts violated or did not violate the terms of the contract in a way that that would make you responsible for your failure to keep the contracts? A. It never occurred to me.

By Mr. Bouregois. Q. Doctor, what about when Doctor Durand called your attention to that agreement of May, 1912, didn't it then dawn on you that if you didn't keep the agreement that it would be a violation of the agreement?

Mr. McCarter: He didn't say he called his attention to whether he kept the agreement, he said to render his accounts.

The Vice Chancellor: He said he called his attention to the contract and asked him

if he had known he signed away his life-right.

Q. Now, at that time didn't you know that you were bound to keep these accounts else you would have maybe dissolved the partnership and you would be restrained from practicing? A. It never occurred to me that I might be restrained from practicing.

Q. What did you think Doctor Durand had reference to when he said you had signed away your life-right? A. I thought he referred to the fact that this contract gives everything to one member of the firm, every right and nothing to us two.

Q. I see, but it didn't occur to you then at all that you could be restrained from practicing if you wanted to in Atlantic City? A. It never did.

Q. Never did? A. No.

Q. Now, when did you first become conscious of the fact that that agreement might be the basis of a restraint order against you from practicing in Atlantic City if the partnership were dissolved? A. After I consulted counsel.

Q. Then up to that time your feeling had been that they could not restrain you from practicing?

Mr. McCarter: He has not said that.

Q. No; that thought never—really never occurred to me.

Q. Had you never thought anything about that at all, whether you could be restrained or not? A. I never did.

Q. Did you know the restraint was in there, the clause? A. I knew there was a clause in there.

Q. You had known that from the time the contract was signed? A. Yes.

Q. Well, you knew it at that time—when you

signed the contract you knew it, didn't you? A. It never impressed me much.

Q. Wasn't it discussed?

Mr. McCarter: I object to these questions, it is prior to the contract.

The Vice Chancellor: I think the discussions preliminary to the execution of the contract are not competent.

Mr. Bourgeois: I guess that is true.

Q. Well, at any rate, you knew it was there at that time? A. Yes.

Q. What was your notion about it? Did you think it was of any value or that it was not enforceable?

Mr. McCarter: I object to that, that is certainly not evidence.

Mr. Bourgeois: I think it might throw some light on his actions.

The Vice Chancellor: (After argument.) I think the question is competent as a matter of cross-examination.

(Question repeated.)

Mr. McCarter: What?

Mr. Bourgeois: That is the clause concerning the restraint.

The Vice Chancellor: I think as a test of whether or not he realized what he was doing here and did it deliberately or whether these shortcomings are matter of mere oversight and negligence this question may be competent, I think so; it seems to me it is a test to determine the truth of that.

Mr. McCarter: I certainly object to that question.

The Vice Chancellor: I think it is

proper in that view. As a matter of examination as an abstract question I agree with you but as a test of the truth of his statements I think it is proper. Of course, what he thought about it at the time himself is not of any importance, it is not competent.

(Question repeated.)

A. I never gave that section any consideration until I went with the contract to Judge Endicott and he read the contract.

Q. Then up to that time you didn't consider that it was anything that would be enforced against you? A. I didn't think of a dissolution in fact.

Q. Well, in the event of a dissolution did you think—up to that time you thought—

Mr. McCarter: Now, certainly if he didn't think of it you can't ask him what he would have thought if he had thought of it.

Q. Now, Doctor, in your answers you have frequently answered with the expression "I didn't think." By that did you mean that you believed or didn't believe, or did you simply mean that you didn't think—as a matter of guess, in other words?

The Vice Chancellor: What kind of question—

Q. Well, yes, when he didn't think anything about it—didn't enter your thought? A. That means that the thought didn't come to me.

Q. Didn't come to you at all? A. Yes.

MARY N. HENDRICKSON, re-called:

By Mr. Endicott: Q. Miss Hendrickson, was

it customary always to write the addresses of patients who were attended by the different members of the firm? A. That was the rule.

Q. Was that done as to all patients? A. Supposed to be.

Q. There were people in town, people who were known—was it customary to write their addresses? A. Oh, not in every instance.

Q. This is what I want. When was it not done? A. In case of a patient who was at one of the hotels or one of the cottages and had been under the care of any one of the physicians for quite a long time.

Q. As to furnishing the addresses of patients, that is a matter in which I think you said each member of the firm offended somewhat? A. Yes.

Q. Who was the greatest offender probably?

Mr. Bourgeois: I object; that calls for a conclusion.

Mr. Endicott: She kept the books, she knows. I want to know if Doctor Marvel offended more seriously in this respect than did Doctor Jonah.

Mr. Bourgeois: The books will show.

The Vice Chancellor: I guess the books will show this.

Q. After you left for Atlantic City—

The Vice Chancellor: I would not deny you the privilege of showing from the books, they are here.

Mr. Endicott: I don't care to take the time to do it.

Q. There was some discussion here about an item of $10 which was paid in the fall of 1910. Now, you turn to the books and show us that item and explain it. Were there receipts shown during that period by Doctor Jonah amounting to a

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considerable sum, from say from September to December, September 24th to December 31st? A. This entry in red ink to which my attention was called—"Credit Doctor Marvel $856.50, in full settlement to 12/31/10. Credit Doctor Jonah $10, in full settlement to 12/31/10. Credit Doctor Durand $80, in full settlement to 12/31/10," and these credits were made on the 20th of February, 1911.

Q. Now, above that on the same page does there appear a larger credit to Doctor Jonah? A. I see further up on the page—I didn't see it the other day—"Credit Doctor Jonah check $254 for cash collected."

Q. Now, what is the explanation of this item of $10? A. That was a balance still found to be due from Doctor Jonah at the end of 1910 by the auditor.

By the Vice Chancellor: Q. I don't understand these credits at all. I should think if Doctor Jonah collected a check he would be debited? A. He turned over his own personal check in payment of cash collected.

Q. He had already been charged with it? He kas charged with the amount? A. He was charged with the amount, $254, probably in small sums, and then he gave his check, as I remember, for $254 in payment of this amount.

By Mr. Endicott: Q. And was that custom followed by the other members of the firm? A. Yes.

Q. To give in their check later for the small sums which they had obtained previously? A. A check or cash as they preferred.

By the Vice Chancellor. Q. Well, now, that throws me in the air again. I thought the way they got money to live on was by keeping a part

of the receipts and having it charged to them on the books. A. Pardon me. Except that they didn't consider those amounts were charged to them as part payment of what would be coming to them on the division at the time of the settlement. At the time of the settlement the full receipts were calculated and the amounts charged to them were carried as being a part of the full receipts, and their checks in full settlement couldn't be drawn out until the amount charged to them had been deposited. In other words, they could not withdraw the full amount due them until their charge accounts had been turned in.

By Mr. Endicott: Q. Was that a system inaugurated by Albertson, the expert? A. I think that has been the custom when I was there.

Q. Now, after the fall of 1911 were any of the patients of the firm in Doctor Emery Marvel's sanitarium? A. I should say there were a few.

Q. Have you looked at the books to see if some patients—the books of your firm to see if some patients were there after that period? April 5th, 1912. Will you look at that date? A party by the name of Frear. Do you remember the name? I may be misleading as to the name. A. Mr. Fryer.

Q. When was he there? A. April 5th, 1912.

Q. And April 14th, 1912, will you see if you find the name of Mr. or Mrs. Rowley? A. Yes.

Q. Mrs. Rowley, wasn't it? A. Yes.

Q. And can you tell from those books how many weeks she remained there? A. That patient, you mean?

Q. Was it as long as six weeks? A. I think it was.

Q. Now, November 25th, 1911, was there a Mr. Otis there? A. Yes.

Q. Now, these people were all patients of your firm, the firm that you represented? A. Beg pardon?

Q. These people were all patients of the firm you represented, for whom you kept books? A. Yes; they are among the list of patients here.

Q. And do you know whether after the fall of 1911—

The Vice Chancellor: These patients, did you say, were all sent to the sanitarium?

Mr. Endicott: After Dr. Philip Marvel promised he would stop sending them, one there as long as six week.

By the Vice Chancellor: Q. Can you tell whether either of them were surgical patients? A. Pardon me. I didn't say they were sent there. I said the patients are entered on the list of patients of this firm and they were there.

Q. Can you tell whether they were surgical patients or not? A. No, I don't know.

By Mr. Endicott: Q. I understand you to say that the books showed that they were there but you don't know whether they were sent? A. That is what I said, Judge Endicott. I understood him to say that I had said they were sent there.

Q. Now, do you know a Mr. Cunningham, who was a patient of the firm you kept books for? A. Yes, I have seen Mr. Cunningham.

Q. And do you know whether he was in the sanitarium after the fall of 1911? A. I think so.

Q. Do you know whether a bill was sent to him by Doctor Emery Marvel? A. I am under the impression it was during that year.

Q. Do you recall whether there was a bill sent to him by Doctor Emery Marvel or not? I don't

want to take time to look at the books. Do you of your own knowledge know of such an accurrence of a bill being sent to Mr. Cunningham by Doctor Emery Marvel and his refusal to pay it and afterwards paying it to your firm? A. I saw a letter in which he said "These arrangements were made by Doctor Philip Marvel."

Mr. Bourgeois: I ask that that be stricken out. That is purely hearsay unless they have the letter.

The Witness: It was filed at the time.

Mr. Bourgeois: They should have given us notice to produce it, because we would like to know what that letter is.

Mr. McCarter: I guess you have got it here, haven't you?

Mr. Bourgeois: No.

The Vice Chancellor: She can not testify the contents of the letter unless you want it used and call for it.

Q. Without the use of that letter do you know that to be the fact, that he was at the sanitarium and that a bill was sent from the sanitarium? A. I know it to that extent, that I saw that letter.

Q. That is the only way you know it? A. That is the only means I have of knowing it, yes.

Q. Did you hear it discussed? A. No, I didn't have any discussion about it.

Mr. McCarter: Your Honor, I understand that the rule is that the parties, for instance, Doctor Marvel or Doctor Jonah, could not either refer to any correspondence that was had between them, but when a witness is sworn to a collateral thing, not having the correspondence in her possession, she can say, as I understand it, with regard to the contents of that.

The Vice Chancellor: Do I understand this was a letter from one of the partners to the other?

Mr. McCarter: No, it was a letter from the patient to Doctor Marvel.

The Vice Chancellor: Can it be shown that Doctor Marvel ever received the letter? If it can be then I think it would come within that rule, but surely not otherwise.

Q. Do you know whether that letter was received by Dr. Philip Marvel? A. As I remember it it was sent to Dr. Philip Marvel by Dr. Emery Marvel and I filed it with Mr. Cunningham's card.

The Vice Chancellor: I can not think it competent unless it can be shown to have been received by Dr. Philip Marvel. If it has been he can make any explanation he chooses.

Q. Now, I understand that the cash received in the office by the different doctors was accounted for and there was no question about that? A. Not as far as I know.

Q. Now, cash which was received outside, was that always promptly turned in by everybody? A. Do you mean the turning over of the actual cash?

Q. Yes. A. No.

Q. Did you have any trouble with Philip Marvel about that, his receiving money and not accounting for it for months? A. Not ever so far as I know, accounts collected outside, only on the office cash, as I testified last week.

By the Vice Chancellor: Q. Well, to what extent did you testify that you had trouble about the office cash? I don't believe I remember? A. It was in regard to his sometimes forgetting to

credit payments that had been made in the office.

Q. Sometimes forgetting what? A. To credit payments that had been made in the office.

By Mr. Endicott: Q. Well, did you have any trouble about Doctor Marvel's accounts in that respect, that is, his failure to turn in to the bookkeeper the cash which he had received from patients? A. In these office payments collected credit had been overlooked sometimes, I would send the bill and then naturally the patients protested.

Q. Well, that often occurred, didn't it, with Doctor Philip Marvel's accounts? A. Yes, on several occasions.

Q. Doctor Jonah wasn't the only offender, was he?

Mr. Bourgeois: I object.

Mr. Endicott: Yes; I will withdraw that.

Q. Was this fault of Doctor Philip Marvel so extensive that you were afraid to send out bills?

Mr. Bourgeois: I object as leading.

The Vice Chancellor: I think perhaps you can describe the extent of it.

Q. You have said it occurred sometimes and frequently you sent out bills and found the money had been paid to him and he failed to turn it in? A. Yes.

Q. This negligence of Doctor Jonah's in rendering accounts of his daily work was no financial loss to the firm, was it?

Mr. Bourgeois: I object, that calls for a conclusion. We can judge that same as they can. We have had the testimony about what the method was.

The Vice Chancellor: I somewhat doubt whether she could properly testify to that conclusion, Judge.

Mr. Endicott: Well, I will withdraw it

The Vice Chancellor: Although it is a valuable inquiry, if we can get at it, as to whether it was a source of loss or not.

Q. May I ask if the eliminated pages in Doctor Jonah's account indicate any loss to the firm? A. Not so far as I know, because we sent out the bills later on.

CROSS-EXAMINATION by Mr. Bourgeois:

Q. Does it follow that because you sent out the bills that Doctor Jonah called your attention to that he had not overlooked some of the cases where bills should have been sent? A. That is what I said, as far as I know.

Q. There is no check for us that he didn't overlook some of the patients to whom bills should have been sent? A. Except that we made up bills from his memorandum slips.

Q. But if the memorandum slips were not accurate or he had mislaid some of them then you had nothing to check up by, had you? A. No.

Q. Now, will you turn to the week ending November 25, 1911, in this auditor's account. I notice at the end of the week "D. H." what does that mean? A. It means deadhead.

Q. Then this was one of the patients of Doctor Marvel's firm that was treated in Emery's sanitarium for nothing, was he? A. I couldn't answer that.

Q. Well, he was a deadhead to your office any way? A. Yes.

Q. Now, do you know under what circumstances he went to Doctor Emery's, or don't you know anything about that? A. My recollections are that Mr. Otis was there two different times.

Q. To the sanitarium? A. Yes. Once he had

an operation on his face, but I don't know which of the times, I couldn't say whether this was the time.

Q. Now, will you turn to the entry under April 14th, I think the date is, 15th, the end of the week, may be, 1912, the Rowley accounts—where are they? A. (Witness indicates in book.)

Q. How many visits were made to her—do you know? A. Seven in that week.

Q. Do you know under what circumstances she went to the sanitarium? A. I don't. She was evidently at the Hotel Chelsea and went to the sanitarium.

Q. And you don't know whether she went of her own accord or somebody sent her or not or how it happened? A. No.

Q. Would the firm get the money from her or did they collect the money from her for those visits? A. I can't say whether that bill was collected before I left the office but the intention was that a bill should be sent.

Q. In other words, there is a charge account against her? A. That is a charge account.

Q. The only difference is she is in a sanitarium instead of the hotel?

Mr. McCarter: That is not the point. The point is Doctor Marvel said he sent none after that time. Now, we are showing he did. That is all.

Q. Now, turn to April 5th. Now, the other is Frear. How many visits were there there? A. There was one in there.

Q. And that was charged for? A. Yes; that check mark (indicating) means that it is posted to the cards.

Q. And do you know anything about under

what circumstances that patient went to Doctor Emery's sanitarium? A. No, I don't.

Q. Now, the Cunningham? Is that the same Cunningham that Mr. Jonah speaks of in his answer, do you know? Let me give you the name so that you can tell me.

Mr. McCarter: How can she tell who Doctor Jonah refers to in the accounts in his answer which she has never seen?

The Vice Chancellor: Maybe she can. Let us see.

Q. Do you know whether the name of the Cunningham who was in the sanitarium, as to which you have been examined about, was Mr. Jesse Cunningham, or Mrs. Jessie Cunningham? A. The initital of the patient to which you refer was "J" but I couldn't say as to his first name, it was Mr. J. A. Cunningham.

Q. The one that was in the sanitarium was J. A. Cunningham? A. Yes, as I believe.

Q. Do you know where he lived or stopped? A. Down on Pacific Avenue and they had been at the Runnymede, I couldn't say whether they was at the Runnymede before or after he was at the sanitarium.

Q. Now, about this account that we had some trouble over, Miss Hendrickson. Will you turn to the end of 1910. The red I know. I only want to show the corresponding entries in the check book. I call your attention to a check stub drawn to the order of Doctor W. E. Jonah, bearing date February 18th, which recites "To balance account, December 31, 1910, $475.12," and then beneath that the words "Returned a check for $10," and ask you if that is the same $10 that is mentioned in the weekly time book in red ink?

A. I judge that it is because it is marked "To close twelfth month 31st, 1910."

Q. Now, I call your attention to the next check stub—the previous one was number 288, this is 289, dated February 18, 1911 to Doctor J. I. Durand, "in full of account to December 31, 1910, $634.07," and beneath the amount the words "Returned check for $80," and then in red ink immediately beneath that "Credit account, $80, 2/20/'11," and I ask you if that all refers to the same transaction as the $80 in the red ink in this book? A. I think so.

Q. I call your attention to check stub 290, dated February 18, 1911, to Philip Marvel, "for amount"—what is that (indicating)? A. Balance of account.

Q. "Balance of account to December 31, 1910." Is the red ink mark at the top of that check yours?

Mr. McCarter: The check speaks for itself.

A. Yes, that red ink is mine.

Q. And is the red ink in the book itself yours? A. Yes.

Q. All right—for $2,434, and beneath the amount the words "Returned check for $856.-50"—

Mr. McCarter: That isn't in her handwriting?

A. No, that check isn't.

Q. Then immediately beneath that in red ink in the clerk's handwriting "Credit account $856.-50, 2/20/'10." Now, does that refer to the same red ink transaction that appears on the weekly time book? A. I should say that it does.

Q. Now, Miss Hendrickson, about those bills that were sent out by you and a report was made that the moneys had been paid to Doctor Marvel.

What would be the disposition of that matter? What did you do? A. When bills were sent out and payments came to the office they were credited on the cashbook and went through the bank in the ordinary way.

Q. I don't mean that but when a bill was sent out to a patient who had paid Doctor Marvel in the office and he hadn't accounted for it, and the bill came back with the statement that it was paid, then what was done with the account? A. The amount was charged to Doctor Marvel and we sent a letter of apology to the patient.

Q. And in the end that was charged up against Doctor Marvel or else paid at that time, wasn't it? A. Usually charged to him.

Q. Now, when was it that Doctor Jonah gave you a record of all these items appearing under date of September, 24th to December 31st of bills to be charged—that is 1910—when was it that they were given to you? A. I couldn't say exactly but it must have been at the end of December or at the beginning of January, since he has covered the period to December 31st.

Q. And they were all given to you at the same time, were they not? A. All of these.

The Vice Chancellor: And they cover a period of two months.

Mr. Bourgeois: September, October, November and December.

The Witness: It is from September 24th to December 31st.

Q. Now, when was it that Doctor Jonah gave you the memoranda from which to send out bills for 1911, prior to his going abroad? I think he did it prior to his going abroad. Now when was it he gave it to you? A. The most of it came at the end of October, just before he went away, but

there were times that he would come to me and say people, one, two or three patients were going home, perhaps, and they wanted their bills, that we would go over the card and send the bills that way, but the majority of the work, most of the work was covered at the end—just before he went away.

Q. And where did you meet Doctor Jonah to get that data? A. Sometimes in the office, sometimes in his house.

Q. And it covered what period of time when you were seeking to get the data? I mean, how many days did it take you to get it all together, or evenings, whichever it may have been? A. In the case of the bills we might send three or four at a time, in his office after the patients had gone, and possibly only one.

Q. I don't have reference to that; I mean with regard to the checking up of the business at the end of the year? A. That is hard to say; sometimes I have been to the house in the evenings and then we would go over it in the afternoon if he didn't have very many patients in the office or after the patients had gone.

Q. Were you longer than a week gathering that information or less than a week? A. Less than a week I should say.

Q. How many days do you think? A. Sometimes it may have taken all day.

Q. I mean how many days did it in fact occupy? A. It would take, as I said before, sometimes two or three evenings and probably what time we had in the office; we might not have very much time in the office.

Q. And that was immediately prior to his trip to Europe? A. We covered most of the work at that time.

By the Vice Chancellor: Q. I wanted to ask

Miss Hendrickson if there was any stated time for sending out bills? A. No.

Q. About how often would each member of the firm hand in a report that enabled you to send out bills? A. It couldn't be done that way. When they would ask me or tell me they wanted to send out some bills during the end of the summer, perhaps, or during the end of the year, they would want to send out a number of bills that had been running along, I would take the card and the laboratory book and post the laboratory record to the card and add the amount of the service to a slip of paper or fasten the card to the slip and submit it to the man whose patient it was, he would put the amount on the slip, hand it back to me and I would make out the bills and send the bills.

Q. How often would Doctor Jonah have you send out bills, either in considerable bunch or few in number? A. I would send out a few bills of Doctor Jonah—some possibly every week, the same as I did for other members of the firm although during his lapses there might not be very many, but he would come to the desk and say so and so wants a bill.

Q. Did you send out bills for other members of the firm more promptly than you did for him? A. I should say yes.

Q. Much more frequently? A. No, not much more frequently except, as I say, in regard to our—this periodical sending of bills that we had when I would go over the work with Doctor Jonah.

Q. What say? A. I sent out bills oftner, perhaps, for the other men, in larger numbers, on account of the times when Doctor Jonah and I would go over the work, then I sent more for him

at those times than I did at other times, if I make myself clear.

Q. Well, while you were going over the work with Doctor Jonah you meant just what? A. I meant just what I said to Mr. Bourgeois, that that covered most of the work for those periods of time, at the end of the periods when we straightened it up and sent out the bills.

Q. Can you tell from your books what period of time the bills which you sent out in October, 1911, for Doctor Jonah covered? Can you by reference to your books tell now? A. I couldn't tell entirely because some of them might have gone back of the time of his lapse, don't you see?

Q. Can you tell by reference to the books what period of time the bills which you sent out about the same time for other members of the firm covered? A. Not any more closely, because you take the case of a patient who is seen infrequently that bill may run for a year, if the amount is comparatively small, that bill may not be sent more than once a year, so that it may cover a longer period or a shorter period.

Q. Sometimes bills were not sent for the entire year? A. Beg pardon?

Q. Sometimes bills were not sent for an entire year? A. To some patients, yes.

Q. Of either members of the firm? A. Yes.

By Mr. Bourgeois: Q. Did you sometimes have difficulty to get a record of Doctor Jonah's laboratory work? A. No, not that I know of.

Q. Tell me why it was or how it was that when Doctor Jonah sent out his bills at the end of the year that it was entered on this weekly time book but apparently when he sent them out during the other portion of the year no entry was made on the time book as to whom the bills are sent or

amount of them,—how did that occur? A. That must have come from the fact that the patients whose names were not specifically entered under his name must have been in the office and had a card.

Q. In other words, then those bills that were sent out during the meantime were patients that you had a record of, you had their names? A. No; patients that had come to the office, had a record and we had a card.

Q. And if that hadn't been so there would have been a record made on this book of it the same as at the end of the year? A. There should be.

Mr. McCarter. We rest.

Recess until two o'clock p. m.

Hearing resumed at two o'clock p. m.

EMERY MARVEL, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says:

By Mr. Bourgeois: Q. Doctor, you are a brother of Doctor Philip Marvel? A. Yes, sir.

Q. And are you connected with the private sanitarium at 1801 Pacific Avenue? A. A private hospital, 1801 Pacific Avenue.

Q. Do you know if Doctor Philip Marvel has attended any patients there that have come in since October of 1911? A. He has.

Q. How many and who were they? A. Since October of 1911?

Q. Yes. A. On October 27th—

Q. Well, I mean at the end of October, I mean

that winter, after the 31st of October? A. There has been four.

Q. And who were they? A. Mrs. Rowley, whose first name I can not recall, of Ottawa, Canada; Mr. Freyer, I think of Syracuse or Buffalo; Mrs. Boylston, of North Carolina and Jacksonville, and a Baby Compton, of Poughkeepsie, New York.

Q. Do you know under what circumstances Mrs. Rowley came to 1801 Pacific Avenue? A. I was asked to see Mrs. Rowley in consultation at the Hotel Chelsea, found a surgical condition indicated, expressed that opinion to Mrs. Rowley and her husband as to their acceding to that recommendation, which was dependable upon the concurrence of Doctor Kidd, their family physician, of Ottawa, that they would decide upon whether she should be operated on in Atlantic City, Philadelphia or Ottawa, depending upon the concurrence of Doctor Kidd. Doctor Kidd was telegraphed for that night, wired to have her removed to Doctor Emery Marvel's hospital, which he knew about, and that he would be down the next day, which he did, and she was operated on on the following Monday. Subsequently, also, I took care of her from a surgical standpoint and Philip Marvel from the medical standpoint.

Q. Who was the second one did you say? A. Mr. Fryer.

Q. Can you state the circumstances under which he came to your hospital? A. Mr. Fryer came to the hospital and asked if we could accommodate him, that he wanted rest, that he was quite nervous and his sister had been there the year before. We said we could. When the superintendent notified me that he, Mr. Fryer, was there, I asked what she knew about him.

The fact was that Mr. Fryer was a brother to Miss Fryer who was there in 1910. That fact prompted me that there was an association or connection that I considered ethical between Miss Fryer's relations to my brother's and Mr. Fryer and I sent for my brother to be his physician; he knew nothing about his being in the house until he was sent for by request.

Q. The next one was who? A. Mrs. Boylston.

Q. Under what circumstances did she come? A. I received a letter which was forwarded, Philip Marvel, addressed from Raleigh, North Carolina, which read in this way—

Mr. McCarter: Well, I don't think that is evidence.

Q. Never mind You received that letter addressed to him? A. Requesting that I would prepare for her the room in the hospital and preferring the room which she had previously occupied there.

Q. And was that letter turned over to you? A. It was.

Q. And as a result of that communication what did you do and what transpired? A. Mrs. Boylston came from the train to the hospital.

Q. Was she treated there by Doctor Philip Marvel? A. She was, by his being notified that she was there and called by the superintendent of the hospital.

Q. Now, the other case was the Compton baby? A. Yes.

Q. Under what circumstances did that child enter the hospital? A. She required the removal of the tonsils by the advice of Doctor Sadlier, of Poughkeepsie. It is a question of her returning to Poughkeepsie or having the work done in Atlantic City. Doctor Sadlier asked if I could ex-

tend him the courtesy of the hospital, which was done and arrangements made and Doctor Sadlier operated.

Q. Did Doctor Marvel have anything to do with the treatment of that child? A. Yes, sir; Doctor Philip went so far as her care in the house —the entire direction of her care.

Q. Something has been said about a Mrs. Cunningham. Do you know when it was she was in your hospital? A. I think it was January, 1910. You are speaking now of Mrs. or Mr. Cunningham? They were both in the house.

Q. Maybe it was Mr. I don't know. A. December, 1909, I think it was, or 1910 that Mr. Cunningham was admitted to the house, and on January 3d of 4th Mrs. Cunningham, at her request, was admitted to the hospital.

Q. That was prior to October of 1911? A. Yes, sir.

Q. The last of October? A. Yes.

Q. Now, do you have any advertisement on your billheads or on your stationery that would bring people to you individually?

Mr. McCarter: I object; the stationery speaks for itself, I think.

Q. That is very true. Have you got one of the letterheads here? A. I have the stationery, not the billheads.

Q. Let me see what you have. A. This has some other things on it and the shape of the paper is different, but that is the die that is on all the stationery.

Q. Is there any other printed matter on the stationery excepting what appears on this letterhead? A. By "stationery" if you mean letterheads there isn't.

Q. On the bills? A. Yes, sir.

Q. What? A. On the bills since April, 1910—

Mr. McCarter: It seems to me what they have on the sanitarium letterheads is not in issue here.

Mr. Bourgeois: Well, it isn't except in view of Doctor Jonah's statement that they might mislead patients, and I propose to show that Doctor Emery Marvel's name did not appear on any of it.

A. (Continuing): Previous to April, 1910—I understand that question is to be answered?

The Vice Chancellor: Yes.

A. (Continuing): "1801 Pacific Avenue," line and date, under it was "House for private patients."

Q. Did your name appear on it? A. A blank date—no. On a separate line is "Doctor Marvel's House," not Doctor Emery Marvel's, "Doctor Marvel's house for private patients." After April, 1910, it was the "Private Hospital Associaton house for private patients, 1801 Pacific Avenue."

Q. Without any Marvel's name on it or anybody else? A. We had no Marvel name upon it.

Q. And then this letterhead without any name on it at all? A. It is used for all the paper—all correspondence in the house.

Mr. Bourgeois: I want to offer that in evidence, if I may.

Mr. McCarter: We object to it as immaterial.

The Vice Chancellor: Let it be filed.

Said paper marked Exhibit C .

CROSS-EXAMINATION by Mr. McCarter:

Q. Was the communication which was received just anterior to the coming of Mrs. Boylston to the

sanitarium, which was addressed to Doctor Philip Marvel, received by you or at the sanitarium or was it received by Doctor Philip Marvel at his residence or some other place? A. The first letter asking if it could be—

Q. Please answer the question? A. Was received secondarily by me.

Q. You spoke of a letter being received addressed Philip Marvel which you later gave to Doctor Philip Marvel. Now, you got that letter first, didn't you? A. I did not.

Q. Why didn't you give it to Doctor Philip Marvel afterwards? A. I didn't give it to Doctor Philip Marvel.

Q. Well, where did you see that letter? A. The letter was forwarded to me from Philip Marvel's office.

Q. Baby Compton was a patient of Doctor Philip Marvel's? A. So far as admission to the house she was a patient of Doctor Sadlier's.

Q. Will you answer my question? A. My dear sir, I assume that Doctor Philip Marvel attended her before; my acquaintance with her was through Doctor Sadlier.

Q. Mrs. Boylston was a patient of Philip Marvel's? A. Yes.

Q. Mr. Fryer was a patient of Philip Marvel's? A. Mr. Fryer was treated by Doctor Philip Marvel. He wasn't known to Doctor Philip Marvel until he was called to the house.

Q. I didn't ask you any question, Doctor.

WILLIAM E. JONAH, re-called:

By Mr. Bourgeois: Q. Doctor, you sometimes called Doctor Marvel in consultation? A. Yes.

Q. And sometimes called other people in consultation? A. Yes.

Q. Now, who did you call in consultation outside of Doctor Marvel?

Mr. McCarter: I object to it; that is utterly immaterial. The contract doesn't require Jonah and Durand to do anything but assist Doctor Marvel, practice medicine and assist Doctor Marvel; that is the language used, "aid and assist." There is no requirement to use or to call on his aid as a consultant.

Mr. Bourgeois: It has two phases.

The Vice Chancellor: Still the contract prevents outside of the association, I should think, wouldn't it?

Mr. McCarter: Well, I don't see a word in the contract when consultation was needed of a particular type and kind that Doctor Marvel should be called at all.

The Vice Chancellor: It doesn't seem to me the spirit of the contract would permit an outside physician to be called in consultation unless it is requested by the patient. I do not want to say that, though, absolutely. I think you may introduce the evidence and we will pass upon the force of the contract.

(Question repeated.)

A. I have had Professor Hobart Hare, of Philadelphia. I have had Doctor—Professor Judson Deland, of Philadelphia, and Doctor Tracy, who is a surgeon.

By the Vice Chancellor: Q. Who? A. Doctor Tracy, Philadelphia. I have had Doctor David Riesman, of Philadelphia. I have had Doctor Francis Dercum, who is professor of neurology at the Jefferson Medical College. I have had Professor Augustus Wilson, professor of orthapaedic surgery.

By Mr. McCarter: Q. Where? A. At Jefferson Medical College. I don't recall any more just now; they were the principal ones.

By Mr. Bouregois: Q. Who were the Atlantic City physicians you have ever called in consultation beside Doctor Marvel? A. I had Doctor Darnell do a curetment for me one night last summer about midnight.

Q. Who else? A. That is the only Atlantic City case that I remember I have ever had.

Q. Now, how many times, to the best of your knowledge, did you call in Doctor Marvel in consultation during the year 1910?

Mr. McCarter: I object to that. I can't see that that has any materiality in this at all. There might not have been any occasion to call him in. This young man was a full-fledged doctor.

The Vice Chancellor: I can not say, Mr. McCarter; it may not be competent. I apprehend that each member of a firm of physicians in general practice would be privildedged, if he thought some specialist could aid him; to call in that specialist or some man of eminence in a particular line. It did not occur to me first that that might be so essentially. Go on with your proofs and let us see what was done, and we will pass upon its relevancy.

(Question repeated.)

Mr. McCarter: Objected to.

The Vice Chancellor: Overruled. Can you tell?

A. I can not state how many times.

Q. Can you state approximately, Doctor? A. I wouldn't have any way of knowing. I would answer it this way: That I have always called Doctor Marvel in consultation where a patient asked

for him, but where there was not some special reason, why, I wanted a man with some special knowledge rather than a general practitioner.

Q. How many times did you call Doctor Marvel in during the year 1911?

Mr. McCarter: Same objection.

A. I don't know.

Q. How few times during the year 1912?

Mr. McCarter: Same objection.

A. 1912? I had him in consultation in December.

Q. Well, how many times during the whole year? Any but that once? A. Yes. I showed him a most interesting case at the Marlborough in the spring.

Q. Now, I want to know how many times, Doctor? How many times? A. Those are two times that come to my mind.

Q. Well, there were two times in 1912? A. Well, there may be more, there may have been more but I remember—

Q. In 1911 there were a half dozen or more times, weren't there? A. I don't remember, sir.

Q. And in 1910 there were a dozen or more times? A. I couldn't say.

Q. Now, Doctor, you sometimes went out of town, of course. When you went out of town with whom did you leave your patients? A. Left my patients—I left my patients in the office with Doctor Durand.

Q. Always? A. Always.

Q. Never left them with any outside physician? A. I never left a patient with an outside physician since I have been a member of that firm, since I have been interested in the concern.

No cross-examination.

Both sides rest.

EXHIBIT C-1

This exhibit is the agreement of Drs. Philip I. Marvel, William E. Jonah and Jay I. Durand, dated the 10th day of January, 1910, and annexed to the bill of complaint, and found printed in connection therewith.

EXHIBIT C-2

Blank prescription blanks introduced on page 4, and containing the printed signature of Dr. William E. Jonah.

℞

COPY RX ON LABEL

DR. W. E JONAH

EXHIBIT C-3

Blank prescription blanks furnished by defendant.

DR. PHILIP MARVEL

DR. W. E. JONAH

DR JAY I. DURAND

OFFICES
1616 PACIFIC AVENUE
ATLANTIC CITY
N. J.

HOURS:
10 TO 12 A. M.
2 TO 3 P. M.
3 TO 4 P. M.
7 TO 8 P. M.

R (cut)

COPY PRESCRIPTION ON LABEL

EXHIBIT C-4

Nineteen prescriptions filled by Dr. Jackson, and made out by Dr. Jonah on blanks with his personal signature only printed at the bottom thereof. The prescriptions were numbered as follows, were given on the following dates, to the parties named herein:

Exhibit C-4

Name	No.	Date.
Miss Hartz	※69169	8/17/12
No name	※69170	8/17/12
" "	※69289	8/21/12
" "	※69447	8/26/12
Miss Livingston	※69529	8/28/12
No name	※69530	8/28/12
" "	※69545	8/28/12
" "	※69552	8/29/12
Mrs. Blanchard	※69600	8/31/12
Mr. Leopold	※69697	9/ 2/12
Mrs. Goddard	※69774	9/ 5/12
No name	※69785	9/ 5/12
Miss McCandless	※69815	9/ 6/12
Mrs. Mastbaum	※69832	9/ 7/12
No name	※69834	9/ 7/12
" "	※69835	9/ 7/12
Miss Gundlefinger	※69958	9/13/12
Mrs. Weiner	※69969	9/14/12
" "	※69970	9/14/12

℞

COPY RX ON LABEL

DR. W. E. JONAH

EXHIBIT C-5

For explanation of the bookkeeping system of Dr. Marvel see testimony, page 122, etc.

EXHIBIT C-6

This exhibit consisted of several blank cards from the card index bookkeeping system of Dr. Marvel. One side thereof is ruled as a ledger for one year, by months grouped in quarter years, the first quarter being January, February and March; the second quarter, April, May and June, etc. At the top of this side of the card is a space for the name and address of the patient. On the reverse side of the card it is ruled for the months of the year and the days of the month. The squares opposite being spaces in which to note visits to the patient, whose name appears at the top of the card, and in the same square the initial of the Doctor making the visit is noted. This card constitutes the ledger account and record of visits posted to this card weekly from the Doctor's private records or from the daily office slips kept by the secretary. Facsimilies of both sides of the card are printed below.

Exhibit C-6

NAME _____

ADDRESS _____

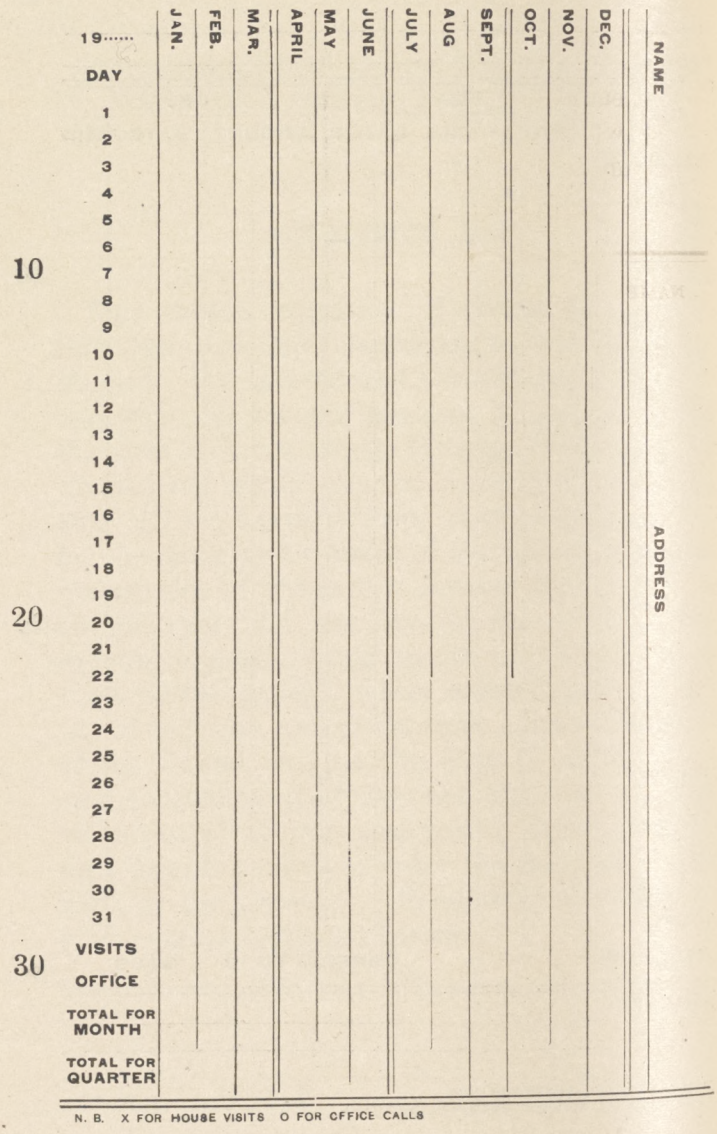
19—	DR. AMOUNT	DR. BILL DATED	CR. AMOUNT	CR. DATE PAID
BALANCE				
FIRST QUARTER — JAN.				
FEB.				
MAR.				
BALANCE				
SECOND QUARTER — APR.				
MAY.				
JUN.				
BALANCE				
THIRD QUARTER — JUL.				
AUG.				
SEP.				
FOURTH QUARTER — OCT.				
NOV.				
DEC.				
TOTAL				
BALANCE		CARRIED TO 19.....CARD		

REMARKS _____

ALWAYS WRITE BALANCES IN RED
DO NOT ADD RED FIGURES WHEN FINDING TOTAL

NO. 411
VEIGHT & HALLAM BROOKLYN, N.Y.

Exhibit C-6



N. B. X FOR HOUSE VISITS O FOR OFFICE CALLS

EXHIBIT C-7

A printed sheet kept in pads on the desk of each doctor in his private room, a facsimile of which is printed below. This sheet is nothing more than a time sheet for each week.

TIME, Week ending,_____19

NAMES	S	M	T	W	T	F	S	Total Time	Wages Per	Amount Paid Dolls.	Amount Paid Cts.	Received Payment

Exhibit C-8

Letter of Dr. Marvel to Dr. W. E. Jonah, dated 7/15/12, introduced on page 127:

Dr. Philip Marvel

Dr. W. E. Jonah Dr. J. I. Durand

1616 Pacific Avenue

Atlantic City

My Dear Dr. Jonah:

Atlantic City,

N. J.

My dear Dr. Jonah:

I have called your attention from time to time to your delinquency with reference to your ac-

counts. As these accounts affect the Trust which was signed by yourself, Dr. Durand and myself January, 1910, and in the interest of those concerned, it becomes my duty now, as the senior member of this business partnership, to inform you that I can not longer permit your lack of accounting for services done or moneys received. It needs no reference from me to charge your mind with the fact that it has been months since our books show any record of the work done by you except that which has been taken account of in the office. Nor does it need any comment by me to make it plain to you that this is neither just or honorable to those who are associated with you, nor is it in compliance with the agreement to which reference is above made.

I, therefore, am giving you due notice that I will require at an early date a satisfactory accounting, as well as a future compliance with the requirements of our agreement. It will be a painful duty of mine if it becomes necessary for me to enlist in this matter legal authority to compel you to comply. Indeed the whole matter is one that is more painful and distressing to me than I have hitherto been forced to meet. But, claiming no part in the incidents which have precipitated the present relation that seems to interpose between yourself and me, and preferring to meet this matter face to face with you and adjust it honorably and equitably, I now give you the opportunity of naming a time at which you are fully at liberty to go into this matter in detail, stating your reasons for having taken the course which you have. You may do so in my presence alone, or with any other person whom you may elect to be with you. You are aware that at our different meetings I have asked, begged and implored you to present some logical and tangible reason for

your action and up to the present time you have studiously avoided giving any reasons whatsoever save the fact that I "(you) do not like you (me)." Whether this is a mere subterfuge or a grounded belief of yours I do not know. You well remember my answer and my contradiction of the same, and I have not, nor can not believe for one moment that this is in any way a cause for your actions in the matter. That there are ulterior reasons for the attitude you have taken toward our agreement is my belief and the same I have previously intimated to you. If this is not the case, you have your opportunity to explain, and possibly rectify the trouble.

Trusting to hear from you at once, I am

Very cordially yours,

PHILIP MARVEL.

7/15/12

Exhibit C-9

Letter of Dr. Marvel to Dr. Jonah, dated 7/20/12, introduced page 127:

Dr. Philip Marvel

Dr. W. E. Jonah Dr. J. I. Durand

1616 Pacific Avenue

Atlantic City

July 20, 1912.

Dr. William E. Jonah,
Atlantic City,
New Jersey.

Dear Doctor:

The manner in which you have been and are treating the subject of our agreement: the inten-

tional absenting of yourself from special meetings called on account of your delinquency; and your persistent silence to both my personal appeals and to my communication to you are all evidence of an inexcusable attitude and indifference on your part of the matter in question between us: also, your continued obstinant defiance and refusal to account for services done and moneys received would seem a matter unworthy of further consideration on my part. I, therefore, give you good and full notice that failing to hear from you concerning this matter within the twenty-four hours next to your receiving this—as much as I dislike to do so—I shall proceed to place the whole matter in the hands of an attorney with instructions to proceed to compel you to make an accounting.

Respectfully yours,

PHILIP MARVEL.

Exhibit C-10

Letter of Dr. Jonah to Dr. Marvel, dated 7/20/12, introduced page 127:

Atlantic City, N. J.,
July 20th, 1912.

Dr. Philip I. Marvel,
1616 Pacific Avenue,
Atlantic City, N. J.

My Dear Dr. Marvel:

You know letter writing is very distasteful to me and I have been rather busy since your letter

Exhibit C-10

of the first of the week, however the letter of even date would seem to demand an immediate reply, though I would much rather spend the time visiting the sick. At the outset I have to confess that I have had much less experience with attorneys and the Courts than you have, and thus I rather hesitate at them, for I am not sure I could plead any "Statute of Limitation" or would be an experienced enough witness to give evidence that might be called "intentional obscuration."

As to the accounts, and my "rendering unto Caesar that which is Caesar's," such is my full intention and purpose; you shall have every cent I have made for you, which you know has been quite a goodly sum in the run of a year. I might report that during the present week business has been good, I have visited forty-five (45) different patients all of whom sent for Dr. Jonah, I have tried to keep out of your territory. If you will look up last year's receipts you will find, that notwithstanding the fact that you kept worrying and beefing me about my accounts, my receipts for the year exceeded the previous year, while yours fell off some three or four thousand dollars, that was due possibly to the honorable (a term which you like to use so much) agreement you made to help another medical firm in town, that time at my expense, a fine piece of work.

"You have too much respect upon the world,
"They lose it that do buy it with much care;
"Believe me, you are marvellously changed."

Respectfully yours,

WM. E. JONAH.

Exhibit C-11

Letter from Dr. Marvel to Dr. Jonah dated 7/23/12, introduced page 128:

Dr. Philip Marvel

Dr. W. E. Jonah Dr. J. I. Durand

1616 Pacific Avenue

Atlantic City

July 23, 1912.

Dr. William E. Jonah,
Atlantic City,
New Jersey.

My dear Dr. Jonah:

I am glad to have your reply even though you have overlooked the elephant and strained at a gnat. Now do you really wish to avoid the fact that your persistent delinquency and the misuse of other stipulations in our agreement are the occasion of the present situation between us? Has not the crux of the whole matter been precipitated by yourself and has not its incipiency been kept alive very largely by your practice of following methods that exhibited disloyalty tending decidedly to disharmonize the influence of our association? I need not answer this. Your own acts stand as indisputable witnesses to the same. You can no more justify your deliqunecy and other inexcusable violations of our agreement than you can shirk the duty and responsibility of your obligations consented to when you signed the trust which the agreement imposed upon us all and no number of your adroit insinuations will strengthen or uphold your attempted show of a false position by me to which you referred in your statement concerning an "honorable agreement"

to "help another medical firm in town." It is not so much that you render "unto Caesar that which is Caesar's," (quoting from your letter), for which I am contending, as it is for a reasonable observation of the terms and covenants of the agreement which bears your signature and should demand your respect. It is the fact of your failure to do so that has occasioned the "worrying and beefing" to which you refer in your letter, and it seems from your present attitude that you intend the same necessity to continue. You do not need me to tell you that to promise to do a thing and purposely refrain thereafter from doing it serves to weaken rather than strengthen any cause that feeds upon disloyalty and interests outside of the cause. Yet has not this been your position in our growing difficulty? I can not believe that you will attempt to deny it.

If you have thus far failed to comprehend your obligation and what I have been asking you to live up to, let the present communication impress upon you that it is not a fault in the amount of work that you are doing, but in the obstinate manner in which you are endeavoring to disregard the rights of others; and further, please understand that no number of principles, however wisely adopted can hold any firm or association together for any great length of time without there being a proper respect for loyalty to each other and harmony of relation between those concerned. You are already acquainted with who has been the most active disturber in the camp and who has fallen farthest short of respecting those obligations. I can not speak more plainly Doctor than to tell you that I want you to turn over your accounts up to date to the secretary, as stipulated in our agreement, as thus far both Dr. Durand and myself are accustomed to doing. Fur-

ther, I want you to name a day and date when you will comply with our agreement that there may be no further reason for accusing you of either disloyalty or intention to wilfully oppose the interests and harmony of any and all concerned. I trust this matter will be of sufficient importance to you—as it is to the rest of us—to give it your careful thought, and what is more, your prompt consideration.

Very respectfully,

PHILIP MARVEL.

EXHIBIT C-12

Ledger index card identical with the card described in Exhibit C-6.

EXHIBIT C-13

Ledger index card as explained in C-6 and C-12, containing the account against M. Simon B. Fleischer, details of which appeal in the testimony page 130.

EXHIBIT C-14

Ledger index card similar to C-6 and C-12, containing the account against Mrs. S. J. Feldenheimer, the details of which appear in the testimony, page 131.

EXHIBIT C-15

Ledger index card containing the account of John Forsythe, details of which appear in the testimony, page 131.

EXHIBIT C-16

Prescription blank used at the date of the trial.

1616 PACIFIC AVENUE
ATLANTIC CITY
N. J.

HOURS:
9 TO 10.30 A. M.
2 TO 3.30 P. M.
7 TO 8.00 P. M.

(cut)

FOR..... DATE.....

R

COPY PRESCRIPTION ON LABEL

2066 DR. PHILIP MARVEL.

Exhibit C-17

No. 7225 Atlantic City, N. J.....191..

THE UNION NATIONAL BANK

Pay to the order of Philip Marvel $46.00
Forty-six .....Dollars

PHILIP MARVEL,
per Rachel S. Marvel, Atty.

Written across end:
Philip Marvel, M.D.
Personal Account.
Written across face:
Jan.—0—1913

(*Endorsed*)
For Deposit in
UNION NATIONAL BANK
Atlantic City, N. J.
To the Credit of
Philip Marvel,
Atty.

The amount of this check was a total made up of several other smaller checks introduced and read into the testimony on page 179, *et seq.*

Exhibit C-18

No. 7211 Atlantic City, Dec. 31, 1912.

THE UNION NATIONAL BANK

Pay to the order of Philip Marvel.....$16.00
Sixteen and .....00/100 Dollars

PHILIP MARVEL.

Written across end:
Philip Marvel, M.D.
Personal Account.
Written across face:
Dec. 31, 1912.

Exhibit C-22

(*Endorsed*)
For deposit in
THE UNION NATIONAL BANK
Atlantic City, N. J.
To the Credit of
Philip Marvel
(Business a/c)
Atty.

The amount of this check was a total composed of several smaller checks which were read into the testimony page 179 and 180.

Exhibit C-19

Weekly office book, all the date from which that is necessary will be found in the testimony page 249.

Exhibit C-20

Cash book containing receipts to Jan. 1, 1913; all necessary data from this book found in testimony page 249.

Exhibit C-21

Cash book of 1911; necessary data from this book found in testimony page 251.

EXHIBIT C-22

(For identification only)

EXHIBIT C-23

(For identification, later introduced as C-24, q. v.)

EXHIBIT C-24

List of calls of Dr. Jonah from 3/15/12 to 5/27/12 inclusive, taken from the office book by Miss Greenleaf.

List of calls for Dr. Jonah from 3/15/12 to 5/27/12 both inclusive.

3/16/12 Mrs. O. P. Letchworth, Chalfonte
" " Miss Wagner, St. Charles,
" " Mrs. Buckley, Stenton Place
3/16/12 Mrs. Harris called up--St. Charles
" " See Mr. Brownfield,
3/17/12 See Mrs. Buckley, 109 S. Stenton,
" " Mrs. Frishmuth.
3/17/12 Miss Thompson, Albermarle,
" " Mr. Chapman, Galen Hall,
" " Mr. Drum, M-B-B
3/18/12 Mr. Gump, Rudolph,
" " Mrs. Young, 10 N. LaClede Place
" " Mr. Pitman, Haddon Hall
" " Mr. Martens, St. Charles
" " Mr. Brownfields
3/19/12 Mrs. Laughlin, Brighton,
" " Mrs. Cook.
3/20/12 Meet Dr. Dercum
" " Dr. MaCuen Smith in regard to Billy Hamilton

Exhibit C-24

" " Mr. Drum, M-B-B
" " Mrs. Breen, Grand Atlantic (Bruon)
3/22/12 See Mrs. Mastbaum, St. Charles Place,
" " See 2700 Pacific Ave. 2900 Pacific (Rutherford?)
3/23/12 See Mr. Dugan 614 Strand
3/24/12 Mr. Olmstead, Haddoj Hall,
" " Dr. Jones, Seaside,
3/25/12 See Mr. Brownfield,
" " See Mrs. Mastbaum
" " Mr. Pearson, Chalfonte
" " Mr. Lipman called
" " See Mr. Brownfield,
" " See Mrs. Reynolds, 10 S. Ohio
" " See J. W. Marks, Amsterdam Apts.
" " Mrs. Katz called
" " Mrs. Drum came to the office
3/26/12 See Mrs. Kahn, 331 Chalfonte,
" " See Mrs. Douglass, 218 M)B-B
" " See Bronno, Grand Atlantic
3/27/12 See Mr. Brownfield,
" " See Mr. Bronno, Grand Atlantic,
3/28/ 2 See Mrs. Reynolds.
" " See Mrs/ Burnham, Dennis
" " Mr. Bruon, Grand Atlantic called
" " Mrs. Cook,
4/ 1/12 See Mrs. McAvoy, Chalfonte
" " Foster's little girl (see)
4/ 3/12 See Miss Wilcott, Haddon Hall,
4/ 4/12 See Mrs. Reynolds, 10-1/2 S. Ohio Ave.
" " See Mrs. Bruon, Grand Atlantic
" " See Mrs. Sheenan, Brighton,
" " Go to 115 Westminster Ave. (hurry)
" " See Mr. Squier, Chalfonte,
" " See Mrs. Sheehan, Brighton,

Exhibit C-24

4/ 5/12/See Mrs. Burnham, Dennis
" " See Mrs. Solomon, 21 S. New Hampshire
" " See W. H. Hill, Chelsea
4/ 6/12 See Mrs. Kahn, Pierrpont,
" " Please call Mrs. Solomon
4/12/12 See Mr. Foster, 2405 Arctic Ave.
4/13/12 Go to the Imperial Hotel
4/16/12 See Mr. Dreifus, Pierrpont,
Calls for Dr. Jonah, from 3/15/12 to 5/27/12, both inclusive.
4/16/12. Call at 145 St. Charles Place,
" " See Mr. Hornheimer, 525 Boardwalk,
4/17/12 Stop at Shacklefords before lunch
4/18/12 Go to the Pierrpont
4/19/12. See Mrs. Hobart, Dennis
4/20/12 Please go to 255 Dennis.
" " See Mrs. Lupler and Mrs. Brouon for Dr. Marvel
" " See Mrs. Landnesser. M-B-B
4/21/12 See Mrs. Lupler, Galen Hall
4/22/12/See Mr. Brownfield
4/23/12 See Mrs. Evans, M-B-B
" " See Mrs. Marsh, Galen Hall
4/24/12. Please go to 568 Blenheim
" " See Mr. McShane, Dennis
4/26/12 See Mr. Viasso, 20 N. Maryland Ave.
" " Go to Royal Palace.
4/27/12 Go to 568 B. Marlborough
4/29/12 See Mrs. Ough.
" " See your patient at the Imperial
" " See Mr. Cunningham
4/30/12 See Mrs. Morris, Marlborough
" " See Mrs. Ough
5/ 2/12 See Mrs. Motte
" " See Mrs. Evans, 309 M-B-B

Exhibit C-24

5/ 4/12 See Mrs. Hersh, New Chatham
" " See Mrs. Follansbee, 173 Blenheim
" " See Mrs. Sorwynth, Galen Hall
5/ 6/12 " Mrs. Julia Arnold, Galen Hall
5/ 7/12 See Mrs. Goldman
" " See Mrs. Ough.
" " See Mrs. Swartz
" " See Frauenthal
" " See Miss McCaulley, Galen Hall
" " Please see patient, 619 Oriental Ave.
" " Go to Amsterdam Apartments
5/ 9/12 See Mrs. VanWick, Galen Hall
" " See Professor Boss, 229 Strand,
" " See Mrs. Mott
5/12/12 See Mrs. Mott
5/28/12 Go to room C. Seaside Hotel
5/13/ 2 Mrs. Ihmsen, Mrs. Vetterlein, Miss Buck, Mrs. Parker, Galen hall, Mrs. John Campbell, Hadon Hall.
5/14/ 2 See Mrs. Ihmsen
" " Mrs. Parker, Galen Hall
5/16 See Mrs. Landnesser, 589 M-B-B.
5/18/12 See Miss Buck, Manheim
" " See Mrs. Mott
" " See Mrs. Chase, Dennis
5/19/12 See patient M-B-B.
5/20/12 See Susan McAllister, Chelsea
5/21/12 See Mr. Brownfield
5/22/12 Go to room 206 Seaside
" " See Mr. Brownfield
5/26/12 See Mrs. Nelson, 163 States Ave.
5/27/12 See Mr. Brownfield.
" " Go to 224 St Charles Hotel

Exhibit C-25

List of prescriptions written by Dr. Jonah and compounded by Dr. Deakyne.

C 25 1/30/13 L

Prescriptions written by Dr. W. E. Jonah and compounded by H. H. Deakyne.

Number	Date	Name	Address	Paper
95675	1-13-10	Mrs Hoag	340 Chalfonte	Scrap
95679	1-13-10	" "	" "	"
95702	1-16-10	Mrs. Lyman		"
95704	1-17-10	Mrs. Hoag	Chalfonte	"
95705	1-17-10	" "	"	"
95706	1-17-10	" "	"	"
95742	1-20-10	Mrs. Haog	"	"
95743	1-20-10	Mrs. Fleming	Seaside	"
95745	1-20-10	Miss Smith	322 Atlantic Ave	"
95780	1-23-10	Mrs. Hoag	Chalfonte	"
95836	1-27-10		203 Haddon Hall	"
95967	2-7-10	Mrs. Milliette	c/o Mr. Geo. Bourgeois	"
95972	2-7-10	" " "	" " " "	"
95994	2-9-10	" Zeigler	137 S. Penn. Ave.	"
96013	2-10-10	Mrs. Blessing	Chalfonte	"
96014	2-10-10	" "	"	"
96026	20-10-10	" "	"	"
96107	2-15-10	Dr. Jonah	Manheim	"
96206	2-20-10	Mrs. Tredewinck	Boscobel	"
96386	3-3-10	Miss Reibenack	108 S. North Carolina	"
96567	3-12-10	Rev. Weidman	Hotel Raymond	"
96596	3-14-10	Mrs. Salfron	Hotel Ramon	"
96597	3-14-10	" "	" "	"
96598	3-14-10	" "	" "	"
96725	3-19-10	Miss Josephs	waiting	"
96767	3-20-10	Rev. Weidman	Hotel Raymond	"
97513	5-1-10	Miss Rineman	407 Marlborough-Blenheim	"
97554	5-4-10	Max Reibenack	108 S. N. Carolina	"
97564	5-4-10	D. Mitchell	Beach Villae	"
97565	5-4-10	Max Reibenack	108 S. N. Carolina	"
97584	5-5-10	Max "	" "	"
97620	5-8-10	Miss Reibenack	" "	"
97644	5-10-10	Jack Hunsicker	154 Seaside	"
97650	5-10-10	Mrs. Bauer	waiting	"
97652	5-10-10	Max Reibenack	108 S. N. Carolina	"
97679	5-13-10	" "	" "	"
97680	5-13-10	" "	" "	"
97681	5-13-10	" "	" "	"
97693	5-14-10	Mrs. Bauer	11 Baton Rouge Ave	"
97728	5-16-10	Mr. Hughes	Manheim	"
97729	5-16-10	" "	"	"
97787	5-20-10	Dr. Jonah	"	"
97812	5-21-10	bFrank Hartman	2514 Arctic Ave	"
97855	5-23-10	Mr. Bower	11 Baton Rouge	"
97858	5-23-10	Mr. Hunt	Seaside	"
97876	5-25-10	Mr. Bower	11 Baton Rouge	"
97874	5-25-10	Mrs. Blemond	Seaside	"
97939	5-30-10	Mr. Hunt	The Seaside	"
97976	6-1-10	Mrs. Reibenack	108 S. N. Carolina	"
97991	6-2-10	Mrs. Bower	11 Baton Rouge	"
98013	6-4-10	Mr. Wilcutt	St. Charles	"
98017	6-4-10	Dr. Wanstall	Revere	"
98019	6-4-10	Mrs. McClure	104 Chalfonte	"
98025	6-5-10	Mr. Wilcutt	St. Charles Hotel.	"
98036	6-6-10	Mr. Clark	Chalfonte	"
98037	6-6-10	" "	"	"
98049	6-7-10	Mrs. Myers	Berkshire	"
98050	6-7-10	" "	"	"
98095	6-11-10	Mrs. Bremond	Seaside	"
98105	6-12-10	Mrs. Geiser	118 S. New Jersey	"
98114	6-13-10	Mrs. Von Poswick	Weiners Hotel	"
98153	6-16-10	Mrs. Abrams	Beach Villa	"
98154	6-16-10	Mr. Emfeld	Weiners Hotel	"
98155	6-16-10	" "	" "	"
98156	6-16-10	" "	" "	"
98157	6-16-10	Mr. Hughes	Manheim	"
98348	6-29-10	Mrs. Bauer	11 Baton Rouge Ave.	"
98355	6-30-10	Mr. Hughes	Manheim	"
98363	6-30-10	Mrs. Seidel	Stanton Hotel	"
98369	6-30-10	Mr. Hughes	Manheim	"
98381	7-1-10	Mr. Wilcutt	St. Charles Hotel	"
98382	7-1-10	" "	" " "	"

Exhibit C-25

Prescriptions written by Dr. W. E. Jonah and compounded by H. H. Deakyne.

Number	Date	Name	Address	Paper
98384	7-1-10	Mr. Hughes	Manheim	Scrap
98399	7-2-10	Miss Johnson	627 Chalfonte	"
98427	7-4-10	Mrs. Beebe	Seaside.	"
98432	7-4-10	Mr. Wilcutt	St. Charles Hotel	"
98424	7-4-10	Mr. Marion	Boscobel	"
98445	7-5-10	Mrs. Dillingberger	Shelbourne	"
98458	7-6-10	Mrs. Dillingberger	"	"
98455	7-6-10	Mr. Nixon	Hotel Strand	"
98457	7-6-10	Mrs. Dillingberger	"	"
98468	7-6-10	" "	"	"
98471	7-6-10	Mrs. Beebe	Seaside	"
98495	7-7-10	Mr. Wuexler	1327 Boardwalk	"
98496	7-7-10	" "	" "	" 10
98511	7-8-10	Mrs. Beebe	Seaside	"
98517	7-8-10	Mrs. Watson	Seaside	"
98547	7-10-10	Mr. Houch	138 Chalfonte	"
98548	7-10-10	" "	" "	"
98733	7-16-10	Mrs. Beebe	Seaside	"
98761	7-17-10	Mrs. Stickler	Chalfonte	"
98763	7-17-10	MP Wilder	25 N. New Hampshire	"
98769	7-18-10	Mrs. Beebe	Seaside	"
98778	7-18-10	Master Sun	Chalfonte	"
98816	7-19-10	Mr. Bartlestein	Isleworth	"
98133	7-29-10	Mrs. Mansbach	Royal Palace	"
99172	7-30-10	Mrs. Mansbach	" "	"
99235	8-1-10	" "	" "	"
99252	8-2-10	" "	" "	"
99348	8-4-10	Mrs. Bruce	Galen Hall	"
99353	8-4-10	Mrs. Beebe	Seaside	"
99391	8-5-10	Mrs. Mansbach	Royal Palace	"
99616	8-13-10	Baby Bell	Chalfonte	"
99637	8-14-10	Mr. Kahn	Pierrepont	"
99638	8-14-10		434 Chalfonte	"
99782	8-19-10	Mrs. Nixon	Hotel Strand	"
99876	8-22-10	Mrs. Humphrey	Ventnor	" 20
99898	8-23-10	Mr. Stearn	108 Folsom Ave.	"
99910	8-23-10	Miss A. Joyce	139 S. N. Carolina	"
99975	8-25-10	Mrs. Longcope	Chalfonte	"
100202	9-4-10	Mrs. Bray	Seaside	"
100207	9-4-10	Mrs. Hartman	Hotel Leland	"
100231	9-5-10	E. Malchi	Waiting	"
100238	9-5-10	No name	106 Seaside	"
100248	9-6-10	Mrs. Miller	Chalfonte	"
100249	9-6-10	Mrs. Miller	"	"
100404	9-12-10	Mrs. Tull	Waiting	"
100520	9-17-10	Tradick	Revere	"
100571	9-19-10	Mrs. Beebe	Galen Hall	"
100597	9-20-10	No name	St. Charles Hotel	"
100834	10-5-10	No Name	Chalfonte	"
100869	10-8-10	Mrs. Lloyd	"	"
100870	10-8-10	Mrs. McGlensey	"	"
100873	10-8-10	Amiss	Call	"
100875	10-9-10	Mr. Nixon	Hotel Strand	"
100893	10-10-10	Mrs. Frank	213 Pacific Ave.	"
100894	10-10-10	" "	"	"
100944	10-13-10	Mrs. Long	Royal Palace	"
101002	10-17-10	Mr. Mc Glensey	Chalfonte	" 30
101017	10-18-10	Dr. Kilmer	"	"
101038	10-20-10	Mr. Gillingham	Haddon Hall	"
101062	10-21-10	Mrs. Gotzenbamer	Galen Hall	"
101093	10-24-10	Horace Alkazin	10 Aaron Apts.	"
101196	11-1-10	Mrs. A. A. Turner	Chalfonte	"
101225	11-4-10	Mrs. Moore	114 N. Penn. Ave.	"
101226	11-4-10	Mrs. Dickenson	Hotel Strand	"
101258	11-7-10	Mrs. Cunningham	Call	"
101322	11-12-10	Mrs. Kessick	Deville	"
101357	11-14-10	Mrs. Mc Mahon	c/o Dr. Jonah	"
101369	11-15-10	Mrs. Isaacs	308 Pacific Ave	"
101459	11-23-10	Miss Lulu Marvel	1616 Pacific Ave	"
101534	12-2-10	Mrs. Tauber	Haddon Hall	"
101579	12-5-10	Miss Mills	Marburg	"
101580	12-5-10	" "	"	"
101646	12-12-10	Mr. Cunningham	25 S. California	"
101654	12-12-10	Mrs. Coleman	Richmond Hotel	"
101655	12-12-10	" "	" "	"
101716	12-16-10	Mrs. Joyce	371 Marlborough	"
102172	(error)			"

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Exhibit C-25

Prescriptions written by Dr. W. E. Jonah and compounded by H. H. Deakyne.

	Number	Date	Name	Address	Paper
	95690	1-15-10	Mr. Geo. Hill	waiting	Firm Blank
	95766	1-22-10	Mrs. Horan	"	"
	95818	1-26-10	Mrs. Hoge	"	"
	95879	2-1-10	Mr. Reibenack	108 S. N. Carolina	"
	95954	2-4-10	Mr. Cocoran	9 S Brighton	"
	95955	2-4-10	" "	"	"
	06061	2-12-10	Mrs. Blessing	Chalfonte	"
	96075	2-13-10	Elizabeth Burns	17 N. Boston	"
	96303	2-27-10	Mrs. Sidebottom	Seaside	"
	96304	2-7-10	" "	"	"
	96339	3-1-10	Mrs. Montgomery	Chalfonte	"
	90396	3-3-10	Mrs. Sidebottom	Seaside	"
10	96417	3-4-10	Mr. Hackett	Waiting	"
	96556	3-12-10	Miss Maycock	Dennis	"
	96574	3-13-10	Mr. Weidman	Raymond	"
	96671	3-17-10	Mr Hoyt	Waiting	"
	96718	3-19-10	Rev. Weidman	Raymond	"
	96719	3-19-10	" "	"	"
	96721	3-19-10	Mrs. Bauer	Call	"
	96724	3-19-10	Mr. Woods	Chalfonte	"
	96768	3-20-10	Miss Myacock	Dennis	"
	96777	3-21-10	Mr. Kellogg	Chalfonte	"
	96806	3-22-10	Mr. Kellogg	"	"
	96833	3-24-10	Mrs. Brown	Shleburne	"
	96946	3-29-10	Mr. Kellogg	Chalfonte	"
	97015	4-1-10	Dr. Jonah	Waiting	"
	97096	4-5-10	Mrs. Weldon	Beachwood	"
	97135	4-8-10	Mr. H. Cook	Seaside	"
	97137	4-8-10	Mr. Berthod	Chalfonte	"
	97184	4-11-10	Thos. May	128 S. Maryland	"
	97274	4-16-10	" "	"	"
	97275	4-16-10	"	"	"
	97306	4-18-10	Mr. Kennedy	Chalfonte	"
20	97307	4-18-10	" "	"	"
	97384	4-23-10	Mr. Scott	"	"
	97521	5-1-10	Miss Evans	Waiting	"
	97552	5-3-10	Mrs. Reynolds	10 Ohio Ave.	"
	97692	5-14-10	Louis Bauer	11 Baton Rouge	"
	97750	5-18-10	Baby Abrams	Beach Villa	"
	97752	5-18-10	Mr. A. T. Findlay	Seaside	"
	97753	5-18-10	" "	"	"
	97786	5-20-10	Miss Shippen	Chelsea Hotel	"
	97849	5-23-10	Mr. Findley	Seaside	"
	97940	5-30-10	Mr. Hunt	"	"
	97941	5-30-10	" "	"	"
	97942	5-30-10	Mr. Bauer	Baton Rouge Ave	"
	97966	6-1-10	Mrs. Reibenack	108 S. N. Carolina	"
	98021	6-5-10	Miss Ashton	Westminster Hotel	"
	98080	6-9-10	Mrs. Little	Archdale	"
	98081	6-9-10	" "	"	"
	98124	6-14-10	Miss Frederick	Revere	"
	98125	6-14-10	" "	"	"
	98129	6-14-10	Mr. Emfeld	Weiners	"
	98140	6-14-10	Mr. Irvin	1614 Pacific Ave.	"
	98444	7-5-10	Harry Kasab	Conn. & Beach	Firm Paper
30	98535	7-9-10	Miss Held	Seaside	"
	98358	7-9-10	Mrs. Keeler	Royal Palace	"
	98566	7-11-10	R. Bragoner	Seaside	"
	98601	7-12-10	Mr. Irvin	1614 Pacific	"
	98603	7-12-10	Mr. Condon	Call	"
	98604	7-12-10	" "	"	"
	98605	7-12-10	" "	"	"
	98555	7-14-10	Mrs. Gottschalk	Waiting	"
	98668	7-15-10	Mrs. Beebe	Seaside	"
	98676	7-15-10	Master Hunt	Boscobel	"
	98701	7-16-10	" "	"	"
	98723	7-16-10	Mrs. Cunningham		"
	98794	7-19-10	Mrs. Krager	Call	"
	98800	7-19-10	Mrs. Gallegher	Haddon Hall	"
	98814	7-19-10	Norman Sloan	Waiting	"
	98853	7-21-10	Mrs. Dillingberger	Shelburne	"
	98870	7-21-10	Mrs. Bamberger	Windsor	"
	99010	7-25-10	Mrs. Colum	Waiting	"
	99037	7-26-10	Miss Myra Sun	Chalfonte	"
	99071	7-27-10	Mrs. Colman	Call	"
	99099	7-28-10	Mrs. Mansback	Royal Palace	"
	99145	7-29-10	Miss Reynolds	Waiting	"
	99180	7-30-10	Mrs. Geiser	Traymore	"
	99238	8-1-10	Baby Bell	Chalfonte	"
40	99247	8-1-10	Mrs. Barner	Waiting	

Exhibit C-25

Prescriptions written by Dr. W. E. Jonah and compounded by H. H. Deakyne.

Number	Date	Name	Address	Paper
99313	8-3-10	Mrs. Ramsey	Chalfonte	Firm
99314	8-3-10	" "	"	"
99371	8-5-10	Dr. Hammond	Ostend	"
99372	"	" "	"	"
99494	8-9-10	Mrs. Kahn	Pierrepont	"
99507	8-9-10	Judge Lambe	Grand Atlantic	"
99508	"	" "	" "	"
99509	"	" "	" "	"
99519	8-10-10	Miss King	Waiting	"
99553	8-11-10	J. C. Wiltshire	Wiltshire Hotel	"
99556	8-11-10	Miss Field	Call	"
99557	8-11-10	" "	"	"
99604	8-13-10	Miss Maybrower	Chalfonte	"
99608	8-13-10	Mr. Wilson	Call	" 10
99659	8-15-10	Mr. Carncross	Seaside	"
99684	8-16-10	Miss Barthelenue	Waiting	"
99740	8-18-10	Mrs. Davidson	"	"
99809	8-20-10	Miss Haugh	"	"
99905	8-23-10	Mrs. Brobson	118 N. Florida	"
99923	8-24-10	Mrs. Miller	Savoy	"
99924	8-24-10	Mrs. Nultee	"	"
99939	8-24-10	Mrs. Friedman	Presston Apts.	"
99954	8-25-10	Mrs. Miller	Savoy Hotel	"
100049	8-28-10	Mrs. Hazlett	Le Grande	"
100090	8-30-10	Dorothy Anderson	Call	"
100120	8-31-10	Miss Joyce	Waiting	"
100133	9-1-10	Mrs. Kimble	108 S. N. Carolina	"
100206	9-4-10	Baby Sussman	Waiting	"
100414	9-13-10	Mr. Nixon	Strand	"
100417	9-13-10	Mrs. A. H. Merrill	St. Chas Hotel	"
100479	9-16-10	Mrs. Reibenack	108 S. N. Carolina	"
100480	9-16-10	" "	"	"
100516	9-17-10	Capt. Cunningham	Galen Hall	"
100564	9-19-10	Mr. Mc Cormick	Call	"
100598	9-21-10	Capt. Cunningham	Galen Hall	" 20
100680	9-25-10	Mr. Nixon	Strand	"
100832	10-5-10	Mrs. Lloyd	Chalfonte	"
100835	10-5-10	Mr. Mc Glensey	Chalfonte	"
100836	10-5-10	" "	"	"
100840	10-5-10	" "	"	"
100841	10-5-10	Mrs. Lloyd	"	"
100950	10-14-10	Mrs. Booye	2702 Arctic Ave	"
100982	10-17-10	Master Turner	Seaside	"
101023	10-18-10	Alice Alkazin	Aaron Apts.	"
101155	10-29-10	Mrs. Alcacar	2315 Atlantic Ave.	"
101167	10-30-10	Mrs. Vance	Haddon Hall	"
101344	10-5-10	Miss Evans	17 N. Boston	"
101245	11-5-10	Alica Alkazin	Aaron Apts.	"
101311	11-11-10	Mrs. Vance	Haddon Hall	"
101327	11-12-10	Mr. Corchran	Waiting	"
101331	11-12-10	Mrs. Vance	Haddon Hall	"
101335	11-13-10			"
101336	11-13-10			"
101342	11-14-10	Mrs. Vance	Haddon Hall	"
101343	11-14-10	" "	"	"
101350	11-14-10	Mr. Mofley	Strand	"
101351	11-14-10	" "	"	" 30
101352	11-14-10	" "	"	"
101354	11-14-10	Miss Miller	St. Claire	"
101387	11-16-10	Mrs. Shallcorse	Galen Hall	"
101437	11-21-10			"
101458	11-23-10	Miss Haugh		"
101463	11-24-10	Mr. Cunningham	Lenox Apts.	"
101488	11-27-10	Mrs. Gray	Waiting	"
101498	11-28-10	Mr. Cunningham	Lenox Apts.	"
101545	12-2-10	Mrs. Henderson	110 S. New Hampshire	"
101567	12-3-10	T. K. Wilson	8 S. New York	"
101596	12-7-10	Miss Mills	Marburg	"
101598	12-7-10	Mrs. Coleman	Richmond	"
101678	12-14-10	Mrs. Bryan	Le Grande	"
100253	9-5-10	Mr. Pitcarn	Waiting	Personal
100250	9-6-10	Mrs. Trimble	Chalfonte	"
100255	9-7-10	Mrs. Dewhurst	Muncaster	"
100256	9-7-10	" "	"	"
100260	9-7-10	Mrs. Fretz	Waiting	"
100309	9-8-10	Baby	220 Railroad Ave.	"
100323	9-9-10	Mrs. T. R. Tradick	Revere	" 40
100351	9-10-10	" "	"	"
101414	11-18-10	Mr. Cunningham	Call	"
101415	11-18-10	Mr. Cochran	(Call) Traymore	"
101446	11-22-10	Mrs. Dickenson	10-La Clede Place.	"

Exhibit C-26

List of prescriptions written by Dr. Jonah and compounded by Dr. Deakyne similar in nature to Exhibit C-25, introduced on page 282 of testimony.

c/26 1/30/13 L

	No. of R	date	Name	Address
	104226—F	6-1-11	Mrs. Thompson	216 Seaside House
	104265—F	6-3-11	Mr. Pollock	214 Galen Hall
	104270—F	6-3-11	Mr. Nevin	514 Chalfonte
	104397—scrap	6-6-11	Miss Goddell	Called for
	104308—scrap	"	" "	" "
	104309—F	6-6-11	Mr. Nevin	514 Chalfonte
	104355—F	6-9-11	Mrs. W. A. Sullivan	Waited for
	104356—F	"	" "	" "
10	104371—F	6-10-11	Mr. Mc Allister	" "
	104373—F	6-10-11	Mr. Ullman	Pierrepont
	104419—F	6-14-11	Mr. Mc Allister	Called for
	104459—F	6-16-11	Mrs. Bryan	Le Grande Apts.
	104821—F	7-6-11	Mrs. Gottschalk	Called for
	105008—Jonah	7-14-11	Capt. Little	229 N. Morris Ave.
	105141—F	7-19-11	Mr. Spencer	Waited for
	105249—F	7-23-11	Mrs. Guggenheimer	No address
	105270—F	7-24-11	Mrs. Clarke	255 Marlborough
	105300—F	7-24-11	T. K. Wilson	8 S. New York Ave.
	105314—F	7-25-11	Mrs. Isaccs	308 Pacific Ave.
	105380—F	7-27-11	Mrs. Ongle	Chalfonte (Store Room)
	105381—F	"	" "	" "
	105471—F	7-30-11	Mr. Reibenack	108 S. N. Carolina
	105472—F	"	" "	" "
	105535—F	8-2-11	Mrs. Bamberger	Windsor Hotel
	105536—F	"	" "	" "
	105716—F	8-8-11	Miss Evans	17 N. Boston
	105572—F	8-10-11	Mrs. Henry Clarke	255 Marlborough
	106037—F	8-18-11	Mrs. Fleming	New Dunlop
	106086—F	8-20-11	" "	" "
	106091—F	8-20-11	Mr. Kendall	108 S. N. Carolina
20	106135—scrap	8-21-11	Mr. Saeger	Called for
	106164—F	8-22-11	Mrs. Margolies	118 S. New Hampshire
	106313—F	8-28-11	Mr. Arthur Hild	Called for
	106314—F	"	" "	" "
	106357—F	8-30-11	Mr. Adler	308 Pacific Ave.
	106385—scrap	9-1-11	Helen Jennie	105 S. Montpelier
	106386—scrap	"	" "	" "
	106391—F	9-1-11	Mr. K.	Waited for
	106403—F	9-2-11	Mrs. Bingham	" "
	106544—F	9-8-11	Mrs. Wasserman	219 Pacific Ave.
	106577—F	9-9-11	Mr. John Deruz	100 Seaside Hotel
	106624—F	9-11-11	Mrs. Me Diets	Waited For
	106625—F	9-11-11	Mrs. Succop	" "
	106644—Jonah	9-12-11	Mr. Darby	Seaside Hotel
	106652—Jonah	9-12-11	Mr. Mc Allister	Called for
	106700—Jonah	9-14-11	A. Rapheal	308 Pacific Ave.
	106815—Finn	9-20-11	Mrs. Frischmuth	237 St. Charles Hotel
	106816—F	"	" "	" " "
	106817—F	"	" "	" " "
	106933—scrap	9-28-11	Nellie Castigan	Waited for
	106948—F	9-30-11	Viola Dutton	3207 Pacific Ave.
30	106969—F	10-1-11	Mrs. Dutton	Waited for
	106981—scrap	10-2-11	Mrs. Houseman	" "
	107005—scrap	10-4-11	Mrs. Doremus	" "
	107028—Finn	10-6-11	Mr. Hooy	102 Galen Hall.
	107050—F	10-8-11	Mrs. Frishmuth	237 St. Charles Hotel
	107051—F	10-8-11	Mr. Hooy	# 102 Galen Hall.
	107078—scrap	10-10-11	L. S. Shirk	Waited for
	107121—F	10-14-11	Mr. Hooy	" "
	107133—scrap	10-15-11	Mrs. Frishmuth	St. Charles Hotel
	107178—scrap	10-19-11	Miss Cohen	220 S. Vermont
	107232—scrap	10-24-11	Mrs. Frishmuth	St. Charles Hotel
	107274—scrap	10-27-11	Mr. Hogg	102 Galen Hall.

Exhibit C-27

List of prescriptions written by Dr. Jonah, and compounded by Dr. Deakyne, introduced on page 282.

c/27 1/30/13 L

No. of Prescription	Date	Name	Address
108823—F	3-16-12	Rev. Duffy	Youngs Hotel
108824—F	3-16-12	Rev. Duffy	Youngs Hotel.
108856—F	3-20-12	Mr. Wallbridge	Chelsea Hotel
108918—F	3-25-12	Mrs. Scott	St. Charles Hotel
108965—F	3-29-12	Mrs. Wasserman	Hotel Traymore
109020—F	4-2-12	Mrs. Lloyd	Glaslyn Chatam
109026—F	4-2-12	Miss Evans	17 N. Boston Av.
109031—F	4-2-12	Mrs. W. J. Boyd	Hotel Strand
109086—scrap	4-6-12	Mr. Wallbridge	Hotel Chelsea
109090—scrap	4-6-12	Mr. Drum	Hotel Blenheim
109124—scrap	4-10-12	Mrs. Sayward	Ostend Hotel
109205—Finn	4-17-12	Mrs. Drum	Hotel Blenheim
109286—Finn	4-23-12	Mr. Wallbridge.	Hotel Chelsea
109318—Finn	4-25-12	Mrs. Fanning	Iroqois Hotel
109520—scrap	5-11-12	Mrs. Knoblauch	3305 Pacific Ave
109548—Finn	5-13-12	Mr. Sloan	Called for.
109563—Finn	5-14-12	Mr. Bryan	Le Grande Apts.
109566—scrap	5-14-12	Elsie Knoblauch	3305 Pacific Ave
109579—scrap	5-15-12	Mr. Knoblauch	3305 " "
109640—Finn	5-20-12	Miss Cohen	220 S. Vermont
109797—Finn	6-2-12	Mr. Scargle	Called for
109967—Finn	6-15-12	T. H. Starke	Haddon Hall.
110129—F	6-25-12	Mrs. Bofird	Astoria Apts.
110130—F	6-25-12	Miss Nacomb	Waited.
110361—F	7-7-12	Mr. Reibenack	108 S. N. Carolina
110415—F	7-10-12	Mrs. Gottchalk	Waited
110623—F	7-18-12	Mrs. Katzie	Rudolph Hotel
110624—F	7-18-12	" "	" "
110625—F	7-18-12	" "	" "
110746—F	7-22-12	Sarah Smoot	Hotel Dennis
110832—F	7-25-12	Master Simon	Called for
110880—F	7-27-12	Miss Parke	Mc Crorey Apts.
110972—F	7-31-12	Mrs. Brown	108 S. Morris
110986—F	7-31-12	Mr. Thorn	Waited
111053—F	8-3-12	Miss Weiskoff	New Marion
111147—F	8-6-12	Mrs. Klinorklinger	New Marion
111263—F	8-10-12	Miss Walton	Hotel Brighton
111323—F	8-12-12	Mrs. Arnold	Weiners Hotel
111372—F	8-14-12	Mr. Sloan	Called for
111437—F	8-16-12	Lawrence Weaver	Royal Palace
111449—F	8-17-12	Master Simon	Manheim Apts.
111450—F	8-17-12	" "	" "
111534—scrap	8-20-12	Mr. Myers	Waited
111617—F	8-23-12	Mrs. Caulk	Called for
111629—Jonah	8-23-12	Mrs. Walton	Hotel Brighton
111663—Jonah	8-25-12	Mrs. Thorn	Called for
111716—Jonah	8-27-12	Mr. Brolasky	Haddon Hall
111738—Jonah	8-28-12	Mrs. Weaver	Waited
111772—Finn	8-29-12	Miss Kern	Called for
111822—Jonah	8-31-12	Mr. Strause	New Marion
111824—Jonah	8-31-12	Mr. H. C. Cook	Waited.
111922—F	9-4-12	Miss Fisher	Hotel Chelsea
111997—Jonah	9-8-12	Miss Walton	Hotel Brighton
112023—scrap	9-9-12	Mrs. Weaver	Royal Palace
112026—Jonah	9-9-12	Miss Walton	Hotel Brighton
112027—Jonah	9-9-12	Miss Taylor	Hotel Chelsea
112046—Jonah	9-10-12	Miss Walton	Hotel Brighton
112056—scrap	9-11-12	Miss duPont	10 Emerson Ave.
112057—scrap	9-11-12	" "	" "
112058—scrap	9-11-12	" "	" "
112101—Jonah	9-13-12	Miss Walton	Hotel Brighton
112117—Jonah	9-14-12	T. K. Wilson	8 S. New York Av
112188—scrap	9-18-12	Mr. Grove	Called for
112219—scrap	9-20-12	Miss Walton	Hotel Brighton
112269—Jonah	9-23-12	Mr. Detrich	Waited
112280—Jonah	9-24-12	Miss Stevens	Hotel Brighton
112290—scrap	9-4-12	Miss Walton	Hotel Brighton
112380—Jonah	10-1-12	Mrs. Stevens	Hotel Brighton
112382—Jonah	10-1-12	Mr. Riley	Waited
112383—Jonah	10-1-12	" "	"

Exhibit C-28

(*Marked C-1—2/7/13—adjourned date of trial*)

Call book of Dr. Jonah, which we have been unable to obtain, the nature of which, however, is disclosed in the testimony page 317.

Exhibit C-29

(*Marked C-2—2/7/13*)

Call book of Dr. Durand, which we have been unable to obtain, the nature of which, however, is disclosed in the testimony, page 318.

Exhibit D-1

2/7/13

Dr. Jonah's book, the nature of which is disclosed in the testimony, page 337.

Exhibit D-2 for Identification

See p. 172 of testimony.

Exhibit D-2 for Identification

Atlantic City, N. J. ---------- *191*---- 10

M----------

DEBTOR TO

Philip Marvel, M.D.
W. E. Jonah, M.D.
J. J. Durand, M.D.
1616 Pacific Avenue

20

For Professional Services

To avoid errors, make all checks payable to Philip Marvel. Statements rendered monthly.

$----------

Received Payment

Opinion

IN CHANCERY OF NEW JERSEY

Between
PHILIP MARVEL,
Compl't.,
and
WILLIAM E. JONAH,
Def't.

Final hearing on bill for accounting, dissolution of partnership, and injunction.

The present controversy is between two physicians who are partners in business. Complainant seeks an accounting, a dissolution of the partnership, and an injunction restraining defendant from practicing his profession in Atlantic City for a period of three years from the date of the decree of dissolution of the partnership.

Defendant has in his answer fully accounted up to the date of the preparation of the answer, and the accuracy of the accounts are unquestioned. Defendant in his answer declares that by reason of the strained relations now existing between him and the complainant the partnership should be dissolved; but denies responsibility for these strained relations and denies the right of complainant to an injunction.

The present partnership was formed under a written agreement bearing date January 10th, 1910. By that agreement complainant, defendant and another physician became co-partners in the general practice of medicine at Atlantic City for a period of eight years. The agreement is of great length and will not be here quoted in full.

By the agreement complainant, as senior partner, is given the major part of the net income of

the business, and the junior partners are subjected to a great number and variety of detailed restrictions relating to their conduct and the business methods to be pursued. Among the provisions relating to business methods are the follows:

"It is further agreed that each party to this agreement shall render to the bookkeeper, or the person employed for that purpose, a daily account of the work done or visits made that day by him, together with all moneys paid to him on account of said work done or visits made; and, it is also understood that, in order that the bookkeeper may keep an accurate and intelligent account, this provision for a daily statement must be more or less strictly adhered to.

"Any misappropriation of the receipts, or refusal to account for the work done or moneys received daily, shall be considered a violation of this agreement."

"All professional cards, letter heads, bill heads and other stationery relating to the practice generally, shall be furnished by the said Dr. Philip Marvel, and shall be used exclusively by the parties to this agreement."

At the end of the agreement the following provision is embodied touching the consequences of a violation by the junior partners of any of the covenants of the agreement:

"If at any time during the term of this agreement either the said Dr. Jonah or the said Dr. Durand, parties of the second part, shall fail to faithfully perform the covenants of this agreement, or shall fail to do their work conscientiously and dili-

gently, or shall fail at any time to protect the interests of the parties to this agreement, and the interest and reputation of the said Dr. Philip Marvel, then, and in that event, the said Dr. Philip Marvel shall have the right to cancel and annul this agreement and oust the said party or parties so offending, from this association.

"As a further consideration, moving to Dr. Philip Marvel, and as part of the consideration causing him to enter into this agreement, and in consideration of the apportionment and division of the net income hereinbefore mentioned, it is further understood and agreed that if at any time during the term of this agreement, either the said Dr. Jonah or the said Dr. Durand, or both, may desire to withdraw from this association, for any reason whatsoever, and shall actually withdraw therefrom, or if at any time during the term of this agreement either the said Dr. Jonah or the said Dr. Durand, or both, may commit a breach or violate any of the covenants of this agreement in such manner as to justify the said Dr. Philip Marvel in requesting the party or parties so offending to withdraw from this association, or to cause the said Dr. Philp Marvel to cancel and annul this agreement, so far as the party or parties so offending are concerned, then in either event such party or parties so voluntarily withdrawing from this association, or ousted from this association, for breach or violation of its covenants, shall not be permitted to practice medicine in the City of Atlantic City, aforesaid, for a period of three years

next ensuing such voluntary withdrawal or ouster. And the said Dr. Jonah and the said Dr. Durand doth hereby covenant, promise and agree that in case of either or both of them withdrawing for any reason whosoever, from this association, during the term of this agreement, or in the event of either or both of them being requested by the said Dr. Philip Marvel to withdraw from this association or being ousted therefrom, on account of a breach of any of the covenants of this agreement, that they, the said Dr. Jonah and the said Dr. Durand will not, either or individually or jointly, or as an associate with any other physician, practice medicine or surgery in the City of Atlantic City aforesaid for a period of three years next ensuing such withdrawal or dissolution of this association or ouster of either or both of the parties of the second part."

Complainant now claims that defendant has failed to render accounts to the bookkeeper of the partnership in accordance with the requirements of two of the provisions above quoted and has also violated the covenant third above quoted in using stationery not furnished by complainant. For these alleged violations of the partnership agreement by defendant, complainant by his bill asserts his option named in the penalty clause of the agreement, above quoted, and seeks a decree ousting defendant from the partnership and prohibiting him from pursuing his profession in Atlantic City for the three years' period specified in the agreement.

Bourgeois & Coulomb, for complainant.

Allen B. Endicott and Robert H. McCarter, for defendant.

Opinion

LEAMING, V. C.:

Defendant concedes that he has not rendered to the bookeeper reports of his work in accordance with the requirements of the provisions of the partnership agreement. It is not claimed that he did not fully comply with these requirements of the agreement, and also with the office rules prescribed by complainant, so far as what is known as "office practice" is concerned. In prescribing for patients during office hours defendant appears to have promptly supplied to the bookkeeper all necessary data of his work thus performed. But for what is called "outside work" defendant during three prolonged periods failed to promptly supply the bookkeeper with a record of his work. No dishonesty or even dishonest purpose upon the part of defendant is claimed or suggested and no loss of money appears to have been occasioned by defendant's negligence, in reporting the details of his work during the period referred to. But his business methods during the three periods referred to were clearly contrary to the terms of the partnership agreement. Defendant's excuse for his delinquency in the respect referred to is to the effect that he would become so engrossed in his professional work that he would not find time to make up his accounts for the bookkeeper, and once falling behind the task became greater and would not be finally performed until the necessity of settlement required it. The evidence disclosed that defendant made regular reports of his work to the bookkeeper until September 27, 1910; from that date until the end of that year he failed to make reports of his outside work. At the end of the year he rendered his accounts and a partnership settlement was made and defendant began the new year with a determination to make

prompt reports; he succeeded in his efforts until May 6th, 1911, when he again fell behind in his reports until October 31, 1911, at which time, after a settlement, he went to Europe to restore his health. From January 7, 1912, until March 16, 1912, defendant promptly reported his work; from the latter date until the bill was filed (September 7, 1912) he failed to make reports. His accounts during that period are fully set forth in his answer. Complainant has repeatedly urged defendant to make prompt reports and defendant has promised to do so, and has, I am convinced, tried to do so. His failure to do so has arisen from the cause already stated, supplemented by the fact that he is temperamentally unable to comprehend the value or necessity of strict business methods or to pursue them.

From the foregoing it will be observed that defendant has clearly violated a covenant of the partnership agreement and that the penalty clause of that agreement in terms bestows upon complainant the right to oust defendant for a failure "to faithfully perform the covenants of this agreement," and also provides that in such case defendant shall not pursue the practice of his profession in Atlantic City for a period of three years.

As the prayer for an accounting and dissolution of the partnership is not resisted, the single question now presented is whether this Court should in this case exercise is prohibitory power in behalf of complainant to the end that the covenant of defendant to refrain from the pursuit of his profession in Atlantic City for the period stated may be, in effect, specifically enforced against him.

It is contended in behalf of defendant that the covenant to refrain from practice is not supported

by an adequate consideration. All authorities appear to agree that a valuable consideration must be established to support a covenant of this nature, even though the covenant be under seal; but the weight of authority is clearly to the effect that if a valuable consideration is found to exist the adequacy of that consideration will not be inquired into. The authorities to that effect are collected by Mr. Freeman in his note to Angier vs. Weber, 92 Am. Dec., at page 754. The ajudicated cases involving covenants of this nature have almost uniformly arisen in connection with the sale of a business, and it has been found impracticable to inquire as to the extent to which the purchase price entered into the covenant of the vendor not to engage in an opposition business. In the present case no sale occurred. The evidence discloses that when the partnership agreement here in question was made defendant was already a partner of complainant. The present agreement continued their partnership relation under new terms and also admitted to the partnership an additional partner. So far as the evidence discloses it is indeed difficult to discern wherein the new partnership agreement can be said to have been beneficial to defendant, but considered as an engagement involving the partnership relation of the three partners for a future period of time it is, I think, impossible to here determine that the benefits and disadvantages flowing from its mutual covenants were inadequate to support the engagem nt of defendant to refrain from practice at the place and during the time specified at the termination of the partnership.

What appears to be a more powerful objection to the present enforcement of this covenant of defendant arises from the views expressed by

Vice Chancellor Van Fleet in Mandeville vs. Harman, 42 N. J. Eq. (15 Stew.), 185. It is there pointed out that covenants in restraint of trade are presumptively void, and that it is only by showing that the restraint is good that the presumption will be overcome; to overcome the presumption of invalidity the restraint must be shown to be reasonable, and the test of reasonableness is that it imposes no shackle upon one party that is not beneficial to the other; restraint unlimited as to time can find no justification in reasonableness except upon the theory that it is necessary to protect the good will of a business; there is no good will in the business of a physician and hence no interest reasonably calling for protection beyond the period during which the physician covenanted pursues his business. His conclusion is that absence of the element of good will in the business of a physician renders it unreasonable and improper for a physician to exact from an employee a covenant against practice for a period longer than the time the covenantee shall pursue his profession. While the relief sought in that case was a preliminary injunction and was denied because of the uncertainty of the right, the views above briefly summarized are clearly defined as the views of that learned jurist. The test of reasonableness stated in Mandeville vs. Harman, that is, that the restraint imposed upon one party must not be larger than is reasonably necessary for the protection of the other, is a test which has been definitely adopted by our Court of last resort, and is not open to question. Brewer vs. Marshall, 19 N. J. Eq. (4 C. E. Gr.), 537, 547; Trenton Potteries Co. vs. Oliphant, 57 N. J. Eq. (13 Dick.), 507.

The covenant here sought to be enforced is between physicians and fixes three years as an arbi-

trary period of restraint, irrespective of whether the covenantee lives or abandons his practice during that period. If the views stated in Mandeville vs. Harman to the effect that no good will exists in connection with the business of a physician and that a restraint can be regarded as reasonable only when limited to the needs of the covenantee, the covenant here under consideration would seem to rest upon an improper basis. I should, however, have great hesitancy in determining that a covenant between physicians could be properly classed as void for unreasonableness as to time when limited in time to three years. But I think it here unnecessary to so determine, for I find it impossible to escape the conclusion, under all the circumstances here present, that the remedy which this Court is now asked to enforce against defendant is oppressive and contrary to the real justice of this case.

In granting relief by injunction and especially in a case of this nature where the relief sought is in effect the specific performance of a contract, the rules laid down in Sternberg vs. O'Brien, 48 N. J. Eq. (3 Dick.), 370, 375, can not be too carefully adhered to:

> "No matter when the writ is applied for, to warrant its issue, in a case like the one now under consideration, three things must be clearly shown—first, that a valid contract has been violated in a material point; second, that such violation has resulted, or will result, in serious injury; and, third, that the remedy at law is plainly inadequate to do full and complete justice. A Court of Equity, in exercising its prohibitory power, must always proceed with the utmost caution and see to it that its power

is not so exercised as to do more harm than good. The power exists to prevent irreparable wrong, and should not, therefore, be used, in any case, when its use will produce the very result it was designed to prevent. The rule is fundamental that an injunction should never be granted when it will operate oppressively or contrary to the real justice of the case, or where it is not the fit and appropriate method of redress under all the circumstances of the case, or when the benefit it will do the complainant is slight in comparison with the injury it will do the defendant. The great office of the writ is to protect and preserve, not to destroy."

The covenant of defendant is that if he "shall fail to faithfully perform the covenants of this agreement" complainant may terminate the partnership and in such event defendant will not pursue his profession in Atlantic City during the specified period. As already stated, the failure of defendant to render to the bookkeeper of the partnership prompt accounts of his work was not by reason of dishonest purposes or acts, but was due to the pressure of his professional work and his failure to appreciate the importance of the strict business methods defined by the partnership agreement. Defendant was, unquestionably, wholly unconscious of the fact that his delinquencies in accounting might be made the basis of a dissolution and the consequences here urged. From the viewpoint of complainant, with his devotion to strict business methods, defendant's failures to account were indeed annoying; but no pecuniary loss resulted. Defendant was, from time to time, urged by complainant to render to

the bookkeeper regular reports of his work, and after the personal relations between complainant and defendant had become severely strained a letter from complainant to defendant was not lacking in emphasis, but no specific warning was given that the consequences here sought to be visited on defendant might result from his conduct. If defendant ever understood the terms of his contract—and this is indeed doubtful—I am fully convinced that until the bill was filed he was in ignorance of the provisions here sought to be enforced; his former defaults of the same nature had been overlooked by complainant. It is urged by complainant that the remedy now sought flows by contract from the right of dissolution. That is undoubtedly the language of the contract; but in administering this form of relief a Court of Equity is required to give consideration to a broader view than the naked terms of the agreement, and it thus becomes impossible to ignore the circumstance that the moving and fundamental cause for the relief here sought is the failure of defendant to render his accounts to the bookkeeper in the manner specified in the agreement, and that this fault, unaccompanied by pecuniary loss or improper motives and arising chiefly by reason of asorbing devotion to another and more important department of defendant's partnership duties, can not justly be made the basis of a form of relief in a Court of Equity which will be fraught with consequences so serious to both defendant and the public as the remedy here urged. In considering this remedy as unjust and unnecessarily oppressive under the circumstances of this case, it must be borne in mind that it is more than doubtful whether the pursuit by defendant of his profes-

sion during the period named will result in serious loss to complainant. That patients will probably be treated by defendant which might otherwise seek the services of complainant may be conceded; but complainant's practice is, in magnitude, far beyond his ability to cope with it without the employment of the services of others, while the consequences which will flow from denying to defendant the privilege to pursue his practice in the only field of his acquaintance are of the utmost seriousness. The force of this situation in a case of this nature is stated in Sternberg vs. O'Brien (*supra*), at page 376, as follows:

> "When, therefore, a Court is asked either to deprive a person of this right, or to abridge it, it is its duty, before its acts, to consider with the utmost care whether, if it does what it is asked to do, it will not, on a careful comparison of consequences, do more injustice than justice."

It is not to be inferred from what is here said that relief of the nature here sought is not within the field of equity jurisdiction in cases of this general nature; on the contrary such relief is not infrequently granted. Nor is it to be here assumed that such damages as complainant may suffer by defendant's breach of contract are not recoverable in an action of law. The denial of relief by injunction herein is wholly based upon the fact that under all the circumstances of this case the relief sought is unjust and unnecessarily oppressive.

A claim is also made by complainant that defendant has violated that part of the partnership agreement which requires the exclusive use of stationery furnished by complainant. That claim is based upon the fact that defendant has not uni-

formly used prescription blanks so supplied, but has, at times, used blank paper and at other times prescription blanks supplied by druggists on which are printed only the names of defendant I have not been able to regard this alleged breach of the agreement as material.

I will advise a decree of dissolution of the partnership, and direct an accounting for such work as have been performed pending the litigation, and deny the prayer for an injunction.

Decree

IN CHANCERY OF NEW JERSEY

Between
PHILIP I. MARVEL,
Complainant,
and
WILLIAM E. JONAH,
Defendant.

This cause coming on to be heard at the present term of this Court in the presence of Bourgeois & Coulomb, of Counsel with complainant, and Endicott & Endicott and Robert H. McCarter, of Counsel with defendant, at the Chancery Chambers in the City of Camden, and the pleadings and proofs having been offered and read, and the argument of the respective counsel having been heard and considered, and the Court having duly considered of the pleadings, proofs and arguments, and it appearing to the Court that the complainant is entitled to a dissolution of the part-

nership and an accounting as prayed in said bill, but is not entitled to a writ of injunction as therein prayed;

IT IS on this day of April, one thousand nine hundred and thirteen, by Edwin R. Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED, and the said Chancellor, by virtue of the power and authority of this Court, doth hereby ORDER, ADJUDGE AND DECREE that the partnership heretofore existing between complainant and defendant be and is hereby dissolved.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said matter be referred to one of the Special Masters of this Court, to take a mutual accounting of all dealings and transactions between complainant and defendant as partners in said bill mentioned, from and after the sixteenth day of March, nineteen hundred and twelve, for the better clearing of which account the parties are to produce before said Master, upon oath or affirmation if required, and leave with him all books and writings in their custody or power relating thereto, and are to be examined by said Master as said Master shall direct, and said Master shall also have power to examine other witnesses in relation to said account, and in taking said account he is to make to both parties all just allowances and is to report what upon such accounting appears to be due from each party to the other, and also the balance which upon said accounting shall appear to be due either party to the other, and the said Master is to make his report touching the matters hereby referred to him with all convenient speed, and if in taking the said account any special matter shall arise, he is at liberty to state the same to the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the complainant's prayer for a writ of injunction restraining defendant from practicing medicine in Atlantic City for a period of three years from the date of such dissolution be and is hereby denied.

E. R. WALKER,
C.

Respectfully advised,
E. B. Leaming,
V. C.

Notice of Appeal

IN CHANCERY OF NEW JERSEY

Between
PHILIP I. MARVEL,
Complainant,
and
WILLIAM E. JONAH,
Defendant.

The complainant hereby appeals from so much of the final decree made in the above stated cause as adjudges and decrees that "complainant's prayer for writ of injunction restraining defendant from practicing medicine in Atlantic City for a period of three years from the date of such dissolution, be and is hereby denied," to the Court of Errors and Appeals in the last resort in all causes.

Dated, April 25, 1913.

BOURGEOIS & COULOMB,
Solicitors for and of Counsel
with Complainant.

I conceive there is good cause for appeal in the above stated cause.

GEO. A. BOURGEOIS,
Of Counsel with Complainant

Due and legal service of a copy of this notice of appeal acknowledged this 25th day of April, 1913.

ENDICOTT & ENDICOTT,
Solrs. of Deft.

Petition of Appeal

NEW JERSEY COURT OF ERRORS AND APPEALS

Between
PHILIP I. MARVEL,
Complainant-Appellant,
and
WILLIAM E. JONAH,
Defendant-Respondent.

To the Honorable, the Court of Errors and Appeals, in the last resort in all causes:

The petition of Philip I. Marvel, the appellant, in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by so much of a final decree made in the Court of Chancery by his Honor, Edwin R. Walker, Chancellor of the State of New Jersey, bearing date the twenty-fourth day of April, nineteen hundred and

thirteen, wherein the said Philip I. Marvel was complainant and the said William E. Jonah was defendant, in this respect, to wit, that the said decree, after adjudging that there should be a dissolution of the partnership theretofore existing between the said Philip I. Marvel and the said William E. Jonah, adjudges that complainant's prayer for a writ of injunction restraining defendant from practicing medicine in Atlantic City for a period of three years from the date of such dissolution be and is denied, and your petitioner humbly appeals from that part of the decree of said Chancellor which decrees that your petitioner is not entitled to a writ of injunction restraining defendant as aforesaid upon the ground that the same is erroneous, for that the decree should have adjudged that complainant's prayer for a writ of injunction restraining defendant from practicing medicine in Atlantic City for a period of three years should be granted and that the State's writ of injunction should issue therefor.

Your petitioner therefore prays that said portion of said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

BOURGEOIS & COULOMB,
Solicitors for and of Counsel with Appellant.

Due and legal service of a copy of this petition of appeal acknowledged this 25th day of April, 1913.

ENDICOTT & ENDICOTT,
Solrs. of Respondent.

Formal Answer

NEW JERSEY COURT OF ERRORS AND APPEALS

Between PHILIP I. MARVEL, Complainant-Appellant, and WILLIAM E. JONAH, Defendant-Respondent.	On Appeal.

The answer of the above named respondent to the petition of appeal of the above named appellant:

This respondent not acknowledging all or any of the matters which in said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the twenty-fourth day of April, last past, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity, and prays that the same may be affirmed, with costs to be adjudged to this respondent.

ENDICOTT & ENDICOTT,
Solicitors of Respondent and
Of Counsel with Respondent.