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**Bill of Complaint.**

**In Chancery of New Jersey.**

Filed Dec. 19, 1929.

*To the Honorable Edwin Robert Walker,* 10  
*Chancellor of the State of New Jersey.*

Complainant George E. Bell of the Town of Montclair, County of Essex, and State of New Jersey, respectfully shows that:

1. On or about the 17th day of April, 1928, complainant agreed with one James Perry of the Town of Montclair, New Jersey, to become a partner with him in the business of conducting a bowling alley and billiard parlor. 20

2. At said time a written agreement dated April 17, 1928 providing for the said partnership between complainant and said Perry was entered into.

3. The following is a true copy of said agreement of partnership:

“Articles of Agreement, Made the Seventeenth day of April in the year of Our Lord One Thousand Nine Hundred and Twenty-eight George E. Bell of the Town of Montclair, in the County of Essex and State of New Jersey And James Perry of the Town of Montclair, in the County of Essex and State of New Jersey. 30

Witnesseth: That the parties above named have agreed to become copartners in business, and by these presents do agree to become copartners to- 40

*Bill of Complaint.*

gether under and by the name or firm of Fourth  
 Ward Bowling Alley and Billiard Parlor in the  
 business of Bowling and Billiards, their copart-  
 nership to commence on the seventeenth day of  
 April, in the year of Our Lord One Thousand Nine  
 Hundred and Twenty-eight and to continue indef-  
 10 nitely, and to that end and purpose the said  
 George E. Bell and James Perry contribute the  
 sum of \$225.00 each to be used and employed in  
 common between them, for the support and man-  
 agement of the said business, to their mutual ben-  
 efit and advantage. And it is agreed by and be-  
 tween the parties to these presents, that at all  
 times during the continuance of their copartner-  
 ship they and each of them will give their attend-  
 20 ance, and do their and each of their best endeav-  
 ors, and to the utmost of their skill and power  
 exert themselves, for their joint interest, profit,  
 benefit and advantage, and truly employ, buy, sell  
 and merchandise with their joint stock, and the  
 increase thereof, in the business aforesaid. And  
 Also, that they shall and will at all times during  
 the said copartnership, bear, pay and discharge  
 equally between them, all rents and other expenses  
 that may be required for the support and manage-  
 30 ment of the said business; and that all gains, profit  
 and increase, that shall come, grow, or arise from  
 or by means of their said business, shall be divided  
 between them, and all loss that shall happen to  
 their said joint business by ill commodities, bad  
 debts or otherwise, shall be borne and paid between  
 them.

And it is agreed by and between the said parties,  
 that there shall be had and kept at all times dur-  
 40 ing the continuance of their copartnership, per-  
 fect, just and true books of account wherein each

*Bill of Complaint.*

of the said copartners shall enter and set down, as well all money by them or either of them received, paid, laid out and expended in and about the said business, as also all goods, wares, commodities and merchandise, by them or either of them, bought or sold, by reason or on account of the said business, and all other matters and things whatsoever, to the said business and the management thereof if any wise belonging; which said books shall be used in common between the said copartners, so that either of them may have access thereto, without any interruption or hindrance of the other. 10

And Also, the said copartners, once in two weeks or oftener if necessary, shall make, yield and render, each to the other, a true, just and perfect inventory and account of all profits and increase by them, or either of them, made and of all losses by them or either of them, sustained; and also all payments, receipts, disbursements, and all other things by them made, received, disbursed, acted, done or suffered in this said copartnership and business; and the same account so made, shall and will clear, adjust, pay and deliver, each to the other, at the time, their just share of the profits so made as aforesaid. 20 30

And the said parties hereby mutually covenant and agree, to and with each other, that during the continuance of the said copartnership, neither of them shall nor will endorse any note, or otherwise become surety for any person or persons whomsoever, without the consent of the other of the said copartners. And at the end or other sooner determination of their copartnership, the said copartners each to the other, shall and will make a true, just and final account of all things relating 40

*Bill of Complaint.*

to their said business, and in all things truly adjust the same; and all and every the stock and stocks, as well as the gains and increase thereof, which shall appear to be remaining either in money, goods, wares, fixtures, debts or otherwise, shall be divided between them.

10 In Witness Whereof, the said parties hereto have hereunto set their hands and seals the day and year first above written.

GEO. E. BELL (L.S.)

JAMES E. PERRY (L.S.)

Signed, Sealed and Delivered  
in the Presence of

20 4. Said partnership was actually entered into by complainant and said Perry, at 176-180 Bloomfield Avenue, Montclair, N. J., and four pocket billiard tables, billiard balls, and other accompanying property, which was purchased by said partnership for said business, was placed in said premises and still remains there, and a lease was entered into by said partnership at said premises.

30 5. Moneys were paid to said partnership by complainant pursuant to said agreement.

6. Complainant has performed, or been ready, able and willing to perform, and tendered performance of all things on his part to be performed under said articles of agreement.

7. Complainant tenders himself willing to do all things that may be equitably required of him herein.

*Bill of Complaint.*

8. Said James Perry has since the beginning of said partnership received all the money paid to said business and partnership, but has failed to keep any or proper books of account.

9. Though complainant has often demanded an account as provided for by the terms of aforesaid agreement from said James Perry, said James Perry has always refused to render him such account. 10

10. Said James Perry has not opened or maintained any partnership bank account.

11. Said James Perry has deposited all or part of the moneys paid to said business and partnership to his personal account. 20

12. Said James Perry has excluded complainant from said business entirely.

13. Complainant has demanded the right to be allowed to be personally or to have a representative on the premises at reasonable times.

14. Said James Perry has refused to allow complainant to be personally, or to have a representative on the premises at any time. 30

15. Said James Perry has in divers other respects acted improperly, unlawfully, wrongfully, and fraudulently as to complainant in the management of said partnership property and business, with intent to wrongfully and fraudulently exclude complainant from same and convert same to his own use. 40

*Bill of Complaint.*

Complainant is without adequate remedy in the courts of law and therefore prays:

1. That said James Perry, who is the defendant to this suit, may answer this bill of complaint, and each statement therein made.
- 10   2. That said partnership may be dissolved, and that an inventory and account be taken of, all, and every of said partnership dealings, transactions, and property from the time of the commencement thereof, and of the moneys received and paid by said defendant.
- 20   3. That the said defendant may be decreed to pay to complainant what upon the taking of the said account appears to be due complainant, who hereby tenders himself ready to pay to said defendant what, if anything, there shall appear upon the taking of said account to be due from him to said defendant.
- 30   4. That a temporary injunction be issued restraining defendant from selling or disposing of any of the partnership property or assets, except in the ordinary course of said business, and from mortgaging or otherwise encumbering said property or assets.
- 40   5. That a receiver may be appointed with the usual powers to collect, take into possession, and receive all the property and assets of said partnership, and wind up said partnership and business, and that complainant may receive so much of the surplus after satisfying and paying just claims and demands against said partnership as may be according to equity and good conscience.

*Bill of Complaint.*

6. That complainant may have such other and further relief as the nature of the case may require, and as to the court may seem meet.

7. That a writ of subpoena may issue commanding aforesaid defendant to answer this bill of complainant and abide by such decree as this court may make in the premises. 10

SYLVAN J. RAUCH,  
Solicitor for and of Counsel  
with Complainant.

---

State of New Jersey, )  
County of Essex,     )

George E. Bell being duly sworn according to law, upon his oath deposes and says: 20

I am complainant in the foregoing bill of complaint named, have read said bill of complaint and know the contents thereof. Same is true to the best of my knowledge, information, and belief.

Particularly is it true that on or about the 17th day of April, 1928 I agreed with one James Perry of the Town of Montclair, New Jersey, to become a partner with him in the business of conducting a bowling alley and billiard parlor. At said time a written agreement dated April 17, 1928 providing for the said partnership between myself and said Perry was entered into, a copy of which is contained in the bill of complaint. Said partnership was actually entered into by myself and said Perry. Moneys were paid to said partnership by me pursuant to said agreement. I have performed all things on my part to be performed under said articles of agreement. I have been at all times, 30 40

*Affidavit of George E. Bell.*

and am ready and willing to perform all things on my part to be performed under said articles of agreement, subject to the charges and prayers of the annexed bill, and tender myself willing to do all things that may be equitably required of me in the premises. Said James Perry has since the beginning of said partnership received all the money paid to said business and partnership, but has failed to keep any or proper books of account. Though I have often demanded an account as provided for by the terms of said agreement, from said James Perry, said James Perry has always refused to render me such account. Said James Perry has deposited moneys paid to said business and partnership to his personal account, and has not opened or maintained any partnership account. Said James Perry has excluded me from said business entirely, and has refused to allow me to be personally, or to have a representative on the premises at any time, though I have demanded such right.

GEO. E. BELL.

Sworn to and subscribed before me  
this 17th day of December, 1929.

Zeler V. Oumbus,  
Notary Public  
of New Jersey.

**Order to Show Cause.**

Filed Dec. 19, 1929.

IN CHANCERY OF NEW JERSEY.

Between

GEORGE E. BELL,  
Complainant,

and

JAMES E. PERRY,  
Defendant.

On Bill, etc.

Order to  
Show Cause.

10

Upon reading and filing the duly verified bill  
of complaint presented by complainant herein, and  
the court having considered the matter, and good  
cause appearing for the making of this order, 20

It is, on this 19th day of December, 1929, on  
motion of Sylvan J. Rauch, solicitor for and of  
counsel with complainant, Ordered that defend-  
ant James E. Perry show cause on Tuesday, the  
24th day of December, 1929 at ten o'clock in the  
forenoon, or as soon thereafter as counsel can be  
heard, before the Chancellor, at the Chancery  
Chambers, Industrial Office Building, 1060 Broad  
Street, Newark, N. J., why a receiver should not  
be appointed with such powers as to the court  
shall seem proper, why a temporary injunction  
should not be issued restraining defendant from  
selling or disposing of any of the partnership prop-  
erty or assets except in the ordinary course of said  
business, from mortgaging, or otherwise encum-  
bering said property or assets, and from execut-  
ing any promissory notes, acceptances, bills of ex- 30  
40

*Order to Show Cause.*

change, or other instruments of indebtedness in the name of said partnership, and

10 The said James E. Perry is required, on or before the return of this order to show cause, to wit, the 24th day of December, 1929 to answer the bill filed herein upon the merits, or make a motion addressed to the pleadings, and in case of their failure so to do, then a decree pro confesso may be taken against him and the cause proceed, and such order and decree may be made as to the Chancellor shall seem proper; and if a motion is made addressed to the pleadings the court, upon the return day of the order, may proceed forthwith to dispose of such motion and may direct the said respondent James E. Perry to file an answer upon the merits within such time as the court may, by  
20 its order, direct, and in case of the failure of the said respondent James E. Perry to file an answer to the merits within such time as the court may by order prescribe, a decree pro confesso may be entered against him and the cause may proceed, and such decree may be made as to the Chancellor shall seem equitable and just; and in case an answer be filed upon the merits on or before the return day hereof, or on or before such other day as  
30 may be fixed by the court, if a motion be made addressed to the pleadings, then the court may proceed forthwith, either upon the return day hereof or upon such other day as the court may fix, to a final hearing upon the merits, and it is

Further Ordered that a true copy of this order, which may be certified by complainant's solicitor, be served upon the defendant James E. Perry personally, or by leaving same at his dwelling house

*Order to Show Cause.*

or usual place of abode within one day of the date  
herewith.

E. R. WALKER,  
C.

Respectfully advised,

JOHN H. BACKES,

V. C.

10

I certify this to be a true copy of original order  
on file.

SYLVAN J. RAUCH,  
Solicitor of Complainant.

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**Stipulation.**

IN CHANCERY OF NEW JERSEY.

|    |  |   |                               |
|----|--|---|-------------------------------|
| 10 | Between<br>GEORGE E. BELL,<br>Complainant,<br>and<br>JAMES E. PERRY,<br>Defendant. | } | On Bill, etc.<br>Stipulation. |
|----|--|---|-------------------------------|

It is hereby on this 24th day of December, 1929 stipulated, understood and agreed that:

20     1. Hearing on order to show cause made in above matter December 19, 1929, be, and hereby is, continued to January 7, 1930.

2. An account as prayed for in bill of complaint is to be made by Mr. Richard Janey, his services therein to be charged to the partnership, the account to be submitted to complainant, but not to be binding on complainant.

30     3. Until the matter is settled or adjudicated, defendant agrees that status quo is to be maintained, partnership assets are not to be disposed of except in ordinary course of business, not to be encumbered, and no instruments of indebtedness are to be executed on behalf of the partnership.

4. Until settled, or the making of a court order, complainant is to have the right to have a representative, on the premises during business hours, and at any reasonable time.

40

*Stipulation.*

5. This stipulation is made as part of negotiations looking to settlement of the matter in difference, and in the event said matter shall be further litigated, this stipulation, and any action taken thereunder, shall not prejudice either party in said litigation.

PHILIP GOODELL, 10  
Solicitor of Defendant.

SYLVAN J. RAUCH,  
Solicitor of Complainant.

20

30

40

**Decree for Accounting and Receiver.**

Filed February 14, 1930.

## IN CHANCERY OF NEW JERSEY.

|    |  |  |
|----|--|--|
| 10 | Between<br>GEORGE E. BELL,<br>Complainant,<br><br>and<br><br>JAMES E. PERRY,<br>Defendant. | } On Bill, etc.<br>} Decree for<br>} accounting<br>} and Receiver. |
|----|--|--|

20 This cause being opened to the court by Joseph F. Murphy of counsel with complainant, and it appearing that an order to show cause was made herein on the 19th day of December, 1929, returnable on the 24th day of December, 1929, and the matter having been duly continued by agreement of counsel for complainant and defendant, and the matter now coming on to be heard in the presence of Philip Goodell of counsel with defendant, and the court having read the bill of complaint and affidavit annexed, and having heard and considered

30 the arguments of the respective counsel, and being satisfied that complainant is entitled to the relief prayed for in his bill of complaint,

It is on this 4th day of February, 1930, on motion of Joseph F. Murphy of counsel with complainant Ordered, that it be referred to Chester C. Beekman, Esq., one of the Masters of this Court, to take and state an account of all dealings and

40 transactions by and between complainant and de-

*Decree for Accounting and Receiver.*

pendant, as partners, in said bill mentioned, and an account of all the assets and liabilities of said partnership, and it is

Further Ordered that witnesses may be subpoenaed to appear before said Master, and the parties and witnesses examined under oath before him, that the parties and witnesses produce before said Master and, if required, leave with him, all such books, papers, records, writings, and exhibits, bearing upon the said matter, and in their custody or power, as the said Master shall direct, that the said Master report the balance which upon said account shall appear to be due from either party to the other, and that if any special matter shall arise, said Master or either of the parties shall be at liberty to state same to the Court, and it is

Further Ordered that said Master make his report to this Court with all convenient speed,

Further Ordered, Adjudged, and Decreed that said Chester C. Beekman, Ssq., be, and he hereby is, appointed, with the usual powers, receiver to collect, receive, and take possession of all the moneys, effects, goods, chattels, rights, credits, books, records, papers, choses in action, checks, notes, instruments, evidence of indebtedness, property, and assets of every kind, nature, and description belonging to said partnership with power to, see the same and if sold in bulk or as a going concern with the court's consent only and in his own name, bring such suits or proceedings to secure possession of, collect or preserve said property and assets as he may deem advisable, and it is

*Decree for Accounting and Receiver.*

Further Ordered that the defendant James E. Perry, his agents and servants, deliver to said receiver all the aforementioned property and assets and all the books of account, records, papers, moneys, notes, drafts, checks, instruments, and evidences of indebtedness to said partnership, and all other documents belonging thereto, and that the said defendant, his agents and servants, desist and refrain, until the further order of the Court, from using the partnership name, or transacting any business in the name of the partnership, or directly or indirectly interfering in any manner with the said receiver in the conduct of said business, or otherwise, and it is

Further Ordered that, for the purpose of enabling the sale of said business carried on by said partnership as a going concern, and conserving the good will thereof, said receiver be, and he hereby is authorized and empowered to continue the business of said partnership, with all powers necessary or appropriate for said purpose, until the further order of the Court, and it is

Further Ordered that said receiver enter into bond to the Chancellor in the sum of \$1000 Dollars conditioned for the faithful performance of his duty, which bond is to be approved by one of the Special Masters of this Court and filed with the Clerk in Chancery.

And all further equity is reserved until the coming in of said Master's report.

Respectfully advised,  
JOHN H. BACKES,  
V. C.

## Notice.

## IN CHANCERY OF NEW JERSEY.

Between

GEORGE E. BELL,  
Complainant,

and

JAMES E. PERRY,  
Defendant.

On Bill, etc.  
Notice.

10

To PHILIP GOODELL, ESQ.,  
Solicitor of Defendant.

Take Notice that on Tuesday, the 11th day of March, 1930, at ten o'clock in the forenoon, at the Chancery Chambers in Newark, I shall apply to the Chancellor for leave to accept the offer which has been made to me of \$1200. for the assets of the partnership mentioned in the bill of complaint, and in the alternative for an order for public sale, or such other order as the court shall think proper.

20

CHESTER C. BEEKMAN,  
Receiver.

30

40

**Report and Account of Receiver.**

Filed March 20, 1931.

IN CHANCERY OF NEW JERSEY.

|    |  |  |
|----|--|--|
| 10 | Between<br>GEORGE E. BELL,<br>Complainant,<br><br>and<br><br>JAMES E. PERRY,<br>Defendant. | } On Bill, etc.<br>} Report and<br>} account of<br>} Receiver. |
|----|--|--|

20 *To the Honorable Edwin Robert Walker,  
 Chancellor of the State of New Jersey.*

The petition of Chester C. Beekman of the Town of Montclair, in the County of Essex and State of New Jersey, respectfully shows that:

30 1. Petitioner is the receiver, duly appointed by this Court by an order made in the above entitled cause on the 4th day of February, nineteen hundred and thirty, and hereby submits his account of his administration of the business placed in his hands as such receiver pursuant to the directions of said order.

2. The following is a summary of petitioner's said account:

Petitioner charges himself with .....\$1797.15  
 Petitioner prays allowance for ..... 886.82

40 Balance in hands of accountant ..... \$910.33

*Report and Account of Receiver.*

Petitioner therefore prays that his said account may be approved by this court; that this court may fix the allowance to be made to him for his services; that he may be ordered to distribute the balance of the moneys shown by said account to be in his hands; and that he may be discharged as such receiver.

CHESTER C. BEEKMAN,  
Receiver.

10

State of New Jersey, }  
County of Essex,    } ss.:

Chester C. Beekman, of full age, being duly sworn according to law, upon his oath deposes and says that he is the petitioner in the foregoing Petition named, and that the matters and things therein contained are true.

20

Subscribed and sworn to at  
Montclair, N. J., this 14th  
day of January, 1931, before me.

CHESTER C. BEEKMAN (L.S.)

30

40

**Account.**

IN CHANCERY OF NEW JERSEY.

|    |  |   |         |
|----|--|---|---------|
| 10 | Between<br>GEORGE E. BELL,<br>Complainant,<br>and<br>JAMES E. PERRY,<br>Defendant. | } | Account |
|----|--|---|---------|

*Receipts.*

20 This accountant charges himself with receipts as follows:

|    |  |           |
|----|--|-----------|
| 20 | February 7, 1930   |           |
|    | Balance in defendants bank   | 5.05      |
|    | Balance in defendant bank  | \$5.05    |
|    | Receipts of business   | 665.01    |
|    | Received from sale of business and<br>equipment under approval of<br>court | 1125.00   |
|    | Interest on bank account   | 2.09      |
| 30 |  | \$1797.15 |

*Disbursements.*

This accountant prays allowance in the following disbursements:

NOTE: The following disbursements were necessary for carrying on of the business under the order of the Court.

|    |                                 |       |
|----|---------------------------------|-------|
| 40 | 2/13/30 Wm. Grigsby - rent Feb. | 50.00 |
|    | 2/13/30 Public Service Gas Co.  | 25.00 |

*Account.*

|         |   |          |    |
|---------|---|----------|----|
| 2/15/30 | Martin Dodd - acct. salary  | 15.00    |    |
| 2/15/30 | Fred Jones - acct. salary   | 15.00    |    |
| 2/15/30 | Pin boys and helper   | 21.00    |    |
| 2/17/30 | William Grigsby - bal. of rent                                    | 50.00    |    |
| 2/24/30 | Aaron Fox - salary  | 20.00    |    |
| 2/24/30 | Fred Jones - salary & pin boys                                    | 29.00    |    |
| 3/1/30  | Aaron Fox - salary  | 7.00     | 10 |
| 3/1/30  | Fred Jones - payroll for himself<br>& pin boys                    | 29.00    |    |
| 3/8/30  | Fred Jones - salary   | 20.00    |    |
| 3/8/30  | Extra man   | 7.00     |    |
| 3/15/30 | Fred Jones - salary   | 27.00    |    |
| 3/26/30 | Martin Dodd - balance of salary                                   | 125.00   |    |
| 4/7/30  | Fred Jones - salary to 3/21/30                                    | 25.00    |    |
| 4/12/30 | Gas bill for Mch  | 41.71    |    |
| 5/1/30  | Commercial Funding Co. rent<br>for part of March                  | 80.00    | 20 |
| 2/27/30 | Premium on receiver's bond  | 10.00    |    |
| 2/27/30 | Harry N. Reeves — approving<br>bond                               | 3.00     |    |
| 3/10/30 | John L. Cox - insurance on<br>chattels                            | 13.60    |    |
| 3/22/30 | Register - Rec'd chattel mtge                                     | 2.50     |    |
| 6/2/30  | Florence Goodell - testimony                                      | 81.00    |    |
| 6/2/30  | Madeline Beekman - testimony                                      | 14.40    |    |
| 5/2/30  | Supplies  | 5.83     | 30 |
|         | Henry Bros. for merchandise<br>purchased before receiver-<br>ship | 154.52   |    |
|         | Fred Douglas - ice  | 15.20    |    |
|         |   | <hr/>    |    |
|         |   | \$886.82 |    |

*Account.*

|    |  |           |
|----|--|-----------|
|    | Total receipts                             | \$1797.15 |
|    | Total disbursements                        | 886.82    |
|    |  | <hr/>     |
|    | Balance in hands of ac-<br>countant        | \$ 910.33 |
| 10 | Amount still due on chattel<br>mortgage    | 75.00     |
|    | Interest approximated                      | 12.50     |
|    |  | <hr/>     |
|    | Amount due receiver on<br>chattel mortgage | 87.50     |

State of New Jersey, }  
County of Essex, } ss. :

20 CHESTER C. BEEKMAN, of full age, being duly sworn according to law, upon his oath deposes and says that he is the accountant in the foregoing account named, and that the said account is in all things just and true, both as to charges and discharges thereof.

Subscribed and sworn to at  
Montclair, N. J., this 14th  
day of January, 1931, before me.

30 CHESTER C. BEEKMAN (L.S.)

**Order for Sale of Assets of Business.**

Filed March 20, 1931.

IN CHANCERY OF NEW JERSEY.

Between

GEORGE E. BELL,  
Complainant,

and

JAMES E. PERRY,  
Defendant.

On Bill, etc. 10  
Order for sale  
of Assets of  
Business.

Upon reading and filing the Report of Chester C. Beekman, one of the Masters of this Court, wherein, and whereby the said Master reports that he has received an offer of \$1200 for the stock in trade and goodwill of the business of James E. Perry and George E. Bell, and

20

It appearing that the amount offered for said business is a good and fair price for said business, stock in trade and goodwill, and

It further appearing that the Solicitors for complainant and defendant have consented to the sale of said merchandise and goodwill of the business to James E. Perry for the said sum of \$1200.00 to be paid as follows: \$600.00 Six Hundred Dollars in cash, and \$600.00 Six Hundred Dollars by the said James E. Perry executing to Chester C. Beekman as receiver six notes in the sum of \$100.00 each, the first of said notes to be due one month after the date thereof and the remaining five notes to be due respectively two, three, four, five and six months after the date thereof, said notes to be se-

30

40

*Order for Sale of Assets of Business.*

cured by a chattel mortgage on the stock in trade, fixtures, balls, billiard tables, pool tables and all other chattels connected with the business and contained in the basement of premises No. 176-180 Bloomfield Avenue, Montclair, New Jersey.

10 It is on this 20th day of March, 1930 on motion of said Chester C. Beekman, Master, Ordered, that the said sale be and it is hereby consented to by this court and it is further ordered that the said Chester C. Beekman, as received, execute and deliver a Bill of Sale to the said James E. Perry for all the stock, fixtures and merchandise contained in the premises at No. 176-180 Bloomfield Avenue, Montclair, New Jersey, and belonging to the partnership of said James E. Perry and George E. Bell, and also the goodwill of the business, the said  
20 stock in trade of said business, consisting in five pool tables and accessories connected therewith and all chattels of every sort belonging to the partnership and contained in said premises, upon the said James E. Perry complying with the terms of sale above set forth.

JOHN H. BACKES,  
Vice Chancellor.

30 I hereby consent to the entry of the above order.

SYLVAN J. RAUCH,  
Solicitor of Complainant.

PHILIP GOODELL,  
Solicitor of Defendant.

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**Master's Report.**

Filed Jan. 27, 1931.

## IN CHANCERY OF NEW JERSEY.

Between

GEORGE E. BELL,  
Complainant,

and

JAMES E. PERRY,  
Defendant.

On Bill, etc.

Masters  
Report.

10

Pursuant to an Order of Reference made in the  
above entitled cause on the 4th day of February, 20  
1930, whereby it was referred to me, one of the  
masters of this court, to make and state an ac-  
count of all the dealings and transactions by and  
between complainant and defendant as partners  
in said bill mentioned, and an account of all the  
assets and liabilities of said partnership, and  
whereby I was directed to examine into matters  
referred to me, and to examine witnesses produced  
before me, to take testimony and to report the 30  
balance which upon said account shall appear to be  
due from either party to the other, and that if  
any special matters should arise to state same to  
the court, and wherein and whereby I was directed  
and appointed a receiver to collect and receive all  
money and effects of said partnership, and with  
power to sell the same with the court's consent, and  
whereby I was further authorized and empowered  
to conduct the business until such sale, I do hereby

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*Master's Report.*

respectfully report to his Honor, the Chancellor, as follows:

10 1. I have been attended by Sylvan Rauch, Esq., and Joseph F. Murphy, Esq., Solicitors of Complainant, and by Philip Goodell, Esq., Solicitor of Defendant, and in their presence I have taken the depositions of witnesses produced before me and have examined into the matters referred to me.

2. Several hearings were had before me as Master appointed in this cause at which testimony was given by Mr. Perry, Mr. Bell and other witnesses. In analyzing this testimony the essential facts appear to be as follows:

20 James E. Perry and George E. Bell entered into a partnership agreement in writing, dated April 17, 1928, to run a pool-room and bowling business which agreement was signed in the office of P. Henry Strazza, Esq., and which agreement stated that the partners are to share equally in the profits and expenses of the business. It appears that Mr. Perry actually managed the business and spent three or four evenings a week in the place from about seven until twelve o'clock. Mr. Perry, it appears, hired help to carry on the business with the implied consent of Dr. Bell.

30 In order to start business the first thing they did, through Mr. Perry, was to enter into a lease with one Grigsby, for a basement located at #178 Bloomfield Avenue, Montclair, New Jersey, and possession was taken and business started on April 8, 1928, although the partnership agreement was dated later.

40 The next step was to buy the necessary equipment for the business and Mr. Perry and Dr. Bell negotiated with the Brunswick Balk Company for

*Master's Report.*

the purchase of pool tables, which pool tables and accessories were bought for the sum of \$1800.00 of which \$450.00 was paid in cash by initial deposit, and the balance was secured by a chattel mortgage.

The business went on with more or less success until February, 1930, at which time, owing to differences which had arisen between the partners, George E. Bell filed a bill for a dissolution and an accounting. 10

So much for a short history of the business, upon which both sides agree.

3. James E. Perry, the first witness sworn, testified that he received \$150.00 from Dr. Bell for the initial deposit on the pool tables and that he paid the balance of \$300.00. He also testified that \$100.00 of his share was borrowed from a party by the name of Morris, whom he afterwards paid back out of his own funds. He testified that thereafter he paid \$214.62 from his own pocket for articles of merchandise which he bought shortly after the poolroom opened, such as chairs, lumber, soda water and other miscellaneous articles. 20

He further testified that the moneys of the poolroom were deposited in the Bank of Montclair from the opening date of said poolroom until June 20, 1928 when he transferred the poolroom account to the First National Bank and Trust Company of Montclair, N. J., and all moneys of the poolroom were deposited there. 30

4. Mr. Janney, witness produced by Mr. Goodell on behalf of Mr. Perry, testified that he was an accountant and had carefully checked over all the figures, vouchers, checks, and the book kept by Mr. Perry, and to sum up his testimony he states 40

*Master's Report.*

that the total amount of the receipts from the business to January 31st, 1930 were \$12,179.80, and disbursements were \$12,673.10. Mr. Janney further testified that he took no account of any deposits made in the Bank of Montclair from June 20, 1928 up to February 1, 1930, which additional deposits  
10 as testified to by Mr. Stafford, one of the officials of the Bank of Montclair, amounted to the sum of \$2,882.44. Mr. Perry has sworn that all of this money was from personal sources and not from poolroom moneys. Mr. Perry also testified that certain items were paid from the Bank of Montclair out of his own personal funds for the benefit of the poolroom, and taking the above figures it would show that these items represent the difference between the amount taken in and the amount  
20 spent out, namely the sum of \$493.30.

5. If we accept this testimony that \$12,179.80 was the total amount taken in by the partnership to January 31st, 1930, a period of 95 weeks, as testified to by Mr. Janney, we would arrive at the figure of \$21.00 approximately as the average amount taken in each day. However, in my opinion, in the light of the testimony of the witnesses, I  
30 believe that a fair average to strike as the daily amount taken in at the poolroom would be \$25.00, which over a period of 96 weeks, the actual time the partnership existed, would make the receipts \$14,400.00, and by deducting the total amount of the expenditures of \$12,673.10 together with an amount of \$75.00, the estimated expenditures for the week not taken into account by Mr. Janney, would leave a balance of \$1651.90, profit from the business during this period.

40 The testimony taken in connection with the

*Master's Report.*

vouchers shows that Dr. Bell received from Mr. Perry \$450.00, and that he paid in to the business the sum of \$150.00, his initial deposit, and \$225.00 represented by checks given by him to Mr. Perry, which shows that he received from the business the sum of \$75.00.

The testimony shows that Mr. Perry paid out \$514.62 and that he received from the business personally the sum of \$229.57, giving him a credit of \$285.05 and a further credit of \$75.00 which was the amount Dr. Bell received from the business, making a total credit to Mr. Perry of \$360.05. 13

After deducting this from the sum of \$1651.90, we have a net profit shown of \$1291.85, of which Dr. Bell is entitled to \$640.92.

6. I have not taken into account any money for services Mr. Perry rendered to the business as I do not think he is entitled to any. Mr. Perry entered into this business venture and was naturally anxious to have it succeed and his services were rendered voluntarily to the partnership. 20

I have likewise not taken into account as partnership funds the amount of \$2882.44 which was deposited in the Bank of Montclair from June 20, 1928 by Mr. Perry but as money belonging to Mr. Perry personally as testified to. 30

In my opinion, therefore, the sum of \$640.92 is due from James E. Perry to George E. Bell.

Respectfully submitted,

CHESTER C. BEEKMAN,  
Master.

**Exceptions to Master's Report.**

Filed Feb. 3, 1931.

IN CHANCERY OF NEW JERSEY.

|    |  |   |
|----|--|---|
| 10 | Between<br>GEORGE E. BELL,<br>Complainant,<br><br>and<br><br>JAMES E. PERRY,<br>Defendant. | } On Bill, etc.<br>} Exceptions to<br>} Master's Re-<br>} port. |
|----|--|---|

20 The defendant, James E. Perry, hereby excepts to the report filed in the cause by Chester C. Beekman, one of the Masters of this Court, which report bears no date, but which was filed on January 27th, 1931, for the following reasons:

30 1. The master has charged the defendant with receipts of his business at \$150.00 a week for 96 weeks, or \$14400.00, whereas the receipts of the business, according to the testimony produced, were but \$12179.74, any testimony to the contrary being admittedly a guess; and for the further reason that the time which elapsed between the commencement of the business on April 8th, 1928 and the appointment of a receiver was but 95 weeks, during 2 weeks of which time, as the testimony shows, the defendant was away and the business was managed and controlled by the complainant.

40 2. For the further reason that the master has

*Master's Report.*

failed to charge the complainant with \$150.00 received from the business and paid into his hands by Fred Jones, one of the witnesses, from the proceeds of the business.

3. Because no compensation was allowed by the master to the defendant for the work he did in connection with running the business, he having assumed the whole burden. 10

PHILIP GOODELL,  
Solicitor for Defendant.

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*Exceptions to Master's Report.*

no record whatsoever of the daily receipts of said business, or of the total amount of said receipts, and at times destroyed the printed records of the cash register of said receipts, depositing said partnership money and receipts in his personal bank account, said defendant having kept no partnership bank account. 10

(b) That in the alleged business bank account, kept in defendant's personal name, there remained at the time of the appointment of the receiver the sum of \$5.05, while said defendant deposited in one of his alleged personal bank accounts during the period of the partnership the sum of \$2882.44. 20

(c) That under aforesaid and other circumstances, defendant was called upon, and it was defendant's duty, to adduce clear, detailed, and convincing proof of the sources whereby he could have obtained this money, over and above his living, and other personal expenses.

(d) That said defendant failed in his attempt to properly account for said funds during the existence of said partnership, and made no attempt to account for the sources from which an amount of such size could have been obtained by him. 30

(e) That there was no evidence before the master, that the moneys found in said Bank of Montclair and said savings banks, were defendant's personal money, except the self-serving uncorroborated, all-inclusive. 40

*Exceptions to Master's Report.*

personal declaration of defendant himself, elicited through completely leading questions.

19 (f) That defendant took in moneys, the business receipts of said partnership, and was bound under the law to keep full, accurate, and proper accounts thereof, that defendant could not ignore, fail to perform, or wilfully refuse to carry out his said duty of keeping such accounts, and replace same by a personal, uncorroborated, self-serving declaration, setting the amount of the partnership receipts at an amount just equal to the expenditures, thereby relieving himself of the necessity of paying over any profits.

20 (g) That the said failure of defendant to keep said full, detailed, and accurate accounts of said receipts, raised a presumption against said defendant's contention that said moneys in the Bank of Montclair and the savings banks should be credited to him as his personal funds, and that in view of said presumption, the finding regarding said items should have been resolved in favor of  
30 complainant.

4. That the findings of said master are erroneous because they are founded upon hearsay, and other improper evidence in the following respects:

40 (a) That the said master, according to his report, based his findings upon the testimony of the defendant's accountant concerning the receipts of the partnership business, said witness obtaining the figures from defendant Perry.

*Exceptions to Master's Report.*

(b) That the said testimony of the defendant's accountant is wholly hearsay, that the fact that said witness testified that he was "an accountant" does not improve the status of his testimony, and make it better than hearsay testimony.

(c) That the defendant's accountant testified as to what the total receipts of said business were, which testimony, as to said total receipts, was, according to his report, given weight by said master, and that the amount given by said witness, as the amount of the receipts, was, in fact, identically the amount of the alleged expenditures of said business, which was adopted by the defendant's accountant as the amount of the receipts. 10  
20

(d) That the entire testimony of said witness was based upon obviously invalid, self-serving, and incorrect deductions from such records as were kept by defendant, upon unsworn, oral statements of defendant, and upon other self-serving, incorrect, invalid, and improper evidence.

(e) That the testimony of defendant's accountant was not based upon proper vouchers, said witness having admittedly accepted, and based his testimony as to said expenses upon, the unsworn, personal, uncorroborated statement of the defendant in respect to the expenses for salaries, and other items of expense. 30

(f) That the total of disbursements, as calculated by the said defendant's accountant 40

*Exceptions to Master's Report.*

10 is erroneous because of errors in calculation and duplication of items, in that, upon the statement prepared by said witness, the disbursements paid for billiard balls and ten pins are included in two different categories, and charged in duplication as expenditures of said business, and in other similar instances.

20 5. On the ground that the exhibits offered in evidence on behalf of complainant, showing the bank deposits of defendant from day to day and week to week in detail in the Bank of Montclair and The First National Bank & Trust Company, and the other banks, or transcripts of said bank statements, have not been annexed to the testimony.

JOSEPH F. MURPHY,  
Solicitor for Complainant.

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**Notice of Application for Allowance for Receiver.**

Filed Feb. 17, 1931.

IN CHANCERY OF NEW JERSEY.

Between

GEORGE E. BELL,  
Complainant,

and

JAMES E. PERRY,  
Defendant.

On Bill, etc.

Notice of Application for allowance for Receiver.

13

To PHILIP GOODELL,

Solicitor of Defendant, James E. Perry.

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Please take notice that the final account of Chester C. Beekman, the receiver appointed in the above entitled cause, has been filed in the Court of Chancery of New Jersey, and that said receiver will ask, upon the return of the order to show cause, a true copy whereof is served upon you herewith, the sum of Four Hundred (\$400.00) Dollars as his compensation, together with his taxed costs in this suit.

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CHESTER C. BEEKMAN,  
Receiver.

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## Order to Show Cause.

IN CHANCERY OF NEW JERSEY.

|    |  |   |  |
|----|--|---|--|
| 10 | Between<br>GEORGE E. BELL,<br>Complainant,<br><br>and<br><br>JAMES E. PERRY,<br>Defendant. | } | On Bill, etc.<br><br>Order to<br>Show Cause. |
|----|--|---|--|

20 Chester C. Beekman, the Receiver heretofore appointed by this court in the above entitled cause by an order made on the 4th day of February, nineteen hundred and thirty, having presented and filed his final report as such receiver, together with his account from the date of his appointment as aforesaid, and covering the entire period of his said receivership; and it appearing by said account that the receipts of said receiver have amounted to \$1797.15, and his disbursements to \$886.82, leaving a balance in his hands amounting to \$910.33, and that said receiver is desirous of having his account passed upon and allowed, and of having his compensation for his services in this cause, fixed and determined, and of being directed to make distribution of the balance of said moneys remaining in his hands, and of being discharged as such receiver.

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40 It is, on this 27th day of January nineteen hundred and thirty-one, on motion of Chester C. Beekman, Receiver, Ordered that George E. Bell and James E. Perry, the parties complainant and defendant in the above entitled cause, show cause

*Order to Show Cause.*

before the Chancellor, at the Chancery Chambers, in the City of Newark, on the 3rd day of Feb. nineteen hundred and thirty-one at the hour of 10 o'clock, in the forenoon, or as soon thereafter as counsel can be heard, why the report of said receiver should not be approved and his account allowed, and why an order should not be made fixing and determining the compensation of said receiver for his services in this cause, and directing the distribution of the balance of the moneys in the hands of said receiver among the several parties entitled thereto, and why said receiver should not be discharged from further duties and liabilities in connection with said trust. 10

It is further Ordered that true but uncertified copies of this order, together with notice of the amount which said receiver will ask this court to allow him as compensation for his services be served on each of the parties complainant and defendant, in this cause within three days after the date hereof, 20

It is further Ordered that the said report and account of said receiver be kept upon the files of the clerk of this court open to reasonable inspection and examination by any and all persons having an interest therein. 30

Respectfully advised,

JOHN H. BACKES,

V. C.



*Order Approving Receiver's Account.*

receiver's account is correct, and no reason appearing or being shown to the contrary;

It is, on this 17th day of February, nineteen hundred and thirty-one, Ordered, Adjudged and Decreed that the said account filed by said receiver in this cause be and the same is hereby allowed and confirmed, and that the said receiver has in his hands a balance of \$910.33 and there is still due on chattel mortgage the sum of \$87.50. 10

It is further Ordered that said receiver be allowed for his services the sum of \$300 and his disbursements in this cause; and that, after paying the amounts so allowed to said receiver, the said receiver held the balance of the moneys remaining in his hands until the further order of this Court. 20

And it is further Ordered, Adjudged and Decreed that after filing the aforesaid statement and carrying out the directions of this court, the said receiver be discharged from all further duties and liabilities with respect to said trust.

Respectfully advised,  
JOHN H. BACKES,  
V. C.

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**Memorandum.**

Filed Sept. 19, 1931.

IN CHANCERY OF NEW JERSEY.

|        |      |
|--------|------|
| Docket | Page |
|--------|------|

Re- Bell vs. Perry

10

After a careful reading of the voluminous testimony I do not find myself in disagreement with the Master's report and therefore overrule the exceptions of both litigants. The defendant handled the partnership funds and kept no record. The charge against him of \$25.00 a day income was justified. If the rate had been higher no fault could be found. If the Master erred in that respect, the defendant is responsible. It was his duty to keep a careful record. And there could have been no just criticism had the Master charged the defendant with the bank account he claims was his personal savings.

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BACKES,  
V. C.

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**Final Decree.**

Filed March 19, 1931.

## IN CHANCERY OF NEW JERSEY.

|  |   |                                |    |
|--|---|--------------------------------|----|
| Between<br>GEORGE E. BELL,<br>Complainant,<br>and<br>JAMES E. PERRY,<br>Defendant. | } | On Bill, etc.<br>Final Decree. | 10 |
|--|---|--------------------------------|----|

This matter being opened to the court by Joseph F. Murphy, solicitor for complainant, in the presence of Philip Goodell, solicitor for defendant, and it appearing by the report of Chester C. Beekman, Esquire, one of the masters of this court, dated and filed herein the 27th day of January, 1931, and made in pursuance of an order made by this court in this cause on the 4th day of February, 1930, whereby said matter was referred to said master to take and state an account of all dealings and transactions by complainant and defendant as partners, and whereby said master was also appointed receiver of the property and assets of the said partnership in the bill of complaint mentioned, and as by said order will more fully appear, that the said master has taken the depositions and testimony of the witnesses produced before him, has examined into the matters referred to him, and has taken an account of the profits of said partnership, that upon such accounting there appears to be due and owing by said defendant James E. Per-

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*Final Decree.*

ry to said complainant George E. Bell the sum of \$640.92, complainant's share of said profits, and it further appearing by the account of the said receiver filed the 27th day of January, 1931, that there remains in his hands a balance of approximately \$697.83, (including the sum of \$87.50, approximately, and interest, due the receiver from defendant James E. Perry, and uncollected) which sum represents the balance of the amount received from the sale of the capital assets, and good will of said partnership, and from the receiver's operation of the said business;

And the court having duly considered said report and the exceptions filed thereto by defendant and by complainant, and having heard and considered the arguments of counsel, and being satisfied that the said master's report is in all things true and correct, and should be ratified, and confirmed;

It is on this 17th day of March, 1931, Ordered, Adjudged, and Decreed, and the Chancellor doth, by virtue of the power and authority of his office, Order, Adjudge, and Decree as follows:

1. That the exceptions to said master's report of both complainant and defendant be, and they hereby are, overruled, and the said report, and the matters and things therein contained be, and same hereby are, in all things ratified and confirmed.

2. That there is due and owing from defendant James E. Perry to complainant George E. Bell the sum of \$640.92, with interest from the said 27th day of January, 1931, the date of the master's report, and that complainant do recover from defendant the said sum of \$640.92 with interest as aforesaid.

*Final Decree.*

3. That complainant George E. Bell is further entitled to one-half of said sum of \$697.83 remaining in receiver's hands, or due receiver on chattel mortgage from defendant James E. Perry, to wit, the sum of \$348.91 of the said moneys in receiver's hands.

4. That the said complainant George E. Bell, or his solicitor, have his costs of this suit to be taxed, payable out of the partnership funds.

5. That the said defendant James E. Perry pay to the said complainant George E. Bell, or his solicitor, the said sum of \$640.92, together with interest, as aforesaid, forthwith upon service upon defendant, or his solicitor, of a true copy of this decree, and that, in default of such payment for 15 days from the date of such service, execution issue against the goods, chattels, rights, credits, lands, tenements, hereditaments, and real estate of said defendant James E. Perry to make said sum of \$640.92, together with interest thereon, as aforesaid, according to the practice of this court.

6. That the said receiver is hereby directed to pay one-half of the balance remaining in his hands after said payment of his allowance, to complainant George E. Bell, or his solicitor.

7. That the remaining half of said balance in the receiver's hands be paid by receiver to defendant, or his solicitor upon defendant's paying the said sum of \$640.92 and interest to the complainant or his solicitor.

8. That said receiver, upon receiving the balance due him, under contract of purchase, by de-

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*Final Decree.*

fendant James E. Perry, and making the disbursements herein authorized, and duly filing a statement thereof with the clerk of this court, be discharged from all further duties, and liabilities under his appointment, to the extent of the funds for which he has accounted.

10

Respectfully advised,  
 JOHN H. BACKES,  
 V. C.

E. R. WALKER,  
 C.

**Notice of Motion.**

20

IN CHANCERY OF NEW JERSEY.

Between

GEORGE E. BELL,  
 Complainant,

and

JAMES E. PERRY,  
 Defendant.

On Bill, etc.

Notice of  
Motion.

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To PHILIP GOODELL, Esquire,  
 Solicitor for Defendant,  
 484 Bloomfield Avenue,  
 Montclair, N. J.

Please take notice that on the 31st day of March,  
 1931, at ten o'clock in the forenoon, or as soon  
 40 thereafter as counsel can be heard, I shall move

*Notice of Motion.*

Honorable John H. Backes, the Vice Chancellor to whom the above matter has been referred, for an order authorizing and directing the issue of process upon the final decree in the above entitled cause, unless the defendant shall furnish proper security for the payment of the amount decreed, and costs, said security to be in at least double said amount, and upon such other terms and conditions as the court shall think proper, and that I shall also apply for instructions on behalf of the receiver appointed in said cause with reference to making the payments to complainant provided for under said decree, on the ground that no order of the court staying the operation of the said decree has been either applied for, by defendant, or made, and upon such other grounds as the court may think proper, and for such other and further relief as may be agreeable to equity.

Respectfully yours,

SYLVAN J. RAUCH,  
Solicitor for Complainant.

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**Order that Execution issue unless Bond be filed,  
etc., notwithstanding appeal.**

Filed Apr. 28, 1931.

IN CHANCERY OF NEW JERSEY.

|    |  |  |
|----|--|--|
| 19 | Between<br>GEORGE E. BELL,<br>Complainant,<br>and<br>JAMES E. PERRY,<br>Defendant. | } On Bill, etc.<br>} Order that<br>} execution issue<br>} unless bond be<br>} filed, etc., not-<br>} withstanding<br>} appeal. |
|----|--|--|

20       This matter being opened to the court by Joseph F. Murphy, solicitor for complainant, in the presence of Philip Goodell, solicitor for defendant, and the court having read and filed the duly verified petition of complainant praying that security be required of defendant as in case of money judgments, having heard arguments of counsel, and being satisfied, after due deliberation, that the prayer of said petition should be granted.

30       It is on this 24th day of April, 1931, on motion of Joseph F. Murphy, solicitor for complainant, Ordered that the defendant James E. Perry, within ten days of the date of this order, deposit the amount of the decree, to wit, the sum of \$640.92, with the clerk of this court, as security, or, within said time, duly become bound, with two sufficient sureties, to complainant in double the said sum, to prosecute the said appeal with effect, and also to pay and satisfy, if the said appeal be dis-

40       missed, or the said decree be affirmed as to said

*Order that execution issue unless bond be filed,  
etc., notwithstanding appeal.*

payment, the amount so decreed to be paid, with legal interest, and costs and counsel fee, if any, on appeal, said bond to be approved by one of the Special Masters of this court, and filed with the clerk of this court, and a true copy served upon solicitor of complainant, within said time, and that upon failure so to do, execution issue out of this court against defendant according to the practice of this court to collect the said amount and interest, and pay same into court, there to remain until the further order of the court. 10

E. R. WALKER,  
C.

Respectfully advised,  
JOHN H. BACKES,  
V. C. 20

Certified a true copy.  
JOSEPH F. MURPHY,  
Solicitor for Complainant. 30

Notice of Appeal.

Filed March 21, 1931.

IN CHANCERY OF NEW JERSEY.

|    |  |   |   |
|----|--|---|---|
| 10 | Between<br>GEORGE E. BELL,<br>Complainant,<br><br>and<br><br>JAMES E. PERRY,<br>Defendant. | } | On Bill, etc.<br><br>Notice of<br>Appeal. |
|----|--|---|---|

20 The defendant, James E. Perry, hereby appeals from so much of the final decree made by the Chancellor in the above entitled cause on March 16, 1931 and advised by John H. Backes, Vice Chancellor as overrules the exceptions to the master's report filed by the defendant and from the directions of the final decree based on the master's report with the defendant's exceptions overruled as directs any payment by the defendant to the complainant or by the receiver to the complainant, and from the discharge of the receiver until he be

30 relieved, after the determination of this appeal, by further order of the Court of the funds in his hands, to the Court of Errors and Appeals in the Last Resort in All causes.

Dated, March 19, 1931.

PHILIP GOODELL,  
 Solicitor for and of Counsel  
 with Defendant, James E. Perry.

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*Notice of Appeal.*

I conceive there is good cause for appeal in the above entitled cause.

PHILIP GOODELL,  
Of Counsel with Defendant,  
James E. Perry.

Service ack'd March 20/31.

JOSEPH F. MURPHY,  
Solr.

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**Petition of Appeal.**

Filed April 28, 1931.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

20

Between

GEORGE E. BELL,  
Complainant,

and

JAMES E. PERRY,  
Defendant.

Petition of  
Appeal.

30

*To the Honorable the Court of Errors and Appeals  
in the Last Resort in all Causes:*

The petition of James E. Perry, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Hon-

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*Petition of Appeal.*

or, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date March 16, 1931, in a certain cause in said Court of Chancery where the said George E. Bell was complainant and the said James E. Perry was defendant, in the following respects to wit:

10

A. That the said decree adjudges that the defendant's exceptions to the Master's report be overruled and that the said report be confirmed.

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B. That the said decree after overruling the defendant's exceptions to the Master's report decrees that the defendant pay to the complainant the sum of \$640.92, and further decrees that the Receiver, appointed in the cause, pay \$348.67 of certain funds in his hands to the complainant.

And the petitioner appeals from so much of the decree of the Chancellor which decrees as aforesaid upon the ground that the Chancellor erred in overruling the appellant's exceptions to the Master's report and confirming the said report, although said report was erroneous, as appellant believes, in that the Master

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1. Charged the appellant with gross receipts from the partnership enterprise in the amount of \$14,400.00 whereas the actual receipts as shown by the evidence were but \$12,179.80.

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2. In charging against the appellant the said gross receipts at the rate of \$25.00 per day during the operation of the partnership described the partnership as 96 weeks in length whereas it existed only 95 weeks, failed to make allowance to the ap-

*Petition of Appeal.*

pellant for the two weeks in which it appeared that he did not operate the partnership, failed to give credit to the appellant for the funds received from the operation of the partnership by the appellee during the said two weeks and charged the appellant with \$25.00 a day receipts during the month of January, 1930 to an aggregate of \$675.00 whereas the evidence clearly shows that the actual receipts during said month were but \$326.50, to all of which errors in the Master's report, as claimed by the appellant, exceptions were taken to the Chancellor. 10

Petitioner, therefore, prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this court shall seem proper. 20

PHILIP GOODELL,  
Solicitor for and of Counsel  
with Appellant.

(Endorsement) Due and legal service of a true copy of the within Petition of Appeal is hereby acknowledged this 23 day of March, 1931. 30

SYLVAN J. RAUCH,  
Sol'r. for Complainant-Appellee.

**Notice of Cross Appeal.**

Filed April 8, 1931.

IN CHANCERY OF NEW JERSEY.

|    |                                 |   |                            |
|----|---------------------------------|---|----------------------------|
| 10 | Between                         | } | Notice of<br>Cross Appeal. |
|    | GEORGE E. BELL,<br>Complainant, |   |                            |
|    | and                             |   |                            |
|    | JAMES E. PERRY,<br>Defendant.   |   |                            |

20 The complainant, George E. Bell, hereby appeals from so much of the final decree made by the Chancellor, in the above entitled cause, on March 17, 1931, and advised by Honorable John H. Backes, Vice Chancellor, as overrules the exceptions to the Master's report filed by the complainant, and from the directions of said decree to such extent as they order, adjudge, and decree that there is due and owing from defendant to complainant, and that complainant is entitled to be paid out of

30 the funds in the hands of the receiver appointed in the cause, and that the receiver pay to complainant, only the sums therein respectively provided, and not the greater amounts, respectively, as would have been decreed, if complainant's said ex-

*Notice of Cross Appeal.*

ceptions had been sustained, to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated, March 20, 1931.

SYLVAN J. RAUCH,  
Solicitor for and of Counsel with  
Complainant, George E. Bell. 10

I conceive there is good cause for appeal in the above entitled cause.

SYLVAN J. RAUCH,  
Of Counsel with Complainant,  
George E. Bell.

20

30

40

## IN CHANCERY OF NEW JERSEY.

Between  
 GEORGE E. BELL,  
 Complainant,  
 and  
 10 JAMES E. PERRY,  
 Defendant.

State of New Jersey, }  
 County of Essex, } ss.:

Madeline Beekman, of full age, being duly sworn according to law, upon her oath deposes and says that she will faithfully and truly take stenographically and reproduce in manuscript or typewriting  
 20 the testimony given in the above entitled cause.

MADELINE BEEKMAN (L.S.)

Subscribed and sworn to before me  
 this day of February, 1930.  
 Chester C. Beekman,  
 Master in Chancery  
 of New Jersey.

30

Before—CHESTER C. BEEKMAN, Special Master in  
 Chancery of New Jersey.

## APPEARANCES:

JOSEPH F. MURPHY, ESQ., solicitor of the  
 Petitioner.

PHILIP GOODELL, ESQ., solicitor of the De-  
 fendant.

40

*James E. Perry—Direct.*

JAMES E. PERRY, witness produced on behalf of defendant, being duly sworn by the Master, deposes as follows:

Q. Mr. Perry when you made plans to start this pool-room what was the first thing you did? A. Paid the rent.

Q. Where did you get that money? A. Out of 10  
my salary.

Q. How much was the rent? A. The first rent was \$60 or \$65—something like that.

Q. When you bought the pool tables, did you consult with Dr. Bell? A. Yes, sir.

Q. What purchase price did you agree to pay for these pool tables and equipment? A. Well we were supposed to go half and half. We were supposed to pay \$250 apiece. 20

Q. What I want is the correct purchase price? A. You mean the first payment down? The first payment down was \$450.

Q. And then you gave this paper for the rest of it? A. Yes, sir.

Chattel mortgage shown for \$1350.

Q. How much of the \$450 did you pay and how much did Doctor Bell pay? A. Doctor Bell paid \$25 first down. He gave a check after that for \$125. 30

Q. How many tables did you buy? A. Four.

Q. Doctor Bell gave you \$150 then, did he give you any more? A. No, sir.

Q. How much did you put in, the rest of it? A. I put in the balance.

Q. How much money did you put in? A. I put in \$275 more.

Q. Where did you get the rest? A. I put it in. 40

*James E. Perry—Direct.*

Q. Then you put in \$300? A. Yes, sir.

Q. What other money did you put in out of your own pocket in starting this business going? A. I bought chairs and put in the electric.

Q. How much did you put in for electric? A. Deposit of \$25.

10 Q. As to the other things you bought out of your own pocket did you make any note of them? A. No, I did not make any particular note, I wasn't looking for anything like this.

Q. Did you put anything in the book? A. Some I did.

Q. Is that your writing in this book? A. Yes.

20 Q. Can you tell us which of these items you bought out of your own pocket, and which you bought out of the receipts of the pool room. A. Yes, sir.

Q. Which did you buy out of your own money? A. First all the items were bought out of my own pocket after the pool-room started, then it commenced to pay for itself as we went along.

Q. Is this a record of what you paid for out of your pocket? Look at each item. Did you pay this \$36.50 for lumber out of your own pocket? A. Yes, sir.

30 Page 2 of book under date of April 5, 1928 materials purchased to the total of \$72.03. Mr. Perry says same were purchased out of his own pocket.

Q. Can you look at that and tell us what you paid out of the pool room money and what you paid out of your own pocket? Shows Mr. Perry Page 3 of book. A. Yes, sir.

40 Mr. Goodell: Mr. Perry will you mark

*James E. Perry—Direct.*

with "P" what you paid out of your own pocket.

Page 3 of book Mr. Perry shows \$30.15 paid out of his own pocket.

Q. Did you start business before you got the pool tables? A. No, sir, the day the business started was the day we got the pool tables. 10

Q. Do you know how soon after you signed that paper the pool tables were delivered? A. I don't know, they called me up and told me the pool tables were ready and I went down and paid the final payment on the deposit.

Q. You don't remember the date when the pool room was opened? A. No, sir, but the papers will show it.

Q. When did you go in there Perry, do you remember? A. I can't exactly tell you the day, I think it was around the 5th of April. 20

Q. When did you get the pool tables? A. I got the tables that day.

Q. What delayed the opening of the business? A. Couldn't get the tables without the final deposit being paid and I couldn't get any money from Dr. Bell.

Q. I show you page 4 of the book, marked April 16th; will you look it over and see what you paid for out of your own pocket and what you paid for out of the business. 30

Mr. Perry paid \$21.38 out of pocket.

Mr. Murphy objects to admission of book unless he shows receipts for all he paid.

Mr. Perry paid \$1.06 on page 5.

*James E. Perry—Cross.**Cross-examination:*

Q. How do you know you paid them out of your own pocket? A. Because I paid them.

Q. Have you any receipts? A. I can call on Mr. Merchon to tell you.

10 Q. How can you pick out since 1928 and how can you say that on the 3rd day of some month you bought ivory tips and you paid for them out of your own pocket? A. I've been buying everything.

Q. You are just guessing then? A. No, some I paid and some I did not pay.

Q. You have no receipt for these ivory tips? A. Some things I have receipts for, they are all there.

20 Q. Here are two whisk brooms bought in 1928, how did you know you paid for them yourself? A. Because I did.

Q. Why did you buy the soda water out of your own pocket? A. The first I did.

Q. How did you buy it the other weeks? A. The other time it came from the business.

Q. These items you say you have paid out of your pocket you have no receipts for have you? A. Some I have and some I have not.

30 Q. Can you show a receipt for this lumber materials? A. I don't think I got one.

Q. You have no receipt for these chairs, have you? A. I don't think I have.

Q. In other words on all these pages Mr. Goodell showed you, you are not certain which items you got receipts for and which you did not? A. Yes, sir, some I have receipts for and some I have not, there are several hundred receipts.

40 Q. You don't know whether you got a receipt for this lumber or not? A. I don't think so.

*James E. Perry—Cross.*

Mr. Murphy objects to item of lumber being charged against business because he can show no receipt for it—\$36.50.

Q. When did you write these pages? A. When I first opened the place.

Q. Do you remember when you wrote these items down? A. I wrote them down when I bought them. 10

Q. Who kept that book? A. Me.

Q. Where was it kept? A. In my house.

Q. Why didn't you keep it at the place of business? A. There was no place to keep it.

Q. Some of the things you did not put in the book, why? A. When I started this place I was as innocent as a lamb, I didn't expect this trouble and I didn't keep books. 20

Q. Where did you get the money for the last deposit you spoke of? A. From my own sources.

Q. The week of April 5, 1928 you have a total of \$73.02 that you say you paid out of your own pocket, did you draw that from the bank or did you have it in cash? A. All cash.

Q. Was it yours? A. Yes, sir.

Q. You did not draw it from the bank? A. Some I got from my savings account. 30

Q. What bank is that money in? A. In a lot of banks, Montclair Savings Bank, Bank of Montclair, Montclair Trust Company, Union Dime Savings Bank, Harlem Savings Bank.

Q. Got money in all these banks now? A. Yes, sir.

Q. So that is where you got some of the money of that \$72.03? A. Yes, sir.

Q. The total amount you say you paid was 40

*James E. Perry—Cross.*

\$514.62 and that you had it in cash, did you carry it around with you? A. I worked for it.

Q. Within what times did you pay this out? A. I just don't know what date, I got things at odd times.

10 Q. Do you get paid every week, how much do you get, \$500 a week? A. I do a lot of extra work besides my regular job.

Q. Whom did you work for in 1928? A. C. W. Anderson, Jr.

Q. How much did you get a week in April 1928? A. \$28 a week.

Q. Who else did you work for and how much money did you get? A. I worked for different people and I got between \$10 and \$12 extra.

20 Q. On the side? A. Sure.

Q. Do you remember who you worked for? A. Different people.

Mr. Murphy objects unless Mr. Perry can tell whom he worked for.

Mr. Goodell objects to Mr. Murphy's questions on the ground of encumbering the record.

30 Q. You paid some of this \$514.62 from your earnings of \$28.00 a week and your extra earnings of \$10 a week? A. All my wife's money went in too.

Q. And the balance you borrowed and took from the bank? A. My wife made \$16 a week.

Q. Whom did you work for besides Mr. Anderson? A. I worked for Mr. Anderson and lots of other people, Miss Cushman, Mr. Gibbs and others.

40 Q. You say that you were not able to start the business for some time because you could not get

*James E. Perry—Cross.*

any money out of Dr. Bell after he paid the first deposit, where did you get the balance of the deposit? A. I borrowed \$100 from Dave Morris to make up Dr. Bell's share.

Q. I show you two checks from Dr. Bell, dated March 20 and March 30th for \$25 and \$125? A. Yes, sir. When these things first got bought he gave \$25. first to B. B. Company and then the check for \$125. We were to go down to pay the balance and I was waiting for him to bring the rest of his money. 10

Q. How much was that supposed to be? A. We were supposed to go 50-50.

A. He did not come and the man from B. B. Company called up and asked when we wanted the tables, they were ready to be loaded on the truck, they were only waiting for the final installment of the first deposit. 20

Q. How much money was he waiting for? A. Dr. Bell had paid \$25 and after that \$125, and I had to go to Dave Morris and get \$100 to make up his share.

Q. How much of your own money did you have? A. I think I had \$275 of my own.

Q. You gave these two checks and enough to make up the \$450? A. Yes. 30

Q. Do you still owe Morris \$100? A. I paid it back.

Q. When did you pay him back? A. I paid him back since.

Q. Where did you get the money to pay him back? A. Worked for it.

Q. Did you get the \$100 you paid back out of the receipts? A. Yes.

Q. Out of the pool room money? A. No out of my own pocket I paid him back. 40

*James E. Perry—Cross.*

Q. Then you were mistaken when you said you paid B. B. Company \$375 when Dr. Bell had already given them \$150 and the first deposit was only \$450? A. I paid them the balance.

Q. You said the B. B. Company would not send the pool tables until you paid the initial deposit?

10 A. They wouldn't.

Q. How much was that initial deposit? A. \$450.

Q. How much of it did you pay? A. Well he paid \$150, I paid the rest.

Q. You paid the rest did you? How much was that? A. Whatever it was I paid it.

Q. You paid \$300 then? A. I don't know, I know I paid the rest.

20 Q. You said before you could not get the pool tables because Dr. Bell did not give you the money?

A. He did not give me enough.

*Direct-examination by Mr. Goodell:*

30 Q. Since then Mr. Perry have you incurred any expenses that you paid out of your own pocket? Have you paid any bills for the pool room out of your own pocket? A. Some small bills I have and I got behind in the rent and drew some money to pay it.

Q. As you began to make money in the pool room did you put it in the bank? A. Yes, sir.

Q. What bank? A. Bank of Montclair.

Q. How soon? A. I do not know how soon, pretty soon afterwards.

Q. Have you the date of your first check? A. April 10, 1928.

40 Q. Did you change banks? A. Yes, sir.

*James E. Perry—Direct.*

Q. And opened an account where? A. First National Bank and Trust Company.

Q. Did you put anything in the First National except the pool room money? A. No.

Q. Did you put all the pool room money in the bank? A. I did.

Q. I thought you paid help? A. I paid the help sometimes out of the drawer, what I did not pay them I put in the bank, except business expenses. 10

Q. You paid some business expenses in cash? A. Yes, sir.

Q. You paid some business expenses by check? A. Yes, sir.

Q. I show you check dated June 30 for \$25, was that for business or personal? A. Business.

Q. Check to Harry McPherson for \$20 dated June 30th, was that for business? A. Yes. 20

Q. Check of July 6 for B. B. C. Company for \$65.79, business? A. Yes, business.

Q. Check to National Cash Register for \$10.00. business? A. Yes.

Q. Check to Henry Bros. for \$29.75 dated July 28, business? A. Yes.

Q. Check to Simpson Merritt for \$65, business? A. Yes, sir, rent.

Q. Check to Henry Bros. for \$19.29, business? A. Yes. 30

Q. Check to Fred Jones for \$25, business? A. Yes, he is man who worked in place.

Q. Check of \$20 to Harry McPherson, business? A. Yes.

Q. Check to Henry Bros. for \$15.00, business? A. Yes.

Q. Checks for Paul Grant for \$10, Gilbert Ryder for \$10. Henry Bros. \$20.44, LeRoy Jones \$6.00, 40

*James E. Perry—Direct.*

Farber Bros. \$7.50, Grigsby \$65.00. Were they all for business? A. Yes.

Q. Check for Oscar W. Duke, was that for the business? A. Yes.

Q. You drew these checks on the Bank of Montclair, after you had withdrawn all the funds of the business? A. Yes.

10

Q. That is money you put into the business out of your own pocket? A. That is just some of it.

Q. Is there any other money you put in out of your own pocket? A. Look over the papers.

*Cross-examination:*

Q. Can you point out which of these checks you paid for your personal business and which for the business of the pool room? A. I will go through them.

20

Q. You still continued to have a balance after you transferred the pool room money to the other account? A. I figured how much was in the bank belonging to the pool room and put it in the other bank.

30

Mr. Murphy objects to any charges being shown after the date in which he drew the account out of the Bank of Montclair as charges to the business.

Q. Why did you not draw the checks shown to be drawn on the Bank of Montclair after you had transferred the account to the First National out of the First National if they were for the business? A. There was no money. I went to Dr. Bell for money and couldn't get it. My rent, electric bill, my table notes and other bills come due and I had to have some money and where was I going to get

40

*James E. Perry—Cross.*

it from. There was very little in the bank from the pool room money.

Q. Why did you transfer the account? A. Nearer my business.

Q. Why did you not transfer your personal account? A. My wife could take care of that.

Q. Did you put any money out of the pool-room into your own pocket? A. No. 10

Q. You were paying the money out for expenses that you did not put in the First National? A. Yes, sir.

Q. I want to know about other items of money that you have paid out which did not come out of the pool-room money, in other words what other money came out of your own pocket? A. Some few things I would buy and bring to the pool-room. 20

Q. What were they, have you any record of them? A. No, sir.

Q. When you changed banks did you draw the balance in the Bank of Montclair? A. Yes, sir.

Q. Do you know how much that was? A. It was the first deposit in the First National \$42.38.

Q. After that there was no money left in the Bank of Montclair due to the business? A. No, sir. 30

Q. I notice that you drew a number of checks out of the Bank of Montclair after that, were any of these for the pool room? A. Yes, sir.

Q. I show you check of \$21 No. 24 stub in Bank of Montclair to the order of Henry Bros. Was that for the business? A. Yes.

Q. I show you check of \$65 to B. B. C. Company for \$65? A. That was for the business.

Q. Did you put any money in the Bank of Mont- 40

*James E. Perry—Cross.*

clair from the receipts of the business after you had transferred the account? A. No, sir.

Q. The only money you put in the Bank of Montclair after the date you transferred the account were your own earnings? A. Yes, sir.

10 Q. The only money you put in the First National Bank was from the business? A. Yes, sir.

Q. Did you draw any money and pay any bill from the Upper Montclair Bank to pay the pool-room debts? A. I drew them when I had the money.

Q. During the period of time in which you were running this business you were able to pay off the Brunswick Balk people and all other debts out of the profits besides? A. I don't understand you.

20 Q. During the time from the day you started business and the first of January, 1930, you were able to pay off all your debts and pay off the \$1800 to the Brunswick Balk people and have no other debts except perhaps \$200 or \$300?

Mr. Goodell objects to the question as stating a conclusion.

Q. Did you make a profit?

30 Mr. Goodell object on the ground that that is what all concerned are trying to find out.

*James E. Perry—Cross.*

Continuation of the taking of depositions in the above-entitled cause, before me, Chester C. Beekman, a Special Master in Chancery of New Jersey, this 19th day of February, 1930 at the office of Philip Goodell, Esq., Hinek Building, Montclair, New Jersey, in pursuance of the order of reference before recited, and in the presence of Joseph F. Murphy, Esq., solicitor of the petitioner, and Philip Goodell, Esquire, solicitor of the defendant. 10

State of New Jersey, }  
County of Essex, } ss.:

I, Florence Goodell, do solemnly swear that I will faithfully and truly take stenographically and reproduce in typewriting the testimony to be given in a certain cause now pending in the Court of Chancery of New Jersey, wherein George E. Bell is petitioner and James E. Perry is defendant. 20

So help me God.

Sworn and subscribed before me this nineteenth day of February, 1930.

JAMES E. PERRY, witness produced on behalf of the defendant, being duly sworn, deposes as follows: 30

*Mr. Murphy:*

Q. I was examining you on where you got the money. You said you borrowed \$100. and paid the other \$200. and Mr. Bell furnished \$150. out of the \$450. Mr. Goodell originally asked you where you got the money from, as I recall it. You said you borrowed \$100. from Mr. Morris. Later 40

*James E. Perry—Cross.*

on he asked you if you paid Mr. Morris. Do you recall? A. Yes.

(Mr. Goodell object, as this is repetition)

Q. Did you pay it out of your own funds? A. Yes.

10 Q. You said, yes, you paid it out of your own funds. How long after you borrowed it, did you pay it?

(Mr. Goodell objects to this question).

A. I paid it back—I don't know how long after.

Q. About a month? A. Maybe so.

Q. It might have been two months? A. It could have been.

20 Q. How did you pay it, in cash? A. I gave him the money.

Q. In cash, or by check? A. Cash money.

Q. At the time that you paid him the cash money, the \$100., did you have some money belonging to the pool business? A. That was in the bank.

Q. The funds of the pool parlor business were in the bank. You paid him from cash money you had yourself? A. Yes.

Q. You didn't take it out of the money you got in the pool business? A. No.

30 Q. Mr. Goodell, when he asked you about this book (showing witness page 3 of Exhibit ) marked alongside of certain figures "p" on several sheets and he asked you if that was what you paid out of your own pocket or out of the partnership money—paid out of your money and you answered, yes. Is that right? A. Yes.

*By the Master:*

40 Q. In other words, we can agree that all those

*James E. Perry—Cross.*

marked "p" you said you paid for, is that right?

A. Yes.

*Mr. Murphy:*

Q. You paid for them out of your own pocket?

A. Yes.

Q. These places that are not marked—without any "p" on them, for instance, one for lumber, \$14., one for soda water \$3.50—not marked "p", were they paid out of the partnership funds? A. Yes, paid out of the pool room money.

10

*By the Master:*

Q. You call the partnership funds "pool room money"? A. Yes, sir.

*By Mr. Murphy:*

Q. Here is one for a cue stick, the first item, \$3.85. Here is one for lumber, \$14. Did you pay cash for that? A. It came out of the funds of the pool room.

20

*By the Master:*

Q. Was it money or check? A. Money.

*By Mr. Goodell:*

Q. And you paid for it when you bought it? A. Yes, out of the pool room money.

30

*By Mr. Murphy:*

Q. Here is one for soda water—\$6., did you pay for that at the time? A. It came out of the pool room money.

Q. Here is one for \$20., that is pool room money? A. All that is not marked.

40

*James E. Perry—Cross.*

*By the Master:*

Q. You took a certain amount of cash and paid for them out of the pool room receipts and paid them cash? A. Yes, sir.

*By Mr. Murphy:*

10 Q. Here is a supply of soda, did you pay that when you got the stuff? A. That came out of pool room money.

*By Mr. Goodell:*

Q. What Mr. Murphy is asking you is whether you paid the fellow when he delivered the stuff or whether he charged it to you and paid him later.

*By the Master:*

20 Q. When did the Henry Brothers where you bought the soda from— A. I don't get soda from them. I get it from Parker.

Q. When did they give you any credit? A. About a couple of weeks after I opened up the place.

*By Mr. Goodell:*

30 Q. You bought two sets of ivory billiard balls in April. Did you pay for them in cash? A. No.

Q. You paid for them later on? A. Later on.

Q. You bought fifteen sets of ten pins? A. No, later on.

Q. All out of pool room money? A. Yes.

*By Mr. Murphy:*

Q. Did you pay cash \$65. for a pool table? A. I paid that out on one check.

40 By Mr. Goodell: The questions and an-

*James E. Perry—Cross.*

swers brought out that of the items on page 5 of the book, those for billiard balls, \$40. and ten pins, \$97.50 represented an obligation incurred rather than disbursements at the time. They were paid later, but were paid out of partnership funds. All those marked "p" were paid for at the time out of his personal money. 10

Q. Mr. Perry, what services have you rendered to that pool room? What have you done personally? A. I have put three nights a week in there after I came from my job.

Q. What hours? A. From six o'clock until twelve or one and some nights all night.

Q. When did you close the pool room? A. At twelve o'clock at night for business and then I had the work. 20

Q. What kind of work? A. Polishing the bowling alleys and painting the floors.

Q. And cleaning? A. Yes.

Q. How long have you done that? A. Ever since the place has been opened.

Q. Have you in addition been down there sometimes in the daytime? A. Yes, sir, I was off on a vacation and spent a week getting water out of the bowling alley and all my spare time in 1928. 30

Q. That is from the beginning, from the 10th of April, 1928 to the first of February, 1930? A. That was the month of August when it rained and I had all that trouble.

Q. That was the month you spent a solid week there? A. Yes.

Q. Were you there at all the week before that, or was that the week you were away? A. I was away for a week. 40

*James E. Perry—Cross.*

Q. There was one week when Dr. Bell took charge? A. Yes.

Q. I think that is ninety-five weeks, that period. How much do you think your time was worth there, Mr. Perry? A. I think about \$15. or \$20. a week.

Q. Fifteen dollars a week? A. Yes.

10 Q. What would it have cost you to hire a man to do what you did? A. Twenty dollars.

Q. Would you be satisfied for yourself, to take \$15. a week? A. Well, yes, sir, I would.

Q. What services has your wife rendered down there? A. She came down there of mornings and stayed for about two and a half or three hours.

Q. Beginning when? A. Along about October.

Q. What date in October? A. I don't just exactly recall—about the 15th of October.

20 Q. Until the first of February—about fifteen weeks. What did she do there? A. Well, she always opened up and stayed around till my brother-in-law came down.

Q. Would a dollar a day be a fair recompense for what she did? A. Yes.

Q. Have you received any of that fifteen weeks' pay for your wife's services? A. Not as yet.

30 Q. Have you been paid anything for your time? A. Not as yet.

Q. Mr. Perry, when this suit was started did you turn over to Mr. Janney all your books and records and bank books, etc. for him to make up a statement? A. Yes, sir.

Q. Does he still have them? A. Yes, sir.

Q. Those records were true? A. Yes, sir.

40 Q. Check books, vouchers and receipts, they all show money spent for the partnership? A. Yes, sir.

*James E. Perry—Cross.*

Q. The moneys you took in from the pool room, did you put them all in the bank? A. Yes.

Q. All of them? A. What I didn't pay out of cash out of the drawer.

Q. The cash you paid out of the drawer you didn't pay yourself? A. No, sir.

Q. So that all you took in either went into the bank or for pool room debts? A. Yes, sir. 10

*By Mr. Murphy:*

Q. Whom did you work for? A. Mr. C. W. Anderson.

Q. Where does he live? A. 334 North Mountain Avenue, Montclair.

Q. What were your duties there? A. Janitor and superintendent of the building.

Q. Didn't that take you there all hours of the day? A. No, sir. I am supposed to take care of the place. I have no limited hours. 20

Q. That might mean all day? A. Yes.

Q. It might mean part of the night? A. It don't mean any part of the night unless something happens.

Q. What did you have to do around the building? A. Take care of the building.

*By Mr. Goodell:*

Q. Did you do cleaning? A. Yes. 30

*By Mr. Murphy:*

Q. You do have some of that to do? A. Yes.

Q. Sweeping up the rooms? A. No, sweeping the hallway.

Q. What are the buildings? A. It consists of apartments and a couple of stores.

Q. How many apartments? A. Six. 40

*James E. Perry—Cross.*

Q. How many stores? A. Two stores and the post office.

Q. The Upper Monclair post office building? A. Yes.

Q. You had to keep the fire in the furnace, didn't you? A. Yes.

10 Q. You had to sweep out the halls? A. Yes.

Q. Did you live in the building? A. No.

Q. Didn't that mean that you had to be there both day and night? A. No.

Q. Didn't you have to be there in the building evenings? A. No.

Q. You were there some evenings, were you? A. Yes.

20 Q. Do you remember what evenings they were. Do you remember how many evenings you were there? A. Where?

Q. Mr. Anderson's building. A. I am off around six o'clock. In the summer time I get off earlier.

Q. There have been times when you have been there in the evening? A. I have no limited time. I got to work there in the mornings and I work there until time off.

30 Q. In other words, you are supposed to be on the job unlimited time, day and night? A. I go there about seven o'clock in the morning.

Q. What time do you leave? A. In the summer I leave around five or five-thirty.

Q. In the winter time? A. I leave there around 5:30 or six o'clock in the winter.

Q. Weren't you supposed to be there some times in the evenings? A. What do you mean?

*By Mr. Goodell:*

40 Q. Did your duties at the apartments take you there evenings to fix the fires? A. The man at the

*James E. Perry—Cross.*

theatre would come there and do the work for me.

*By Mr. Murphy:*

Q. Your duty was to be there on certain evenings? A. No.

Q. What did you have to get a man there for?  
A. That was our business. I was working for Mr. Anderson. 10

Q. You were supposed to be there evenings some times? A. No. He did work for me and I did work for him, as a favor.

Q. You were supposed to do that? A. That was my job and he did it as a favor.

Q. Did he have to do it? A. No, if he didn't, then I would fix it before I left.

Q. The evenings that you would work unless he came over there you would have to do it yourself? 20  
A. I would do it before I left there.

Q. You used to have the man come over and do your work?

Mr. Goodell: I object to the question. Objection held.

*By the Master:*

Q. You had to go back only to the furnace and when the man next door did it you didn't have to go back at all. That is how you worked it some evenings and then you would go down to the pool room. Other evenings what did you do? A. If there was work to do I did it and if not I would go home. 30

Q. How late did you stay there? A. I always left early.

Q. You stayed down till the work was done? A. I stayed there till about seven o'clock. 40

Q. Did you ever come down to the pool room and

*James E. Perry—Cross.*

then go back to the job? A. Yes, I got my brother-in-law to take my place.

*By Mr. Murphy:*

10 Q. Whom else did you work for besides Mr. Anderson? A. I done days' work for other people, Mrs. Anderson, Miss Bull.

Q. Did that take your time during the day? A. No, that was a little special job. It didn't take my time.

Q. You did work for other people during the time you worked for Mr. Anderson? A. I done little special jobs.

Q. What did that work consist of? A. Little jobs. When a man wanted a window pane put in I did it and—

20 Q. Furnaces? A. I did lawns and—

Q. You did have time to work in the pool room besides? A. I have been a slave for two years.

Q. Whom else did you work for after you left Mr. Anderson? A. I am working for him now. I am down here on his time.

30 Q. All during this period of time you have worked for Mr. Anderson? A. Yes, I worked for Mr. Anderson and nobody else, except a few jobs here and there.

Q. Janitor of the church? A. No, sir.

Mr. Goodell: I object.

*By Mr. Murphy:*

Q. How much a month do you get from Mr. Anderson? A. I don't know. I work by the week.

Q. How much a week do you get? A. I started at \$28. a week.

40 Q. How much do you get now? A. I get \$28. a week now.

*James E. Perry—Cross.*

Q. You say that you used to polish the bowling alleys? During this period that you polished the bowling alleys did you have Mr. Jones working with you? A. Yes, many a night we worked together.

Q. You had a boy there, too? A. Yes, sir.

Q. Did he help polishing on the bowling alleys, too? A. Some nights.

10

Q. You say your wife worked there for fifteen or sixteen weeks—since the 15th of October. What did she do? A. Opened up of mornings until my brother-in-law came down, Mr. Jones.

Q. Did she have any arrangements with you to sell any sandwiches or coffee or pigs feet? A. Have any arrangement?

Q. Did she sell any pigs feet or coffee or sandwiches ever? A. Yes.

Q. Who got the money? A. It was her stuff and her money and she got the money.

21

Q. That was her department? A. No, she didn't have no department—she only had a little pan and she took it home with her.

Q. But she did sell some pigs feet during that time? A. Yes.

Q. Did you charge her any rent? A. There was nothing to charge for.

Q. What did she do with the profit? A. I don't know. You will have to ask her.

30

Q. You have a charge for your wife's services? A. I would have had to pay a man to do it.

Q. She was selling sandwiches— A. Not always—there weren't always people there.

Q. She had them to sell? A. Yes, sir.

Q. She sold them during the period from the 15th of April up to the time she quit? A. It wasn't every day she had stuff—some days she would get out of it—

40

*James E. Perry—Cross.*

*By the Master:*

Q. How long was she there A. Some days after she would come back after he came.

Q. When did your wife stop opening up—when did she quit? A. She stopped after this man—the first of February.

10 Q. During that time did you have a boy down there? A. Yes, sir.

Q. In addition to Mr. Jones? A. Yes.

*By Mr. Murphy:*

Q. How much did you pay Mr. Jones?

Mr. Goodell: I object on the grounds that this isn't cross-examination.

*By the Master:*

20 Q. How long has that boy been there opening up? A. Quite a while—I don't know just exactly.

*By Mr. Goodell:*

Q. When your wife went in did that save any expense for the company? A. Yes, sir.

30 Q. How? A. I used to have a man and paid him a weekly salary and after I didn't have a man I told her she could go down and he could come down later. We did this because we weren't making money. I told him my wife would come down and she would go down there—so I had a boy go down there. I arranged to have Mr. Jones go down afterwards.

*By Mr. Goodell:*

40 Q. Was he a pin boy? A. He was just there to rack the balls. He took care of the money. I paid him pin boy's salary.

*James E. Perry—Cross.**By Mr. Murphy:*

Q. When you had a man working there before your wife did it, how did you do? A. We split the shift. He would come on of a morning around about eight o'clock and stayed till twelve—go home. Jones would come on at twelve and the man come at six o'clock and Jones would go and get his dinner if it was his night on and come on and the man would stay on. 10

*By the Master:*

Q. If Mr. Jones wasn't there? A. Either Jones was there or I was there.

Q. You always had a man there, or your wife? A. That was the first year when I first opened up. Everybody was excited and wanted to have a big time and so I needed a man to split the shift. 20

*By Mr. Goodell:*

Q. How much money did you pay Dr. Bell out of this partnership—did you pay him all in checks? A. No, sir, I didn't pay him all in checks. There was some money, but when I was away and no account was made.

Q. When you were away when? A. August, 1928. 30

Q. The first summer Dr. Bell took care of the place. How long were you away? A. He had charge of it the time I was gone. It was about two weeks.

Q. Outside of that money that Dr. Bell took in then, did you pay him any cash money or was it all checks? A. I paid him all checks.

Q. Have you got those checks, Mr. Janney? A. No, I haven't them here. 40

*James E. Perry—Cross.*

Q. Did Mr. Bell give you back any of the \$565.?

A. He hasn't given me any up to date. He gave me one or two little old bogus checks.

Q. You never collected on them? A. No.

*By Mr. Murphy:*

10 Q. You said the only thing that Dr. Bell gave you was one or two bogus checks. Is that right?

A. Yes.

Q. I show you a check dated May 12, 1928 for \$50. Was that check given to you? A. No. That is not my handwriting on the back. No.

*By Mr. Goodell:*

Q. You are sure you didn't cash it in the bank?

A. Yes, sir. I never write my name like that.

20 Q. You are sure you didn't sign "J. Perry" on the back? A. I didn't. I never sign my name that way. I told him how to put my name.

Q. So he was told how to draw the checks. Have you got some explanation of that check? Do you remember anything about it? A. I don't know nothing about that check.

*By Mr. Murphy:*

30 Q. I show you a check dated June 18, 1928 for \$75. Did you get the money on that check? A. Yes, sir.

Q. Cash it? A. Yes, sir, that was put back in the bank.

*By Mr. Goodell:*

Q. You got the money for it. Did you give Dr. Bell the cash for the check? A. Yes.

*James E. Perry—Cross.**By Mr. Murphy:*

Q. You mean to say you cashed the check, got the money and gave it to Dr. Bell? A. Yes, sir.

*By Mr. Goodell:*

Q. What did you give Dr. Bell for the check? A. He gave me this check for another check. I exchanged him this check for one out of the pool room money. That is what I mean. 10

*By Mr. Murphy:*

Q. Where is the check you got from the pool room, let's see the check that you gave him. A. It is there.

*By the Master:*

Q. Did that check go through the bank or was it deposited back? You cashed that check and got \$75. for it. What did you do with it? A. He got that money. 20

Q. What do you mean? A. He got this here amount of money.

Q. Did you get any of it? A. I went to the bank and got the money. I got the money and handed it to him. He got the money so far as that is concerned. 30

Q. He got the cash money? A. He got the cash money C. O. D.

Q. What was the idea of him doing that? A. I don't know what his idea was, ask him.

Q. Wouldn't it have been just as easy for him to do it? A. I don't know.

Q. In other words, he draws a check to your order and you go over to the bank and you turn the money over to him? A. Yes, like a big clown. 40

*James E. Perry—Cross.*

Q. What for? A. I don't know.

Q. Did you give him a check in exchange for this? A. No, I gave him the money.

Q. You said before you gave him a check. A. I didn't understand it. I got the money and gave it to him.

10 *By Mr. Murphy:*

Q. I show you a check dated 16, 1928, for \$15., made out to James Perry. What became of this? A. That was a check I had a little trouble in getting. It went back in the bank.

*By Mr. Goodell:*

Q. What did you give him for the check? A. I gave him a check for the check.

20 *By Mr. Murphy:*

Q. What check did you give him for it? A. I gave him a check from the pool room money.

*By Mr. Goodell:*

Q. When you got the money on that check what did you do with it? A. I put it back in the pool room account.

30 *By Mr. Murphy:*

Q. Did you cash it? A. No, I deposited it.

Q. There is no deposit designation there. What bank did you put this in? A. Bank of Montclair.

*By the Master:*

Q. This check is endorsed by you, "James Perry". Was that put in the bank? A. That was put in the bank.

40 Q. What bank? A. I don't know what bank.

*James E. Perry—Cross.*

Q. The money or the check? A. The check.

*By Mr. Murphy:*

Q. Did you put it back in cash or in the check?

A. I don't know. But he got it back to meet the notes.

Q. You gave him a check for this to Dr. Bell for that balance? A. Yes.

Q. I show you a check dated April 18, 1928 made to James Perry. Did you get the money on that check? A. Yes.

Q. What did you do with that? A. Put it back in the bank.

Q. Did you get the money out of the Bank of Montclair? A. Whatever bank the check was made out to.

Q. Did you get the money out of the Bank of Montclair? A. I put the money back in the pool room funds—in the bank to meet the notes every month.

Q. Did you get the cash on this? A. I don't know—the money was put in the bank in the pool room funds.

Q. You don't know whether it was cashed? A. It was put back in the pool room bank account.

Q. Did you do the same thing with this check?

A. I don't know.

*By the Master:*

Q. When these checks were given to you—these two checks—did they go back into the business? A. Yes.

Q. Why didn't you put these two checks into the Upper Montclair Bank? A. I don't understand.

Q. Did you put the checks themselves in the Bank of Montclair or did you cash them and put

*James E. Perry—Cross.*

the money in? A. I don't know exactly whether I cashed them down there or up there. But I know that all the moneys from the poolroom and things was always put back.

Q. Was this particular money represented by these two checks put back in the bank? A. Yes, they were put back in the bank.

10

*By Mr. Goodell:*

Q. You mean, Mr. Perry, that these checks that Dr. Bell has here were not money he gave you and you kept for the pool room. They were checks he gave you for cash and later on when you got the cash you put it in the bank. A. Yes.

20

Q. They were not for money paid into the pool room, but for cash. How did you get the cash that you gave Dr. Bell? Did you draw checks for it or did you have it, take it out of the cash drawer? A. No, I drew checks for it out of the pool room money.

*By Mr. Murphy:*

Q. So that all the checks you have drawn for the pool room money he gave you checks to balance them?

30

*By the Master:*

Q. Certain checks—three checks you acknowledge were given you by Dr. Bell—two for \$50. and one for \$75.—and these checks why were they given to you by Dr. Bell, do you know? A. Yes.

40

Q. Why did Dr. Bell give you these checks? A. I had let him have money and he promised to return it and that is the onliest money he returned. I let him have check for check and that was all he ever returned or tried to return. The rest he didn't return.

*Angelina Perry—Direct.**By Mr. Murphy:*

Q. Was that pool room money or your own money? A. Pool room.

Q. Do you still say, after all these questions and answers, that that was not your signature? (showing him check dated May 12, 1928). A. I don't want to look at that no more. That isn't mine. 10

ANGELINA PERRY, witness produced on behalf of the defendant, being duly sworn, deposes as follows:

Q. Mrs. Perry, when did you first go to work down there in the pool room? A. On the 15th day of October, 1929. 20

Q. How long did you work? A. Until February 1, this year.

Q. What did you do? A. I went down in the mornings to open up and sold cigarettes and confectionaries for the partnership.

Q. How long would you stay there until you were relieved? A. Around ten-thirty.

Q. Would fifty cents an hour be a fair allowance for your services. A. Oh, yes. 30

*By Mr. Murphy:*

Q. Were you employed in any other business during that period? A. No, I was not.

Q. What were your duties? A. To open up from eight-thirty till ten-thirty—to sell sodas and cigars and cigarettes during the day.

Q. You sold other things besides, didn't you? A. During the day I would sell pigs feet.

Q. For yourself? A. For myself. 40

Q. The money that you received from selling

*Angelina Perry—Direct.*

those articles went where? A. The money I received for selling the pigs feet went into my own pocket.

Q. Did you sell it while you were employed there? A. I sold it after ten-thirty—not while I was working there. From ten-thirty on.

10 *By the Master:*

Q. Mrs. Perry, did you always receive the money for the soda? A. Sometimes they said they didn't have it and asked me to charge it.

Q. Did the boy ever sell any soda? A. Yes.

Q. Did he get the money? A. I put it in the cash drawer.

Q. Mrs. Perry, did that boy always go down when you opened up? A. He always came along with me.

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Continuation of the taking of depositions in the above entitled cause, before me, Chester C. Beekman, a Special Master in Chancery of New Jersey, this 27th day of February, 1930, at the office of Philip Goodell, Esq., Hinck Building, Montclair, New Jersey, in pursuance of the order of reference before recited, and in the presence of Joseph F. Murphy, Esq., solicitor of the petitioner, and Philip Goodell, Esquire, solicitor of the defendant.

30

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RICHARD R. JANNEY, witness produced on behalf of the defendant, being duly sworn, deposes as follows:

*Mr. Goodell:*

40 Q. Mr. Janney, have you prepared from such records as Mr. Perry has given you figures of his

*Richard R. Janney—Direct.*

income and outgo from this pool room? A. I have, up to January 31, 1930.

Q. You did it separately up to January first and another set of figures for January? A. I have combined the two.

Q. Did you prepare a schedule of the moneys that Mr. Perry deposited in the banks where he was depositing his pool room money? A. I did. 10

Q. Can you show us that schedule? A. I can.

Q. What is the total amount deposited? A. Up to December 31, 1929 it was \$6102.75.

*By the Master:*

Q. Is that from the time it started? A. It was from April 7, 1928 to December 31, 1929. Then there was \$704.—there was \$326.50 during January. 20

*By Mr. Goodell:*

Q. Will you give us now the total amount of other receipts Mr. Perry took in and not deposited in the bank? A. Yes, it was \$5750.49.

Q. Is that through January? A. Yes, through January.

Q. That was not deposited in the bank? A. No, that was not deposited. 30

Q. How did you make up that last figure? A. I made that up by taking the total of all the receipted bills and subtracting from it the total of the checks paid out.

Q. So that there are receipted bills outside the bills paid by check for \$5750.49 during that period? A. Yes.

Q. Now as to the disbursements Mr. Perry made, have you prepared schedules of disbursements? A. Yes, I have. 40

*Richard R. Janney—Direct.*

Q. Will you dictate into the record a summary of them as appears from that schedule. How much did he pay in the aggregate to Fabre Brothers?

A. Fabre Brothers, \$408.74. These are only the cash disbursements. Do you want the total, including the checks and cash?

10 Q. I want the total. A. The total of Fabre Brothers is \$754.09. That includes what he paid in checks and cash. Henry Brothers, \$1656.95. Then there are sundry bills amounting to \$268.89. I didn't analyze those. Brunswick Balke—these include the tables and sundry bills—totals \$2128.49. Public service, \$28.42. Taxes to Montclair, \$17.20. Pool room license, \$4. Pay roll \$4022.50.

Q. Have you any other memorandum of disbursements by Mr. Perry? A. That includes all.

20 Q. You have given us the total of \$12,584.46. Are there any other disbursements? A. Yes, miscellaneous disbursements made by check, \$3792.60 that include rent and things of that kind.

Q. Were there any disbursements to the partners? A. There were checks drawn to Dr. Bell endorsed by him and paid by the bank amounting to \$565.

30 Q. Any drawings by Perry? A. There were drawings by Perry amounting to \$229.57.

Q. You are quite sure that that schedule includes all disbursements for which you found memorandum or vouchers? A. Yes, sir.

Q. As to your bank deposits, where did you get that total? A. That total was taken from the deposit book and checked up afterwards with the bank statements.

*By the Master:*

40 Q. What bank, the Bank of Montclair? A. To

*Richard R. Janney—Direct.*

the twenty-first of June, 1928.

Q. Is that the book? Will you put a line on that book where you stopped crediting them to the partnership? A. Yes.

Q. The items in that book after that date you understand to be Mr. Perry's personal moneys? A. Yes, Mr. Perry told me that.

10

Q. Have you the First National Bank book? A. At the First National I took the deposits from June 21st. The first entry in the book, up to January 31, 1930, and checked up with the monthly statements of the bank.

Q. And found that they agreed? A. They agree.

Q. May I ask you about the first item in the book? Did you include the first item, \$42.38 in the total? A. Yes.

20

Q. I understood that to be a transfer from the other bank. A. No, it included the cash that was taken from the business.

*By Mr. Goodell:*

Q. As to these disbursements, have you got the vouchers and receipts together which make up the Fabre total of \$754.09? A. The total bills are here, (indicating package of papers)

Q. Those are the vouchers? A. These are the vouchers, (indicating package of papers)

30

Q. Those are the vouchers partly paid in check and partly paid in cash? A. Yes.

*By the Master:*

Q. That is all you have outside of the checks? A. Yes.

*By Mr. Goodell:*

Q. The vouchers covering amounts paid to Hen- 40

*Richard R. Janney—Direct.*

ry Brothers, amounting to \$1565.95? A. Yes.

Q. The vouchers for various sundry items, \$268.89? A. Yes.

Q. Is that total right? A. This does not agree with this because there were some added in January.

10 Q. The list is not complete because of the January items? A. Yes.

Q. The Brunswick-Balke-Collender Company items? A. Yes, payments are all in here.

Q. Do they include the payment on the tables? A. Monthly notes, \$65. each.

Q. Public Service? A. I have that voucher.

Q. The next item is the tax bill—pool room license? A. Here is the license.

20 Mr. Murphy: I object to having offered in evidence any records of any payments made by Perry not represented by a check or voucher or receipted bill.

Objection overruled.

I move to strike out any testimony on any items not so covered.

*By Mr. Goodell:*

30 Q. About your pay roll, what evidence is there of the pay roll? A. In this book (pointing to Exhibit D-1)

Q. What pages? A. Pages 101-136.

Mr. Murphy: I object to using items shown in the book unless it shows entries made at the time when the payments were made.

A. Pages 245-285.

40 Q. Those show a total of your payroll as listed in your testimony? A. Yes.

*Richard R. Janney—Direct.*

Q. The total of the Brunswick Balke? A. Is \$2128.49.

Q. Tell us the evidence you have of the drafts by the partners. A. Dr. Bell's \$565. is made up of these endorsed checks here (indicating bundle of checks) paid by the bank.

Q. And Mr. Perry's check? A. That amounted to \$229.57 and was made up of certain checks that Mr. Perry drew himself. 10

Q. Where are they? A. They are in with the bundles of checks.

Q. The insurance payments, made by check, can you show us the checks? A. Those checks will be in the bundle of checks, but it means that there were a certain number of checks that were not drawn to Fabre Brothers and those other accounts that I analyzed and that is the total of those checks. In other words, it includes rents and other items so that— 20

Q. All the partnership checks have been kept together so far as you know. A. Yes, so far as I got them.

Q. So that that bundle includes not only the \$3792.60, but also other checks sustaining the payments shown by vouchers included in the other schedules. A. Yes. 30

(Mr. Goodell offers in evidence the various schedules made by Mr. Janney and receipts and vouchers, as follows:

Deposit book of the Bank of Montclair, received and marked in evidence Exhibit D-1 of February 27, 1930.

Deposit book of the First National Bank and Trust Company of Montclair, received and marked Exhibit D-2 of Feb. 27, 1930. 40

*Richard R. Janney—Direct.*

Received bills of Fabre Brothers. Received and marked Exhibit D-3 of February 27, 1930.

Received bills of Henry Brothers. Received and marked Exhibit D-4 of February 27, 1930.

10 Bundle of sundry received bills. Received and marked Exhibit D-5 of February 27, 1930.

Received bills of Brunswick Balke Colender Company. Received and marked Exhibit D-6 of February 27, 1930.

Public Service Company's received bill. Received and marked Exhibit D-7 of February 27, 1930.

20 Pool room license. Received and marked Exhibit D-8 of February 27, 1930.

Two received tax bills. Received and marked Exhibit D-9 of February 27, 1930.

Book D-1 of the first day of the hearing, pages 101-136 and 245-285.

Checks drawn to Dr. Bell. Received and marked Exhibit D-10 of February 27, 1930.

30 Bundle of bank statements and vouchers from both the Bank of Montclair and First National Bank and Trust Company of Montclair. Received and marked Exhibit D-11 of February 27, 1930.

Mr. Murphy objects.

Voucher for seventy-five cents charge made by the bank, also offered in evidence. Received and marked Exhibit D-12 of February 27, 1930.

40 Mr. Murphy: As long as these papers have been put in evidence, I insist that the rest of

*Richard R. Janney—Direct.*

the contents of the box where they were also be put in evidence.

*By Mr. Goodell:*

Q. Mr. Janney, will you look at them and say whether or not they belong with the schedules already offered (indicating other papers in the tin box). A. Referring to a memorandum from the Peoples National Bank, this does not belong. It was in a group of other papers handed to me at a later time and placed by me in the box and they do not belong with the schedules. They are simply a letter from the National Cash Register Company acknowledging receipt of the final payment. Nor does this charge back from the Bank for a check not paid for the reason there were insufficient funds, the check is for \$6. 10 20

*By Mr. Murphy:*

Q. Isn't this letter from the National Cash Register Company a voucher? A. It simply shows the final payment of the monthly payments to them which are already on the list and represented by checks.

*By Mr. Goodell:*

Q. I show you another bundle of papers. Do they belong in the schedules on record? A. There is a letter asking for rent—more in the nature of a statement. These are mostly letters. 30

Q. These other checks, why are they not in with the bundle of vouchers? A. They should be.

(Mr. Goodell offers in evidence bundle of checks covering miscellaneous payments. Received and marked Exhibit D-13 of Febru- 40

*Richard R. Janney—Direct.*

ary 27, 1930.) This includes miscellaneous vouchers some of which are duplicates of checks and some of which may not be duplicates.

10 Mr. Murphy: I call the attention of the master to the fact that Mr. Goodell has in his possession papers taken out of the partnership box, a bank book in the Savings Department of the First National Bank and Trust Company of Montclair, No. 10130 in the name of James E. Perry—

The Master: Mr. Perry at the last hearing produced out his pocket those books and the books we requested him to produce and they were left by Mr. Perry and put in this box.

20 Mr. Murphy: We have to show the amount of receipts that Mr. Perry has received during that period and which have not already been shown. I want to call the Master's attention to the fact that these bank books show deposits in them from February 4, 1929 to February 3, 1930—various deposits—that there is a note for \$275. dated May 17, 1929 payable to the Anderson Realty Company marked paid Nov. blank, 1929. I can't read the date. I ask for a ruling that Mr. Goodell refuses to produce these things in evidence and I ask that all the bank books—four of them—be marked in evidence.

30

Mr. Goodell: I object to Mr. Murphy's marking them in evidence at this time.

The Master: I sustain the objection that they may not be marked at this time.

40 Mr. Murphy: I ask that they be given to the receiver. I ask that the note be produced. The note was taken and turned over to

*Charles Anderson—Direct.*

Mr. Perry and I will not put that in evidence under Mr. Goodell's objection.

(Note was placed in the box).

CHARLES ANDERSON, witness produced on behalf of the petitioner, being duly sworn, deposes as follows: 10

*By Mr. Murphy:*

Q. Does James E. Perry work for you, Mr. Anderson? A. He works for the Anderson Realty Company.

Q. How long has he worked for you? A. Approximately four years.

Q. When he started to work for you in 1926 how much did you pay him? A. Twenty-eight dollars. 20

Q. Have you ever raised or decreased his salary since then? A. No.

Q. Where did he work? A. He is the janitor of the building we own in Upper Montclair.

Q. Did he do work at that one building? A. For the company. Yes, he did the janitor work. We always let him do work outside—at my home and other peoples' homes. 30

Q. And he was paid outside for that? A. That was separate pay.

Q. Was it days' work? A. Hours' work.

Q. So much an hour? A. Yes.

Q. What were his duties at the building in Upper Montclair? A. He took care of the building, kept the halls clean, took care of the furnace—kept the post office clean. 40

*Charles Anderson—Direct.*

Q. Takes care of the furnace covering the post office? A. Yes.

Q. You have no other man to work in the post office? A. Not under our employ.

Q. Is there someone else? A. Just the post office employees, not taking care of the building.

10 Q. The janitor takes care of the building? A. Yes.

Q. What hours of the day? A. That depends on the season—in winter time his hours are longer. I don't check him up. I imagine he gets there between seven and eight in the morning and leaves around five or six o'clock.

Q. Takes care of the furnace in the evening? A. If necessary. He might have to go up there.

20 Q. So it was uncertain whether he might be there one or two or three nights, just according to the weather? A. That's right. It is not continuous, of course. He might go away and then come back and see if his furnace is all right and leave again.

Q. So that all during that period he received in salary from the Realty Company \$28. a week? A. In salary, yes.

Q. Did he ever borrow any money from you? A. Yes.

30 Q. And pay it back again? A. Yes.

Q. How much was that? A. At different times he has borrowed different amounts. The note of \$275. is the only item I recollect.

Q. Since April, 1928, do you remember whether do you remember whether he has borrowed any other money than what you have mentioned? A. That is the only one.

40 Q. How did he pay that? A. Out of the weekly salary from April until the fall. I would pay one week and hold back the next week until it was

*Charles Anderson—Direct.*

finally liquidated. Or I might skip a couple of weeks according to how he was fixed.

Q. When he borrowed this money did he mention what he wanted it for? A. Only in a general kind of way.

Q. Will you tell us what he said? A. He said he had some business expenses in Montclair, or repairs. 10

*By Mr. Goodell:*

Q. That is the note, is it, Mr. Anderson? (Showing him the note for \$275. dated May 17, 1929).

A. Yes, I think it is.

Q. Have you had any talk with Mr. Perry about his testimony here? A. No.

*By the Master:*

20

Q. Mr. Anderson, what were you paying Perry up there? A. Twenty-eight dollars a week. He earned money aside from that by the hour.

*By Mr. Murphy:*

Q. He got work from your own family and from others too? A. Yes.

Mr. Goodell: I object. Mr. Murphy has examined the witness. 30

*By the Master:*

Q. So that he did odd jobs for you and others? A. Yes.

*By Mr. Goodell:*

Q. What has been your experience with Perry's honesty? Have you found him honest and frank?

A. Yes, so far as my experience has been concern- 40

*Richard R. Janney—Recalled—Cross.*

ed I have had very satisfactory dealings with him.

Q. Ever heard of his being dishonest? A. No.

10 RICHARD R. JANNEY, being recalled, deposes  
as follows:

*By Mr. Murphy:*

Q. Mr. Janney, are you an accountant? A. Yes,  
sir.

Q. Certified by the state? A. No, sir.

Q. Do you have your office with Mr. Goodell?  
A. Yes.

Q. Been with him for some time? A. Novem-  
ber 9, 1929.

20 Q. How did you arrive at the deposits that you  
mentioned, of \$6102.75? A. I copied a list from  
the deposit books.

Q. Deposit books or book? A. Books.

Q. Will you show me that book (Witness shows  
attorney Exhibits D-1 and 2 of February 27, 1930.)

Q. Is this book for \$6102.75. (Indicating Ex-  
hibit D-1) A. That is only the first book.

30 Q. Is this a combination of two or only one? A.  
It is a combination of two.

Q. Can you tell us how much from this bill and  
down to what date? A. The last date was June  
20th and the amount was \$1207.60. That extends  
from April 10, 1928 to June 21, 1928.

Q. That shows a deposit of how much? A.  
\$1207.60.

Q. From April 10, 1928 to June 20, 1928? A.  
Yes.

40 Q. From June 20, 1928, I am showing you the

*Richard R. Janney—Recalled—Cross.*

same book, can you tell us what the total deposits were after that? A. Not in that book, no.

Mr. Goodell: I object on the grounds that there was no evidence after that date—they are Mr. Perry's personal deposits and not testified to in the direct testimony.

The Master: Objection sustained.

10

*By Mr. Murphy:*

Q. Did you make any figures from that date?

A. Not in that book, no.

Q. You are just taking Mr. Perry's word when you testify that all the period of his partnership deposits were made from April 10th down to June 20th? A. Certainly, supported by other figures.

Q. How do you mean, supported by other figures?

20

A. From June 21st Mr. Perry opened an account in the First National Bank and Trust Company of Montclair.

Q. How do you know he did that? I show you a book, it says nothing about a partnership account

— A. I am taking Mr. Perry's word for it.

Q. Just taking Mr. Perry's word for it? A. Exactly.

Q. So you don't know what this total from June 20, 1928 to date is? A. No, sir.

30

Mr. Goodell: I object to that question, the same objection which was sustained before—not cross-examination and not material.

A. I don't know anything about them after that date. I paid no attention to them.

40

*Richard R. Janney—Recalled—Cross.*

*By Mr. Murphy:*

Q. No attention whatsoever? A. They are not included in the calculation of the figures.

Q. Hadn't you reason to suppose from the figures in the deposit book showing deposits on June 25, 26 and so on, almost every other day, that they  
10 should be considered part of the partnership fund?

Mr. Goodell: I object to the question, as it asks for his personal opinion.

Objection sustained by the master.

Q. And the expenses that Mr. Perry shows you after June 20th, by his receipts for expenses did he tell you he drew any money out of this bank account to cover it, out of his own personal account? A. Yes, he did. He told me that he drew  
20 some funds from that account to pay the business bills.

*By the Master:*

Q. You say Perry told you when you examined the vouchers after that date—and Perry told you he drew checks after that date out of the Bank of Montclair? A. Yes, sir.

*By Mr. Murphy:*  
30

Q. Then why didn't you take these deposits after that date?

Mr. Goodell: I object. It calls for a conclusion.

*By Mr. Murphy:*

Q. If he drew expenses out for that period, why shouldn't his receipts go in for that period? A. I  
40 didn't question that statement.

*Richard R. Janney—Recalled—Cross.*

Q. Can you show what dates he drew it or over what period of time after June 20th? A. Those payments are marked.

Mr. Goodell: I object, that is not cross-examination. It is all in Perry's testimony.

*By Mr. Murphy:*

10

Q. Mr. Janney said that Mr. Perry told him that he did take the money out and I asked Mr. Janney why he didn't include the deposits in the receipts. A. Because they are in a different section of the figures. Part of the amount is scheduled here as due Perry.

Mr. Murphy offers the bank book, Exhibit D-1 of February 27, 1930 in evidence, saying that Mr. Janney had testified down to June 20th deposit and asking that the deposits from June 21, 1928 to December 30, 1929 be included in the testimony.

20

Mr. Goodell objects.

*By Mr. Murphy:*

Q. How much was that other amount from this First National Bank and Trust Company book? You gave one item from this book of \$1207.60. How much was the amount that you have as receipts in there for the other item? A. \$5221.65, that is for the First National Bank of Montclair.

30

Q. That is a difference of about \$20. The items you gave amounted to \$6102. A. The amount is \$6429.25.

Q. That is in the two banks? A. \$6429.25.

Q. Then does this First National Bank include all the deposits that were made by Mr. Perry from June 21, 1928? A. All the deposits.

40

*Richard R. Janney—Recalled—Cross.*

Q. Up to January 31st? A. Yes.

Q. Was this deposit on June 21st the balance that was in the Bank of Montclair account? A. No, sir.

Q. This deposit of June 21st for \$42.38? A. \$42.38.

10 Q. That wasn't a transfer? A. That was not a balance transferred.

Q. Do you know what the balance was on June 20, 1928? A. It was less than that.

Q. How did you arrive at that? A. I don't know now.

Q. Did Mr. Perry state to you what the balance was? A. No.

20 Q. So all the deposits here from June 21, 1928 amount in this book to \$5221.65. Is that right? A. Down to January 31st, yes, sir. There may have been some February deposits there.

Q. Did Mr. Perry show you any other bank books or accounts? A. No more deposit books.

Q. Savings Bank books showing a deposit down there?

*By the Master:*

30 Q. Do you know anything about these books? A. No.

*By Mr. Murphy:*

Q. I show you a book of the First National Bank, have you seen it before? When did you first see it? A. I saw that about a week ago.

Q. Did you take any records from it? A. No.

Q. Here is one of the Bank of Montclair, Thrift Department. A. I took no record from it.

40 Q. The Montclair Trust Company, Thrift Department? A. Same thing.

*Richard R. Janney—Recalled—Cross.*

Q. Montclair Savings Bank? A. Same thing, no record.

Q. Now you have an item of \$5750.49 from April 7, 1928 to date. How did you arrive at that figure?

A. That is made up of figures which represent the difference of the total of the amount of certain bills and the amounts paid out by checks, in other words, representing cash disbursements. 10

Q. In other words, that \$5750.49 is money that Perry took in but did not put in the bank? A. Yes.

Q. Money or cash he just took in from the business and paid out? A. Yes, sir.

Q. And what amount of that is checks, can you tell us? A. None of that is checks, it was paid out in cash.

Q. Have you got receipted bills showing all that? 20  
A. Yes, sir.

Q. Are all those bills which show receipted? A. Most of them are.

Q. Are there any that are not? A. There may be, I can't say. I didn't see any not receipted when I examined them.

Q. As far as you know all the bills in there are receipted? A. As far as I know they are all receipted. 30

Q. You are an accountant and you checked them?  
A. I went through them.

Q. If there were any money that Mr. Perry received himself and did not make any record of you would do nothing about it? A. No, sir.

Q. The only receipts that you show on your statement is either through deposits in the bank or by receipted bills which he has spent for various items? A. Yes, sir.

Q. Not one dollar has he showed you above that? 40

*Richard R. Janney—Recalled—Cross.*

A. I don't quite get you. There has got to be some leeway for human error.

Q. But you are testifying from figures. A. What was your question?

Q. Was there any money which Mr. Perry took in himself which he has not accounted to you for that you know of? A. No, there is none that I know of.

Q. Not one dollar over or beyond those figures that you have given me has Perry received and not spent out? A. I can't answer that.

Q. Why not? A. Because I can't. I just said that I couldn't tell whether Mr. Perry could have held any money out or not.

Q. Then there might have been some money that Mr. Perry took in or spent, but he has not given you the figures on it? A. Yes.

Q. So that when you say the total receipts are \$6429.25 in the two banks and \$5750.49 spent out by Perry which you have charged as receipts, you don't know whether that is true or not? A. It is true according to the records that I had.

Q. You don't know whether that was all the receipts or not? A. It was all according to those records.

Q. All that you obtained from him? A. That is everything I have.

Q. As a matter of fact you don't know whether they are all the receipts or not? A. No, I don't know.

Q. You say some were paid by cash and some were paid by check of all the receipts. In other words, you show receipts of \$12,179.74 and you show expenses of that amount? A. Yes.

Q. Part of that was paid by cash and part by check? A. Yes.

*Richard R. Janney—Recalled—Cross.*

Q. Can you tell us which was paid by check? A. Yes, sir, \$3792.60 of those bills was paid by check.

Mr. Goodell: I object, because it has been testified to before.

*By the Master:*

Q. Can you tell us quickly? A. I can't do it right off the bat. I will have to go over the figures all again. The following were paid by cash. 10

*The Master:*

Fabre Brothers \$408.74; Henry Brothers \$448.75; Sundry bills \$268.89, Brunswick Balke Collender, \$552.29.

*Mr. Murphy:*

Q. Is that item cash? 20

*The Master:*

\$552.29 is. These are all items paid from cash. Public Service, \$28.42; Taxes in Montclair, \$172.20; pool room license \$4.00, pay roll, \$4022.50, making a total of \$5750.49 paid in cash.

Q. Is that right, Mr. Janney? A. That is right.

*By the Master:*

Q. Everything else was paid by check. Is that right? A. Yes. 30

Q. Do you know, Mr. Janney, whether the capital investment made by Bell and Perry was put in the deposit book? A. It was not included in the deposits, no.

Mr. Murphy objects.

The amount of the checks was \$6429.25. 40

*Richard R. Janney—Recalled—Cross.*

*By Mr. Murphy:*

Q. Have you got in this total receipts—have you any unusual capital payment included in there?

A. No, not in those receipts.

Mr. Goodell objects.

10 *Mr. Murphy:*

Q. There is no capital investment? A. No, these are all receipts taken in from the business.

Q. You heard Mr. Perry testify that he put in so much for business, I think he borrowed \$100. from Mr. Morris, is that in there? A. No, that is not included.

Q. Shouldn't it be in?

20 Mr. Goodell: I object, because it is a conclusion and because it is not cross-examination.

The Master: I sustain that objection.

*Mr. Murphy:*

30 Q. Mr. Perry testified that there were certain cash payments that he made shown by this book (Exhibit D-1 of February ) Are they in there as part of the receipts of this business? A. Not unless they are represented by vouchers.

(Mr. Murphy objects to the answer)

In other words, I did not take those expenditures as a whole and dump them into either the expenses or receipts. You see there are only four days showing expenses and they didn't mean anything.

40 Q. You heard Mr. Perry testify that he put so much into the business, in particular, \$100. that he borrowed, didn't you put that in? A. That is not included in those receipts.

*Richard R. Janney—Recalled—Cross.*

Q. How much has he put into the business that you have not put in?

Mr. Goodell: I object on the ground that it is not cross-examination, it is new testimony.

The Master: Objection sustained.

Mr. Goodell: There is no need of going into the question, because Mr. Perry has testified as to what he put in and it is clear as to what Mr. Janney has testified to.

The Master: Objection sustained.

Mr. Murphy: I take exception.

10

Q. The total receipts for the business, as you mentioned before is, \$12,179.74? A. Yes, sir.

Q. That is all of cash—all the receipts that you have for the business, I think? A. Yes.

20

Q. No others of any kind? A. No.

Q. So that you give me an item of \$5750.49 which had been paid in cash and the balance has been paid by check? A. Yes, that is right.

Q. How did you arrive at this pay roll of \$4022.50? A. I copied that pay roll from that book which was brought in evidence the other day and the pages referred to. Week after week there are indications showing amounts paid out.

30

Q. This pay roll starts May 5, 1928. A. There are records going back to April 7th.

Q. Were these by the week or by the month—these pay rolls? A. Weekly.

Q. Can you tell me from the figures you took what it averaged a week? A. Yes, I can get you an average. That will give you an average of Fortw-five Dollars and about a half a week.

Q. Some of the pay roll—all the figures that you

40

*Richard R. Janney—Recalled—Cross.*

computed in the pay roll are actual figures, aren't they? You didn't take them for granted? A. I had to fill those in and I had to fill in the figures. In other words, Mr. Perry swore to me that he employed those men during those weeks and filled them in.

10 Q. I show you page 102 for the weeks of May 12, 19 19 and 26, June 5, 9, 16, 23 and 30, July 7, 14, 21, 28 and August 4, 11, 18, 25, September 1, 18, 15, 22. For that period there appears no figures in the book showing pay roll payments. Mr. Janney, did you fill in the pages with the dates? A. No, I made no entries in that book.

20 Q. Who did? A. When I said "filled in" I meant that I applied a more modest pay roll to each one of those pay rolls where there were no entries—on my rough figures.

*By the Master:*

Q. Was this the way the book was presented to you, the way it stands? A. Just as it is now.

*By Mr. Murphy:*

Q. The book shows down to that period no figures showing pay roll payments.

30 *By the Master:*

Q. What do you mean, Mr. Janney, when you say you estimated the pay roll? A. I wanted to get the pay roll. There were no figures to support it. Therefore, I had to get some kind of information in regard to the people who were employed down there.

Q. Where did you get it? A. From Mr. Perry.

40 Q. Will you tell us what estimates you put down for those weeks that are blank? A. May 12th, I put down \$58. He employed presumably the same people on May 12th that he did the preceding week.

*Richard R. Janney—Recalled—Cross.*

Q. Who were they, Mr. Janney? A. Fred Jones, Sam Taylor and two pin boys. That is \$56.

Q. Is that the way you filled in the other blank dates, too? A. No, just for those four. As I drew near the end here I took the weeks following.

*By Mr. Goodell:*

Q. Did you get information about those pay rolls from Perry or did you simply surmise them? A. I got them from Mr. Perry. 10

Q. Then you put down the weeks that are blank in the book from what Mr. Perry told you? A. Yes.

*By Mr. Murphy:*

Q. I thought you said before you took an average? A. No, I didn't take an average. I took the names that were carried on with the former rates. 20

Q. How did you arrive at \$58. The one before was \$56. A. They run—

Q. How do they run? A. April 5th was \$61.75 That came on the book.

Q. I mean the average that you took, was that from what had been formerly in the book? A. Yes, that was the only way I could take them.

Q. Did you put in an average from what he had already put in the book. Did you average it from that, or did you take figures from Mr. Perry? A. No, I took the figures from the preceding weeks. 30

Q. It is only about five weeks. I don't think they average \$56. and you have \$58.

*By Mr. Goodell:*

Q. What was the pay roll for the first week. A. April 7th was \$34.50. That was when they began. April 14th was \$55. 40

*Richard R. Janney—Recalled—Cross.**By Mr. Murphy:*

Q. Let me see how that came to be from \$34. to \$55. The next one. A. Fifty-seven Dollars.

Q. The next one? A. Fifty-seven Dollars. The next one is May 5th, \$56 and then May 12th. I filled in \$58.

10 Q. You averaged it? A. Yes.

Q. That averages at the outside \$52. A. From the previous ones, all right.

*By the Master:*

Q. Mr. Janney, did you have any receipts produced by Mr. Perry showing any payments on the payroll? A. No, except the very few that he paid by check and those were usually the same people. Here is a regular record of those, page 251.

20

*By Mr. Murphy:*

Q. But you took an average? A. No, I filled in from those afterwards.

Q. You see how that is down there in the book, don't you, the average for the first five weeks was \$52. Do you average it yourself? A. No, I didn't average it. The sheets are filled in there with presumably the exact amount. I filled the dates in.

30

*By the Master:*

Q. Do you know who filled those in, in the book? A. That is Perry's writing.

*By Mr. Murphy:*

Q. Was it done after you got the book? A. No, sir, it was done before I got the book.

Q. And these figures that were figured in the back of the book, were they put in there in the total? A. Yes.

40

*Richard R. Janney—Recalled—Cross.*

Q. There was no average set? A. No, I couldn't take an average.

*By the Master:*

Q. Did the amount you took for the blank dates given by Mr. Perry, do they correspond with the book? A. I can only answer that in this way. These were actually filled in from the book itself; from the record that was made toward the back of the book. There were some dates later on in the year that I had to get Mr. Perry's say so for. 10

*By Mr. Murphy:*

Q. Do you remember what dates they were? A. No, there were very few of them. They were not in a bulk like that.

Q. Can you give us an idea of what they are? 20  
A. No. It was towards the end of 1929.

*By the Master:*

Q. You say as I gather it, that on these blank pages here that are not filled in you took the figures just before. A. I did in some cases—but in those particular ones I didn't because they were filled in later.

Q. After you discovered it why didn't you take it from there? A. Because I didn't know they were in the book. 30

Q. When did you first find they were in there?  
A. In going through the book, yes.

Q. Then did you recheck them? A. Yes, I went over all that.

*By Mr. Murphy:*

Q. When I asked you what it averaged a week, 40

*Richard R. Janney—Recalled—Cross.*

how did you arrive at that? A. I took the total and divided by the ninety-one weeks.

Q. What did that give you? A. About \$45.50

Q. In the figures when you took an actual amount, how did you fix it? A. I will have to check up and find that out. I didn't mark them as I went along.

10 Q. I have an item of \$552.29 for Brunswick Balke, you say that was paid in cash? A. Yes, sir.

Q. When the payments on account of the pool tables were made, were they paid in cash, too, to Brunswick-Balke? A. The initial payment was made in cash, the first \$450.

Q. And then were the rest? A. The notes were paid by check mostly.

20 Q. I show you a check of Dr. Bell's—two checks—one for \$125. and one for \$25. Could you tell us whether they were made in initial payment or not? A. No, I can't tell.

Q. Did you hear Mr. Perry state in Mr. Beekman's office that he got \$125. as the initial payment from Dr. Bell? A. Not in exactly those words, no.

30 Q. What were the words? A. I don't recollect the amount that he said he got from Dr. Bell for the initial payment.

Q. You heard him say he got something? A. Something, yes.

Q. Do you remember our showing him those checks? A. Yes, I have seen those checks before.

Q. Would you say now, after hearing that testimony and seeing those checks that the original payment was paid in cash? A. That doesn't agree with any of the initial payments.

40 Q. Only that I believe Mr. Perry testified to two

*Richard R. Janney—Recalled—Cross.*

or three items. What do you consider initial payments? A. The amount paid down when the contract was signed and the amount paid on the delivery of the goods.

Q. How much was that? A. Fifty Dollars at the time of signing the contract and \$400. on the delivery of the tables.

10

Q. Did you hear Mr. Perry testify that he paid \$400. in cash as the initial payment? A. Yes, I remember that.

Q. That he paid \$400. in cash? A. In cash.

Q. And not that he had to wait a week or two and that he was held up by Dr. Bell's not paying his initial deposit? A. I didn't hear that.

Q. What was the date you have in your record showing the initial payment? A. I have no record of that.

20

Q. No record of the date? A. The contract shows that.

Q. Can you tell me what it is? A. No.

*By Mr. Goodell:*

Q. How were the other payments made to Brunswick Balke for the pool tables, on the notes? A. All by check.

*By Mr. Murphy:*

30

Q. Did you say on the pool tables? I am cross-examining on the item of \$552.29. Mr. Janney has testified they were paid in cash and I am trying to find out what they were. They are in the group of bills showing the payments to Brunswick-Balke. It was the difference between the total bills and the checks.

Q. What were they for, generally? A. Why, pool room supplies.

40

*Richard R. Janney—Recalled—Cross.*

Q. Two years, \$500.? A. Repairs and things like that. For instance, two gallons of cleaning polish—that is some of them. The \$552. is the difference between the Brunswick Balke bills and the amount of the checks drawn to the order of Brunswick Balke.

10 Q. So that you have no receipt from Brunswick Balke showing a payment of \$300. which you got in there as a cash payment? A. What \$300? \$552.

Q. There is \$552.29 that you got in paid in cash. What are the totals of these bills? A. \$2100.

Q. Just these bills (pointing to bundle of bills)? A. I can't tell.

Q. I mean Brunswick Balke. A. Brunswick Balke—here are a lot of others.

20 Q. I want a total of what you paid Brunswick Balke in cash and what you paid them in checks.

A. I can give it to you, yes, if I have time.

*By the Master:*

Q. You have all your check vouchers showing your payments by check. All the items paid in cash, have you got in here as vouchers showing receipts for—receipts instead of checks? A. Yes.

30

FRED JONES, witness produced on behalf of the petitioner, being duly sworn, deposes as follows:

*By Mr. Murphy:*

Q. Mr. Jones, how long have you worked down in the pool room owned by Dr. Bell and Mr. Perry?

A. Ever since it opened.

40

*Fred Jones—Direct.*

Q. You have been working on a salary? A. On a salary.

Q. You collected receipts at the end of the day?

A. Do you mean for the place?

Q. For the place.

Q. Do you of your own knowledge know how much has been taken in there a day since you have been working there? A. I can guess at it. 10

Q. Can you tell what the average receipts are?

A. Now?

Q. Now. A. About \$21. or \$22.

Q. In the beginning. A. About \$45. or \$48. or some days less—some days about \$50.

*By Mr. Goodell:*

Q. Have you any records? A. No records.

Q. How long did they keep up at \$48.? A. From the beginning until about May they began to fall off. 20

Q. How low did they go? A. They went down as low as \$11 or \$12.

Q. When would that be? A. About June, July

Q. How about September? A. They picked up a little—about \$12 or \$18.

Q. How about October? A. When the weather got colder they picked up a little. 30

Q. How about the winter? A. Hasn't done so well this winter—the second year.

Q. How did they do last winter? This is all from memory? A. Yes.

Q. Did you put the money in the cash register? A. Yes, sir.

Q. Every day? A. Not every day because he went away on a vacation and I gave it to Dr. Bell.

Q. How much did you turn over to him? A. About \$150. 40

*Fred Jones—Direct.*

Q. That is from your memory? A. From my memory.

Q. How much have you been paid? A. \$25 and \$27 later on.

*By the Master:*

10 Q. When did the \$27 start? A. After a couple of months I was paid \$27, and that has continued down to date.

*By Mr. Goodell:*

Q. Did you ever get \$20? A. No.

Q. Who else worked with you? A. Sam Taylor.

Q. How long did that last? A. About two weeks, I guess.

20 Q. How many pin boys did you have? A. Two regularly and one extra sometimes.

Q. Two and sometimes three? A. Yes.

*By Mr. Murphy:*

Q. You say business wasn't so good during January this year, or earlier? A. Not so good.

Q. It had been better January and December last year? A. Yes.

*By Mr. Goodell:*

30 Q. To get back to your salary, you say you got \$20 a week? A. \$25.

Q. \$25 for how long? A. About three months as near as I can remember.

Q. Then you began to get \$27? A. I am now.

Q. You had another man down there, how long? A. Up until business got dull, about the middle of June.

40 Q. What year, 1929? A. The first year we opened up, 1928.

*Fred Jones—Direct.*

Q. Then you dropped that man? A. We dropped him for a while.

Q. When did you take on another man? A. I don't remember the exact week, but I know they took on another.

Q. What month? A. I imagine it was somewhere the latter part of September.

13

Q. How long was he kept? A. Kept all winter.

Q. And all summer? A. We let him go when the business was dull.

Q. When was that? A. About June.

Q. When did you take him on again? A. We didn't take him on this year.

Q. When did you take on Mrs. Perry? A. Mrs. Perry came down and opened up and stayed till I came.

Q. When did you come? A. Ten or ten-thirty. 20

Q. You didn't keep any record of the money they took in? A. No, I didn't keep any record.

Q. How much do you think they took in the first week? A. I don't know.

Q. How much do you think they took in the second week? A. I don't know.

Q. How much the third and fourth week? A. I don't know.

Q. Do you know any week? A. Well, I know somewhere along about June because I was left there by myself and I had to turn the money over. 30

Q. How much was it then? A. \$25., \$26.

Q. What day was it \$25.? A. Perry left Saturday night.

Q. The week he was on his vacation, how much did you take in? A. We took in about \$22. or \$25.—sometimes it was \$26. and sometimes less.

Q. How long was he away? A. About two weeks. 40

*Fred Jones—Direct.*

Q. What did you do with the money? A. I gave it to Dr. Bell, did what he said.

Q. What did he tell you to do? A. I paid everybody off.

Q. And gave him the rest? A. Yes, sir.

Q. How much did you pay him? A. About \$150.

10 Q. Did you take any receipt? A. No.

Q. After Mr. Perry came back, what happened then? A. I turned the money over to him.

Q. Do you know how much you turned over to him? A. No, he would always come back and take it out himself.

Q. You don't know how much? A. I didn't pay any attention to it.

Q. How much was it during the winter, did you pay any attention? A. Sometimes I did—the  
20 nights I was on.

Q. How many nights were you on? A. I would be off two or three nights a week.

Q. The nights you were on what did you do? A. I turned it over to him in the morning.

Q. When was that? A. That was this year.

Q. This year? A. The latter part of last year.

Q. What part? A. November.

Q. You turned the money over to Perry the three  
30 nights you were on? A. The day's receipts.

Q. What would they be? A. Sometimes \$21, \$22., Saturdays it would be \$25. or \$27.

Q. Was that about as good as the pool room ever did? A. That was both the pool room and the alleys.

Q. Is that about as good as they both together ever did? A. In the beginning they did better.

Q. How long? A. From April up until the latter part of May, then it fell off.

40 Q. What did it fall down to? A. The receipts

*Fred Jones—Direct.*

fell down to \$19. or \$20. and to \$11. and \$12.

Q. You said something awhile ago when Mr. Beekman was questioning you about \$48. A. That was in the beginning.

Q. How long did that keep up—how long did they take in \$48.—that was about the highest? A. Yes.

10

Q. What was the highest day you ever handled the receipts after the first five or six weeks? A. I don't know.

*By Mr. Murphy:*

Q. Is there a cash register there? A. Yes.

Q. You put the money in the cash register? A. Yes.

Q. You registered it? A. Yes.

Q. Each day showed the cash receipts? A. Sure, they did. 20

Q. Who got that? A. Mr. Perry.

Q. Each day the money was taken was there a cash record of it, a written one? A. I don't know.

Q. Did you ever see any? A. I have seen the ribbon, but I can't see the total.

Q. Each day has a total? A. When you start the next day it always started clear.

Q. Did Mr. Perry ever show you the total? A. No. 30

Q. He never let you see it? A. I never asked to see it.

Q. He never showed it to you? A. No.

Q. Are you related to Mr. Perry? A. No, only through marriage.

Q. What relation are you? A. I married his sister.

Q. You say during the two weeks while Mr. 40

*Fred Jones—Direct.*

Perry was away you turned over the money to Dr. Bell? A. Yes.

Q. Do you remember what weeks they were? A. During the time he was away on his vacation?

Q. Do you know when it was? A. I don't remember exactly when it was.

10 Q. Was it in June or July? A. I don't remember.

Q. You did turn over the money during those two weeks to Dr. Bell? A. Yes.

Q. You paid him about \$150.? A. About \$150.

Q. You paid off the pay roll first? A. Yes.

Q. Do you remember how much you paid? A. I paid myself for two weeks at \$25. a week.

Q. I thought you said you were getting \$27.? A. I was getting \$25.

20 Q. How was that? A. I hadn't got my raise.

Q. Are you sure of that? A. \$25.

Q. I call your attention to the fact that Mr. Perry's pay roll shows no payment of \$25. a week. Which is correct? A. I am talking about what he paid me.

Q. How long did you get that \$25.? A. About three months, I reckon.

Q. That was for three months you got \$25.? A. As well as I can remember now.

30 Q. How long was there enough business as the start? A. About three month, as near as I can remember.

Q. And then how long were you paid \$25. a week? A. About three months, I reckon.

Q. You got \$25. a week when Dr. Bell had the money? A. I paid myself \$50. while Dr. Bell was there.

40 Q. Who else did you pay? A. Two boys.

Q. How much did you pay them? A. Seven dol-

*Fred Jones—Direct.*

lars for one of them and seven fifty for the other.

Q. That would be \$14. for one and \$15. for the other? A. Yes.

Q. Did you pay anybody else? A. Yes, I paid the soda man.

Q. I mean anybody else on the pay roll. A. No.

Q. How about Sam Taylor? A. He wasn't working there then. 10

Q. Three months after you opened the business, the business opened in April, 1928—May, June, July. During the month of July Sam Taylor wasn't working there? A. I don't remember. I don't know exactly.

Q. You remember so well that you paid Dr. Bell, how do you happen to remember that? A. I remember what I paid him.

Q. Did you pay Sam Taylor? A. No, I didn't pay him when Dr. Bell was there. 20

Q. During the month of July— A. I can't remember exactly the time he left, but he wasn't there when I had the money in charge.

Q. It was three months after— A. I don't know.

Q. Well, you were off three nights a week during that period. A. I wasn't off any then, I had to stay on the whole time. I didn't have anybody to relieve me. 30

Q. But during the two weeks that you were working there—you started with the business from the start—didn't you— From the beginning of the business to the end of the business there were two week when Sam Taylor wasn't working there? A. I don't know how long he worked.

Q. Do you remember how long he worked there? A. I don't remember.

Q. He wasn't there two weeks? A. He wasn't 40

*Fred Jones—Direct.*

there the weeks I had charge. Dr. Bell was in charge. I paid off the pay roll and turned the balance of the money over to him.

Q. During the month of January this year, was that a very good month, or a bad month? A. A bad month.

10 Q. During the month of December last year, was that a good month or a bad month? A. Not so good.

Q. If I told you there was \$700. taken in during the month of January, would you say that was good or bad? A. I don't believe he took in that much.

Q. During this period that you have been there, did you ever pay the money to anybody else? A. Only two people—Perry and Bell.

20 Q. But did you ever pay any over to Mrs. Perry? A. No.

Q. Did she ever take any money herself? A. No.

Q. Didn't she handle any money? A. Sure, she sold sodas and candies and put the money in the cash register.

Q. From the beginning of the time of the start of the business the money was put in the cash register? A. So far as I know.

30 Q. How long did you say you got \$25. a week? A. I said about three months as well as I can remember. I can't tell definitely. It might have been longer, it might have been shorter.

Q. Was it \$25. for the first three months? A. I don't know how long.

*Stanley R. Soverel—Direct.*

Continuation of the taking of depositions in the above entitled cause, before me, Chester C. Beekman, a Special Master in Chancery of New Jersey, this 26th day of March, 1930, at the office of Philip Goodell, Esq., Hinck Building, Montclair, New Jersey, in pursuance of the order of reference before recited, and in the presence of Joseph F. Murphy, Esquire, solicitor of the petitioner, and Philip Goodell, Esquire, solicitor of the defendant. 10

STANLEY R. SOVEREL, witness produced on behalf of the petitioner, being duly sworn, deposes as follows:

*Mr. Murphy:*

Q. Have you an account in your bank in the name of James E. Perry? A. We have an account in the name of James E. Perry. 20

Q. Could you tell us his address? A. I can't. The account is #69863.

Q. Have you a statement showing the deposits from April, 1928 to date? A. Yes, I have a statement of the individual ledger card and the drafts and deposits. The account with us was opened December 3, 1928. 30

Mr. Goodell: I object to the line of testimony, because Mr. Perry testified that none of this is partnership money.

Objection overruled.

*Mr. Murphy:*

Q. Will you let me know how much that was during that time? A. Do you want the separate deposits? 40

*Stanley R. Soverel—Direct.*

*By the Master:*

Q. From December 23rd to February first? A. On December 3rd he put in \$3. This was a campaign account. He was solicited and agreed—

*By Mr. Murphy:*

10 Q. Have you a statement there showing the account? A. I have.

Q. Can you give us this statement? A. I can't give that up, it is part of our records.

Q. Can you let us have a copy of that statement? A. You have one in your hand, in that passbook.

Q. I want one from you. A. I can have a copy made.

20 Q. Showing deposits from the beginning, please read off the deposits. A. December 3, 1928, \$3.; December 18, \$3.; December 31, \$3. Then there was an interest credit of four cents and on February first there was an interest credit of three cents. Six cents interest credited in all. March 11, 1929 there was a deposit of \$3. May 1 interest was credited of eleven cents. August first credit of thirteen cents, November first credit of thirteen cents, February, credit of thirteen cents and on  
30 February 11th a withdrawal of \$10., leaving a balance in the bank at that date of \$2.56 which is the present balance.

Q. Have you any notes or mortgages or any other accounts in Mr. Perry's name? A. Not that I know of, no.

*John Walter Stafford—Direct.*

JOHN WALTER STAFFORD, witness produced on behalf of the petitioner, being duly sworn, deposes as follows:

*By Mr. Murphy:*

Q. Have you an account in the name of James E. Perry, Mr. Stafford? A. Yes. 10

Q. Do you know his address? A. 178 Bloomfield Avenue, Montclair.

Q. Mr. Goodell, will you admit that the account he is about to show is James E. Perry's account?

Mr. Goodell: Yes.

*By Mr. Murphy:*

Q. Is it just in the name of James E. Perry or is there any partnership designation of any kind? A. James E. Perry alone. 20

*By the Master:*

Q. When was that account opened? A. On June 21, 1928.

Q. What was the initial deposit? A. \$42.38.

*By Mr. Murphy:*

Q. Have you a statement showing all the deposits during that period? A. I have our ledger sheet. 30

Q. That is from June 21 down to date? A. The last transaction was February 27th, the account is still open—down to the present date.

Q. What were the deposits down to February 1st of this year? A. Total of deposits or separate deposits?

Q. Could you tell us the total from June 21 to February 1? Total deposits. A. We don't show that. I can make it up. 40

*John Walter Stafford—Direct.*

Q. Could you have that made for us? A. I can have a transcript of the account.

Q. Will you make up a copy of them? A. Yes.

Q. Could you tell us how much he had deposited February 1, 1930? A. \$49.30.

10 Q. Have you any statement there showing whether the account was to be opened as a partnership account? A. The only record we have here is, "Mr. James E. Perry, 178 Bloomfield Avenue, Pool room."

Q. What would that mean in reference to the statement? A. In reference to his business.

Q. Those deposits were his business? A. Only our reference here that he conducts a pool room.

20 Q. So that as far as the statement shows it reads James E. Perry? A. That is the way our account reads.

Q. No partnership, nor the name of Dr. Bell mentioned anywhere? A. No.

Q. Could you tell us what the balance was at the end of June, 1928? A. On the 30th of June the balance was \$73.88.

Q. And July? A. \$33.88.

Q. In August? A. \$156.67.

Q. And September? A. \$149.47.

30 Q. And October? A. \$178.60.

Q. November? A. \$127.29.

Q. December? A. \$170.51.

Q. January 30, 1929? A. \$104.82.

Q. February? A. \$103.84.

Q. March? A. \$180.95.

Q. April? A. \$181.26.

Q. May? A. \$144.92.

40 Q. Will you skip to December, 1929 and tell us what the balance was then—December 30th? A. December 31st, \$106.15.

*John Walter Stafford—Direct.*

Q. January? A. \$49.30.

Q. February? A. \$5.05.

Q. Will you have your concern send Mr. Beekman a copy of that? A. I will.

Q. Are there any other accounts he has had at any other time? A. We have a savings account.

Mr. Goodell: I object to testimony about Mr. Perry's personal savings account in this matter. 10

Objection overruled.

Q. Could you tell us what the dates and deposits amount to? A. What period?

Q. The first deposit was February, 1929. Show whatever deposits you have in the savings account. Have you one or two? A. We have an old account in 1926, Mr. Perry closed out. 20

Q. When was that closed out? A. June 21, 1928.

Q. Will you show how much he had on the first of April, 1928 in that savings account?

Mr. Goodell: I object because it is absolutely immaterial what he had in his personal account in April, 1928.

Objection overruled.

A. \$10.51. 30

Q. Now will you show deposits to that since April first? A. \$5. on April 28, 1928, twelve cents interest credited; \$5.75 on June 2; \$6. on June 19, 1928. That was all—three deposits.

Q. That is one account? A. That was the old one, closed out.

Q. Will you let me know what the other account shows? A. This account was opened on the 4th of February, 1929 with a three dollar deposit. 40

*John Walter Stafford—Direct.*

Q. February 26th what was the deposit? A. \$3.00.

Q. March 4th? A. \$3.00.

Q. March 11th? A. \$23.

Q. April 5th? A. \$7.

Q. April 30th? A. \$3.

10 Q. Interest to December 1, 1929? A. Forty-nine cents.

Q. That has been all the deposits? A. Yes.

Q. And with the withdrawals it leaves \$5.45? A. There was five cents interest you haven't got in your book. \$5.45 is the balance.

Q. Will you let us have copies of those statements, too? A. Yes.

Q. Have you any other account? A. No other account.

20 Q. Did he have any mortgages or bonds? A. No records showing any other transactions.

Mr. Goodell: I object for the same reason, that Mr. Perry's personal financial affairs have nothing to do with this case.

30 Q. Would you have anything to show that when this account was opened in your bank it was designated as a partnership account—any statement signed at that time? A. Unless this will do it. The savings account shows his residence on Elmwood Avenue, whereas the checking account gives 178 Bloomfield Avenue, pool room.

40 Q. I show you a check dated May 12, 1928 drawn to the order of J. Perry for \$50. signed by George E. Bell. On the back is marked "Received payment through the First National Bank of Montclair, Monclair Clearing House" signed by J. Perry. Would you say Mr. Perry's account was credited with that check or that Mr. Perry received the

*John Walter Stafford—Direct.*

money for it? The reason why I am asking is that Mr. Perry denies that he ever got the money on it or that he had endorsed it. A. It was not credited to his account because that would show a deposit on the 14th. What checks come in on the 14th go down on the 15th. That would appear that it had been cashed.

10

Q. Mr. Perry says he didn't get the money—he didn't sign his name to that check. Of course we are being charged with \$50. and somebody got the \$50. or somebody is in error. Is there any way you can tell or any way someone at your bank could tell? You see, Dr. Bell signed the check and it was payable to J. Perry. Mr. Perry is the man whom it was intended for. Mr. Perry swears he never received the money and that that is not his signature. We want to find out. A. It would appear to me to be Mr. Perry's endorsement on there and one of our teller's initials. I couldn't say whether Mr. Perry received the money or not.

20

Q. Could you produce the teller who could tell us? Dr. Bell has drawn it out. Mr. Perry says he never received it. Could you produce the teller that paid that money out? A. He is still with the bank. In my opinion that is Perry's signature.

*By Mr. Goodell:*

30

Q. What do you base your opinion on—comparison? A. For the last four years I have been responsible for looking over signatures and every check that goes through.

Q. Do you base this on comparison? A. From my familiarity with his signature.

*By Mr. Murphy:*

Q. In your opinion, Mr. Stafford, the money was

40

*John Walter Stafford—Direct.*

paid him? A. I said it was his signature in my opinion.

*By Mr. Goodell:*

10 Q. How do you know it was Perry that got the money and not somebody else? A. It is a banking practice in an endorsement like that that the final endorsement would show who received the money.

Q. If Mr. Gibbs met Mr. Perry on the street and cashed the check and Mr. Gibbs took the money, would you cash the check without Mr. Gibbs' signature? A. Yes, unless it was drawn to bearer.

20 MR. JAMES LORD, witness produced on behalf of the petitioner, being duly sworn, deposes as follows:

Q. You have in your possession a statement showing an account in the name of James Elmer Perry in the Bank of Montclair? A. That is a savings account—James Elmer Perry.

Mr. Goodell: I object to evidence on Mr. Perry's private affairs.

30 Objection overruled.

Q. Will you let us know what he deposited from April 1, 1928 to February 1, 1930. A. \$46.11. That was the total of the deposits. This is from June 1, 1928 to February 1. He withdrew \$45.

Q. Will you leave with the master a copy of that statement? A. You may have this one.

40 Statement sheet from the Bank of Montclair showing account in the name of James

*James Lord—Direct.*

Elmer Perry offered in evidence. Received and marked Exhibit D-1 of March 26, 1930.

Q. What other account or accounts did he have?

A. There is a checking account in the names of James E. Perry, 43 Elmwood Avenue, Montclair.

Q. Could you tell us what has been deposited from April 1, 1928? A. \$4178.84. 10

Q. Could you tell us what the balance was in his account on the first of February, 1930? A. \$40.57.

*By the Master:*

Q. What was the balance on June 20, 1928? A. \$146.02.

*By Mr. Murphy:*

Q. How much were the deposits from that—from April, 1928 to that time? A. From April 10, 1928 through June 20th, they were \$1296.40. 20

Q. Are there any other accounts that you know of, Mr. Lord? A. No, those are all.

Q. May we have those records? A. Yes.

Q. I show you a check dated May 12, 1928 made to the order of J. Perry for \$50. signed by George E. Bell and on the back of the check is "received payment" through your bank. Mr. Perry denies that signature—that he ever signed it or that he ever received the money on that check. Would you say that Mr. Perry did receive the money on that check? A. I couldn't answer that, no, sir. 30

Q. Who could? A. I suppose one of the tellers could. That account is in the name of James E. Perry. He would sign it J. Perry, but in the usual course of business he should sign "James E. Perry" under it. I am not an expert in handwriting. 40

*James Lord—Direct.*

Q. Could you tell us who could tell us? A. There is no teller's stamp on it, so I couldn't tell what teller received it. It was paid at our bank. All the record we would have would be not as to who drew the money, but that it was charged to George E. Bell. The First National Bank cashed it.

10 Q. You don't know of any other accounts in the name of Mr. Perry? A. I do not.

Several sheets showing statement of checking account of James E. Perry at Bank of Monclair offered in evidence. Received and marked Exhibit D-2 of March 26, 1930.

20 Copy of statement of Montclair Savings Bank in the name James E. Perry. Received, and marked Exhibit D-3 of March 26, 1930.

JAMES E. PERRY, witness produced on his own behalf, being duly sworn, deposes as follows:

*Mr. Goodell:*

30 Q. This brown or slate-colored book—these entries that have been made from time to time in this book are all made in your handwriting? A. I know my own handwriting.

Q. Page 2, is that in your handwriting? A. Yes.

Q. Page 3? A. Yes.

Q. Page 4 except the pencil notations in my handwriting? A. Yes, that is mine.

Q. Page 5. A. Yes.

Q. Page 244, is that your handwriting? 245, 46 and 47—are they in your handwriting? A. Yes.

40 Q. Pages 248-273, 386—are those all in your handwriting? A. Yes, all in my handwriting.

*James E. Perry—Direct.*

Q. Pages 125-36, all in your handwriting? A. Yes.

Q. So far as you know are all the entries? A. Yes, sir.

Q. Were those entries made at the time the payment was made that they covered? A. They was made the time the stuff was paid for—or maybe 10  
the next day—so it wasn't far away.

Q. You didn't make any entries after this suit was started? A. No, that book was at home and I brought it up to you when you asked me for it.

*By the Master:*

Q. I notice that some entries are made in ink and some in pencil, is there any special reason for that? A. No, unless I was in a hurry and couldn't find a pen. 20

Q. Sometimes you would have a pen and then you would make them in ink? A. Yes.

Q. Where was this book kept? A. Sometimes I would have it at the place and sometimes I would take it home.

Q. Where did you make those entries—from any other memoranda? A. No, just from slips of paper—my brother-in-law would give them to me.

Q. Your brother-in-law who conducted the business and he would make slips up paper and give you these and you would take them home or make the entries down at the place? A. Wherever I had the book, yes. 30

Q. Why did you skip pages in that book—for instance, why did you go right along and make them one right after the other? A. What do you mean?

Q. You will see you skipped. You stopped at 40

*James E. Perry—Direct.*

page 128 and then made several entries later in the book.

*By Mr. Goodell:*

10 Q. You have got here on the pay roll—August, September, October, November—then you skip. Why didn't you go along? A. I saved that space out for something else.

Q. You go through December and then skip several pages. A. You see that is the way I keep books. I am not a stenographer.

*By the Master:*

20 Q. You say you reserved those spaces for something else—what did you have in mind to put in? A. Different things. You see, for instance, I decided once to keep the ice man's payments and keep his all on one sheet and the and several like that and supplies—I was going to keep it all in different places. I thought then I could look for each one separate.

30 Q. Then you made the entries on these other pages for those other things. Why didn't you keep track on each sheet? A. I didn't realize I would need it for anything like this. It was my way of keeping books.

*By Mr. Goodell:*

Q. Did you consider that you had a partner in this matter, or did you think it was your own business? A. All this was for—I just kept putting it off. I meant to get all the bills and enter them in a book and I never did it.

*By the Master:*

40 Q. You were careful about putting down the pin

*James E. Perry—Direct.*

boys and pay rolls. A. I didn't have any bills for them. I could take the bills for the other things and write them up.

Q. Did Mr. Jones ever give you a bill? A. I didn't have to have bills for the salary.

Q. Did he ever give you a bill? A. No—just the same.

10

Q. You did get bills for ice?

*By Mr. Murphy:*

Q. As you spent this money you put it in the book either that day or the next day? A. All that was put down there was paid out.

Q. The same or the next day? A. I couldn't tell just how long, soon.

Q. You put it in soon after? A. If I paid Saturday night I put it in Sunday night or Monday.

20

Q. Did you do that all the time? A. Yes, as soon as I could.

Q. Are you sure of that? A. Yes, I know it.

*By the Master:*

Q. Did you make those entries from your slips or from memory? A. Jones would tell me and sometimes he would write it down.

Q. Sometimes it was from slips and sometimes from memory? A. Yes.

30

*By Mr. Murphy:*

Q. It wasn't a week after you did that? A. No, sir.

Q. I show you page 102 on May 12, May 19, May 26, you didn't put in those weeks the pay rolls in the book, did you? A. You don't see them in there, do you?

40

*James E. Perry—Direct.*

Q. Therefore, you didn't put them in, did you?  
A. What do you mean?

Q. Look on that page 102 (showing him book).

A. I am looking on that.

Q. Did you put the payroll for May 12, 19, 26  
in the book? A. If they ain't in there I didn't put  
10 them in.

Q. I show you page 103, June 2—through 30—  
are those payrolls in the book? A. It isn't there.  
I can't see it.

Q. You didn't put it in the book? A. No.

Q. You didn't put it in for June 16th? A. If it  
isn't there I didn't put it down.

Q. July 7, 14 and 21 and 28—are those payrolls  
in the book? A. I don't see them there—not on  
20 this sheet.

Q. They might be somewhere else? A. They  
might be.

Q. Are they anywhere else? A. I can't tell you.

Q. I show you August 4—18—I show you page  
106, September 1, 8, 15, 22. Did you put those  
payrolls in the book? A. If they ain't down there,  
they can't be put in there.

Q. I want to show that the first payrolls he tes-  
tified to aren't in the book.

30 *By Mr. Goodell:*

Q. When Mr. Janney made up those payrolls,  
you told him the figures, didn't you? A. Yes.

*By Mr. Murphy:*

Q. Do you know how much total cash you took  
in?

Mr. Goodell: I object, as it is not cross-  
amination.

40

*James E. Perry—Direct.*

*By Mr. Murphy:*

Q. And paid out during the period of the partnership?

Mr. Goodell: I object on the same ground.  
Disallowed.

*Mr. Murphy:*

10

Q. Do you know how much cash was received and spent during the period of partnership? A. I don't know.

Q. Did you ever file an income tax report of the business? A. I didn't have time to bother with that stuff.

Q. Why didn't you take the lease in your name instead of the partnership?

Mr. Goodell: I object because it is not cross-examination. 20

Objection overruled.

*By the Master:*

Q. Mr. Murphy wants to know why you took the lease in your own name. A. When I paid the rent for the building 178 Bloomfield Avenue I don't know where Dr. Bell was. It was two months before I entered into negotiations with Bell. 30

Lease for premises 178 Bloomfield Avenue, Monclair, New Jersey offered in evidence. Received and marked Exhibit D-5 of March 26, 1930.

*By Mr. Murphy:*

Q. Mr. Perry, you kept a careful book of items showing what you spent out during this period. why didn't you keep any record of the receipts? 40

*James E. Perry—Direct.*

A. I wasn't supposed to do that.

Q. You weren't supposed to keep a record of the receipts? A. Not until all the stuff was paid for—then were to make a mutual agreement and keep the receipts.

*By the Master:*

10 Q. What do you mean? A. We were to have an agreement. Between this fellow and myself we promised to pay for the tables and all and get everything paid for and then we would take the money—keep an exact account of it and there would be a fifty-fifty split and he was drawing it out faster than it came in and that killed that.

*By Mr. Murphy:*

Q. You didn't keep a record of what you paid out? A. The best I could.

20 Q. You took a record of what you took in showing the receipts each day? A. Not exactly a record. Some of them.

Q. From the beginning of the business did you keep a record of the receipts. A. I told you some of them was and some of them wasn't. I was gone away for a week and asked this man to keep track and he never could tell what we took in.

30 Q. The only way you could tell was by how much you paid out and how much you had left? A. We was supposed to pay for everything. We wasn't fighting about what we took in.

Q. How did you know how much to pay out if you didn't know how much you took in? A. When we got the bills we knew we had to take in enough to pay them.

Q. How much did you know you had to take in before you knew how much you had to pay out?

40 A. How much—

*James E. Perry—Direct.*

Q. Do you know how much you took in each day? A. No, I can't tell you that.

Q. Do you know how much you took in each week? A. No, I knew how much we took in some weeks—but not all weeks.

Q. Do you know how much you took in a month? A. No, that didn't interest me until the stuff got paid for. 10

Q. The balance you put in the bank, didn't you? A. No, the month of—

Q. The week of April 10th you took in \$70. according to that. A. Well, I don't know. If it's there it must be right.

Q. Did you pay bills out of that from the cash or from checks? A. I don't know what you are talking about hardly. 20

*By the Master:*

Q. Do you know whether you paid that out of cash or out of your checking account? A. These moneys that I have taken in in the first place was money spent out of my pocket. As soon as the money kept coming in he would borrow from me. After the place got going the soda water and other things was paid for and what was left was put in the bank and when the notes came due it was taken out of the bank and paid on the tables. 30

Q. You had a cash register there, didn't you? A. Yes.

Q. Didn't that register each day how much receipts there were? A. Sometimes it did, sometimes it didn't.

Q. Have you got a record of those items? A. Yes, some of them.

Q. During the first part of the opening of the business you had a cash register, didn't you? A. I always had a cash register. 40

*James E. Perry—Direct.*

Q. Did it show the receipts each day? A. It showed the receipts when you kept the receipts.

Q. What do you mean by that? A. Well, I mean what figures was on there for the day, if you don't dispose of them and check them up tomorrow they will pile up and you can't tell for what day they are.

10

*By the Master:*

Q. What did you do with those slips? A. There was no slips.

Q. Didn't they have slips? A. The first cash register didn't have slips—didn't carry a tape.

Q. You just put the money in? A. Yes.

Q. Did you put all the money you took in into the cash register? A. From the business. Yes, it had to come through the cash register.

20

Q. And at the end of each day you knew from it how much the cash register showed each day? A. Sure.

Q. Did you keep a record of the amount in the cash register? A. No.

Q. Didn't the cash register show each day? A. No. The figures would pile up and it was hard to straighten it out, because I can't figure. I started them out the best way I could, but it wasn't keeping track of every day. I straightened them out the best I could.

30

*By Mr. Murphy:*

Q. Have you any record or any book of any kind showing the receipts each day? A. No, only what he has got there.

Q. No record of the receipts? A. No, I didn't say that—I said.

40

Q. Except from February, not from the start of

*James E. Perry—Direct.*

the business? A. No, I wasn't supposed to keep them.

*By the Master:*

Q. Were there any special reasons why you kept some things? You entered the payrolls. A. I kept the salaries.

Q. Why didn't you put the receipts in—any special reason? A. Yes, because Dr. Bell told me he was going to help me keep the books straight and after he didn't do that I decided it wasn't necessary if he wasn't worrying about it.

Q. Why did you put your expenditures in there and why didn't you put the receipts in there? A. He told me I was not to do that. In the first place he was going to help me keep it, but he never did.

*By Mr. Murphy:*

Q. But you kept account of the expenses. A. I had to do the best I could.

---

GEORGE E. BELL, witness produced on behalf of the petitioner, being duly sworn, deposes as follows:

Q. Dr. Bell, you entered into a partnership with Mr. Perry? A. Yes.

Q. I show you that signature (showing him paper). Is that your signature? A. Yes.

Partnership agreement offered in evidence.  
Received and marked Exhibit D-6 of March 26, 1930.

Q. I show you a check dated March 20, 1928 for \$25. drawn to the order of the Brunswick Balke Col-

*James E. Perry—Direct.*

lender Company. What was that check used for?

A. On payment on the pool tables of the partnership.

10                    Check of George E. Bell for \$25. dated March 20, 1928 to the order of Brunswick Balke Collender Company offered in evidence. Received and marked Exhibit D-7 of March 26, 1930.

Q. I show you a check dated March 30, drawn to the order of the same people for \$125. that is signed by you. What was that check for? A. For the same purpose.

Q. To pay on the pool tables? A. Yes.

20                    Check dated March 30, 1928 signed by George E. Bell to order of Brunswick Balke Collender Company for \$125. offered in evidence. Received and marked Exhibit D-8 of March 26, 1930.

Q. Did you contribute any money in cash to the partnership? A. Yes, but I don't recall just how much it was.

30                    Q. I show you four checks totalling \$225. drawn to the order of James E. Perry. Were all those checks or the money for them turned over to Mr. Perry? A. Yes.

Four checks totalling \$225, made payable to the order of James E. Perry signed by George E. Bell offered in evidence. Received and marked Exhibit D-9 of March 26, 1930.

40                    Q. Have you endeavored from time to time to obtain from Mr. Perry your share of what you considered the partnership?

*George E. Bell—Direct.*

Mr. Goodell: I object to that question as it is leading.

A. Yes.

Q. Has Mr. Perry ever given you an account of the partnership? A. No.

Q. Has he ever let you examine the books? A. Once. He brought the books to my house, but they didn't have anything in them. 10

*By the Master:*

Q. What books did he bring? A. I don't know what book it was. He had a book, but the way he had it jumbled up I couldn't get anything out of it. He didn't go over it or anything. He just displayed it.

*By Mr. Murphy:*

20

Q. Did he ever show you a statement of what his receipts were? A. No.

Q. Did he ever show you a statement of what his expenses were? A. No, other than a voucher and bills—no itemized statement.

Q. Did you ever go to the pool room and supervise it at any time? A. No. I went there on numerous occasions, that is to see him and look the finances over, but not actually to take charge of the running of the business. 30

Q. Mr. Jones testified that during two weeks—or ten days—I am not sure during which Mr. Perry was away on vacation that you came there and got the receipts. Did you ever receive any money? A. No, I didn't receive any from Jones—not that I recall.

Q. Have you any idea from your own information or information you gathered about how much 40

*George E. Bell—Direct.*

the receipts were from the business? A. When we first began I would go down at night and look at the tape and it showed \$47—\$54—\$37—it never ran under \$25.

10 Q. About how long a period used you to go down there? A. I would go down there about once a week for a good long period and then after that I didn't go quite so often.

Q. Have you an idea of the total amount that Mr. Perry took in?

Mr. Goodell: I object to that question as it calls for the witness' idea and not for facts.

Objection sustained.

*By Mr. Murphy:*

20 Q. I show you a statement—

Mr. Goodell: I object to his showing that statement.

By Mr. Murphy: From April 18, 1928 to December 31, 1929. Would you say that Mr. Perry took in on an average of \$200. a week?

30 Mr. Goodell: I object—it is a leading question and the figure has no basis in facts. Sustained.

*By Mr. Murphy:*

Q. What would you say that the average that Mr. Perry took in was in a week?

Mr. Goodell: I object to that question after he has asked the leading question before suggesting an answer.

40

*George E. Bell—Direct.*

*By Mr. Beekman:*

Q. Do you know how much the receipts were?

A. Only on the basis of what the receipts were at the times that I noticed them.

Q. How much do those receipts show? A. They show an average of \$200. a week.

Mr. Goodell: I object, as that figure was suggested to the witness. 10

*By the Master:*

Q. What did you do when you went there? A. I had the key to the cash register and I would look on the slip.

Q. What did they show? A. And then once or twice I had the ribbon and showed an average of \$35.—\$25 or \$35 a day—that is what the ribbon showed. 20

Q. When was that, in 1928? A. 1928 and 1929.

*By Mr. Goodell:*

Q. What dates? A. I don't know what dates, but—

*By the Master:*

Q. That was the only way you have of knowing—from the ribbons? A. From the ribbons and what I would see in the drawer. 30

Q. You examined the cash in the drawer? A. Yes.

Q. What was the greatest amount you ever saw in the drawer? A. Over \$50.

*By Mr. Murphy:*

Q. Could you tell us what the estimated weekly expenses were—or monthly? A. The approxi- 40

*George E. Bell—Direct.*

mate monthly expenses were \$300., around \$300. Some months it may have been a little over.

Q. Have you ever been paid any money out of the business? A. Yes.

10 Q. How much? A. I don't recall just how much it was—it would be the difference between the exchange of checks and the checks that he has from me—whatever that difference is.

Q. In other words, you exchanged certain checks with him? A. Yes.

Q. I show you one more check drawn to the order of James Perry for \$75. Did Mr. Perry receive the money on that? A. I don't know.

Q. You gave it to him—that is your signature on the check? A. Yes. So far as I know he did.

20 Q. I show you seven checks totalling \$490. (showing him checks) A. This one here isn't my signature.

Q. Then there are only six checks totalling \$450. made to your order—did you receive the money on them? A. Yes.

Six checks offered in evidence, totalling \$450. Received and marked Exhibit D-10 of March 26, 1930.

30 Q. You gave him back four checks totalling \$225.? A. Yes.

Q. So the difference of \$225. is what you received from the partnership account? A. Yes.

Q. So that that is all the money that you ever received from the partnership—the difference of those exchange of checks? A. Yes, so far as I know.

40 Q. I show you a check for \$75. made to Mr. Perry's account and apparently it has come back. Did you ever receive any compensation for that check?

*George E. Bell—Direct.*

A. I think that was an exchange check, as I recall. As I remember, I paid him the cash money for that check.

Q. You gave him the money to pay that? A. Yes.

Q. In other words, that was an exchange check that you made but you never got any money for it? A. No.

10

Q. You gave Mr. Perry a check for \$75.? A. No, Mr. Perry gave me—

Q. No, that is your check. It was drawn to the order of Mr. Perry. It was never used. A. I think the reason I gave him that check was because he gave me a check for \$75.

Q. What was the reason for these exchange of checks? A. Whenever I would need \$75., or any money for that matter, I wanted to get it out of the partnership because I wasn't getting anything. So I would ask him for money and I would say, "I can't spare it." And I could give him till next week, so I would say, "Here is a check and next week cash it". And the reason I would go to him was to try to find out how much he had in the bank—in the treasury.

20

*By the Master:*

Q. In other words, you needed the money and you would make it good later? A. Yes.

30

*By Mr. Murphy:*

Q. Did Mr. Perry prevent you from coming into the place after a certain time? A. No, he didn't prevent me from coming into the place.

Q. Or to have a representative there—prevent you from having a representative there? A. He prevented me from having a representative there.

40

*George E. Bell—Direct.*

Q. Did you want a representative there? A. Yes.

Mr. Goodell: I object.

*By Mr. Murphy:*

10 Q. What happened that you didn't continue the partnership? A. I had a representative in the place by the name of Sam Taylor and Perry came to me and complained of Sam Taylor and said that he couldn't get along with Fred and that he wanted Sam out. When I went to Sam and asked him what was the trouble he said, "I will tell you. Those fellows are trimming you and I have—"

Mr. Goodell: I object, as it is hearsay.

Q. Were you there? A. They discharged him.

20 Q. How do you know? A. Perry told me he had discharged him.

*By Mr. Murphy:*

Q. You were about to tell us what the expenses per month were in the business. I think you said \$300. What did that consist of? A. That \$300. consisted of the salaries and the running and the payments on the billiard tables.

30 *By the Master:*

Q. Those were all the expenses you know about? A. The accessories.

Q. What do you mean by that? A. Things for the up-keep of the pool tables.

Q. How do you know it was \$300.? A. From what Perry told me.

*By Mr. Murphy:*

40 Q. You heard Mr. Perry say that there were to

*George E. Bell—Direct.*

be no account kept of the receipts—that they were paid out as they came in? A. Yes.

Q. Until they were all straightened out. Is that correct? A. No.

*By the Master:*

Q. What was your understanding about that? 10  
A. My understanding is that Perry came to my house on a Sunday morning and asked if I would enter into a partnership agreement to conduct a pool room in Mr. Grigsby's hall.

*By the Master:*

Q. Is that the partnership agreement, D-6? A. Yes.

*By Mr. Goodell:*

Q. Drawn afterwards? A. Yes, at my sugges- 20  
tion.

*By the Master:*

Q. When was this first mentioned? A. It must have been about the first week in April, or something like that.

*By Mr. Murphy:*

Q. Before the partnership was entered into? A. 30  
That was when we talked it over first.

Q. Before you entered into the partnership? A. Yes. After we entered into the partnership I went to Mr. Strazza and had him draw up these partnership papers. This is the result of that. I told him that I wouldn't be able to take an active part in the conduct of the pool parlor because I wouldn't have the time, to begin with. He said, "We will hire somebody to take care of it" and I said 40

*George E. Bell—Direct.*

I could come down and look things over and he gave me a key to the cash register. Later, he had a door built and he gave me a key to the door. Before that the pool room was open. Then business began to flourish.

*By the Master:*

10

Q. After you signed the agreement and had the keys and went down there, how often did you go down? A. In the beginning I went quite often.

Q. You went down there about once or twice a week? A. I said "quite often."

Q. What would you do? A. I would look into the cash register and talk with Perry.

20

Q. What did you mean by the business was flourishing? A. The bowling alleys and pool tables were going whenever I went down there. After a short while he got rid of Taylor and got someone else to work in Taylor's place. I don't know the name because he changed. From time to time he and I would talk about the business and I asked him on several occasions to give me an accounting of the business and he would say, "Don't you worry. You will find out that everything will come out all right and you will see that I am one person that will give you a square deal" and that is the way he shooed me off when I asked for an account.

30

A little later receipts began to drop off and he told me he was going to have his wife go down there and watch after things—that he thought Jones was taking some of the money and he would have his wife go down and watch Jones. He said he thought Jones was taking cigars and soda from the place because he had seen cigars and soda in Jones' home and that he thought his wife should  
40 go down there and she could keep watch of things.

*George E. Bell—Direct.*

He said when things were paid for he would give up his job and give all his time.

*By Mr. Murphy:*

Q. Did he give up his job? A. Not that I know of.

Q. Did you ever agree to pay him any money? 10  
A. No.

Q. Did he ask for any? A. No.

Q. Do you know whether he gave all of his time or any time tending to the business? A. I don't know that he gave any of his time.

Q. Do you know if he used any funds of the partnership in his home affairs? A. Yes.

Q. Could you tell me what—have you any idea?  
A. We were looking over one of the checks he told me that he had given this check to his wife—that she needed something and he made this check out to his wife on one occasion. 20

Q. Were there any other that you remember now from the funds? A. He made some personal loans from the funds. He came to me and got my consent to lend money to Mr. Grigsby and to make one to Dr. Ferdinand Williams.

Q. Do you know how much? A. The one to Grigsby he said was \$300. and he said the one to Williams was \$25, and then he made another loan, but I don't remember the name. 30

Q. Do you know whether he made the loans? A. He told me he did.

Q. Did he tell you whether they were paid? A. He said Mr. Grigsby asked for time, but he never told me it was paid.

Q. At the same time of the payment to Brunswick Balke for the pool tables, do you remember about the transaction? A. Yes, I remember he and 40

*George E. Bell—Direct.*

I went down to Brunswick-Balke to make arrangements, but in the beginning he came to me and got \$25 as an initial payment on the pool tables. He sent the Brunswick-Balke man to my office and he went over the cost and the arrangements and that sort of thing and then on a set day I mailed a check to Brunswick-Balke. Then later on we went down to Brunswick-Balke and Perry signed the notes because I was supposed to be a silent partner. I was not supposed to let my identity be known. I was not to let anyone know I was connected with the business and afterwards we paid \$25 at the appointed time—paid \$125.

10 Q. I show you a book showing payments made by Mr. Perry. Did you ever see that book before?  
A. I don't remember that I ever have.

20 *By Mr. Goodell:*

Q. Did you keep any track of what you found—make any notes? A. No.

Q. So you are speaking entirely from memory?  
A. Yes, from what I saw.

Q. You don't know any one week when the receipts were \$125, do you? A. Yes.

30 Q. What week was that? A. I don't know the date, but I know from the agreement between Perry and myself, we would agree that it had been so much and so much.

Q. You would talk it over? A. At the end of the week, yes.

Q. He told you that the receipts were a certain amount? A. Yes, and from what I had seen.

Q. What did you see? A. I would go down there and I would see that the business was going on all right and I would see money in the cash register.

40 Q. You never stayed there a week or gave six

*George E. Bell—Direct.*

consecutive nights? A. No, but from the deposits I saw I knew what he was doing.

Q. You haven't any reason to dispute what he says? A. Yes, indeed I do.

Q. Why do you dispute it? A. Because the receipts in the beginning were so much and so much and apparently there hasn't been any let up in the business. 10

Q. How do you know? A. I have had different individuals go in from time to time.

Q. And you got it from them? A. I learned it from my own observation.

Q. What observation? A. When I would go in.

Q. When were you last in there? A. As soon as we began to have trouble.

Q. In December? A. Yes.

Q. When was it? A. It was before December, I guess it was November. 20

Q. You never put anything down? A. No.

Q. You can't name a single day? A. No, I don't know any set days.

Q. Then all you know outside of what Mr. Perry told about the receipts and disbursements is from your occasional observation and hearsay? A. No, from what I saw in the cash register and what I saw from the activity of the business and also from the deposits. 30

Q. The deposits in the bank are what Mr. Perry told you? A. No, I saw the book.

Q. Where did you see it, who showed it to you? A. Yes—the bank book.

Q. You are not able to point to a date—tell one date that you looked at the cash register? A. No, I couldn't say the exact date. I would go in there in the very beginning I went in there frequently—every night and would look it over. 40

*George E. Bell—Direct.*

Q. Do you know what the average receipts are according to the testimony in this case? A. I don't know exactly what it is, but I think the average receipts would be around \$25 a day.

Q. Do you know what the testimony shows? A. No.

10 Q. Why did you say they were larger than the testimony shows if you don't know what the testimony shows? A. Did I say that?

Q. Yes, you did. A. I know what my estimation of the receipts is from the sources where I gained my information.

Q. So far as your information goes the business has not fallen off any? A. Yes, so far as I have been able to observe.

Q. You know it started off big? A. Yes.

20 Q. You don't think it has fallen down at different seasons of the year? A. No, it has been a fair average.

Q. That is just guess work? A. No, from my observation.

Q. About this check for \$40. Do you know Sadler? A. Yes.

Q. Did you give him that check? A. No, I never gave him that check.

30 Q. Do you know him? A. Yes.

Q. Have you had money dealings with him? A. Yes.

Q. Is it possible that you did give it to him? A. Yes, I guess so, but I wouldn't give him a check without endorsing it.

Q. Suppose you gave him a check for a loan? A. No, I never owed him.

Q. It may have been a loan? A. It may have been.

40 Q. Do you know whether that \$40 is charged to

*George E. Bell—Direct.*

Sadler in what he now owes you? A. Yes, I know that it is not charged to him.

Q. If you gave him a check without an endorsement what would he do with it? A. He would bring it back.

Q. If you gave him the check you meant to pay him \$40, didn't you? A. On the face of it that question answers itself. 10

Q. About this \$75 check, you say you may have given Mr. Perry at some other time. Do you know when? A. When he told me it was returned.

Q. You don't have any recollection about it? A. No, I have no recollection.

Q. You may not have given it to him? A. I am pretty sure I did.

Q. What were the circumstances? A. Yes, I know I gave him the money at the time. 20

Q. Do you know where it was or whether anyone was there? A. It may have been at my office—there was no one there.

Q. All I want to know is whether you gave him the money and why you think so. A. I think I gave him the money because I always pay my debts.

Q. That is the only reason you think you gave him the money? A. Yes.

Q. When was it you say Perry said he discharged Taylor? A. About a month after he started. 30

Q. You consented that he make these loans out of the partnership, you say? A. They had been made when he spoke to me concerning them and I said it was all right.

Q. When he said that Mrs. Perry would go down there and keep her eye on the place, did you expect that to be free? A. Well, he said she was going to sell some pigs feet or something down there while she was down there. 40

*George E. Bell—Direct.*

Q. And you expected what she did for the partnership to be free? A. I expected what she did for the partnership to be taken care of by the profits in selling pigs feet and that sort of thing.

Q. You say that when you took up the partnership neither you nor he would give up your job?

A. Yes.

10 Q. You didn't tell Mr. Strazza that? A. No.

Q. That partnership agreement says that you will both give your full time, but you didn't intend to do that.

Q. Yes, we made a different agreement.

Q. In making your partnership with Mr. Perry, did you agree to help him keep the books? A. I don't remember that anything special was said.

20 Q. You have more education than he has, haven't you? A. I don't know.

Q. You are a physician? A. Yes.

Q. There wasn't any agreement about the time you should each give to it? A. We both agreed to do all we could to promote the business.

Q. When did you first get dissatisfied with it? A. I have been dissatisfied ever since we started the partnership.

Q. But you never took any steps to terminate it? A. No.

30 Q. Did you ever complain to Perry? A. Never made any special complaint. I just hoped things would work themselves out.

*By the Master:*

40 Q. Dr. Bell, this book is here. You looked at the deposit slips. You looked at some of the cash slips and you looked at the money in the drawer and you say you looked at a book. These entries are made from April 25, 1928 on in that book. A. Yes.

*George E. Bell—Direct.*

Q. Can you say—did you ever open the cover of any book? A. Yes, I don't think this is the book that I saw.

Q. You were interested in this business in the beginning, weren't you, and you didn't want to keep any books, did you? A. No.

Q. Did you want Perry to keep books? Did you ever ask him to? A. No, I never asked him to. 10

Q. Did you ever want him to make an accounting? A. Yes, I asked him to.

Q. Did he give you any accounting? A. No, only a verbal one.

Q. What did he wish to show you? A. He showed me—

Q. What reason did he give? A. No reason.

20

JAMES E. PERRY, being recalled, testifies as follows:

*By the Master:*

Q. Mr. Perry, where did you buy this book? A. From a store down on Bloomfield Avenue, next to Joe Baker's place, a stationery store.

Q. When did you buy it? A. 1928.

Q. Do you remember what month? A. It was the first beginning of the business I got the book—a few days after. 30

*By Mr. Goodell:*

Q. Did Dr. Bell ever give you \$75. for that check? A. No, sir, he did not.

Q. Do you remember this \$40 check? Did you give that to him? A. I made that out to him.

Q. You gave it to him? A. Yes. 40

*James E. Perry—Recalled—Direct.*

Q. You didn't give it to anybody else? A. All those checks made out to him were handed into his hands.

Q. He said you took out some money for your wife, whatever money you took out you have told us about, haven't you? A. Yes.

10 Q. Did you tell him you thought Jones was stealing any money out of the place? A. No.

Q. Any cigars? A. I said I thought Jones was careless. He said he thought Jones was stealing stuff and I wouldn't say that. I thought he was careless.

Q. Have the receipts remained even? A. No, sir.

20 Q. When were they the biggest? A. When I first opened the place and in the fall and winter of 1929. In the summertime everybody is out.

Q. Do you know what the biggest week you ever had was? A. The biggest week I ever had—I opened on Thursday or Friday—it was the first week I opened.

Q. Do you know how much that was? A. To be honest, I don't. It was close around three or four hundred dollars.

30 Q. What would be the smallest week? A. Around about \$80.

*James E. Perry—Recalled—Direct.*

Q. They ran all the way from three or four hundred dollars down to \$80. A. No, they varied.

---

I certify that the foregoing depositions were taken by Florence Goodell, a stenographer selected by me, and by me duly sworn faithfully and truly to take stenographically and reproduce in typewriting the testimony given, and that such depositions were taken in my immediate presence and hearing by said stenographer, sworn as above stated, and I believe that they accurately state the said evidence.

CHESTER C. BEEKMAN,  
Special Master.

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## New Jersey Court of Errors and Appeals

Between

GEORGE E. BELL,  
Complainant-Appellee,

and

JAMES E. PERRY,  
Defendant-Appellant.

On Bill, etc.

### APPELLANT'S BRIEF.

#### Facts.

This appeal is taken from a decree of the Court of Chancery primarily because the Chancellor has confirmed the Master's report, charging the defendant, a partner who was ordered by the Court to account for the partnership business and who accounted to the best of his ability, with an arbitrary income of \$25.00 per day to a total of \$14,400.00 or over \$2200.00 more receipts than the appellant admits. No precedent has been found for such a method of determining what one man may owe to another, and the matter is, therefore, brought before this Court.

The appeal is taken secondarily because although the Master did not properly apply his arbitrary standard, as the appellant conceives, the court below erred in not correcting the complication of the figures.

The parties to the case are both colored men, the complainant-appellee, Dr. Bell, being a licensed and practising physician, and the defendant-appellant being a janitor and odd job man.

The partnership, for such there undoubtedly seems to have been, was formed in April, 1928. The partnership agreement was written into the bill of complaint. It provided that they would each contribute \$225.00 as capital for the venture and would give their attendance to the interests of the partnership, keep accounts, and once in two weeks, or oftener, make an accounting to one another.

From the beginning the letter of this partnership agreement was ignored. Perry contributed several times the agreed \$225.00 of capital while Bell never contributed but \$150.00 of capital. The partnership business was the running and operation of a pool room. The two men carried the business on together apparently with a minimum of friction from April, 1928 until the bill was filed, December 19, 1929. After the filing of the bill an attempt was made by Perry, with the help of counsel, to make an accounting that would satisfy Bell and his counsel, but these figures were not accepted and the matter was referred to a master to take testimony and state the accounting. The Master was also appointed as Receiver and operated the business from his appointment on February 4, 1930 until he sold it in March, 1930. Hearings on the accounting began in February, 1930 and were continued from time to time. An examination of the testimony will show that the greatest latitude was allowed. It is not necessary for this purpose to go into it in detail. It can be summed up very briefly.

Paraphrased and condensed, the accountant's story was as follows: As he put it in his own phrase (page 61 of the book, line 20) "When I started this place I was as innocent as a lamb, I didn't expect this trouble and I didn't keep books." This was quite true. He didn't keep books but he

produced a considerable volume of vouchers or receipts of one sort or another for expenditures. He also testified verbally to an approximation of his expenditures which were paid in cash (principally wages). He produced everything he could, showing his check books, books of deposit showing deposits in bank, including all his personal bank books consisting of half a dozen thrift account books of one sort or another with balances and deposits of insignificant amounts. He explained and stuck to it that no partnership money went into his personal bank account except for a few weeks when what was afterwards his personal bank account was used solely for partnership moneys and his deposits in that personal bank account were well within his income which he received as a janitor and for his odd jobs quite apart from the pool room, without taking into account his wife's earnings which he says were deposited in the same account. This fact is dwelt upon because a cross appeal was filed alleging that the Master should have charged Perry for deposits in his personal bank account as being partnership monies. Thus having accounted for his disbursements, Perry balances his account in the only way he could be expected to balance it by saying in effect "I paid these bills out of the partnership monies. I drew for myself the amount of \$229.57. Dr. Bell had \$225.00, and the rest of it, except for a small balance in bank was used up in paying the bills for all of which I have shown receipts. The total of bills for expenses paid with these adjustments is the only way I have to tell what my receipts were."

Perry's figures were in practically all details accepted by the Master and no exceptions have been taken to his report except as to the main point, the amount of the receipts. The amount

of receipts ascertained as above admitted by Perry and confirmed by a Mr. Janney, an accountant who assisted him, were \$12,179.80. The Master says in his report (page 28):

“5. If we accept this testimony that \$12,179.80 was the total amount taken in by the partnership to January 31st, 1930, a period of 95 weeks, as testified to by Mr. Janney, we would arrive at the figure of \$21.00 approximately as the average amount taken in each day. However, in my opinion, in the light of the testimony of the witnesses, I believe that a fair average to strike as the daily amount taken in at the poolroom would be \$25.00, which over a period of 96 weeks, the actual time the partnership existed, would make the receipts \$14,400.00, and by deducting the total amount of the expenditures of \$12,673.10 together with an amount of \$75.00, the estimated expenditures for the week not taken into account by Mr. Janney, would leave a balance of \$1651.90 profit from the business during this period.”

It is from this conclusion of the Master so expressed and from the background which we have tried to outline briefly that exception was taken from the Master's report to the Vice Chancellor. The Vice Chancellor in overruling the exceptions filed an informal memorandum which is printed on page 42 of the book. He says that if the Master erred the defendant (appellant) is responsible because he kept no record.

It is contended that although the Master says he found from the evidence that the receipts were \$25. a day, there is no evidence to sustain his finding and that an arbitrary finding was illegal, and that, therefore, the court below erred in sustaining him.

Let us look first for any possible testimony sug-

gesting a different rate of income than that sworn to by the appellant, and second let us examine the testimony for evidence of the probable receipts.

Perry's honesty is never questioned in the evidence. On the contrary, his employer, Mr. Anderson, who had dealt with him for four years at the time of his testimony loaned him money which was repaid. Mr. Anderson had employed Perry as a janitor in his building and at his home as an odd job man and had found his honest, and frank and satisfactory in his dealings and had never heard of his being dishonest (see pages 99 and 100). It is unfortunate that neither this court nor the court below has ever had an opportunity to see the parties and to observe their demeanor, but we can glean from the testimony some picture of the character of the two men.

It is undisputed that for all but two weeks of the period when Perry was away, he worked three nights or more a week in the pool room from six o'clock until midnight or later cleaning or scrubbing after the place was closed to save the hiring of an extra man, while Dr. Bell at the most only looked in occasionally to see about finances." Perry could get no compensation for all this work although it was testified to have been worth \$15.00 a week because he did not know the law and did not know that a partner must make a separate bargain if he is to have special compensation for doing more than his share of the work.

It is undisputed that Perry not only contributed his \$225.00 capital as he agreed but several hundred dollars more as was necessary to get the pool room furnished and started (the pool tables were bought for a stipulated amount and paid for month by month out of the takings but there were numerous small items of expense which Perry paid for as additional capital, and which he has been al-

lowed for his additional contribution to the capital by the Master without dispute). In spite of these additional contributions Perry drew only about \$229.51. Dr. Bell "in looking after the finances" managed to get for himself his entire invested capital, \$150.00, and \$75.00 more, getting Perry from time to time to advance him \$450.00 exchanging Perry's good checks to that aggregate for his own checks to the amount of \$225.00, which Perry managed to collect in the banks with more or less difficulty as the evidence shows. Dr. Bell knew that Perry was not keeping books (see line 10, page 145) but he did not mistrust him and took no steps to correct the condition but acquiesced in it. Although the witness Jones testified that in the two weeks that Perry was away he turned over \$150.00 to Dr. Bell (page 117, line 40) Dr. Bell denies receiving any such sum with the saving words "Not that I recall" (page 145, line 38). This \$150.00 which Bell apparently had has never been accounted for or charged to him.

Leaving this partial picture of the two men and their manner of dealing with one another, let us examine the testimony to see what the Master had before him from which he could conclude that the receipts were different from Perry's testimony.

We have the witness Jones, called by the complainant (at one time the counsel for complainant said that he had not called Jones but that he was called by the Master. This may be the fact. Memory does not serve. The record says he was called by the "petitioner" and it is immaterial). Although he was a colored man whose comprehension of figures was necessarily limited, he was allowed to be questioned as to average receipts. On page 117, line 10 he admitted that all he could do was to "guess" at the average receipts although

he, himself, handled them to a large extent. When he testified, which was during the operation of the place by the Master with Jones in charge, he gave as his idea of the average receipts \$21.00 or \$22.00 (page 117, line 13). As a matter of fact, according to the Master's report they were considerably less, being between \$16.00 and \$17.00 a day. (See Master's accounting, pages 20-22). This shows that the witnesses' guess as to a current matter which can be definitely tested by a known factor, was unreliable. How worthless then is anything he says as to what took place many months earlier? He then goes on to tell that although in the beginning the receipts from the pool room were from \$45.00 to \$50.00 they dropped after the first month or two (April to June, 1928), to \$11.00 or \$12.00 and picked up in the fall and winter. This "guess" is the best evidence there is of average receipts outside of appellant's testimony although it comes from an ignorant witness who admitted that he kept no record of the money; contradicted himself on page 119 and page 121 admitted that he had never seen the ribbon on the cash register to have accurate data; and who was off duty three nights a week.

Dr. Bell under examination by his counsel, although he admitted he only looked in occasionally, once a week at first and less often later on, was asked by his counsel an improper question (page 146, l. 25) "Would you say that Mr. Perry took in on an average of \$200.00 a week?" This objection was sustained but a few seconds later he was allowed to say that the receipts, when he noticed them, were \$200.00 a week. It is submitted that this answer, although it was objected to, should never have been permitted to stand and had no evidential value. Had the receipts been \$200.00 a week or anything like it, it is evident that Dr. Bell,

who was getting every penny he could from the business, would have more keenly followed up the situation. At one place only was \$25.00 a day mentioned. This was the witness Bell, (page 156, line 4). This testimony is quoted to show how quick he was to make careless answers, and, therefore, how little weight can be given to his testimony. "Q. Do you know what the average receipts are according to the testimony in this case? A. I don't know exactly what it is, but I think the average receipts would be around \$25.00 a day. Q. Do you know what the testimony shows? A. No." This was after he had testified that in his opinion the receipts were \$200.00 a week, a figure suggested to him a few seconds before by his counsel in an improper question, and in spite of the fact that his testimony read as a whole shows that he had no possible way to determine the receipts. It is to be noted that the question was not directed to Bell's knowledge of the receipts—but to his conception of the testimony—and his answer was wrong as the testimony shows only \$21.00 per day as the average receipts.

The only evidence that could have guided the Master in finding the receipts to be \$25.00 a day has been recited. It is submitted that as evidence it amounts to nothing. The ordinary rule that the burden of proof should be borne by the claimant certainly prevails, and this evidence is an inaccurate guess by Jones and an answer, suggested by Bell's own counsel, by Bell. When Bell mentioned \$25.00 a day, he was talking about the receipts as shown by the evidence and not the receipts as actually taken in. It is to be noted that Bell had every opportunity to learn more about the receipts had he seen fit to use it but that he apparently was satisfied with things as they were.

Let us look now to see what we can find in the evidence as to the actual receipts.

We have two periods that we know about. One has been referred to. That is the period from February 4, 1930 to March 21st when the Master as Receiver operated the pool room. He retained the same manager Jones and the period of operation was in the winter at a time when all witnesses agreed that the business was more prosperous than in the summer. We find that the Master, himself, for the period of thirty-eight days, excluding Sundays, shows in his report \$665.01 gross takings, or between \$16.00 and \$17.00 a day. The other period of which we have actual knowledge from the definite testimony of the accountant, Richard Janney, whose testimony is beyond dispute and who during the month of January, 1930 after the bill was filed and before the Receiver was appointed had Perry and his cash register under his surveillance. The receipts for that period of twenty-seven days were \$326.50, that is actual receipts of slightly over \$12.00 a day.

It is believed that we have now reviewed all the evidence on the question of average receipts that might have swayed the Master in his conclusion. The Master must have been moved by some other consideration than the evidence. It was apparently suspicion that Perry had not been frank and honest. It is submitted that there was no ground for the suspicion and nothing in the figures to justify it. No comment is made by the Master to show that he in any way had a suspicion of Perry and yet he charges him with the arbitrary amount of \$25.00 a day for a period of 96 weeks, a total of \$14,400.00, an excess over the appellant's figure (\$12,179.74) of \$2,220.26, a considerable fortune to this janitor.

Even in applying his arbitrary standard of \$25.00 a day, the Master ignored the fact that there were but 95 weeks in the partnership between the inception thereof and the appointment of a Receiver and called it 96 weeks. It is easy to calculate. The business began April 7, 1928. The Receiver was appointed February 4, 1930. To April 7, 1930 would have been 104 weeks. February 4th to April 7th is 9 weeks, or one day short of 9 weeks, and 9 from 104 is 95 weeks and not 96 weeks. There should be \$150.00 to Perry's credit for this week. There was admitted by both sides to have been two weeks while Perry was away and Jones turned the proceeds over to Dr. Bell (\$150.00 and not \$300.00 which \$25.00 a day would appear to have produced.) This is a further credit to Perry of \$300.00 which has not been made. The charge of \$25.00 a day should not be made for the period when Perry actually kept track of the receipts. We refer to the period in January, 1930 when he was working under the eyes of the accountant Janney and the receipts were \$326.50 instead of the arbitrary \$675.00 for twenty-seven days, a further allowance in Perry's credit of \$348.50. In other words, if the Master's finding of the arbitrary sum of \$25.00 a day is to be followed, it ought to be followed consistently. Furthermore the Master has not charged Bell with the \$150.00 which Jones says he gave him during the two weeks Perry was away, the receipt of which money Bell attempted to deny but with the saving clause in his answer "Not that I recall."

## LAW.

**An accounting partner, who under certain circumstances may have to have doubts resolved against him, cannot be charged with an arbitrary amount.**

In Volume 30 of Cyc at page 742 appears the following statement: "If a party fails to perform his duty of keeping accurate account of partnership affairs, all doubts respecting particular items will be resolved against him, unless there is some reason for not applying the rule. (Cites *Van Ness vs. Van Ness*, 32 N. J. Equity 669, *Knapp vs. Edwards*, 57 Wis. 191, 15 N. W. 140, the rule not to be applied, however, if the copartner knows that the partner charged with the duty is incompetent to perform it, and there is no evidence of dishonesty or an intent to defraud), and in such case the court will resort to the best evidence obtainable to ascertain the true state of the account."

In the *Van Ness* case, decided as long ago as 1880, *V. C. Van Fleet* said that the partner who was the bookkeeper was bound to keep full and accurate accounts, and that if he has been derelict in his duty so that doubt and uncertainty have arisen, he must bear the consequences. No mistake of his should be corrected except upon the most satisfactory proof. The Court of Errors reversed *V. C. Van Fleet* with the following words "There is strong reason to believe that justice has not been done as this matter now stands, etc."

In 30 Cyc 447, we find practically a repetition of the doctrine expressed by the Vice Chancellor in the *Van Ness* case. It is submitted however, that this doctrine does not here apply. If the appel-

lant is to be bound only by the entries in his books, he is not bound at all because there were no entries worthy of the name. He had a book but as Dr. Bell says in his testimony, it was unintelligible. We have here then apparently a novel proposition. The Reference Master, without any figures to guide him and after a little talk by one or two witnesses, who guessed and didn't know, has hit on an arbitrary figure, charging the accountant with \$2,200.00 which he hasn't got and says he never had and making him accountable to Dr. Bell for \$1,100 which apparently had never existed and never been in the accountant's hands. To this writer, it is an unheard of and an unnecessary and harsh situation. Justice does not suffer. Dr. Bell has lost no money. He has had his investment back and 50% more, and it is respectfully submitted that the decree should not stand.

**Where a partnership agreement is not followed literally and the partners acquiesce therein, neither party can afterwards insist on strict performance.**

Nor does equity or justice require that Perry should be penalized for his failure to keep accounts. Dr. Bell knew he was not doing it, did not insist on it, kept none when he managed the business, made no efforts to keep them, and lulled Perry into a sense of security for nearly twenty months of the twenty-one that the partnership existed. Then and only then under advice of counsel, he asked for an accounting, and then, and then only, did Perry, also on the advice of counsel, begin to keep accurate accounts of his receipts. It would seem to do violence to the principles of equity and to create an unfair situation to permit Dr. Bell, who by his failure to find serious

fault for over 20 months with his hardworking janitor partner at the end of the 20 months period, to profit by an arbitrary assessment at a figure that it is impossible to verify in any way. The Vice Chancellor observed that Perry was fortunate that the Master did not set the figure higher. It would seem that the Vice Chancellor erred in enunciating such a doctrine. Certainly Dr. Bell cannot be allowed to have little by little enticed Perry into the hole in which he now finds himself unless this decree be reversed, and then take advantage of him. At the hearing Dr. Bell would have been permitted to produce evidence of greater receipts than Perry reported, but no such evidence was offered or hinted at. The fact is that Perry was honest and is honest and Dr. Bell knew he was honest and trusted him, nor there is not a scintilla of evidence or any reason to suppose that his trust was misplaced. The Receiver could not get the amount out of the business that he charged Perry with nor does the evidence show that the business yielded \$25.00 a day at a time when Perry was keeping accurate account of his receipts in January, 1930. Perry's method was acceptable to Dr. Bell. He collected the money from the pool room. He put it in his pocket and carried it to the bank, first paying the help and small bills in cash and the other bills with checks from that Bank account. The partnership was under the burden of paying out of profits for its pool table equipment, \$1,350.00, in monthly payments and this was just completed when the bill was filed. Dr. Bell kept constantly after Perry for money and succeeded in getting from him from time to time verbal accounts and an aggregate of \$225.00.

It is contended that Perry really had no duty to keep books under the circumstances. The au-

thority for this is found in 47 Corpus Juris 785 "In the absence of an agreement on the subject, the duty of keeping full and accurate accounts of the partnership business, in proper books, or of seeing that such accounts are kept by a third person to whom the management of the business has been intrusted rests equally on each partner; but if one of the partners is the managing partner, the duty to keep books is on him, unless, where the business is run without books, with the knowledge and consent of the other partners." Cites *Wooley vs. Maltingly*, 204 Kentucky 699.

Whether or not he had the duty, Perry has done his best and should not be charged with an arbitrary surcharge in his receipts. This is particularly true when Bell knew in the beginning and repeatedly during the course of the business that his partner was by education unfit and unable to keep books.

The partnership agreement will probably be cited as showing Perry's duty to keep the books and read literally he had that duty, but actually the partnership agreement, except for the existence of an equal partnership, was ignored by the parties consistently. Neither of them devoted their full time to the business and it was manifestly impossible from the beginning that they could or intended to. The clause about stating an account between them every two weeks was ignored by common consent and Dr. Bell knew from the beginning that Perry was not keeping books. It was hardly worth while to keep books. If Perry was dishonest, (and he must be branded with this stigma if he is to be surcharged arbitrarily with this extra \$2,200.) it is obvious that he could have put anything in the books he liked and Bell would have been helpless. Perry was honest and Bell knew he was honest.

It has been repeatedly stated in this argument that Bell acquiesced in the omission of accurate bookkeeping. Let us examine the testimony with this point in mind. On page 145 Bell admitted that Perry showed him all the books he had, that he brought them to Dr. Bell's house; that they were jumbled up; and that he never showed him statements or receipts of expenses but did show him vouchers and bills (all Perry had to show.) Not dismayed by this, Dr. Bell went to the pool room on numerous occasions to look the finances over but did not care to take charge of actually running the business. He looked at the receipts when the business was first started. He was satisfied almost nightly. (It is admitted by all parties that when the pool room was first opened, the receipts ran between \$25.00 and \$50.00 a day but this prosperity, according to Jones, lasted only a few weeks.) Bell was evidently quite satisfied with the conditions because he didn't go often after that. At the foot of page 149 he says that Perry never prevented him coming in the place but prevented him from having his representative there, but in the very next answer he admits that he did have one. On page 154 he says he did go down and see that the business was going on all right and see the money in the cash register. On page 155, line 20 he speaks of not having any trouble until December or November, obviously a few weeks before the bill was filed and repeats in line 40 that he did go in frequently. On page 158, lines 25 to 33 he says he was dissatisfied but never made any complaint, and on page 159, lines 10 to 14 he definitely admits that he never asked Perry, whom he trusted to run the business, to make any accounting and that he received a verbal accounting.

Taking all these circumstances into account then, the character of the men, the time that elapsed, the fact that Perry honestly accounted for over \$12,000 of receipts at an average rate of \$21.00 a day, higher than any one else was apparently able to get out of the business, and without a single charge of dishonesty against Perry, by what theory is he to be charged with an arbitrary burden of \$2,200.00? It is earnestly submitted that so much of the decree as charges him with this fictitious amount of \$2,220.20 should be reversed and that the matter should go back to have the figures as otherwise accepted by both sides and reported by the Master modified so as to cast the balances between these two men and to have an amended decree entered expressing the results of this change.

Respectfully submitted,

PHILIP GOODELL,  
Counsel for the Appellant.



and records of the business, and that the income and disbursements of the business had to be approximated by inference and deduction on this account. The accounting defendant attempted to establish the income of the business by proof that \$6,102.75 was paid out by check and a balance was apparently paid out by cash because of receipted bills, so that the total receipts up to January 31, 1930, were given as \$12,179.80, by reason of the fact that that much money was paid out. There are no accurate books of account for this entire period. The defendant himself sets up that the business was operating at a deficit, and that he made further cash payments out of his own personal funds, so that he asks for an allowance of \$12,673.10.

The Master in his report allowed the disbursements asked, \$12,673.10, but fixed the income at \$25.00 per day for a period of 96 weeks, or \$14,400.00 over that period, and, deducting \$12,673.10 disbursements alleged by the defendant from the income estimated by the Master, there was a balance of \$1651.90 profit from the business during that period. Making allowances for advances and payments made to and by the partnership, there was a net profit of \$1291.85, of which amount the Master found the complainant was entitled to one-half, or \$640.92.

There was a further question as to the claim of the complainant as to a certain bank account in the personal name of the defendant which account was used admittedly at times by the defendant for the partnership purposes. The claim of the complainant to this fund as a partnership fund was disallowed by the Master. The fund amounted to \$2882.44. The report of the Master was confirmed in its entirety by the Vice Chancellor.

Exceptions to the report were taken by the de-

fendant and cross-exceptions were taken by the complainant for the disallowance by the Master of the claim as to the bank account of the defendant, and also on account of disbursements allowed without any proof by vouchers. All exceptions were disallowed by the Vice Chancellor, and the Master's report was confirmed in its entirety. This appeal is taken by the defendant from the decree disallowing the exceptions of the defendant. The appeal by the complainant from the disallowance of complainant's exceptions to the Master's report has been abandoned.

## STATEMENT OF THE LAW.

### I. The report of the Master is supported in law.

Appellant lays much stress in his brief upon the fact that the Master fixed the amount of income for which the defendant is chargeable without having exact, precise, and permanent records proving the amount of income.

It is not a novel way for a Master to arrive at a finding.

In the case of *Blauvelt vs. Ackerman*, 23 N. J. Eq. 495, 1873, affirmed 25 N. J. Eq. 570, there was a reference to a Master for an accounting of trust property. Among the items to be accounted for were many chattels and other things of personalty and proceeds from the sale of articles or chattels which could not be ascertained by any records of any sort. In the language of the Court:

“Any result arrived at in respect to these matters must be little less than conjectural. Out of any given number of accountants un-

dertaking to adjust a balance or settle the particulars on either side of this period of the assignee's transactions, I take it to be certain that no two of them would deduce from the materials as they are furnished in this case similar results; and the differences between their results would probably be large. It is with respect to these matters that six out of the complainant's nine exceptions are taken."

The Master did however fix the amount for which the accountant would be held chargeable for these items. Exceptions to the Master's report were overruled by the Vice Chancellor who sat below in the following statement given on page 502:

"I have given much time and attention to an examination of these exceptions, and while I am unable to see with what precise view of the evidence the Master arrived at the figures in his report in regard to the matters included in the first six of the exceptions, I am unable to see how any different figures can be inferred more consonant with the evidence as a whole, or more probably just, with reference to the fixed and known data of the case.

"Where a trustee has kept his accounts in a negligent way, or kept no account whatever of his receipts, all presumptions should be strongly against him, and obscurities and doubts should not operate to his advantage, but adversely."

It must seem obvious that, simply because a partner by his own wrongful act fails to keep any accurate records of accounts, or is unable to produce them, the other partner is not required to rely upon the mere statement of the accounting partner for the amounts for which he shall be chargeable and given credit.

In the case of *In Re Gaston Trust*, 35 N. J. Eq. page 60, the trustee was unable to produce accurate books and records to justify his account. The trustee was unable to reproduce from memory a single item of it. Nobody knows what the true items of either side of the account were. In that state of affairs the Court said on page 64:

“Whether the trustee has charged himself with everything with which he is properly chargeable, and entered on the credit side nothing but what he is justly entitled to credit for, nobody can tell. In this position of affairs, to allow the credit claimed, the court must accept an arbitrary sum fixed by the trustee, in utter ignorance whether it is just or not, and without affording the *cestui que trust* the slightest opportunity either to investigate or dispute its correctness—such a thing, I venture to say, has never been done by any tribunal having the slightest acquaintance with the law defining the duties and obligations of trustees.

“Trustees are bound to keep clear and accurate accounts, and in case doubts or obscurities arise from their failure to do so, they should be resolved against the trustees. If the accounts of a trustee become lost, through his carelessness, he should be required to bear any injurious consequences arising from their loss. The law imposes the duty of keeping accounts on trustees for the protection of their *cestuis que trust*, and a trustee will not be permitted to defeat this salutary purpose by his carelessness.”

This case was affirmed by the Court of Errors and Appeals, 35 N. J. Eq. 348, and followed in *Smith vs. Robinson*, 83 N. J. Eq. 384 at page 388.

So that it must seem clear that in the absence of accurate records, which absence is caused by the negligence or wrong doing of the accountant, the

Master is justified in using such evidence as is available in forming his best opinion.

**II. The Master's Report is justified by the evidence submitted.**

The Master found substantially that from the admitted evidence of the accountant, Perry, the income of the business was \$21.00 per day, based upon proof of actual disbursements, but from the other evidence in the case the Master found that the income of the business amounted to \$25.00 per day for the period of 96 weeks. The accountant, Perry, himself gave proof that he paid actually out of the partnership funds \$21.00 per day. He also claimed additional moneys which were paid out of his own funds, showing a deficit in the partnership business. But the following evidence appeared to justify the Master's finding:

The accountant, Perry, himself, in his own testimony stated that during some part of this period when business was good, his weekly income ranged from \$300. to \$400. per week. (Page 160, State of Case). The poorest week he ever had was \$80.00 per week. (Page 160, State of Case). The Master found an average income of \$150.00 per week or \$25.00 per day, six days having been taken as the business week. Mr. Fred Jones, a brother-in-law of Perry, the accountant, who worked for Perry during the greater part of this period, testified that the income of the business was about \$45.00 to \$50.00 a day at certain times, which is conceded in appellants brief.

The experiences of the receiver during the time that he operated the business, which was subsequent to the period for which this accounting was sought, showed an income of \$665.01 over a period

of 38 actual business days, or roughly, about \$110.00 for the business week. The receiver in this case was the Master who heard the testimony, and was in an excellent position to pass judgment upon the average income of this business upon the testimony submitted. The receiver showed disbursements of \$886.82. In these disbursements are included the following expenses which would not be normally chargeable against the business if conducted by the defendant Perry: Premium on bond, \$10.00; approving bond, \$3.00; insurance \$13.60; recording chattel mortgage, \$21.50; testimony, Florence Goodell, \$81.00; other testimony, \$14.40; outstanding indebtedness incurred prior to receivership, \$169.72; total \$294.22. If this amount were deducted from the disbursements of the receiver, the receiver would show a net profit of \$72.41 but there should be further deducted from the receiver's account the sum of \$140. which was paid out by the receiver to an extra man to manage the business, an expense which the accountant Perry would not have. So that, on this basis, the receiver would show a total profit of \$212.41 over a period of about 6 weeks. This experience of the receiver should be very convincing in establishing that the business must have been operated at a profit. Actual experiences before and after the period the accountant was in charge of the business may be taken into consideration. (*Blauvelt vs. Ackerman, supra*).

There is further proof in the case that the defendant, Perry, himself bought in the business at the receiver's sale for the sum of \$1200.00. It is reasonable to suppose that if this business, after being operated by the defendant Perry himself, over a period of 96 weeks, showed a deficit, it would not be bought in by the defendant Perry at this price.

There appears to be an error in the statement of the facts as presented by the appellant in his brief, in which he states that the receipts for the month of January, 1930, were \$326.50. The statement of the witness, Janney, showed that the receipts for that period were \$704. (Page 89, State of Case). The answer of the witness, Janney, the accountant may appear ambiguous in the State of the Case, but the memorandum that was submitted by Janney and used by him in testifying, showed that the receipts for the month of January, 1930 were \$704.90. If we consider 27 business days in January, the average daily income would be about \$28.00 per day. This would tend to substantiate the report of the Master, that the average daily income is \$25.00 a day.

*It should be further borne in mind that the burden of establishing the accuracy of the amounts for which the accountant shall be credited or allowed, is upon the accountant. McCulloch vs. Tomkins, 62 N. J. Eq. 262, Chancery, 1901. Dufford vs. Smith, 46 N. J. Eq. 216. And in making such an account, all doubts and obscurities must be resolved against the accountant. It should be further noted that the accountant deposited in his alleged personal account the sum of \$2882.44. This is shown by defendant's banks' statements admitted in evidence but not returned with the State of the Case. Notice of objection to the State of Case for this omission was duly given, and is here-to annexed. Mr. Perry claimed that this money was acquired by his outside work, his weekly salary being \$28.00 a week. This was the salary that he earned for himself while not engaged in the partnership business, but \$28.00 a week for 96 weeks would total only \$2688. This leaves out of account his own personal expenses and living expenses. He is wholly at a loss to show by his own*

testimony how he accumulated this large personal fund.

The credit which was asked by Perry for a payment of \$150.00 to the co-partner, Dr. Bell, was disallowed by the Master. This payment was denied by Dr. Bell. A question of fact arose and the Master was justified in disallowing it.

As to the extent of the period for which the accountant was chargeable, 96 weeks is calculated from April 4, 1928 to February 7, 1930. This amounts to 96 weeks and 5 days. While the receiver was appointed February 4, he did not qualify for this appointment and take over possession until February 7, 1930, at the earliest, as is shown by the date of his bond on file in these proceedings.

In view of the concession of the fact by counsel for the appellant, mention need only be made of the rule of law that a partner is not entitled to remuneration for his services to the partnership in the absence of any express agreement to that effect, and for that reason Perry was disallowed any remuneration for his services. (Uniform Partnership Act). *Coddington vs. Idell*, 29 N. J. Eq. 504.

### **III. The finding of the Master should not be disturbed.**

The finding of the Master who had first hand opportunity to value and weigh the testimony, will not be disturbed unless he erred in a matter of law or plainly as to the facts. *Wilson vs. Sandall*, 92 N. J. Eq. 130, and the cases cited therein.

There is nothing in the brief of the appellant or in the testimony submitted to justify the contention that the Master erred plainly as to the facts. There was no error in law. The Master's findings

therefore were properly confirmed by the Vice Chancellor and the exceptions of the defendant were properly disallowed.

The appellant in his brief refers to one New Jersey case in support of the position that he takes, being the case of VanNess vs. VanNess, 32 N. J. Eq. 669. The appellant contends that the Master is fixing an arbitrary amount and is citing this case in support of his position, but an examination discloses that no such position is taken by the Court. In the case of VanNess vs. VanNess, there was a reference by the Vice Chancellor. On exception before the Vice Chancellor, he held that the report must be taken to be correct until error is shown. "The burden is on the exceptant." In that case one of the partners also mingled the partnership funds with his own private funds, and therefore proof as to what part of the mingled funds belonged to the partner personally or to the partnership became very uncertain. The Master decided against the exceptant and the Court, in affirming the Master's report held that this was correct; that the accountant must be held chargeable for his own wrong doing.

"If he (the accountant) has been derelict in his duty so that doubt and uncertainty have arisen, he must bear the consequences."

This is in support of our position in this case. This case was reversed on appeal, not because the appellate court differed with the court below, as to this principle, but on account of the refusal by the Master to admit additional testimony upon a second reference. This case by no means is in support of the position taken by the appellant in his brief. No other New Jersey case is cited by the appellant in his brief.

### Conclusion.

The appeal from the decree of the Chancellor in overruling the exceptions of the appellant to the Master's report should be dismissed. The report of the Master should not be set aside in the absence of proof of an error in law, or plainly, of an error in fact. Neither is made out by the appellant in this case. The burden of proof in justifying the account is upon the accountant, who, by his own wrong-doing or negligence, has failed to keep proper records. In the absence of such exact and accurate records, the Master is justified in forming an opinion from the best evidence available. Certainly the wrong-doer can not profit by his own wrong-doing. The finding of an income of \$25.00 a day, or of a profit of an average of \$4.00 a day, in the light of all the circumstances of the case, was not unreasonable. The appeal should therefore be dismissed with costs allowed.

Respectfully submitted,

SYLVAN J. RAUCH,  
Solicitor and Of Counsel,  
For Complainant-Appellee.

**Notice.**NEW JERSEY COURT OF ERRORS AND  
APPEALS.

|  |   |   |
|--|---|---|
| GEORGE E. BELL,<br>Complainant-Appellee,<br><br>vs.<br><br>JAMES E. PERRY,<br>Defendant-Appellant. | } | On Appeal<br>from the<br>Court of<br>Chancery.<br><br>Notice. |
|--|---|---|

To PHILIP GOODELL, ESQUIRE,  
 Solicitor of Defendant-Appellant,  
 484 Bloomfield Avenue,  
 Montclair, N. J.

Sir:

PLEASE TAKE NOTICE of the following several, separate, objections of complainant-appellee to the state of the case served by defendant-appellant:

1. The state of the case does not contain the following:
  - (a) All of the proofs in the court below.
  - (b) All of the exhibits admitted in evidence in the court below.
  - (c) All of the evidence admitted in the court below.
  - (d) The bank statements of the Bank of Montclair, and of the First National Bank and Trust Company of Upper Montclair, of the account of the defendant-appellant, admitted in evidence, and nec-

essary to properly present the matter to the appellate court.

(e) The receipts and cancelled checks admitted in evidence, and necessary to properly present the matter to the appellate court.

(f) Exhibits admitted in evidence necessary to properly present the matter to the appellate court.

2. The state of the case is incorrect on page 116, in that witness Fred Jones is stated to have been produced on behalf of "petitioner," whereas he was called by the Master, and in that said witness was first examined by the Master, which examination by the Master is entirely omitted, greatly prejudicing complaint-appellee.

3. The state of the case is incorrect on pages 73, 74 and 75, in that redirect-examination of James E. Perry by Mr. Goodell is stated to be cross-examination, and by Mr. Murphy, and is otherwise inaccurate.

4. Aforesaid errors and omissions, or one, or some of same, are prejudicial to complainant-appellee, and prevent the matter from being properly presented to the appellate court.

Please take notice that complainant-appellee will duly ask affirmance of the decree, or dismissal of the appeal, on the above grounds, or in the alternative upon each, and any of same, and will also take other or further proceedings.

SYLVAN J. RAUCH,  
Solicitor for and of Counsel  
with Complainant-Appellee.

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#11

**New Jersey Court of Errors and Appeals**

Between

GEORGE E. BELL,  
Complainant-Appellee,

and

JAMES E. PERRY,  
Defendant-Appellant.

On Bill, &amp;c.

**APPELLANT'S REPLY BRIEF.****Facts.**

On page 8 of his brief, the appellee quotes the testimony, or alleges that he quotes the testimony, in an attempt to show that the gross amount of appellant's private bank account, aggregating over the period of the partnership \$2,882.44, was not satisfactorily explained by the accountant. The appellee claims that the accountant said he put in it his wages of \$28.00 a week, and he argues that since it obviously contained more than \$28.00 a week that he must have put some of the partnership funds in it, and as he cannot now divide them that he should be charged with having received the gross amount. The appellee does not quote the full testimony. I do not find any definite statement in the testimony and the appellee quotes none as to the sources from which this \$2,882.44 were taken, but on page 62, lines 29 and following, Mr. Perry explains that his income was not only the \$28.00 a week that he received for wages but that

he received \$10.00 or \$12.00 for doing odd jobs, that his wife received \$16.00 a week, or thereabouts, and that all of these funds, or large parts of them, were from time to time put in the bank account. The appellee speaks as though this bank account were a fund he had on hand at the time of the accounting. As a matter of fact, the sum represents the total of deposits made after June 1, 1928 when he stopped using that bank account as a partnership bank account up to the end of the partnership, and the balance on February 1, 1930 was but \$40.57 (see page 33, lines 1-12 and line 22).

As for the actual existence of the partnership, the appellee claims April 4, 1928 to February 7, 1930. April 7, 1928 seems to have been the opening date (page 89, line 18) and the book shows that the Receiver was appointed February 4, 1930. On that day and from that day forward Perry touched nothing.

On page 8 the appellee states that the witness Janney said that the receipts for January, 1930 were \$704.00. On page 89, line 19 is his actual testimony. He misspoke when he said \$704.00 and immediately corrected it with the definite statement that it was \$326.50 for January.

It is true that Perry, on page 160, said that the biggest week he ever had was the first one but that he didn't know how much it was that he took in but that it was around \$300.00 or \$400.00. All the witnesses agree that this was the biggest week, and the testimony of the witness Jones, as recited in the brief, shows that within six or eight weeks it had slumped to \$10.00 or \$12.00 a day. Certainly there was no testimony to show that the highest and lowest week could be combined to form

an average of ninety-five weeks, particularly where the highest week was admittedly a guess.

The appellee uses the argument that Perry would not have bought the place for \$1,200.00 if it had been a losing venture. In considering this it should be considered that it had not been a losing venture, and that during the period of the partnership \$1,350.00 had been earned and paid on a capital debt, to wit, the balance of the purchase price of the pool tables (the down payment being made from the capital contributions) and that in addition to these pool tables all the other equipment had been earned and paid for by the partnership.

#### Law.

*Blauvest vs. Ackerman*, 23 N. J. Equity 495. This case is distinguished from the case at bar in that in the *Blauvest* case there were actual items of personal property which both sides admitted were to be accounted for and on which no value was put, and it was obvious that some value had to be put on them while in the case at bar the surcharge of \$4.00 a day is arbitrary. The appellant insists that he has accounted for all his receipts and there is no evidence that he has not. The Master for some reason does not believe him, and without anything to guide him surcharges him an additional amount. It is insisted that that is novel.

*In re Gaston Trust*, 35 N. J. Equity 60 is a case which might have been cited by the appellant to show that "an arbitrary sum fixed by the trustee, in utter ignorance whether it is just or not, and without affording the cestui que trust the slightest opportunity either to investigate or dispute its correctness—such a thing, I venture to say, has never been done by any tribunal having the slightest ac-

quaintance with the law defining the duties and obligations of trustees." In that case, the trustee without any records or reason said that he had paid his cestui \$1,175.00 and the item was thrown out. It was true there was a credit sought by the accountant but the arbitrary nature of the charge was as abhorrent to the court as the arbitrary charge in this court is abhorrent.

Appellant does not quarrel with the doctrine in *Dufford vs. Smith*, 46 N. J. Equity, 216, but it should not be overlooked that the appellant, an ignorant janitor dealing with his partner, an educated physician, was caught off his guard after he had made verbal accountings which were satisfactory to his partner and after twenty months operation of the business, during which time his partner was well aware that no accounts were being kept, and that the accountant under these circumstances did supply an amazing amount of accurate information; that no question as to any detail had not been satisfactorily settled; that very few details were questioned, and that the single element in the accounting on which appeal was taken is the arbitrary surcharge of a fictitious amount of receipts.

No issue is taken with the doctrine expressed by Vice Chancellor Backes in *Wilson vs. Sandall*, 92 N. J. Equity 130 that the Master's reports is not to be lightly overturned. However, this Court of Errors and Appeals in the Last Resort is provided for by the Constitution to determine just such questions. Certainly the mere fact that the Master made his report is not conclusive, and it is sincerely urged that the Master must have been governed by something outside of the evidence in what amounts to his suspicion of Perry (for to surcharge him with \$4.00 a day is equivalent to say-

ing that he stole it or attempted to steal it) and it is contended that there is nothing in the evidence to justify it.

As to the omissions of the exhibits in the printed case and the corrections in the testimony claimed.

The testimony is printed as taken before the Master. It is surprising if there are no mistakes. The mistakes alleged by the appellee, it is believed, are immaterial.

As to the exhibits, hundreds, if not thousands, of documents were referred to, books, checks, bank statements, receipts, etc. There was a book which contained little, which was never marked. Most of the papers referred to were not marked. A few were. They were carefully scanned with the issue in mind before the printing was done. It was found that to print them would, as a matter of fact, deprive the appellant of his right of appeal because the expense was prohibitive. There is nothing in the appeal or cross-appeal which goes into the details of the exhibits, particularly the bank statements. The appeal is on the matter of principle. Sufficient reference is in the testimony to give this Court all the information as to the bank accounts and the transactions. It is believed that nothing has been omitted which would be essential or useful in the determination of the case. No argument in appellee's brief refers to any exhibits nor is it indicated that any exhibit is needed that was not printed.

Respectfully submitted,

PHILIP GOODELL,  
Counsel for the Appellant.



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