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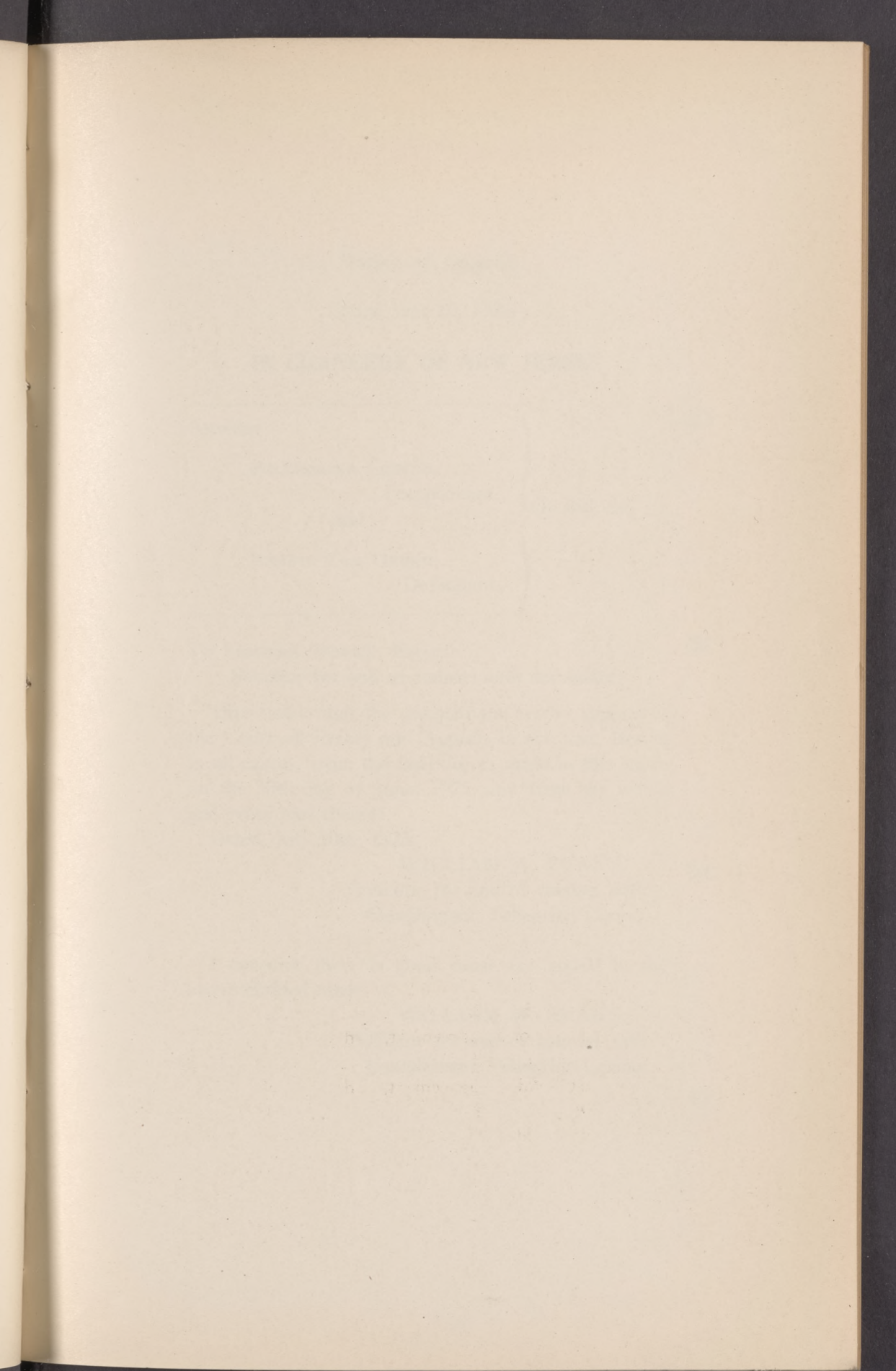
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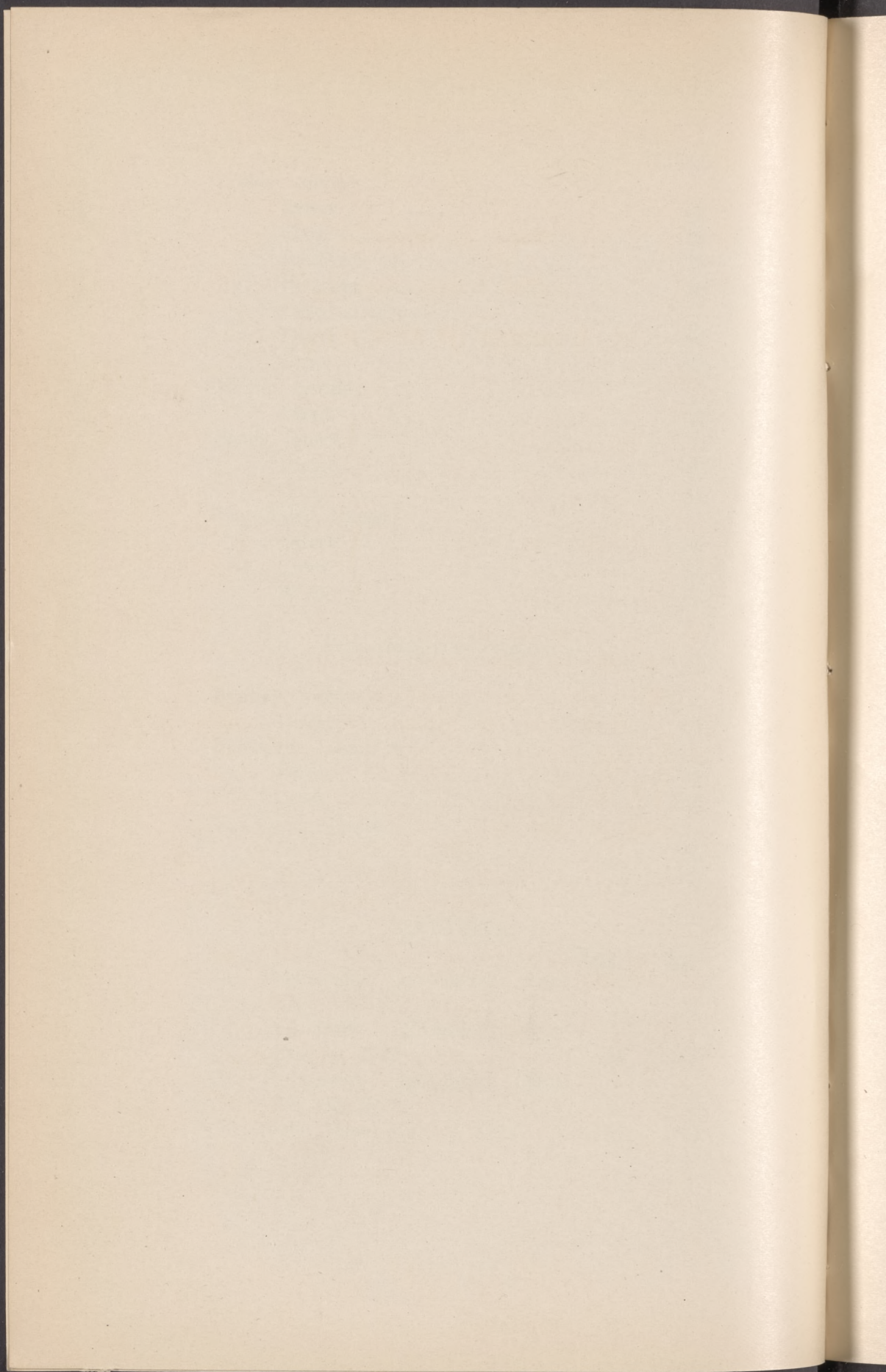
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Notice of Appeal.

(Filed June 10, 1925.)

IN CHANCERY OF NEW JERSEY

Between 10

PELLEGRINO CERINO,
Complainant,
and
JOSEPH VAN ORDEN,
Defendant.

} On Bill, etc.

To Emanuel Shavick, Esquire, 20
Solicitor for and of counsel with defendant.

Take notice that the complainant hereby appeals to the Court of Errors and Appeals in the Last Resort in all causes, from the final decree made in this cause on the 30th day of June, 1925, and from the whole and every part thereof.

Dated, July 10th, 1925.

WILLIAM W. EVANS, 30
Solicitor for and of counsel with
Complainant, Pellegrino Cerino.

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

WILLIAM W. EVANS,
Solicitor for and of counsel with
Complainant, Pellegrino Cerino.

40

Petition of Appeal.

(Filed July 29, 1925.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

PELLEGRINO CERINO,
Complainant-Appellant,
vs.
JOSEPH VAN ORDEN,
Defendant-Appellee.

On Appeal
From the
Court of
Chancery.

20

To the Honorable, the Court of Errors and Appeals
in the Last Resort in All Causes:

The petition of Pellegrino Cerino, the appellant in
the above entitled cause, respectfully shows that:

30

Petitioner finds himself aggrieved by a final decree
made in the Court of Chancery by his Honor, Edwin
Robert Walker, Chancellor of the State of New Jer-
sey, bearing date the 29th day of June, 1925, in a
certain cause in said Court of Chancery, wherein the
said Pellegrino Cerino was complainant and the said
Joseph Van Orden was defendant, in this respect,
to wit, that the said decree adjudges that the pleadings
and proofs having been considered and, it appearing
for good and sufficient reason, the bill of complaint
and the cross bill filed in this cause be dismissed.

40

And the petitioner appeals from the said decree of
the Chancellor and from the whole and every part
thereof, upon the ground that the same is erroneous
in that the said complainant was and is entitled to the
relief prayed for in his bill of complaint, namely, that
by the decree of the Chancellor, it should have been
decreed that a partnership between the complainant,

Petition of Appeal

Pellegrino Cerino, and the defendant, Joseph Van Orden, was in existence, and that jitney bus permit No. 141 and the jitney bus to which it applied, was the property of and belonged to the partnership, according to the articles of agreement and the evidence submitted.

And for that the Chancellor should have by said decree ordered the said defendant to account to the complainant for all of the profits resulting during the operation of said jitney bus under the said permit No. 141. 10

And for that the Chancellor should have by said decree dissolved the said partnership, and from the profits derived from the sale of the assets, after the payment of costs and expenses of the proceedings and any debts and obligations of the partnership, ordered an equal division of the said profits to be made and the complainant, Pellegrino Cerino, and the defendant, Joseph Van Orden, each to receive their one-half of the same. 20

And for that the Chancellor should not have held by such decree that "If, therefore, any rights can be claimed under a partnership arrangement between the parties, it would present the situation of an application to this court to take an accounting between two partners with regard to partnership funds resulting from an illegal transaction." 30

And for that the Chancellor should not have held "That the complainant has no status to appeal to this Court for an accounting between himself and his alleged partner in such an arrangement."

Petitioner therefore prays that the said decree of the said Chancellor may be wholly 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. 40

WILLIAM W. EVANS,
Solicitor for and of counsel with Appellant.

Answer to Petition of Appeal.

(Filed August 13, 1925.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

PELLEGRINO CERINO,
Complainant-Appellant,

vs.

JOSEPH VAN ORDEN,
Defendant-Appellee.} On Appeal
} From the
} Court of
} Chancery.

20

The answer of Joseph Van Orden, appellee, in the above entitled matter respectfully alleges and shows:

30

1. This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a certain decree was, on the 29th day of June, 1925, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this appellee begs leave to refer thereto when the same shall be produced.

2. This appellee is advised and believes that the said decree is agreeable to equity; and prays that the same may be affirmed with costs to be taxed as against the appellant, in favor of this appellee.

EMANUEL SHAVICK,
Solicitor for and of Counsel with Appellee.

40

Complaint.

(Filed June 5, 1924.)

IN CHANCERY OF NEW JERSEY.

TO THE HONORABLE EDWIN ROBERT WALKER, Chancellor of the State of New Jersey.

The complainant, Pellegrino Cerino, of Paterson, New Jersey, respectfully shows: 10

1: That on or about December 30, 1922, complainant and one Joseph Van Orden, who is the defendant herein, entered into an agreement to be and become partners in the operation of a certain jitney bus now operating under permit No. 141, between the City of Paterson, and the Borough of Prospect Park, in the County of Passaic, a copy of which agreement is hereto annexed, made a part hereof, and marked Exhibit "A." 20

2: Thereafter the said Joseph Van Orden, the defendant herein operated the said jitney bus for a long period of time and failed to account to the complainant for his share of the profits or losses as the case might be.

3: The said Joseph Van Orden likewise failed to keep accurate books of account of the partnership, and of all receipts and disbursements thereof, and did not at the end of each three months make a full and complete statement showing the receipts and disbursements of the partnership, and of the profits and losses of the partnership as required in the aforesaid contract. 30

4: By reason of the defendant's failure to keep and perform the terms of the said partnership agreement on or about May 24, 1924, complainant caused to be sent to the said defendant, a notice of the several 40

Complaint

breaches of the said partnership agreement and in compliance with the terms of paragraph 12 of the said agreement, but not admitting the terms of the said contract as applicable to the case, but for the purpose of conserving any rights which he might have in the premises, the said complainant referred the matters
10 therein to Andrew Locker, for arbitration.

5: That thereafter the said defendant refused to submit to arbitration and has failed and neglected to proceed in accordance with the said contract.

6: Complainant has been, at all times willing and anxious to purchase the interest of the said defendant, or to sell his share of the said partnership assets to the said defendant, who refuses or neglects to either purchase or sell; although complainant did thereafter offer to purchase the interest of the complainant for the sum of \$4,500, but has since refused and neglected to consummate the said agreement.
20

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

1: That Joseph Van Orden who is the defendant in this suit may answer this bill of complaint and each statement herein contained.
30

2: That an account may be taken of the amount due to the complainant as and for his share of the profits and losses sustained during the period of the operation of the bus belonging to the partnership from the commencement of the said partnership.

3: That if there be any profit in the operation of the said bus, that the complainant may be decreed to receive his share thereof with interest and costs.
40

4: That the said partnership may be dissolved, that

Complaint

a receiver may be appointed therefore, and that the assets of the partnership be sold by the said receiver, and the profits thereof be divided between the partners after the payment of the costs and expenses of the sale and of this proceeding.

5: That a writ of subpoena may issue commanding the said defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises. 10

WILLIAM W. EVANS,
Solicitor for and of Counsel with
Complainant.

ARTICLES OF AGREEMENT made and entered into this 20
30th day of December, in the year of our Lord; one thousand nine hundred and twenty-two, between Pellegrino Cerino and Joseph Van Orden, both of the City of Paterson, in the County of Passaic and State of New Jersey:

First: The said parties have agreed and entered into a co-partnership in the jitney bus business for a period of five years from this date and each of said parties has paid in cash or delivered property of an equal amount to be employed in said business. The property of said partnership consists of one White Jitney bus, which is now being run on the Prospect Park route in the City of Paterson and Boroughs of Prospect Park and Haleden, and is known as bus No. 141. 30

Second: It is agreed that the profits and losses of said business shall be equally divided and sustained by and between said parties. 40

Complaint:

Third: All funds belonging to the partnership shall be deposited under the name of the partners jointly in the United States Trust Company, Paterson, New Jersey, and all bills and firm debts shall be paid by check drawn on said account, which checks must be signed by both of the partners.

10

Fourth: Also whenever there shall be occasion to give any bond, note, bill or other security for the payment of money on account of the partnership, the same shall be signed and executed by both of the partners and in case either partner shall give such obligation the same shall be deemed to be given on his separate account and shall be payable out of his separate estate and he shall indemnify the other partner against the payment thereof.

20

Fifth: The said Joseph Van Orden shall keep the books of the partnership and shall keep a true and accurate account of all the receipts and disbursements and shall at the end of each three months during the continuance of this partnership, make a full and complete statement showing the receipts and disbursements during the preceding three months and the profits and losses of the business.

30

Said statement shall be entered on the partnership books and shall be signed by each partner and when so signed shall be binding upon them save that any manifest error therein shall be found and signified by either of the partners within one month from the date thereof; then the same shall be rectified.

40

Sixth: Said partnership books shall at all times be available to each partner and each partner shall on the reasonable request of the other, furnish full information regarding all letters, accounts, writings or other things which shall come into his hands or to his knowledge concerning the business of the partnership.

Complaint

Seventh: Neither of the partners shall buy or contract for any article exceeding the value of Five dollars (5.00) without the previous consent of the other partner.

Eighth: Neither of the partners shall without the previous consent of the other in writing, assign his share or interest in the partnership business. 10

Ninth: Neither of the partners shall without the written consent of the other partner, enter into any bond or become surety or security with or for any person or knowingly cause or suffer to be done anything whereby the partnership property may be attached or taken in execution.

Tenth: In the event of either partner retiring from said firm before the expiration of the term of this partnership or within two years thereafter, such retiring partner shall not within the term of the partnership and within two years thereafter, carry on or engage or be interested directly or indirectly in any other bus line in any way competing or interfering with the bus line now run by the parties hereto. 20

Eleventh: In case either of the partners desires to retire from the partnership business after the expiration of the term hereof, he shall give thirty days notice in writing to the other partner, to that effect, and the partner to whom such notice has been given shall be at liberty to purchase the interest of the retiring partner and shall pay him the value of his share in said partnership effects, and the value of the said share shall be ascertained by two persons, one to be chosen by the partner who desires to retire and the other by the continuing partner and in case the said two arbitrators cannot agree upon a price that shall 30 40

Complaint

be just, a third person is to be chosen by them and his decision as to the value of said retiring partner's share shall be final.

10 The partner who desires to continue the business shall have ten days after the price has been set as aforesaid to decide whether or not he will purchase the retiring partner's share.

In case said party desires to purchase at such valuation the right to do so shall be awarded to the partner who is willing to pay the highest sum above the price set as aforesaid for the privilege of purchasing.

20 Twelfth: All disputes and differences, if any, which shall arise between the said parties, shall be referred to, and decided by two competent persons in or well acquainted with the trade, one to be chosen by each party or by an umpire to be chosen by the referees, in the usual course in such or similar cases; and their or his decision shall in all respects be final and conclusive on both the said parties, and shall be given in writing within ten days next after such submission.

30 Thirteenth: Upon the dissolution of the partnership a full and general account of the assets, liabilities and transactions of the partnership shall be taken and the assets and property thereof shall as soon as practicable, be sold, the debts due the partnership collected, the proceeds applied, first, in discharge of the liabilities of the partnership and the expenses of liquidating the same; and next, in payment to each party of his representatives of any unpaid interest or profits belonging to him, and of his share of the capital; and the
40 surplus, if any, shall be divided between the parties or their representatives in the shares in which they

Complaint

contributed the capital of the said partnership; and the partners or their representatives shall execute all such instruments for facilitating the collection and division of the partnership, and for their mutual indemnity and release, as may be requisite or proper.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals this 30th day of December, A. D. Nineteen hundred and twenty-two.

10

PELLEGRINO CERINO (L. S.)
JOSEPH VAN ORDEN (L. S.)

Signed, sealed and delivered
in the presence of

20

30

40

Answer

not consummate the said alleged partnership agreement, and therefore the said agreement is void and of no effect.

SECOND SEPARATE DEFENSE.

That there was no consideration for the said alleged agreement of partnership as the said complainant never contributed anything towards the said partnership as the said jitney bus was purchased by the said defendant, and the permit under which the said jitney bus was running and is still running was always owned by the said defendant and is in his own name and at no time was there any consent to the transfer from the individual to the partnership, and the said permit was issued to this defendant by the various municipalities. 10
20

THIRD SEPARATE DEFENSE.

That if the Court shall find that the said alleged partnership agreement is binding and a valid agreement then this defendant contends in this defense that the word "business" as set forth in the said agreement means the said jitney bus and has no connection whatsoever with the said permit which has been issued to Joseph Van Orden, and which is now and has always been in the name of this defendant. 30

FOURTH SEPARATE DEFENSE.

The said defendant will maintain at or before the trial that this bill of complaint is filed contrary to law and reserves the right to strike out the said bill. 40

By way of counterclaim as against the complainant, this defendant says:

Answer

10 1. That on the 30th day of December, 1922, an agreement, the subject-matter of this suit, was entered into between the complainant and this defendant, purporting to be an alleged partnership agreement, in reference to the carrying on of the business known as the Jitney bus business running on the Prospect Park Road, Paterson, and the Borough of Prospect Park and Haledon, which jitney bus carrying on the said business is known as number 141 on the Prospect Park line.

20 2. That when the said alleged agreement was entered into, the said defendant herein was caused to enter the said alleged agreement by reason of false and fraudulent representation and where in fact your defendant did not or was not informed as to the true contents of the said alleged agreement purporting to be a partnership agreement, between the parties hereto.

3. That the said complainant never contributed anything towards the said partnership, and no consideration was paid for the said making and executing of the said agreement, and no property was contributed by the said complainant towards the said partnership.

30 4. That the said alleged agreement was never consummated in that the said defendant continued the business solely and alone, and without the help or assistance of the said complainant, Pellegrino Cerino, and without any aid financially or without any help or assistance of the said complainant in this cause.

40 5. That the said complainant never exercised any duties or responsibilities which a partner would assume or which is customary to assume and take care of and in fact for a period of one month, that is, from the 30th of December, 1922, until about the end of

Answer

January, 1923, the complainant did not make any demand or statement to your defendant in reference to the said alleged partnership.

6. That the said permit or license which authorizes the jitney bus of this kind to be operated in the City of Paterson, and in the Borough of Prospect Park and Haledon, is in the name of the said defendant, who received the said permits from the various municipalities and the said complainant has no interest in the said permit or was there any interest in the said permit assigned to the said complainant. 10

7. That since the time that the said complainant has been harassing and disturbing the defendant and informing various people that he is a partner and he has even demanded from the defendant sums of money to release him from any claim whatsoever, and that the said complainant has continuously annoyed your defendant, and has demanded certain information and for the past two and a half and three months has attempted to annoy, harass and disturb this defendant. 20

8. Defendant is informed that the said alleged agreement was made in duplicate and that one copy is in the possession of the defendant and the other is in the possession of the complainant, and which copy your defendant has demanded but the complainant refuses to surrender up and deliver to your defendant for cancellation the said alleged agreement which purports to be a certain partnership agreement. 30

9. The defendant has continued the said business solely, as aforesaid, and has greatly advanced the purpose of the said business without the help and assistance of the said complainant, and all check books of the said business, negotiable instruments, books and other 40

Answer

papers have been carried on solely by the defendant, and this complainant is now desirous of participating in the said business as an alleged partner and is continuously annoying your defendant.

Wherefore your defendant prays:

10 1. That the said bill of complaint filed in this cause should be dismissed with costs.

2. That the said alleged agreement now in possession of the said complainant should be delivered up for cancellation and to be declared null and void and that in the meantime the said complainant may be restrained by an order and injunction of this Honorable Court from assigning or transferring the said alleged partnership agreement, and that this Court grant the
20 defendant such other and further relief in the premises as the nature of the case may require.

And defendant will ever pray and etc.

EMANUEL SHAVICK,
Solicitor for Defendant.

30

40

Replication.

IN CHANCERY OF NEW JERSEY.

Between

PELLEGRINO CERINO,
Complainant,

and

JOSEPH VAN ORDEN,
Defendant.

10

The complainant herein replying to the defenses set forth in the answer of the defendant herein says:

1. He denies the contents of the first separate defense.

20

2. He denies the contents of the second separate defense, except to admit that the permits under which the said jitney bus was running and is still running are in the name of the defendant but complainant alleges that the said permits were issued in the name of the said Joseph Van Orden at the suggestion of the said Joseph Van Orden, but for the benefit of the said partnership.

30

3. Complainant denies that part of the third separate defense that the word "business" means jitney bus and this complainant alleges that the said business embraces the permits issued for the operation of the said jitney bus.

4. This complainant denies the contents of the counterclaim as set forth in the answer of the defendant.

WILLIAM W. EVANS,
Solicitor for Complainant.

40

Order of Reference.

NEW (Filed December 2, 1924.)

IN CHANCERY OF NEW JERSEY.

Between

10

PELLEGRINO CERINO,
Complainant,

and

JOSEPH VAN ORDEN,
Defendant.

20 This matter being opened to the Court by William
W. Evans, solicitor for and of counsel with the com-
plainant, and Emanuel Shavick, solicitor for the de-
fendant, and upon reading the consent hereto under-
written, it is thereupon on this 2nd day of December,
1924,

30 Ordered that the above-stated cause be referred to
the Honorable V. M. Lewis, one of the Vice Chancel-
lors of this court, to hear the same for the Chancellor
and to report thereon to him and advise what order or
decree should be made therein.

E. R. WALKER.

We hereby consent to the entry of the above order.

WILLIAM W. EVANS,
Solicitor for and of counsel
with complainant.

EMANUEL SHAVICK,
Solicitor for and of counsel
with defendant.

40

Designation.

(Filed December 13, 1924.)

IN CHANCERY OF NEW JERSEY.

Between

PELLEGRINO CERINO,
Complainant,
and

JOSEPH VAN ORDEN,
Defendant.

10

Application being made to fix a time and place for the hearing of the above-stated cause, it is

Ordered that Tuesday, the third day of February, 1925, at the hour of ten o'clock in the forenoon, at the Chancery Chambers at Paterson, New Jersey, be and the same is hereby designated as the time and place of the hearing of the said cause.

20

Dated, December 9th, 1924.

VIVIAN M. LEWIS,
V. C.

I hereby consent to the entry of the foregoing.
EMANUEL SHAVICK,
Solicitor of Defendant.

30

A true copy
Thomas Barber,
Clerk.

40

Testimony.

IN CHANCERY OF NEW JERSEY.

Between

PELLEGRINO CERINO,
Complainant,

and

JOSEPH VAN ORDEN,
Defendant.

10

Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the third day of February, nineteen hundred and twenty-five, before Hon. Vivian M. Lewis, Vice Chancellor.

20

Appearances:

William W. Evans, Esq., for the Complainant.
Emanuel Shavick, Esq., for the Defendant.

ANDREW LOCKER, being duly sworn, testified as follows:

30

Direct-examination by Mr. Evans:

Q. Where do you live? A. Wyckoff, New Jersey.

Q. What is your business? A. I am in the bus business.

Q. Were you ever a partner in a partnership between Andrew Locker, Pellegrino Cerino and Joseph Van Orden? A. Yes, sir.

Q. Is this the agreement which was entered into between you at the time of the formation of this partnership? A. Yes, sir; it is.

40

Complainant's Witness, Andrew Locker, Direct

Mr. Evans: It is consented that this is the partnership agreement between Andrew Locker, Pellegrino Cerino, and Joseph Van Orden, dated September 15, 1922, which provided for the ownership of Buses 139 and 141.

Marked Exhibit C1.

10 Q. I note that among other things this provided for the ownership of Buses 139 and 141?

Mr. Shavick: Objected to; the contract speaks for itself; it is in evidence.

The Court: I will allow it. You may note an objection.

A. Yes, sir.

20 Q. With respect to these particulars buses, what was a necessary incident to their operation? A. I don't understand the question.

Q. Well, the partnership owned the buses? A. Yes, sir.

Q. What was a necessary incident to the ownership of these buses? A. Two permits and the two buses.

30 Q. Was there a question at any time raised as to the fact that the permits were part of the bus assets? A. It was understood when we drew up these partnership agreements.

Mr. Shavick: Objected to.

The Court: The objection is sustained; don't tell what was understood; tell what the conversation was.

By the Court:

40 Q. What was the conversation with respect to the permit? A. The conversation was with respect to the

Complainant's Witness, Andrew Locker, Direct

permits that they were to be included in the business of the buses.

FURTHER DIRECT:

Q. Was this partnership subsequently dissolved as between you, Pellegrino Cerino and Joseph Van Orden? A. Yes, sir. 10

Q. I show you a contract or an agreement, dated December 30, 1922, which purports to be a dissolution agreement; was that signed by the parties to the agreement? A. Yes, sir.

Mr. Shavick: No objection.

Mr. Evans: I offer it in evidence.

Marked Exhibit C2. 20

By the Court:

Q. When did they dissolve? A. The last day of the year 1922.

Q. During the course of your business, as partners between the three of you—

The Court: What is this suit?

Mr. Evans: I wish to show the transfer of the assets of this old concern to the new. It having been denied that they were partners, we want to show the consideration that passed to the new partners at the time; Cerino and Van Orden were the two partners— 30

The Court: There was a dissolution, so far as Mr. Locker was concerned, and he stepped out. What happened?

Mr. Evans: We want to show what passed to the new partnership by dissolution of the old. Our case is to prove the partnership— 40

Complainant's Witness, Andrew Locker, Direct

The Court: Do you dispute the partnership?

10 Mr. Shavick: First, Mr. Locker and my client were partners; then they made arrangements and took in Mr. Cerino; later, they dissolved as between the three of them, Mr. Locker taking one jitney bus and then Mr. Cerino and my client, Mr. Van Orden, entered into another partnership agreement; we took a bus; the permit was always in our name.

By the Court:

Q. You dissolved, and then there was a splitting up of these things? A. Yes, sir; it was agreed between Mr. Van Orden and Mr. Cerino and myself, that I was
20 to take one bus, No. 139; and that Mr. Cerino and Mr. Van Orden were to take one bus, No. 141, and it was mutually agreed that the permit was also to be included as part of the business.

FURTHER DIRECT:

Q. At the time of the formation of your partnership between the three of you, just what was put into
30 the partnership by each of the partners? A. About August, 1922—

Mr. Shavick: I object to this as immaterial as to the case before the Court; and furthermore, that the contract speaks for itself.

The Court: I am in a state of dubiety about its materiality, but I will admit it. The controversy is now over the bus and the permit.

40 Mr. Shavick: There was no consummation of the second agreement.

Complainant's Witness, Andrew Locker, Direct

Q. How much did you put in when you started?

A. I put in \$1,800.00.

Q. How much did Cerino put in? A. He gave me \$1,800.00.

Q. You both put in \$1,800.00? A. Mr. Cerino paid me \$1,800.00; Mr. Cerino put in \$1,800.00 in Bus 139, and I owned half of Bus 139; he put that up against my permit; and I also put up about \$1,800.00, which I can show, in checks and bills, for to put up against Bus No. 141, against Mr. Van Orden's permit. 10

Q. How was this \$1,800.00 made up that Mr. Cerino put in? A. He gave me a check for \$1,000 and about \$400.00 in cash, and he gave me a car for the consideration of \$300.00.

Q. That gave two permits to the organization? A. Yes, sir. 20

Q. And two cars? A. Yes, sir.

Q. Where did they run? A. To Prospect Park; first, I had No. 139 with Mr. Cerino; and about a month later I got Mr. Van Orden to get a permit, and I told him I would finance the whole proposition and we would go on the fifty-fifty basis; and when we got Bus 141 in operation, Mr. Cerino and Mr. Van Orden and I got together, being as I owned half of No. 141 and half of 139, we said we would make a partnership of the two buses and the interest of two permits, and form one company, and that I was to take the management of it; that was around October; we continued that business and Mr. Evans has the books which I signed—the books of the business, of the receipts and disbursements, and Mr. Cerino signed the books; Mr. Van Orden O K'd the books every other week and myself, and we continued this business to about the last day of the year 1922; and on account 30 40

Complainant's Witness, Andrew Locker, Direct

of minor disputes arising between the three parties, Mr. Van Orden seemed to have objections to the way I was running the business, and did not feel I was entitled to draw the salary that we agreed upon, and we agreed to dissolve. Now, in the dissolving of this partnership, I told Mr. Van Orden and Mr. Cerino
 10 I would only dissolve the way I went into it—I owned half of No. 139 at the time we first formed the company and half of No. 141, and I said, “The only way we will dissolve is that I get one bus back and one permit back, on account of putting that much into the company when we first organized with the three of us”; and he agreed to that and signed the agreement of the dissolution of letting me go, and for him and Cerino to have the interest in the other bus; and I took
 20 my bus and carried on my business; I still kept in operation.

Q. You separated yourself and you operated your bus yourself? A. Yes, sir, and they took care of their own bus.

Q. How much did Van Orden put into the partnership? A. Nothing; I financed the whole work against his permit.

30 By the Court:

Q. What was the conversation you had with Mr. Van Orden or Mr. Cerino about the permit? A. That if we dissolved, that I was to take back the interest of my permit, and they were supposed to continue on the interest of their permit.

Q. Was that reduced to writing? A. No, sir.

FURTHER DIRECT:

40

Q. Was there any agreement to the effect that the

Complainant's Witness, Andrew Locker, Direct

permit was a separate thing away from the partnership?

Mr. Shavick: Objected to as leading and suggestive.

The Court: Objection sustained.

By the Court:

10

Q. Was there any further conversation? A. The only conversation I can recall is, that when these papers were signed, the understanding was—

Mr. Shavick: I object to the word "understanding."

Q. What was said by the three of you? A. It was agreed that the permit was part of the business.

20

Q. Tell us what they said and what you said; when you dissolved and made an agreement of dissolution, you mentioned that they got a bus and you got a bus; was there anything said about permits? A. Yes, sir, there was.

Q. What was it? A. That the permit was supposed to be part of the business; they said that the permit was a part of the business.

Q. What did you say? A. I said the same thing.

30

Q. That was the conversation between you? A. It was before we signed those papers—the dissolution as well as the beginning—the first papers.

Mr. Shavick: I ask that that answer be stricken out, first, on the ground that the written agreement embodies the agreement between all of them; the agreement speaks for itself.

The Court: Motion overruled.

40

Complainant's Witness, Andrew Locker, Cross

CROSS-EXAMINATION by Mr. Sharick:

Q. What is your name? A. Andrew Locker.

Q. Where do you live? A. Wyckoff, New Jersey.

Q. When did you buy this permit from Wilson?

10 A. Mr. Wilson, my brother-in-law, got the permits issued in Prospect Park, I believe, around June, 1922.

Q. How long did he keep those permits? A. Mr. Wilson kept those permits, I think, up to the following year, 1923, around February, when we incorporated the Wilson Transportation Company.

Q. In 1922, you did not own any permits? A. I had an interest in them.

20 Q. You testified that when you made this partnership agreement between you and Mr. Cerino and Mr. Van Orden, that you owned the permit? A. Yes, sir, I did.

Q. Did not the Wilson Transportation Company own it? A. No, sir, Mr. Wilson, my brother-in-law, has an agreement with himself and me; the permit was in his name; it was my permit; I was running the business; I had taken everything right over.

30 Q. He had legal title to the permit, didn't he? A. Yes, sir.

Q. When did you get the title to this permit? A. I got the title of this permit as soon as the permit was granted.

Q. Give me the date, month and year when the permit was transferred to you by the City of Paterson. A. It has not been transferred to me at all; it was transferred to the Wilson Transportation Company in the year 1923.

40 Q. Who are the incorporators of the Wilson Transportation Company?

Complainant's Witness, Andrew Locker, Cross

Mr. Evans: I object; the Wilson Transportation Company has nothing to do with this case.

The Court: Who are the Wilson Transportation Company?

Mr. Shavick: He will prove that this corporation owned this; he never owned the permit until late in 1923. 10

By the Court:

Q. Who is the permit issued to? A. To Mr. Wilson individually; the permit was in Mr. Wilson's name; I am very sorry to say Mr. Wilson is dead; he died a year ago last November; I was his brother-in-law—

20

FURTHER CROSS:

Q. Was there any corporation? A. No, sir, it was just a sort of a partnership agreement between me and Mr. Wilson of that permit.

Q. This permit was known as what number? A. No. 139.

Q. Your brother-in-law had owned permit 139? A. Yes, sir. 30

Q. So that when you made this alleged partnership agreement between Mr. Cerino, Mr. Van Orden and yourself; you did not contribute to the partnership the permit, because it belonged to your brother-in-law?

A. My brother-in-law sold his permit and business to myself.

Q. When? A. About August, 1922.

Q. Did you have any papers? A. I have papers, but I have to look them up. 40

Q. In whose name was the license given to? A. Mr. Wilson got the permit.

Complainant's Witness, Andrew Locker, Cross

Q. You were first in business with Mr. Van Orden? A. No, sir.

Q. You knew Mr. Van Orden had a permit on that line? A. Yes, sir.

Q. And he had that permit before you met him; is that right? A. No, sir.

10 Q. Who gave the permit? A. The Prospect Park gave the permit with the sanction of the letter that Mr. Evans has; also Paterson.

Q. And then he got the permit from Paterson? A. Yes, sir.

Q. Who gave it to him from Paterson? A. The Board of Public Works.

Q. What time did you get this permit, do you know? A. I think the bus came out about September 6th; 20 the bus came in operation about September 6th; the permits are not issued until they measure the bus, the length, width and height; Mr. Van Orden got it about that time.

Q. Who bought that car? A. I did.

Q. Whose name is the car in? A. The car is in Mr. Van Orden's name.

Q. At that time Mr. Cerino was not in the partnership? A. With Mr. Van Orden; no, sir.

30 Q. Only you and Mr. Van Orden? A. Yes, sir, Bus 141.

Q. Only in Bus 141? A. Yes, sir.

Q. At that time there was no agreement between you and Mr. Van Orden about the permit? A. No, sir.

Q. Then where did you meet Mr. Cerino? A. I met Mr. Cerino around the city hall; I have known him for the last five years.

40 Q. Where did you meet him first? A. First I met him about four years ago; Mr. Cerino and I were interested in a bus in Singac, No. 58.

Complainant's Witness, Andrew Locker, Cross

Q. Where did you meet him in 1922? A. Around the hall there.

Q. Did you talk to each other? A. Yes, sir.

Q. Did you talk to Mr. Van Orden about taking Mr. Cerino in partnership? A. When I owned No. 139 and part of 141, are you referring to?

Q. Yes. A. Yes, sir. 10

Q. And Mr. Cerino gave you \$1,800.00? A. Mr. Cerino gave me \$1,800.00; he bought half of No. 139 bus off me before No. 141 even got on the road.

Q. So he gave you the \$1,800.00 before Bus 141 was completed? A. For a half interest in Bus 139, Mr. Cerino gave me \$1,800.

Q. You kept the \$1,800? A. Yes, sir, I did.

Q. How long did you stay as a partner with Mr. Van Orden? A. I am kind of getting off the track; 20
after I got the \$1,800—about two or three weeks later Mr. Van Orden's permits were granted, and I used that money to finance the Bus No. 141 to put in operation, with Mr. Van Orden's consideration that I was to have a half interest at that time.

Q. In whose name was Bus No. 139 when you got the \$1,800? A. Andrew Locker.

Q. And Bus No. 141 was in the name of Mr. Van Orden? A. Yes, sir, but I signed notes for half of 30
that bus.

Q. Then there was no money passed from Cerino to Mr. Van Orden? A. No, sir, there was not.

Q. The money was passed from Mr. Cerino to you? A. Yes, sir, for No. 139.

Q. There was no express agreement that Mr. Van Orden was to give you the permit, was there? A. Half of the business.

Q. How much did the bus cost? A. The bus it- 40
self cost close to \$7,000; on the down payment of

Complainant's Witness, Andrew Locker, Cross

Bus 141, I think I paid \$1,300.00, delivered; of course, there is insurance \$32.50, and license plate of \$50.00.

By the Court:

Q. Were both buses worth about the same? A. Yes, sir.

10

FURTHER CROSS:

Q. Didn't you run the shop? A. Yes, sir.

Q. Didn't you take any income out of it? A. It paid for itself.

Q. How much money did you first put in in purchasing Bus 139? A. I put in \$1,800.00.

20

By the Court:
Q. Have you got proof that you put it in? A. Yes, sir.

FURTHER CROSS:

Q. How did you put it in? A. In checks.

Q. In whose name did you take that bus, 139? A. My own.

30

Q. When Mr. Cerino gave you the money, the \$1,800.00, that was how long before Mr. Van Orden made the arrangement with you? A. Mr. Cerino gave me the \$1,800 three or four weeks before Mr. Van Orden, and I made an arrangement to go partners in half that bus.

Q. You know that in order to get a change of license, you have to have the consent of the city officials? A. Yes, sir.

40

Q. You did not make application for that, did you? A. No, sir, we felt it was not necessary.

Complainant's Witness, Andrew Locker, Cross

Q. Because Mr. Van Orden did not agree to give you half a permit? A. He put the good will up against my money.

Q. The business was the bus, wasn't it? A. The bus cannot run without the permit.

Q. Now, did you remember making this agreement between you and Mr. Cerino and Mr. Van Orden up in Mr. Hofstra's office? A. Yes, sir. 10

Q. At that time you all agreed to become partners? A. Yes, sir, one-third partners in the two buses.

Q. You further agreed that the profits and losses were to be divided between you? A. Yes, sir.

Q. When you made that agreement, nothing was said about the permits? A. Yes, sir, there was.

Q. What was said about the permits? A. We said that permits were to be part of the business. 20

Q. Who said that? A. Mr. Van Orden, Mr. Cerino and myself; it was said when the partnership papers were drawn up.

Q. Why didn't you put them in the partnership agreement then? A. I don't know.

Q. You explained it to Mr. Hofstra, didn't you? A. Explained what?

Q. About this permit being in the business? A. Positively. 30

Q. You explained everything else to Mr. Hofstra? A. Yes, sir.

Q. Where did this conversation take place? A. In Mr. Hofstra's office.

Q. Was Mr. Hofstra there? A. Yes, sir.

Q. And still you did not have it put in the agreement? A. No, sir.

Q. And isn't it because the permit did not belong to you? A. No, sir. 40

Q. Your brother-in-law owned the permit at that time? A. No, sir, I owned it.

Complainant's Witness, Andrew Locker, Cross

Q. So you could not agree to put it in the partnership? A. We could, because I had one and Van Orden had one.

Q. But you said the permit belonged to your brother-in-law, Mr. Wilson? A. Yes, sir; Mr. Wilson signed over to myself the right of the permit in the
10 business.

Q. Don't you know you cannot sell those permits? A. We did not sell any permits.

Q. Therefore, you could not give the permits to the partnership because you could not sell them? A. We did not try to sell the permits.

Q. So the only agreement you made was about the business, that is, the jitney buses? A. Yes, sir.

Q. Because you knew you could not sell the permits? A. Yes, sir.
20

Q. Now, this \$1,800 which you got from Cerino, how did he give it to you? A. He gave me a thousand dollars in cash at one time, and he gave me \$400 at another time, and he gave me an Overland car, an Overland car on which I credited him \$300.00.

Q. He gave it to you? A. That was for half of No. 139.

Q. You deposited that money in your own account?
30 A. Yes, sir.

Q. You did not give any of that money to Mr. Van Orden? A. Why should I? No, sir.

Q. During the time you, Mr. Cerino and Mr. Van Orden were partners, who took the profits? A. I took care of the money.

Q. What happened to the profits? A. They were used to pay off the expenses of the cars; we drew our salary, Mr. Van Orden drew a salary of \$35.00, and
40 I drew a salary of \$25.00, taking care of the two buses.

Complainant's Witness, Andrew Locker, Cross

Q. How much did Mr. Cerino draw? A. He did not draw any salary. Mr. Van Orden drove, and, of course, he drew a salary of \$35.00.

Q. You were familiar with the arrangement of Mr. Van Orden and Mr. Cerino? A. Kind of.

Q. Did you ever see any money pass from Cerino to Van Orden? A. No, sir. 10

Q. Did any money ever pass between them? A. Not that I know of.

Q. Were you at the office of Mr. Hofstra when this agreement was made between Mr. Cerino and Mr. Van Orden? A. Yes, sir.

Q. And they agreed to become partners? A. Yes, sir.

Q. And Mr. Van Orden at that time owned the bus? A. No, sir; the bill of sale was in Mr. Van Orden's name, and I indorsed half of the notes of that bus— 20

Q. And the profits of the bus paid off the notes? A. Yes, sir.

Q. Now, there was no agreement of Mr. Van Orden to give the permit to the partnership, was there? A. It was agreed that Mr. Van Orden would throw the permit in the business.

Q. How could he put in the business? A. The permits were included in the business. 30

Q. You say your brother-in-law sold you the permit? A. Yes, sir.

Q. Have you got that agreement with you? A. No, sir.

Q. Where is it? A. I think it is in Wyckoff, New Jersey, where I live.

Q. Who runs that jitney bus No. 139 now? A. The Wilson Transportation Company. 40

Q. Who owns that now? A. I sold the Wilson

Complainant's Witness, Andrew Locker, Re-cross

Transportation Company out to Mr. Cerino, and Mr. Cerino sold it out to Mr. Friedman.

Q. Now, the Wilson Transportation Company after this dissolution was made up of you and Mr. Cerino and somebody else? A. No, sir.

10 Q. Cerino never had any interest in Bus 139 after you dissolved? A. Mr. Cerino bought the shares of the Wilson Transportation Company about six months after I dissolved partnership with Mr. Cerino and Mr. Van Orden.

Q. How much money did he give you for those shares? A. Mr. Cerino gave me \$2,500.00, I think.

Q. Now, you were running jitney Bus No. 139 under your name, when the permit was in the name of Wilson? A. Yes, sir.

20 Mr. Shavick: I want him to produce the contract between his brother-in-law and himself.

RE-DIRECT EXAMINATION by Mr. Evans:

30 Q. What was the first installment which was paid on this bus which was transferred to Mr. Cerino and Mr. Van Orden? A. The first installment? The first installment on the bus was \$1,300.00 on delivery.

Q. And where did you get this money to pay that \$1,300.00 with? A. This \$1,300—I used part of this money and Mr. Cerino bought half of No. 139 four weeks before I got delivery of Bus 141.

RE-CROSS EXAMINATION by Mr. Shavick:

40 Q. This money that you got from Cerino, why didn't you give it to your brother-in-law? A. Because it belonged to me.

Complainant's Witness, William B. Laird, Direct

Q. That was for the interest in the jitney bus itself?

A. Positively not; first off, I was acting as my brother-in-law's agent.

Q. Who was the man who owned the permit, as a matter of fact? A. Mr. Wilson owned the permit, and Mr. Van Orden owned a permit.

Q. For whom was he holding this permit? A. He 10
was really holding it for myself; I paid the expenses to get the permit through.

By the Court:

Q. Who was your lawyer? A. Peter Hofstra.

Q. How much did you pay him? A. \$50.00; that was for his fees.

FURTHER RE-CROSS:

20

Q. He got it for Wilson? A. Yes, sir.

Q. And then Mr. Cerino gave you the \$1,800.00 just for the interest in the jitney bus? A. For half the interest of the business of No. 139.

Q. The permit only cost you \$50.00? A. That is right.

 30

WILLIAM B. LAIRD, being duly sworn, testified as follows:

Direct-examination by Mr. Evans:

Q. With whom are you employed? A. By the Katz Motor Car Company, 29 Union Street, Paterson, N. J.

Q. Did Andrew Locker purchase a bus from you? 40
A. Yes, sir.

Complainant's Witness, William B. Laird, Direct

Q. And did Locker and Van Orden purchase a bus from you? A. Yes, sir.

Q. Have you a statement showing the account?

A. I have the ledger sheet.

10 Q. Do you know whose cash paid for it? A. It was a combination when the partnership took effect; there was a sale to Anderw Locker; he was the first sale—

Q. In whose handwriting are the books? A. Mine.

Mr. Evans: I offer the book.

Q. Is there any account there with Locker and Van Orden? A. With Van Orden and Locker.

Marked Exhibit C1.

20 Mr. Shavick: I admit No. 131 was purchased by Andrew Locker, according to the books.

Q. Turn to the account of Locker and Van Orden.

A. Here it is.

Mr. Evans: I offer it in evidence.

Marked Exhibit C2.

Q. That is as to Van Orden and Locker? A. Yes, sir.

30 Q. Payments made on this account were made by the partnership existing between Locker, Van Orden and Cerino? A. No, sir, Locker and Van Orden.

By the Court:

Q. Who made the payments? A. Our manner of doing business is such that the notes are paid directly through the banks.

Q. Were all these amounts paid? A. No, sir.

40 Q. There are some owing now? A. Yes, sir.

Q. How much is owing to you now? A. There are

Complainant's Witness, Robert P. Friend, Direct

\$971.00 of notes and a matter of \$149.12 on the repair account still owing; that is on Bus No. 141.

CROSS-EXAMINATION by Mr. Shawick:

Q. You don't see the name of Cerino there, do you?
A. No, sir. 10

By Mr. Evans:

Q. Do you know who placed the order for the buses in each of these instances? A. I have an order slip; this first order is slightly confusing; when the first order was placed two buses were ordered from Frank Avolio and Andrew Locker; these do not appertain to the thing in question. The other order was signed by Andrew Locker, 224 East 21st Street, calling for the sale of a Model 50 White Chassis with body— 20

Q. This is what is known as Bus 141? A. Yes, sir.

Q. The bus in question, No. 141 was purchased for the total price of \$6,824.25, no finance, no insurance; that is the net cost.

30

ROBERT P. FRIEND, being duly sworn, testified as follows:

Direct-examination by Mr. Evans:

Q. What is your business? A. Garage owner.

Q. You are in business for yourself? A. Yes, sir, at 60 Market Street, Paterson, N. J.

Q. Did you at any time have any occasion to repair Bus No. 141? A. Yes, sir. 40

Q. On whose orders did you repair this bus? A. Mr. Van Orden's.

Complainant's Witness, James Sands, Direct

Q. Did you ever have anything to do with Mr. Cerino? A. On Bus No. 139.

Q. Did he come to see you at any time with respect to Bus No. 141? A. I did a job one Sunday for him on Bus No. 139.

10 Q. Have you been talking to Mr. Van Orden about this case?

Mr. Shavick: Objected to; he is bound by what he says; he called him.

Mr. Evans: He is a hostile witness.

The Court: The objection will be overruled.

Q. Have you talked to Mr. Van Orden about this matter? A. I told him I was subpoenaed in this case, and he was surprised.

20

The Court: At this time I am inclined to the view that you have established a partnership agreement, because you have got an agreement of partnership and you have got partnership dissolutions; it may follow that you ought to have an accounting; you don't need to go any further; that is my present view.

30

JAMES SANDS, being duly sworn, testified as follows:

Direct-examination by Mr. Evans:

Q. Where do you live? A. 381 Fifth Avenue, Paterson, New Jersey.

Q. Did you ever have any conversation with Mr. Van Orden respecting the ownership of Bus No. 141?

40 A. Yes, sir.

Q. What were they and when did you have them?

Complainant's Witness, James Sands, Cross

A. After Cerino was in partnership with me he used to say to me, Van Orden would tell me to tell Bill about some tires.

Q. Who is Bill? A. Mr. Cerino.

Q. What other conversations did you have with respect to this bus? A. I used to hear Cerino and Van Orden talking together about the tires, and they sent me down with my car to get these books on Sunday. 10

Q. What, if anything, did you see Cerino do about Bus 141? A. We used to go together and clean it up and grease it.

Q. When was this? A. This was after they had dissolved, after the three of them had dissolved partnership.

Q. Did you ever drive Bus No. 141 for Cerino? A. Yes, sir. 20

Q. How often? A. A couple of times only; I drove on Sunday extra; Mr. Cerino came and got me.

Q. Were you ever present when Cerino and Van Orden was purchasing tires? A. Once.

Q. Where? A. On Paterson Street.

Q. What company was that; do you recall? A. I don't recall.

Q. When was this? A. This was when they were partners; I could not say when it was; I know it was sometime about a year ago. 30

CROSS-EXAMINATION by Mr. Shavick:

Q. Where do you live? A. 381 Fifth Avenue.

Q. You are an Italian? A. Yes, sir.

Q. Mr. Cerino is an Italian? A. Yes, sir.

Q. How long have you known Mr. Cerino? A. Ten years. 40

Q. Are you very good friends? A. Yes, sir.

Complainant's Witness, James Sands, Cross

Q. Do you call upon him? A. I am a partner with him now.

Q. When did you talk to Cerino before you came here today? A. I always talk to him.

Q. Have you talked to him about this case? A. No, sir.

10 Q. Who told you to do that? A. Nobody.

Q. Do you remember what store they were buying tires from? A. On the corner of Paterson and Ellison Street.

Q. Are you sure Mr. Cerino was there? A. He was talking to him, yes, sir.

Q. Do you know what the conversation was? A. No, sir, they were talking about tires when I was there; I was standing on the corner close enough to
20 hear them; they were saying their tires did not last and they had to buy new tires for the bus.

Q. Who paid you when you worked as a driver? A. Cerino gave me the money?

Q. How? A. Cash.

Q. Did not Mr. Van Orden hire you and pay you for it? A. No, sir, Cerino came and got me at the house, and Cerino paid me \$6.00; he paid me in front of the City Hall.

30 Q. Do you remember what day you drove the car? A. I think it was on a Sunday.

Q. Did you have a permit to drive a jitney bus? A. Yes, sir.

Q. What year was it? A. It was a year ago, I know.

Q. Was it 1922? A. Yes, sir, I think it was; that is a year ago.

Q. Don't you know this is 1925? A. Yes, sir.

40 Q. That happened in 1924, didn't it? A. No, sir.

Q. When did it happen? A. It happened about a year or a year and a half ago.

Complainant's Witness, Joseph V. Fumagalli, Direct

Q. You say you saw Cerino drive a jitney bus?
A. No, sir.

Q. Did you see him wash the jitney bus? A. Yes, sir.

Q. Do you know whether he was paid by Van Orden? A. I don't know.

Q. He may have been paid? A. I don't know 10
whether he was ever paid.

The Court: There is some indication of a partnership.

JOSEPH V. FUMAGALLI, being duly sworn testified as follows:

20

Direct-examination by Mr. Evans:

Q. You are employed by Mr. Hofstra? A. Yes, sir.

Q. Do you check up bus receipts? A. Yes, sir.

Q. Did you check up the bus receipts on Bus No. 141? A. Yes, sir.

Q. During what period did you check them up—did you check up the receipts? A. Of No. 141 from the time they entered the pool. 30

Q. Did you at any time have any dealings with Cerino and Van Orden together? A. Yes, sir.

Q. And what were the nature of those dealings? A. Well, we went over Mr. Van Orden's checks at his home; Mr. Van Orden, Mr. Cerino and I, until about half past twelve.

Q. What were you checking up? A. The receipts and expenses.

Q. From Bus No. 141? A. Yes, sir. 40

Q. Was there any conversation held that night,

Complainant's Witness, Joseph V. Fumagalli, Cross

do you recall? A. Nothing except about the receipts and expenses—just regarding the books.

Q. What was the purpose of that?

Mr. Shavick: I object to what the purpose was.

10 A. That was the purpose.

Q. Did they have any conversation about the partnership, in your presence? A. No, sir.

Q. How often did they check up in your presence? A. Just this once.

Q. About what time was this that they had this check up; do you recall the date? A. I could not recall, but I imagine it was about a year ago—in January, I imagine.

20

CROSS-EXAMINATION by Mr. Shavick:

Q. You have a book in your hand? A. Yes, sir.

Q. What is that? A. We represent the pool.

Q. Turn to the page in that book showing who owns jitney bus 141.

Mr. Evans: That is not binding on us.

30 The Court: The objection will be overruled.

A. There is nothing here to show.

Q. Does it show anything there that Cerino has any interest in the jitney bus? A. No, sir.

The Court: How many witnesses have you?

Mr. Evans: I have two other witnesses, Mr. Hofstra and Mr. Cerino.

40 Mr. Shavick: I feel that I ought to have a little time to prepare the case; I put it down for another day. I feel it is my fault. I was under the impression that the date of trial was the 13th.

Complainant's Witness, Peter Hofstra, Direct

The Court: All you will get is an accounting at the most; you might get a sale of all the partnership assets eventually, and you might not. It is quite a nice case. Could you finish it on the 16th?

Mr. Shavick: We have three or four witnesses. 10

The Court: Then you could not be here on a motion day. After the complainant's witnesses have been heard, I will set it down for February 19th.

PETER HOFSTRA, being duly sworn, testified as follows: 20

Direct-examination by Mr. Evans:

Q. Were you the counsel who drew the various agreements between Andrew Locker, Pellegrino Cerino and Joseph Van Orden? A. I drew some agreements for them; I don't know which you refer to.

Q. I show you Exhibit C1; did you draw that agreement? A. Yes, sir. 30

Q. Now, I show you Exhibit C2; did you draw that? A. Yes, sir; I drew that.

Mr. Evans: By consent of counsel, the partnership agreement between the complainant and the defendant is introduced in evidence and marked Exhibit C3.

Marked Exhibit C3.

Q. I show you Exhibit C3? A. Yes, sir, I drew that. 40

Complainant's Witness, Peter Hofstra, Direct

Q. What, if any, was the agreement between the parties with regard to the permits of buses 139 and 141, in the first agreement?

Mr. Shavick: Objected to.

The Court: Objection overruled.

10 Q. Is anything stated in that agreement with respect to the permits for 139 and 141, specifically? A. That is the first agreement you showed me.

Q. That is the one between the three partners. A. This is the one you mean—nothing as to permits stated therein.

Q. Was there any agreement between the parties at the time, that was not embodied in this contract?

20 Mr. Shavick: I object; the contract speaks for itself.

The Court: Objection overruled.

A. To the best of my recollection, the permits were to be considered as part of the property, of the partnership; I represented all of the parties.

Q. Did they retain you? A. Yes, sir.

30 Q. How long have you been in their employ getting permits? A. I was originally employed by Andrew Locker; I was never employed by any of the other parties to get permits for them, but I did draw these three agreements which have been shown me. I recall a conversation had at the time I drew the third agreement handed me—

By the Court:

40 Q. Which one is that? A. That is between Cerino and Van Orden, at which time it was agreed that the permits were to be considered as part of the assets of the partnership, but this was not to be set forth in the agreement—

Complainant's Witness, Peter Hofstra, Direct

Q. You said that? A. I cannot recall which of the parties stated that, but I recall that was the understanding between them.

The Court: Strike that out.

Q. Give us the conversation about the permits. A. I cannot give you any conversation that was had, except I remember what the understanding was; I cannot give you any conversation. 10

Further Direct:

Q. Therefore, there was no conversation about the permits? A. Yes, sir, there was; I can tell you what the result of it was; there was a conversation and a discussion between all the parties present as to permits; I don't just know any of the parties said, but I know what the conversation was about, what the result of the conversation was. The conversation was, as to whether or not it would be advisable to include the permits in the language of the contract. 20

Mr. Shavick: I ask that that be stricken out.

The Court: Objection overruled.

Q. And all of the parties decided not to have the permits specifically mentioned in the agreements, because— 30

The Court: I suppose your objection goes to all this, Mr. Shavick?

Mr. Shavick: Yes.

A. Mr. Van Orden, Mr. Cerino and Mr. Locker were there. Mr. Locker was not a party to the agreement, however. There was a great deal said about the possibility of an agreement setting forth or mentioning the permits being construed as a transfer of 40

Complainant's Witness, Peter Hofstra, Cross

the permits, and being the basis for a proceeding to have the permits revoked.

10 Mr. Shavick: This is not responsive to any question, I object. This should be struck out; Mr. Hofstra testifies that he does not know who was talking; he remembers some conversation about permits, but he does not know what the conversation was.

The Court: He is solicitor for the parties; first, the solicitor for Mr. Locker, and then he brought them all there.

Q. Did you advise with them with respect to the issuance of a permit? A. There was no talk of the issuance of a permit at that time.

20 Q. I mean of the transfer of the permit? A. Yes, sir, I took part in that discussion.

Q. With whom did you have that discussion, and what was it? A. With all of the parties; I don't recall any discussion with any particular one of them.

Q. What did you tell them? A. I said, that in my opinion the language of the contract would be sufficient—

30 Mr. Shavick: I object to his opinion.

The Court: The objection will be overruled.

A. The language of the contract would be sufficiently clear to show that there was a partnership as to all of the assets of the partnership, which would include the permits.

CROSS-EXAMINATION by Mr. Shavick:

40 Q. You are a practicing attorney? A. Yes, sir.

Q. You represent the pool in Prospect Park? A.

Complainant's Witness, Peter Hofstra, Cross

Yes, sir; there are six buses on the line, and they all pool their assets.

Q. Were you the attorney for Mr. Van Orden in securing the Prospect Park permit for Mr. Van Orden? A. I don't think I secured that permit, although I may have advised him regarding it.

Q. Mr. Locker testified this morning—

10

Mr. Evans: Objected to.

Mr. Shavick: Question withdrawn.

Q. What is a permit? A. A permit is a license issued by the municipality, allowing a certain person to operate a jitney bus.

Q. Have you ever represented any persons or partnerships in a transfer of permits of this kind? A. I don't think I ever have represented them directly in a transfer.

20

Q. Do you know what procedure you follow to transfer a license from one person to another or to a corporation? A. Yes, sir, I am familiar with that. There is an application made to the proper board, and a license fee paid in most instances of \$50.00, and there is a transfer made.

Q. Do you remember when this agreement between Van Orden and Cerino was entered into? A. I remember it fairly well.

30

Q. You knew at that time that the permit, in order to— (Question withdrawn.) Why didn't you have this permit transferred to both names, if it was in the partnership agreement to do so? A. To the best of my recollection, Mr. Van Orden said that he had gotten a permit through his uncle, ex-Mayor Van Orden, and that he would rather not have his uncle know that he had transferred the permit or had given anyone else an interest in the bus, for one thing. That is the only reason I can recall.

40

Complainant's Witness, Peter Hofstra, Cross

Q. And you drew up the first partnership agreement between Mr. Cerino and Mr. Locker and Mr. Van Orden, didn't you? A. Yes, sir, I drew that.

Q. What is the reason the permits were changed in that instance? A. I don't know whether the permits were changed or not.

10 Q. As a matter of fact, Mr. Locker testified the permits were not changed? A. I don't recall. I don't know what he testified to.

Mr. Evans: Objected to.

The Court: Objection sustained.

Q. Now, in your wording you said, "The property of the said partnership" consisted of two white jitney buses which are being run on the Prospect Park road; is not that the only partnership property? A. That is all it shows there. There was some difficulty about having the permits transferred, and the other permits; there was some difficulty between Mr. Locker and the Board of Works, as I recall, regarding a permit which was later revoked.

20

Q. Don't you know as a matter of law, that where two people come into your office to form a partnership agreement, it is customary to put in the agreement just what the partnership property consists of?

30

Mr. Evans: Objected to.

The Court: Objection overruled.

A. I should say it is always advisable and best, but the circumstances were such that the parties decided it was not advisable. To get a transfer is not very difficult, but it is very difficult to get a permit.

Q. A transfer is very easy? A. Yes, sir.

40 Q. And if it was the intention here, you could have done it very easily? A. I presume you could have; they were left out intentionally; I recall that.

Complainant's Witness, Peter Hofstra, Cross

Q. You were not there when they first made this agreement with reference to the dissolving of the partnership? A. I don't remember whether they made the agreement or whether I was present.

Q. They came into your office and said, "Mr. Hofstra, will you draw up these papers?" A. I drew those papers after their instructions and after some discussion, too. 10

Q. Did you hear Mr. Van Orden testify that he agreed to enter his permit into this partnership agreement? A. I did not hear Mr. Van Orden testify.

Q. Did you see any money being passed from Cerino or Mr. Locker to Mr. Van Orden? A. I don't recall any money passing hands.

Q. What time of day was this? A. They came in in the morning about half-past ten or eleven o'clock. 20

Q. Did they pay you by check or cash? A. I don't recall now.

Q. Who paid you the money? A. I don't know who paid me for drawing these agreements.

Q. Are you sure it was not Locker that paid you? A. I could not say.

Q. Do you work for Mr. Locker now? A. No, not since we drew the first agreement, except on one occasion in the last three months I drew a short agreement for him. 30

Q. Did you ever represent Cerino? A. Only on this occasion.

Q. This is the only occasion you represented Mr. Van Orden? A. That is all; I never represented Mr. Van Orden on any other occasion, except indirectly in representing the pool, of which he is a member.

Q. Were you also counsel of the borough there? A. Yes, sir. 40

Complainant's Witness, Peter Hofstra, Cross

By the Court:

Q. Are you counsel for the Borough of Prospect Park where part of these permits were granted? A. Yes, sir.

10 *FURTHER CROSS-EXAMINATION:*

Q. The first agreement—was there any statement or conversations in reference to the permits when that agreement was consummated? A. I don't recall, Mr. Shavick.

Q. It is exacty the same wording as in the second partnership agreement? A. Substantially so.

Q. You are quite a busy attorney? A. Yes, sir.

20 Q. You cannot remember exactly what occurred?
A. No, sir.

Q. How long ago is it? A. 1922.

30 Q. You are familiar with the rule of law, that where two or three people agree orally and embody into a written agreement, you cannot change it later?
A. I am familiar with that, and I recall telling them there might be some question regarding it, but, in my opinion, in setting forth an agreement that the bus was the subject of the partnership assets, that that would embody everything that was used in connection with the bus.

40 Q. Why did you use this language, "The property of the said partnership consists of two white jitney buses which are now being run on the Prospect Park road in the City of Paterson and known as buses No. 139 and 141"? A. To make it as clear as possible without mentioning the permits, that these buses and all that was used in connection therewith, and especially that they were buses being operated on that road that were to be the partnership assets.

Complainant's Witness, Pellegrino Cerino, Direct

Q. But in the first paragraph you don't even say anything about the jitney bus business; just read it: "The property of the said partnership consisting of buses"? A. "The said parties have agreed and entered into a co-partnership in the jitney bus business for a period of five years from this date, and each of said parties has paid in cash or delivered property of an equal amount, to be employed in said business; the property of said business consists of two white jitney buses which are now being run on the Prospect Park road in the City of Paterson, and known as buses 139 and 141." That is the language I used. 10

Q. You say the property of the said partnership is the two buses? A. I read the paragraph.

Q. You did not see any money delivered at that time? A. That is true; I do not recall seeing any money delivered. In making the final or last contract you showed me, there was some conversation had between the parties in reference to a former agreement between them, which was to be ended, or which was to be revoked by entering into this one. But no money passed hands, as far as I can recall. 20

30

PELLEGRINO CERINO, being duly sworn, testified as follows:

Direct-examination by Mr. Evans:

Q. You are the complainant? A. Yes, sir.

Q. At the time of the drawing up of the contract of partnership between you and Mr. Van Orden, was there anything said with reference to the permits? 40

A. Yes, sir.

Q. Just what was that conversation and between

Complainant's Witness, Pellegrino Cerino, Direct

whom did it take place? A. It was between Mr. Hofstra and Joe Van Orden and Andrew Locker and myself.

Q. What was the conversation? A. Well, he drew the paper up, and after he drew the paper up Mr. Van Orden spoke about the permit; he said, "Do you want to have the permit in the agreement?" and I said, "Sure." When we drew the agreement up then, when he came to put in the permit, Mr. Van Orden said to me, "Cannot you leave that out, because the board of public works did revoke one permit, No. 141." He said, "If you put one in, they may revoke the other." He asked the lawyer next, and the lawyer said, "It won't be a bad idea to leave out the permit, because if they revoke the permit the bus will be no good." Pete Hofstra stood up, and he said, "That is not a bad idea, to leave the permit out;" and Hofstra said, "For your own sake, leave it out." Hofstra said, "We are all here;" and he said, "You understand the permit goes with the business?" And Mr. Van Orden said, "Yes." That is about all about the permit.

Mr. Evans: Does counsel still dispute the fact that there was any consideration paid?

Mr. Shavick: I think the \$1,800 went towards the purchase of the bus.

Q. Have you been endeavoring to get any accounting? A. Yes, sir.

Q. From Mr. Van Orden? A. Yes, sir.

Q. When did you first ask him for an accounting? A. We went over to his house one night.

Q. The first time, right after you got the bus in December, 1922, when was the first time you saw him about the receipts? A. Every Sunday we used to count the receipts up together.

Complainant's Witness, Pellegrino Cerino, Direct

Q. Did you divide? A. Every time he would show them to me we would be in debt.

Q. And where did you have these meetings? A. Over at his house.

Q. How often did you go there? A. Every Sunday we used to balance the book up.

Q. Where did you have your account at this time? A. In the Franklin Trust Company.

Q. And did you sign any checks? A. Yes, sir, I did.

Q. What were the checks for? A. For the note on the car.

Q. And who was that held by? A. Held by the Katz Motor Car Company; it was paid through the bank, because my name was on a note in the bank.

Q. When was it that Van Orden refused to account to you any further about the receipts and disbursements; fix the time when it was that he told you that he would not tell you any more about the receipts and disbursements?

Mr. Shavick: I object to that; the witness has not testified to that.

Q. Did he tell you at any time? A. Yes, sir, in the early part of December, 1923.

Q. What was it Mr. Van Orden said to you? A. He said, "You had better not come up to the house any more, because I will not show you any more books." Nevertheless, in the meantime we got together talking over about the books, and then we agreed between us two to go over to the house again to bring an accountant over; that was in 1924, on the 7th of January.

Q. Whom did you take over there? A. Joe Fumigalli, who works in Mr. Hofstra's office. So we were

Complainant's Witness, Pellegrino Cerino, Direct

there from 8 o'clock at night up to 1 o'clock in the morning, and the boy said that the book did not look clear to him, and the boy said, "I am so sleepy, I cannot get head or tail of the book; it don't look good to me"; so I took his word that the book did not look clear to him.

10 Q. Was this in the presence of Mr. Van Orden?
A. Yes, sir.

Q. What did you do after that with Mr. Van Orden with respect to an accounting? A. He takes the account out of the Franklin Trust Company, and he did not ask me to sign any more checks.

Q. Do you know whether he took the account out?
A. I think he dropped me off the checks and asked me no more after that.

20 Q. Did you endeavor to get any further accountings from him? A. No, sir; he said, "Any time you want a further accounting from me, you must go to court."

Q. And did you attend the meetings of the pool at any time? A. Yes, sir, many times, just to see my interest in 141.

30 Q. What about the books of account which Mr. Van Orden kept; were they kept accurately so far as you could see? A. I could not make anything out of it, the way he kept them.

Mr. Evans: By agreement of counsel, it is admitted that a notice dated March 24, 1924, was served upon Joseph Van Orden by mail.

Marked Exhibit C4.

40 Mr. Evans: Is your Honor quite clear about the consideration that went into the original bus deal as to the payment by him—the \$1,800?

The Court: Yes, that has been gone over.

Complainant's Witness, Pellegrino Cerino, Direct

By the Court:

Q. How much did you put in? A. I gave to Mr. Locker a thousand dollars, and an Overland machine of the value of \$300.00, and \$400.00 in cash.

Q. There was nothing ever paid for permits? A. No, sir. 10

Q. This money was used for what purpose, that you paid in? A. To finance the bus.

Q. What do you mean? A. Because he did not have any money, and Locker put it up to finance the bus.

Q. Do you mean to buy the bus? A. Yes, sir.

Q. So that was your interest in the partnership? A. Yes, sir.

Cross-examination deferred by agreement of counsel. 20

Adjourned to February 19, 1925.

Continuation of the taking of testimony in the above entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the twenty-fifth day of February, nineteen hundred and twenty-five, before Hon. Vivian M. Lewis, Vice Chancellor. 30

Appearances:

William W. Evans, Esq., for the complainant.

Emanuel Shavick, Esq., for the defendant, associated with Assistant Prosecutor Stafford.

Complainant's Witness, Pellegrino Cerino, Cross

PELLEGRINO CERINO resumes the witness stand.

Cross-examination by Mr. Stafford:

Q. In the original agreement in which Mr. Wilson was interested, were you interested in that agreement?

10 A. When was this?

Q. The first original agreement when Mr. Locker's and Mr. Wilson's and Mr. Van Orden's name were in, was your name in that agreement? A. No, sir.

Q. Your name did not enter into any agreement until you entered into the agreement with Mr. Locker and Mr. Van Orden? A. That is right.

Q. Do you know who drew up the original agreement in which Mr. Wilson's name was in? A. The
20 one that Mr. Wilson was in I know nothing about.

Q. You were simply interested in the agreement drawn between Andrew Locker, Pellegrino Cerino and Joseph Van Orden? A. Yes, sir.

Q. Dated the 15th day of September, 1922? A. Yes, sir.

Q. Did you contribute anything at all at the formation of that partnership; did you give anything into it when you entered into the agreement? A. Sure.

30 Q. When? And what amount? A. \$1,800.00.

Q. And to whom did you give that? A. To Andrew Locker.

Q. Do you know where that \$1,800 went? A. Yes, sir, it went to finance the car No. 141.

Q. Don't you know that No. 141 was in the name of Joseph Van Orden? A. The permit was.

Q. So when you contributed \$1,800 to Mr. Locker it had nothing to do with the permit? A. No, sir.

40 Q. The \$1,800 contributed by you was given to Mr. Locker primarily for an interest in the bus? A.

Complainant's Witness, Pellegrino Cerino, Cross

There was an understanding that it was to finance No. 141.

The Court: There has been no cross-examination of this gentleman before this?

Mr. Evans: No, sir.

Q. With reference to this agreement Mr. Hofstra drew up, you testified on direct-examination that there was a sort of an understanding between Mr. Hofstra, the lawyer, yourself and Mr. Van Orden, that you were going to leave out of the partnership agreement any reference whatever to the permit on bus No. 141; that is true, isn't it? A. No, sir. 10

Q. Didn't you say that on your direct-examination? A. Mr. Van Orden said to me that he could not get along with Mr. Locker, because Mr. Locker was a crook; he said, "You and me, we will take No. 141 over, and go away from Mr. Locker, and we can get along better;" so we went up to the office—Joe Van Orden and I went up to Peter Hofstra's office and had the paper drawn up. 20

Q. How much did you pay him for the papers? A. \$50.00.

Q. Didn't you testify on direct-examination, at the last hearing in this case, in answer to a question by Mr. Evans (reading): "Q. What was the conversation? A. Well, he drew the paper up, and after he drew the paper up, Mr. Van Orden spoke about the permit; he said, 'Do you want to have the permit in the agreement?' And I said, 'Sure.' When we drew the agreement up then, when he came to put in the permit, Mr. Van Orden said to me, 'Cannot you leave that out, because the Board of Public Works did revoke one permit, No. 141?'" A. No. 140. 30 +0

Q. (Continuing reading.) "Q. He said, 'If you

Complainant's Witness, Pellegrino Cerino, Cross

put one in, they may revoke the other.'” A. He said that.

Q. And you knew that; you knew that under the ordinance concerning motor buses, that no permits could be transferred to another, except by resolution of the Board of Public Works? A. Yes, sir.

10 Q. And you knew if you incorporated that in this agreement, the Board of Public Works would revoke the permit of No. 141? A. Joe said to me, “We will leave the permit out of the agreement.”

Q. Didn't you know then, that if you had attempted to incorporate into that agreement the permit of bus 141, you would have violated a provision of the ordinance governing the transfer of motor buses? A. Yes, sir.

20 Q. You knew it? A. Yes, sir.

Q. And you knew that for that very reason the Board of Works had revoked the Permit No. 140 belonging to Mr. Wilson? A. Yes, sir.

Q. (Reading from page 43 of the testimony.) “He asked the lawyer next, and the lawyer said, ‘It won't be a bad idea to leave out the permit, because if they revoke the permit the bus will be no good.’” You knew that, didn't you? A. Yes, sir.

30 Q. (Continuing reading.) “Peter Hofstra stood up, and he said, ‘That is not a bad idea to leave the permit out.’” A. But there was an understanding between us three that the permit was to go with the business, because he had no money to put up.

Q. But you knew it could not go into the agreement, because you were violating the law; you knew that you could not put the permit into this agreement, because you would be violating the law? A. Yes, sir.

40 Q. Now, after this agreement had been executed, did you attend any meetings of the pool association

Complainant's Witness, Pellegrino Cerino, Cross

connected with that bus line; do you recall whether you attended any of those meetings? A. Yes, sir.

Q. The secretary was there all the time? A. Yes, sir.

Q. And he recorded the names of those present? A. No, sir.

Q. Don't they keep a record of the minutes of the meeting? A. Yes, sir. 10

Q. Of the members present—did they call the roll? A. No, sir, they never called a roll, because every time I used to be up to the meetings, Joe Van Orden used to walk out.

Q. You knew the secretary, this gentleman here? A. Yes, sir.

Q. You know he is the secretary? A. Yes, sir.

Q. Now, Mr. Cerino, you testified with reference to notes signed by you and held by the Katz Motor Car Company? A. Yes, sir. 20

Q. How many of those did you sign? A. I don't recall how many, because he got all of them.

Q. Don't you remember how many notes you signed? A. About ten notes.

Q. Where did you sign the notes? A. In the office of the Katz Motor Company.

Q. To whom did you give the notes after you signed them? A. The notes were left there, but were put in in the Franklin Trust Company for collection; we have an account there. 30

Q. You know Mr. Laird? A. Yes, sir.

Q. Will Mr. Laird stand up, please? Do you know Mr. Laird? A. Yes, sir.

Q. Do you know where he works? A. Yes, sir, he works in the Katz Motor Company.

Q. Was he there? A. Carl Katz was there. 40

Q. Now, Mr. Cerino, on the 15th of September, 1922, you entered into this agreement? A. Yes, sir.

Complainant's Witness, Pellegrino Cerino, Cross

Q. Why did you wait so long before demanding an accounting from your alleged partner? A. We were getting along good with him.

Q. Had you received any share of the profits? A. He gave me \$100.00 one time.

Q. A check? A. Yes, sir.

10 Q. On what bank was it drawn? A. The Franklin Trust Company.

Q. How long after September 15th did you get this check for \$100? A. He signed the check, and I signed it; that was the profit.

Q. How long after September 15, 1922, did you get this \$100? A. Every time I used to go to his house he would say there was nothing left.

20 Q. (Question read): How long after you formed a partnership did you get this check for \$100.00? A. I know that is all I got from him.

Q. Did you ever give Mr. Van Orden any money? A. I gave him \$25 one time.

Q. Did you ever give Mr. Van Orden anything to buy a share in his bus? A. No, sir.

Q. You knew Bus No. 141 was in the name of Joseph Van Orden? A. The permit, yes, sir.

30 Q. Didn't you know the bus was in his name, too? A. Under the city ordinance, whatever the permit called for; the bus must be the same number.

Q. Now, at the time of the signing of this alleged partnership agreement, did you give any money at all to anyone? A. No, sir, there was no money given out.

Q. Did you put in any property? A. What do you mean—property?

40 Q. Did you put anything into the partnership outside of the \$1,800 you say you gave to Andrew Locker? A. When we separated between us three.

Complainant's Witness, Gerald Mercer, Direct

I took half of No. 141; Joseph Van Orden took half of 141; with Joseph Van Orden's consent, we released Mr. Locker 139.

Q. Why did you give the money to Mr. Locker? You knew he had no permit or bus in his name? A. It was to finance No. 141.

Q. You knew that Mr. Locker did not have a bus or a permit in his name at any time? A. Joseph Van Orden knew, and I knew it, too. 10

GERALD MERCER, being duly sworn, testified as follows:

Direct-examination by Mr. Evans: 20

Q. I show you a signature card, No. 168, showing the signatures of Joseph Van Orden and Pellegrino Cerino, of the Franklin Trust Company of Paterson, and ask you where you got that card from? A. From the Franklin Trust Company.

Q. What is the custom in connection with your accounts; how are your accounts opened; what is the custom followed in your bank in opening accounts? A. The parties must be in the office with the treasurer or the president, and as their checks are to be signed, the signature must also appear on the card. 30

Mr. Evans: I offer this in evidence.

Q. Have you a statement of the account? A. Yes, sir, here it is.

Marked Evans' Exhibit 1 and Evans' Exhibit 2. 40

Mr. Evans: We rest.

Mr. Stafford: I move for a dismissal of the bill in this case.

Defendant's Witness, Joseph P. Bradley, Direct

The Court: Do you wish to rest?

Mr. Stafford: Without prejudice.

The Court: No, you cannot do that.

10

Defense.

JOSEPH P. BRADLEY, sworn in behalf of the defense, testified as follows:

Direct-examination by Mr. Shavick:

Q. What is your official capacity? A. Commissioner of traffic.

20 Q. What are the duties of that position? A. Supervision of the buses in Paterson.

Q. How long have you had that position? A. Close to five years.

Q. Have you any official records with you in reference to permit 141? A. I have.

Mr. Evans: We will admit it is in the name of Joseph Van Orden.

30 Q. When did Mr. Van Orden get that permit? A. On August 8, 1922.

Q. And have you got the records in reference to jitney bus 139? A. I have.

Q. Who was the owner of that? A. The Wilson Transportation Company.

Q. When did they get possession of that permit? A. August 14, 1923.

Q. Who owned that previous to that time? A. The transportation company.

40 Q. Now, I show you a book; tell me what this book is. A. That is the codified bus ordinances of Paterson.

Defendant's Witness, Joseph V. Fumagalli, Direct

Q. What is the procedure to transfer a permit from one person to another? A. Application must be made in writing to the Board of Works, and the permits are transferred by resolution of the Board of Works.

Q. Is it possible to transfer by agreement without the consent of the Board of Public Works?

10

Mr. Evans: Objected to as calling for a conclusion.

Mr. Shavick: I want to introduce this ordinance in evidence. Have you any objection?

Mr. Evans: No.

Marked Exhibit Shavick 1.

JOSEPH V. FUMAGALLI, sworn in behalf of the defendant, testified as follows:

20

Direct-examination by Mr. Shavick:

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

Q. Are you the secretary of the pool of this line?

A. I am the secretary.

Q. What is the pool? A. All the owners agree to pool their receipts and divide it in equal proportions.

30

Q. Have you the minutes of the meetings? A. Yes, sir.

Q. Have you any minutes showing Mr. Cerino attended any meetings of the pool; did he ever attend any meetings? A. Yes, sir.

Q. Have you a record of it? A. Yes, sir.

Q. Who is counsel for the pool? A. Mr. Peter Hofstra.

Q. Who is counsel for the borough? A. Mr. Hofstra.

40

Defendant's Witness, Joseph Van Orden, Direct

CROSS-EXAMINATION by Mr. Evans:

Q. You saw Mr. Cerino at the meetings of the pool? A. I have seen him there.

Q. Was he ever recorded as being at a meeting?

A. I have no record of his being at any meeting.

10 By Mr. Shavick:

Q. He is not recorded as an owner of bus No. 141? A. No, sir.

JOSEPH VAN ORDEN, being duly sworn in his own behalf, testified as follows:

20 *Direct-examination by Mr. Shavick:*

Q. Where do you live? A. 76 Arch Street, Paterson, N. J.

Q. Are you the owner of permit No. 141? A. Yes, sir.

Q. How long have you owned that? A. Three years; it will be three years the 6th of next September.

30 Q. Do you know Mr. Cerino? A. Yes, sir.

Q. Did he ever give you any money? A. No, sir.

Q. Who purchased bus 141 from the Katz Motor Company? A. I and Andrew Locker.

Q. When did you buy it? A. It was around in October, 1922.

40 Q. And did Mr. Cerino ever give you any money towards this bus? A. I did not know the man until after we were in business for about three weeks. Andrew Locker told me that he had forgotten to tell me there was another party in it; and after he had told me, then this party came around.

Defendant's Witness, Joseph Van Orden, Direct

Q. Do you remember appearing in Mr. Hofstra's office and drawing these agreements? A. I did not have a chance to read any agreement.

Q. Was it your understanding that this agreement was a partnership or a pooling of buses? A. Pooling—Frank Wilson owned the permit, the fellow that committed suicide.

10

Q. What permit are you talking about? A. When we were pooling with No. 139 and No. 141; it was owned by Frank Wilson, and a little while after, they had it transferred into the transportation company.

Q. And did you ever agree at any time to transfer that permit to any person? A. No, sir, I never did.

Q. Did you ever agree verbally to transfer the permit to him? A. No, sir.

Q. Was the used permit ever mentioned when this agreement was as drawn up? A. No, sir; it was not, but they did not have any permit to mention.

20

Q. How much money did they put in? A. They put in an old car and \$500.00.

Q. And what did you give back? A. When I went in I paid two notes off that they ran behind on.

Q. How much were those notes? A. \$425.27, each note.

Q. And you paid them off? A. Yes, sir.

30

Q. You turned the bus over to them? A. Bus 139, yes, sir.

Q. You did not turn the license over? A. No, sir, I just turned the car over physically, that is all.

Q. Did Mr. Cerino ever buy any tires for you? A. No, sir.

Q. Who paid off the balance of the notes? A. I paid every note.

Q. Did you pay any notes upon bus 139? A. Yes, sir.

40

Defendant's Witness, Joseph Van Orden, Direct

Q. Where did you get the money from? A. I had a pretty good run; I was given a permit on North 11th, and I was drawing pretty good money.

Q. Did Mr. Cerino give you any money at any time? A. No, sir, he never gave me anything.

Q. Who told you he was in business with you? A.
10 Mr. Andrew Locker.

Q. Were you there in Mr. Hoffstra's office when the agreements were made out? A. No, sir.

Q. Did you ever divide any profits with Mr. Cerino? A. No, sir.

Q. Did you ever give him a check of \$100? A. I loaned him \$100 once, but that check is signed by me alone.

Q. He still owes you \$100? A. Yes, sir.

Q. This was 1923 when you gave him the \$100?
20 A. Yes, sir.

Q. When was the first time he was disturbing you about this agreement? A. Over a year ago and I did not pay any attention to him.

Q. Did you ever consider him a partner? A. No, sir.

Q. I show you a note, made out to the Katz Motor Company; who paid that note? A. There is a name
30 onto it.

Q. Is Cerino's name on here? A. No, sir.

Q. I show you a bunch of checks and notes; are these all moneys paid by you in this business? A. Yes, sir.

40 Mr. Evans: I object on the ground, that first of all it is shown that there is a car in the partnership at the time of the reframing of the contract; they entered into a partnership on December 30, 1922; at that time they had a car.

Defendant's Witness, Joseph Van Orden, Cross

Q. I show you three notes, dated September 6, 1922, signed by Andrew Locker and Joseph Van Orden; who paid them? A. I did.

Q. Out of your money? A. Yes, sir.

Q. Here is a note dated November 14, 1923; is that a renewal of these notes? A. No, sir, it is a repair bill. I gave notes for it. 10

Q. In whose name was this automobile? A. The bill of sale will tell you.

Q. In whose name was the insurance? A. Mine.

Q. Who is your insurance agent? A. Mr. David McGregor.

Q. Who pays the city taxes? A. I do.

Mr. Evans: Objected to as self-serving.

CROSS-EXAMINATION by Mr. Evans: 20

Q. You said in your direct-examination that these papers were at the office of Mr. Hofstra when you called to sign them; you say you did not read them over? A. I did not.

Q. Which papers were you referring to at that time; was it the final partnership agreement between you and Cerino; was it the partnership agreement between you and Cerino you were referring to? A. Yes, sir. 30

Q. When you signed the first partnership between the three parties, was that what you were referring to; did you understand the contents of the paper that you signed between you and Cerino together? A. No, sir.

Q. You did not understand that? A. No, sir.

Q. Did you understand the contents of the paper which you signed when you became a partner with Locker, Cerino and yourself? A. I did not become 10

Defendant's Witness, Joseph Van Orden, Cross

a partner with Cerino at all; I was not there when Cerino signed.

Q. Did you understand the contents of the paper which you signed when this three-party agreement between you and Mr. Locker and Cerino was dissolved; you understood that, did you? A. Certainly, I did.

Q. You understood that? A. Yes, sir.

Q. Now, then, why, if you understood the first two papers, that is, the three party partnership agreement— A. There were no three parties whatever from the start—never from the start.

Q. Then you did not understand that first agreement either; you want to change your testimony now; you did not understand that he was a partner? A. There was no partnership; it was a pool.

Q. Did you read over that agreement between the three parties before you signed it? A. As far as I could understand it, yes, sir.

Q. Now, then, when you entered into the dissolution agreement between the three of you, what was the reason for dissolving the three party partnership? A. What was the reason?

Q. Yes. A. There were several reasons.

Q. What were they? A. There were different things included into it.

Q. Explain it to us; what did you break up for? A. Things were not going right.

Q. What was the reason? A. There were things being gone that no one could account for, that is all the reason of it, profits and losses, and all—the cash was gone.

By the Court:

Q. The cars could not get away? A. I had my eye on them; I had to be there night and day.

Defendant's Witness, Joseph Van Orden, Cross

FURTHER CROSS-EXAMINATION:

Q. Did you find any fault with Cerino? A. I found fault with them all.

Q. What fault did you find with Cerino? A. I will tell you—they both were pulling together; Mr. Locker's brother-in-law came—the one that owned the permit; I told him he was done. 10

Q. Who was done? A. Wilson.

Q. What did he have to do with it? A. He owned the permit, Wilson did, and he owned the car, he said—

Q. You denied he owned the permit, and you denied he owned the car; didn't you tell him he did not own car or permit? A. I told him his brother-in-law put it in the pool, and he said, "That is news to me." 20

Q. Now, then, at the time that you were about ready to dissolve, just what did each man have in the partnership which was to be divided? A. There was nothing divided.

By the Court:

Q. There must have been something; what was there in the partnership; what was there in it that you knew about, in the partnership; when you dissolved you signed papers of dissolution, didn't you? A. I let them have all the money to pay the notes, what I had taken in on No. 141. 30

Q. You just took the car and never got anything at all? A. The permit; the only car that was in the partnership was No. 139, and that went back to Cerino and Locker and another fellow.

Q. Did you enter into the agreement? A. No, sir. Locker, Cerino and Sands sold to the Public Service the permit; first, it was sold to Friedman; he lives at 28th Street, near 11th Avenue. 40

Defendant's Witness, Joseph Van Orden, Cross

FURTHER CROSS-EXAMINATION:

Q. So when the partnership dissolved, the arrangement was that Locker and Cerino were to get No. 139, the bus and the permit, and you were to get 141, the bus and the permit; is that right? A. That was the understanding; that was the agreement.

Q. So that when you signed this agreement, who was present at the time you signed it? A. I could not tell you.

Q. This is the partnership agreement between you and Cerino, dated December 30, 1922; who was present at the time you signed this agreement? A. I don't know.

Q. Did you go up there all alone? A. Yes, sir; I run over from the bus.

Q. Whose office did you go to? A. Peter Hofstra's office.

Q. Whom did you see there? A. Peter Hofstra.

Q. What did you do at that time; what did you say to him and what did he say to you? A. He said, "Here are the papers dissolving the pool."

Q. Is that the date that is indicated here, December 30th? A. I don't remember the date.

Q. What were the circumstances under which you signed the partnership agreement between you and Cerino? Were there two sets of papers signed or three? A. I don't remember.

Q. Do you remember when you signed that agreement; look at it and tell us what the circumstances were under which you signed that agreement? A. That was supposed to be the agreement that they took one car and I took the other.

Q. What does the agreement say? A. I don't know.

Defendant's Witness, Joseph Van Orden, Cross

Q. Can you read English? A. Yes, sir, a little bit; I don't understand everything.

Q. You recall the circumstances under which that was signed? A. I do not.

Q. Do you remember signing your signature to that agreement; is that your signature? A. Yes, sir.

Q. Was Peter Hofstra there at the time you signed it? A. I don't think so, I think this little fellow here was, Joe, and a lady was there when I signed it—upstairs—in a bank building on Market Street. 10

Q. You read over the agreement? A. I did not, and it was never read to me.

Q. You are quite certain there was no agreement between you and Cerino; you are very certain about that? A. Sure; he came over there and told me about it, and he took the car and disposed of it. 20

Q. Who did? A. Locker and Cerino—to Abe Friedman first.

Q. I show you this agreement, marked Exhibit C2, and ask you to read that. A. I don't know what it is; I cannot read it all.

Q. Just look it over and tell us what that says. A. What do you want me to read?

Q. Explain this, what that meant. 30

Mr. Shavick: The agreement speaks for itself.

The Court: Have you read it over?

Mr. Evans: It says, "We, the undersigned, Andrew Locker, Pellegrino Cerino and Joseph Van Orden, parties to the partnership agreement entered into between us on the 15th of September, 1922, in consideration of our mutual promises, do hereby dissolve such partnership from and after the date herein, except in so far as may be necessary to continue the 40

Defendant's Witness, Joseph Van Orden, Cross

10 same for the purpose of winding up such partnership. It is agreed that the assets of said partnership are to be disposed of, and its debts are to be taken care of in the following manner: Andrew Locker shall be the sole owner of white jitney bus No. 139, and Pellegrino Cerino and Joseph Van Orden are to be the sole owners of white jitney bus known as No. 141." (Continues reading.)

20 Q. Now, what did you understand by that when you signed that agreement? A. I understood that I was going to get the two notes back from No. 139, and when I did not get them back, I was told they would go up with me to the Katz Motor Car Company, and I was to take No. 141 and they were to take No. 139, and that was all the understanding. No papers were drawn up until we went to the Katz Motor Car secretary, and he told them that I assumed all debts on No. 141, and he was to assume all debts on No. 139.

Q. Who was present at the time you signed that agreement? A. I told you before, that I did not know who was present; little Joe and the young lady, I believe.

30 Q. So you signed this paper also in the presence of little Joe and the young lady? A. That one was with Hofstra and Locker—Locker and I and Hofstra.

Q. Cerino was not present? A. No, sir, he was not.

40 Q. When was the first that you knew that Cerino was in this agreement of partnership? A. Three weeks from September 6th; when I took the bus out, then he informed me about it, when he had to give Cerino some money.

Q. I show you the agreement marked Complain-

Defendant's Witness, Joseph Van Orden, Cross

ant's Exhibit C1, purporting to be a partnership agreement. Examine that agreement and tell us who was present at the time that the agreement was signed?

A. This is the same agreement.

Q. Who was present at the time that agreement was signed? A. Peter Hofstra.

Q. Who was present at the time this agreement was signed? A. Hofstra and Locker and I. 10

Q. And Cerino was not present? A. Not that I know of.

Q. And the first intimation that you had that this man was a party to this agreement was three weeks after? A. After we had started pooling; then he said we would have to go up and sign papers at Hofstra's office.

Q. What did you say to him when you learned that he was a partner? A. I told him this was a fine joke, and I started to holler— 20

Q. Did you have any other conversation with respect to it; what did you mean by saying you thought it was a fine joke? A. I never saw that man until three weeks after we had started.

Q. You felt that he was not entitled to be a partner? A. There were no partners at all.

Q. And he was not entitled to any share of the bus, or any share of the permits? A. No, sir. 30

Q. So you felt he was not entitled to any share of that? A. That is right.

Q. And you felt that at the beginning of the partnership? A. I signed the paper, but after I found out where I was getting buncoed—

Q. You felt that same way when you signed up the dissolution agreement, that he was not entitled to anything? A. I certainly did. 40

Q. And you felt the same way when you signed

Defendant's Witness, Joseph Van Orden. Cross

up this new partnership with him, that he was not entitled to anything? A. No, sir.

Q. Why did you sign up this card then for? A. That was the same day that the papers were signed.

Q. I show you a book, and ask you if you recognize that book? A. Yes, sir, I do.

10 Q. What is that book? A. That was the pooling of No. 139; there are some pages out of here.

Q. Just turn the pages over and see if you recognize anything else; see if you recognize any other further receipts there than bus 139; yes or no? A. I said it was the pool book.

Q. I ask you if this is your signature as it appears on various pages of the book as Joseph Van Orden; is that your signature, yes or no? A. No, sir, that is not, but this one is (indicating fourth page of the book is not the witness's signature).

Q. Page 5, is that your signature? A. Yes, sir.

Q. Page 6? A. Yes, sir, that is mine.

Q. Page 7? A. Yes, sir.

Q. Page 8? A. Yes, sir.

Q. Page 11, is that your signature? A. That is not my writing.

Q. Page 14? A. Yes, sir.

30 Q. Page 20? A. Yes, sir, that is mine.

Q. I ask you to read to the Court what that statement is above there.

The Court: This book is not in evidence yet.

Q. What statement was that you signed there; read it from the book? A. I cannot see it without my glasses.

40 Mr. Evans: I will read it. "We, the undersigned, find the book total O K up to date. Jan-

Defendant's Witness, Joseph Van Orden, Cross

uary 30, 1923," signed "Joseph Van Orden, Pellegrino Cerino and Andrew Locker."

A. I signed that.

Q. Did you ever go over the books of account with the complainant, Mr. Cerino, and Joe, at Hofstra's office? A. No, sir, that happened to be at my own home; anyone could have seen them; I was never afraid of anyone seeing them. 10

Q. Was it you suggested that the three party partnership should be dissolved? A. No, sir.

Q. Wasn't it at your suggestion? A. No, sir.

Q. You did not like Locker? A. You can tell the world I did not; I said I was going out by myself.

Q. Mr. Cerino used to attend the meetings of the pool, didn't he? Did he attend the meetings of the pool? A. No, sir, he did not attend the meetings, not while I was there; he walked in there, he just walked in and I walked out; we did not allow any outsiders to the meeting. 20

Q. You knew also of the fact that you had to keep the permit in your own name because of the attitude of the Board of Public Works? A. I never bothered my head; I owned the permit.

Q. When the three party partnership went into effect, just what did you put into the partnership by way of cash? A. \$450.00. 30

Q. Have you got any record to show that? A. Yes, sir.

Q. Where is it? A. I have it in the check.

Q. Have you the checks in court? A. The Katz Motor Car Company has.

Q. Have you got the checks with which you paid those notes? A. Yes, sir. 40

Q. Will you produce them? A. Yes, sir.

Defendant's Witness, Joseph Van Orden, Cross

Q. Produce them. They have gone in evidence. How did you pay it; in what sums? A. \$425.27.

Q. How much cash did you put into the three party partnership? A. There was no three party partnership, there were two, and it was \$450.00, just Locker, and I; I paid it by giving a check which was loaned
10 to me—financed to me.

Q. Whose check was that? A. Carl Katz, and I paid that check to William Laird.

Q. Just when did you pay that money? A. They loaned it to me the same day we took the car out, the Katz Motor Company did.

Q. They loaned you the money? A. Yes, sir.

Q. Now, will you have that check in court?

The Court: Bring that check into court.

20

Q. It was their check? A. Yes, sir.

Q. Payable to your order, on September 6th? A. Yes, sir.

Q. Now, just what the false and fraudulent representations which induced you to sign these papers, which you have set up in your paper? A. (No answer.)

30

By the Court:

Q. What was the fraud practiced on you; what misrepresentation? A. Laird said he had bought two buses from the Katz Motor Company, No. 139 and No. 140; he told me that.

Q. What other false and fraudulent statements did he make? A. He said he would put his bus up against his brother-in-law's permit; his brother-in-law loaned it to him.

40

Q. His brother-in-law loaned the permit to Locker? A. Yes, sir, he loaned it to his brother-in-law, Frank

Defendant's Witness, Joseph Van Orden, Cross

Wilson, who committed suicide, just before this trouble.

Q. What were the false and fraudulent statements?

A. Because I could not get along with him.

Q. When you signed these papers, what were the false and fraudulent statements that induced you to sign that paper? A. I don't understand what that word is.

10

FURTHER CROSS-EXAMINATION:

Q. What did you understand by a pool? A. What we each took in we were to divide up.

Q. What interest would these people that were in the pool have in the proposition? A. It was only between me and Locker for the first three weeks; he told me he had borrowed money from Cerino.

20

Q. You were to divide the receipts for the two buses? A. Yes, sir.

Q. So that these two buses were in this pool proposition? A. At one time, yes, sir.

Q. Now, the permits for these two buses were in the hands of outsiders? A. No, sir, I was not an outsider.

Q. How was Wilson to come in on this proposition? A. He ran the bus.

30

Q. How was he to come in in this proposition? A. I don't know.

Q. You were a partner, were you not? A. No, sir.

Q. Then what were you pooling for? A. We were pooling the money we took in on the buses.

Q. The two buses were to be the source of the revenue; now, I ask you what value was the bus without the permit? A. I could not explain that.

40

Recess to 2 P. M.

Complainant's Witness, Joseph Van Orden, Direct

After recess.

Mr. Stafford: Will you admit that the money was paid by Cerino to Locker, but none was paid to the Katz Motor Car Company by Cerino, the complainant?

10 Mr. Evans: We will admit that on the record.

Mr. Stafford: We rest.

Mr. Evans: I would like to have marked in evidence this partnership agreement, which is the basis of our suit.

Mr. Shavick: No objection to it.

Marked Exhibit Evans C1.

20

Rebuttal.

JOSEPH VAN ORDEN, recalled in rebuttal, testified as follows:

Direct-examination by Mr. Evans:

30 Q. What was the reason for your signature appearing in that book? A. There were two or three different reasons—

Mr. Shavick: In order to save time, we will admit that this book is the affairs of the old pool, that is, up to the time the new agreement was made. What we contend is a pool.

Q. What interest did Cerino have in that pool? A. You will have to ask Mr. Locker.

40 Q. You did not know anything at all about it? A. Only what he told me.

Q. What did he tell you about this? A. He said Locker told him he had given him money.

Complainant's Witness, Joseph Van Orden, Cross

Q. Why did his name appear on here? A. Through the pool.

Q. So that you knew Cerino had given Locker money? A. I understood so.

Q. Just what did this represent? A. The pool, the profits of the two buses were to be divided up between the three of us— 10

Q. So when you dissolved, then this final statement here shows the condition under which you dissolved?

A. After the accountant had gone over the books.

Q. You were satisfied to see that Cerino was a partner in that, then, were you not? A. It was a pool.

Q. He was getting one-third of it—supposed to get one-third? A. I don't know.

Q. What was Locker to get? A. I don't know.

Q. What were you to get? A. One-half. 20

Q. Did you ever get it? A. No, sir.

Q. You will say it was not to be divided equally between the three of you? A. No, sir.

Q. And you were to get one-half of it? A. Yes, sir, but I had the permit and the bus.

CROSS-EXAMINATION by Mr. Sharick:

Q. You have a pool now on this line, haven't you? 30

A. Yes, sir, there are five other bus owners.

Q. Do they all contribute their earnings together there? A. Yes, sir.

Q. How do you get your profits? A. If I take in ten dollars more than they do, I have to split it up between the five of them.

By the Court:

Q. Do you put in your permit into this pool? A. 40
No, sir, each signed a slip for it; there are six names on it.

Complainant's Witness, Andrew Locker, Direct

FURTHER CROSS:

Q. You only contribute your bus and the earnings?

A. Yes, sir.

Q. Was Cerino's name ever on any bill of sale on any bus? A. No, sir.

10

RE-DIRECT EXAMINATION by Mr. Evans:

Q. When did you buy this bus No. 141? A. On September 6th.

Q. Does this show the preliminary payment you made to buy that bus? A. No, sir, that is December 6th.

Q. I call upon you now to produce the check. A. (No answer.)

20

The Court: Have you got the check?

The Witness: It was financed to me.

By Mr. Shavick:

Q. What check was it? A. The Katz Motor Car Company.

30

ANDREW LOCKER, recalled in rebuttal, testified as follows:

Direct-examination by Mr. Evans:

Mr. Evans: I offer the book of the receipts of buses 139 and 141 for identification.

Marked Exhibit Evans C2 for identification.

40

Q. I show you book marked for identification Evans C2, and ask you what book that is? A. That is the

Complainant's Witness, Andrew Locker, Cross

book of the receipts taken in on buses 139 and 141; also the disbursements of all kinds paid out and expenses on buses 139 and 141.

Q. And it was kept by whom? A. It is in my handwriting.

Q. And was that in connection with the partnership affairs of the three of you? A. Yes, sir, and also signed by the three of us. 10

Q. Why did you keep that book? A. To show all records of the income and the expenses paid out on the two buses.

Q. The two buses owned by the partnership? A. Yes, sir, 139 and 141.

Mr. Evans: I offer that book in evidence.

Q. Did Mr. Van Orden pay any money towards the financing of bus 141? A. No, sir. 20

Q. What was it that he put in? A. Nothing; I did all the financing.

Q. How were the payments for the buses 139 and 141 made; where did you get the money to pay for that? A. On No. 141 I gave the Katz Motor Car Company a check on delivery for \$900.00, on deposit on the truck to close the deal I gave a check for \$100, and \$300 for the Overland truck. 30

Q. How was the title taken to that bus? A. I don't understand.

Q. And in whose name was it taken? A. The notes were signed "Van Orden and Locker."

CROSS-EXAMINATION by Mr. Shawick:

Q. You never owned the permits, did you? A. I owned it. 40

Q. Did you hear Mr. testify you never owned a permit? A. I owned it.

Complainant's Witness, Andrew Locker, Cross

Q. Whose name was the permit in? A. In Van Orden's name, No. 141; and the permit of 139 was in the Wilson name at that time. It was in Van Orden's name, and he never parted with it.

Q. Was there any time when title to the jitney bus or the permit went out of Mr. Van Orden's name?

10 A. Not that I know of.

Q. Who owned the permit on 140?

The Court: We are not dealing with 140; there is no such permit in existence.

Q. At the time of the partnership between the three parties, the permit to bus 139 was still in the name of Wilson? A. Yes, sir.

20 Q. Was that part of the three party agreement, partnership assets? A. Yes, sir.

Q. Was there ever any question that Wilson's permit belonged to the partnership? A. No, sir.

Q. Was there ever any question that the permit of Mr. Van Orden was part of the partnership assets of the three parties? A. It was.

30 Q. And it was transferred under this agreement that you had when you separated, and that permit went to Cerino and Van Orden, and you kept the permit?

The Court: That is leading and self-serving and an explanation of an instrument before the Court; strike that out.

Q. I show you a bill of sale of the Katz Motor Company? A. Yes, sir.

Q. In whose name did it go in? A. In Mr. Van Orden's.

40 Q. Whose Overland car was that? A. Mine.

Q. Did any money of Cerino go into that automobile? A. No, sir; that was my money.

Complainant's Witness, Peter Hofstra, Direct

Q. What day was that? A. September 6.

Q. What jitney bus number is that? A. I believe No. 141.

Q. Did you ever own permit No. 140? A. Wilson did, not me—

Q. When was that? A. That was given at the same time as No. 139, sir; I forget the date. 10

Q. Did it go into the partnership? A. No, sir, that permit was revoked before the partnership.

Q. Do you know why it was revoked?

The Court: It does not make any difference.

Q. Did Cerino pay you any money towards the purchase of jitney bus No. 141? A. No, sir.

Q. Now, here is a bill of sale I show you; is that the bill of sale from that jitney bus? A. I believe it is. 20

Q. Is that your signature there? A. Yes, sir, it is.

Q. Is that Mr. Van Orden's signature there? A. It looks very much like it.

Mr. Shavick: I offer it in evidence.

Marked Exhibit Shavick 1.

Q. When you first entered the original agreement, in whose name was permit No. 139? A. In Mr. Wilson's name. 30

PETER HOFSTRA resumes the witness stand, in rebuttal.

Direct-examination by Mr. Evans: 40

Q. I show you Complainant's Exhibit C1. Do you

Complainant's Witness, Peter Hofstra, Direct

recall what transpired at the time that agreement was signed, and who was present?

Mr. Shavick: I object to that; he has testified to that; it is not proper rebuttal.

10 Q. Did you read that agreement to Mr. Van Orden before it was signed? A. I don't recall whether I read it to him, but I remember explaining it to him; I thought it was discussed thoroughly.

Q. Was he present at the time it was signed? A. Yes, sir.

Q. Was he present with the others whose signatures appear there? A. Yes, sir, the three of them came in together; I witnessed the signatures.

20 Q. I show you Exhibit C2; was that agreement explained at the time it was signed, by you to Mr. Van Orden?

Mr. Shavick: I think that has been already gone over.

The Court: Objection overruled.

30 A. I presume it was; I don't remember going into this agreement so much, but my signature is there, and I witnessed their signatures; I don't recall explaining this particular agreement; I always do before I allow the parties to sign.

Q. Did you explain this one? A. I don't recall.

Q. I show you Exhibit Evans C1; do you recall whether you explained that agreement to them at the time you were there? A. Yes, sir, I recall going over this matter very clearly with Mr. Cerino and Mr. Van Orden; Mr. Locker was also present.

40 Q. Was anything said at the time, that this was a pool agreement and not a partnership agreement?

Mr. Shavick: The contract speaks for itself.

The Court: The objection will be sustained.

Complainant's Witness, Peter Hofstra, Cross

CROSS-EXAMINATION by Mr. Shavick:

Q. You don't remember whether they were there exactly at the same time? A. Yes, sir, I do remember they were there at the same time.

Q. How long ago did this happen? A. Several years ago. 10

Q. And you remember the time of the day? A. Yes, sir, it was in the morning, I should say about 11 o'clock.

Q. How long was Mr. Van Orden in your office? A. Oh, long enough to go over this matter quite thoroughly, from fifteen minutes to half an hour.

Q. Did he read this himself? A. I am satisfied he did not read it himself; I am quite certain that I explained the situation to him, and that the terms of the agreement were discussed by all present. 20

Q. And especially they all agreed to keep the permit out of the agreement? A. Yes, sir, it was agreed that the permit was not to be specially mentioned in the agreement.

Q. They knew it would be illegal to run a jitney bus without having a proper permit? A. I don't know what they knew, but that was the understanding.

Q. You did not see any money pass between Cerino and Van Orden? A. No, sir. 30

Q. Are you counsel for Mr. Van Orden now? A. No, sir, I never have been except in that case; I represented all the parties, and indirectly represented the Prospect Park bus line pool.

Q. What is a pool? A. It is an agreement.

Both sides rest.

Mr. Stafford: I would like to make a motion for the dismissal of this complaint. I wish to make it 40

Opinion

first, on the ground that this alleged partnership agreement is one that is against public policy; and it is one which a court of equity should not enforce.

The Court: I would not dismiss it right offhand.

Mr. Evans: I think we had better submit a brief.

The Court: When will you have it ready?

10 Mr. Evans: Within five days.

The Court: All right, submit your legal authorities and send your brief to counsel.

Opinion.

(Filed June 24, 1925.)

20

IN CHANCERY OF NEW JERSEY.

Between

PELLEGRINO CERINO,
Plaintiff,

and

30 JOSEPH VAN ORDEN,
Defendant.

On pleading and proofs.

Mr. William W. Evans, for the complainant.

Mr. Emanuel Shavick, for the defendant.

LEWIS, V. C.:

40 The undisputed facts indicate that the defendant possessed a permit to operate a jitney bus, granted by

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the governing body of the City of Paterson, known as Permit No. 141. The permit authorized the operation of the jitney bus by the defendant between the City of Paterson and the Borough of Prospect Park and Haledon. Complainant claims, that by virtue of articles of agreement entered into on December 30, 1922, between complainant and defendant, a copy of which is annexed to the bill, a partnership existed between the parties for the operation of the jitney bus business referred to, under the Permit No. 141 held by the defendant. The property of the partnership is alleged to have consisted simply of this Permit No. 141 and the jitney bus to which it applied. Defendant denied the right of the complainant to participate in the profits resulting from the operation of the bus, contending that the alleged partnership agreement never became operative or binding between them; and that the bus and the permit were both the property of the defendant individually, and that the business was operated by him in that same capacity. There is no evidence to show that the complainant made any specific contribution to the alleged partnership fund. The evidence further shows that no application was made to the governing body of the City of Paterson to have the Permit No. 141 transferred to the partnership. If, therefore, any rights can be claimed under a partnership arrangement between the parties, it would present the situation of an application to this Court to take an accounting between two partners with regard to partnership funds resulting from an illegal transaction. The evidence shows, convincingly, that all the parties engaged in the formation of this arrangement regarded the situation pertaining to the use of the permit as one which must be kept secret, and concerning which no mention of the real situation

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Opinion

should be included in the written documents pertaining to it.

10 It seems to me that the statute and the ordinance relating to the operation of these jitney buses contemplate that the governing body of the municipality shall exercise a supervisory control over their activities, and that the permits which are issued are personal to the one to whom the grant is given, and apply specifically to the bus to be operated under it. If the grantee of the permit could transfer it at will, or use it in conjunction with other persons by partnership or corporate arrangements among themselves, the whole purpose and object of the statute and the ordinance would be circumvented. This seems to have been the very thing which the parties sought to accomplish by their present arrangement.

20 I am therefore of the opinion that the complainant has no status to appeal to this Court for an accounting between himself and his alleged partner in such an arrangement. Equity, under such circumstances, will leave the parties where it finds them. *Allfather v. Schlicher*, 86 N. J. Eq. 1; *E. & A. Somers v. Johnson*, 70 N. J. Law 695; *Church v. Muir*, 33 N. J. Law 318; *Paterson v. Saddler*, 71 N. J. Eq. 315. I will therefore advise a decree that the bill be dismissed.

Final Decree.

(Received in Clerk's office July 8, 1925.)

IN CHANCERY OF NEW JERSEY,

Between

PELEGRINO CERINO,
Complainant,
and

JOSEPH VAN ORDEN,
Defendant.

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This cause coming on to be heard before the Chancellor upon the bill, answer and proofs taken in open court, in the presence of William W. Evans, Esq., solicitor for and of counsel with the complainant, and of Emanuel Shavick, and Bernard L. Stafford, Esqs., solicitors for the defendant, and the pleadings and proofs having been considered, and

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It appearing for good and sufficient reason

It Is Thereupon on this 29th day of June, 1925, Ordered, Adjudged and Decreed that said bill of complaint and the cross bill filed in this cause be and the same are hereby dismissed.

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Respectfully advised,

Vivian M. Lewis, V. C.

E. R. WALKER,

C.

A true copy,
Thomas Barber,
Clerk.

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Exhibit C1.

ARTICLES OF AGREEMENT, made and entered into this 15th day of September, in the year of our Lord One Thousand Nine Hundred and Twenty-two, between Andrew Locker, Pellegrino Cerino, and Joseph Van Orden, all of the City of Paterson, in the County of Passaic and State of New Jersey.

10 FIRST: The said parties have agreed and entered into a co-partnership in the jitney bus business for a period of five years from this date and each of said parties has paid in cash or delivered property of an equal amount to be employed in said business. The property of said partnership consists of two white jitney busses which are now being run on the Prospect Park route in the City of Paterson, and are known as busses 139 and 141.

20 SECOND: It is agreed that the profits and losses of said business shall be equally divided and sustained by and between said parties.

30 THIRD: It is agreed that Andrew Locker shall be the general manager of said business and shall have full charge thereof and shall take care of all the receipts and disbursements and that he has the authority to expend for the business, without the consent of the other parties, sums up to \$5.00.

FOURTH: All funds belonging to the partnership shall be deposited under the name of the partners jointly in the United States Trust Company, Paterson, New Jersey, and all bills and firm debts shall be paid by check drawn on said account, which checks must be signed by all of the parties hereto.

40 FIFTH: Also whenever there shall be occasion to give any bond, note, bill or other security for the payment of money on account of the partnership, the

Exhibit C1

same shall be signed and executed by all of the parties hereto and in case any partner shall give such obligation the same shall be deemed to be given on his separate account and shall be payable out of his separate estate and he shall indemnify the other partners against the payment thereof.

SIXTH: The said Andrew Locker shall keep the books of the partnership and shall keep a true and accurate account of all the receipts and disbursements and shall at the end of each three months during the continuance of this partnership, make a full and complete statement showing the receipts and disbursements during the preceding three months and the profits and losses of the business.

Said statement shall be entered on the partnership books and shall be signed by each of the partners and when so signed, shall be binding upon them save that any manifest error therein shall be found and signified by any of the partners within one month from the date thereof, then the same shall be rectified.

SEVENTH: Said partnership books shall at all times be available to any of the partners and each partner shall on the reasonable request of the other, furnish full information regarding all letters, accounts, writings, or other things which shall come into his hands or to his knowledge concerning the business of the partnership.

EIGHTH: None of the partners shall buy or contract for any article exceeding the value of Five Dollars (\$5.00) without the previous consent of at least one of the other partners.

NINTH: None of the partners shall without the previous consent of the others in writing, assign his share or interest in the partnership business.

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Exhibit C1

TENTH: None of the partners shall without the written consent of the other partners, enter into any bond or become surety or security with or for any person or knowingly cause or suffer to be done anything whereby the partnership property may be attached or taken in execution.

10 ELEVENTH: In the event of any of the partners retiring from said firm before the expiration of the term of this partnership or within two years thereafter, such retiring partner shall not within the term of the partnership and within two years thereafter, carry on or engage or be interested directly or indirectly in any other bus line in any way completing or interfering with the bus line now run by the parties hereto.

20 TWELFTH: In case any of the partners desire to retire from the partnership business after the expiration of the term hereof, he shall give thirty days notice in writing to the other partners to that effect and the partners to whom such notice has been given shall be at liberty to purchase the interest of the retiring partner and shall pay him the value of his share in said partnership effects and the value of said
30 share shall be ascertained by two persons, one to be chosen by the partner who desires to retire and the other by the continuing partners and in case the said two arbitrators cannot agree upon a price that shall be just, a third person is to be chosen by them and his decision as to the value of said retiring partner's share shall be final.

40 The partners who desire to continue the business shall have ten days after the price has been set as aforesaid to decide whether or not they will purchase the retiring partner's share.

Exhibit C1

In case both parties desire to purchase at such valuation the right to do so shall be awarded to the partner or partners who are willing to pay the highest sum above the price set as aforesaid for the privilege of purchasing.

THIRTEENTH: All disputes and differences, if any, which shall arise between the said parties, shall be referred to, and decided by three competent persons in or well acquainted with the trade, one to be chosen by each party or by an umpire to be chosen by the referees, in the usual course in such or similar cases; and their or his decision shall in all respects be final and conclusive on both the said parties, and shall be given in writing within ten days next after such submission. 10

FOURTEENTH: Upon the dissolution of the partnership a full and general account of the assets, liabilities, and transactions of the partnership shall be taken and the assets and property thereof shall as soon as practicable, be sold, the debts due the partnership collected, the proceeds applied, first, in discharge of the liabilities of the partnership and the expenses of liquidating the same; and next, in payment to each part of his representatives of any unpaid interest or profits belonging to him, and of his share of the capital; and the surplus, if any, shall be divided between the partners or their representatives in the shares in which they contributed the capital of the said partnership; and the partners or their representatives shall execute all such instruments for facilitating the collection and division of the partnership, and for their mutual indemnity and release, as may be requisite or proper. 20 30

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals this 15th day of September, A. D. Nineteen Hundred and Twenty-two. 40

ANDREW LOCKER (L. S.)

PELLEGRINO CERINO (L. S.)

JOSEPH VAN ORDEN (L. S.)

Signed, sealed and delivered in the presence of
Peter Hofstra.

Exhibit C2.

We, the undersigned, Andrew Locker, Pellegrino Cerino, and Joseph Van Orden, parties to the partnership agreement entered into by us on the 15th day of September, 1922, in consideration of our mutual promises, do hereby dissolve said partnership, from and after the date hereof, except insofar as may be
10 necessary to continue the same for the purpose of winding up the affairs of said partnership.

It is agreed that the assets of said partnership are to be disposed of and its debts are to be taken care of in the following manner:

Andrew Locker shall be the sole owner of the white jitney bus known as No. 139 and Pellegrino Cerino and Joseph Van Orden are to be the sole owners of the white jitney bus known as No. 141. All the notes
20 made to the Katz Motor Car Company or the company that financed the purchase of bus No. 139 are to be assumed and paid by Andrew Locker. The notes made to the Katz Motor Car Company or the company that financed the purchase of bus No. 141 are to be assumed and paid by Pellegrino Cerino and Joseph Van Orden. One-half of all the other debts of said partnership are to be paid by Andrew Locker, and the remaining one-half of said debts are to be paid by
30 Pellegrino Cerino and Joseph Van Orden. These payments to be made within one week from the date hereof.

New notes are to be made to replace those given in payment of bus No. 141 so as to relieve Andrew Locker the payment thereof, or if this cannot be done, Pellegrino Cerino shall endorse said notes.

Said Andrew Locker hereby covenants and agrees to and with the said Pellegrino Cerino and Joseph Van
40 Orden that he will pay and discharge all the notes and other debts and liabilities against bus No. 139 as

Exhibit C3

they become due, and the said Pellegrino Cerino and Joseph Van Orden covenant and agree to and with the said Andrew Locker that they will pay and discharge the notes and other debts and liabilities against bus No. 141 as they become due, and each agrees that at all times hereafter to keep the other indemnified against all actions, proceedings, costs, damages and claims in respect thereof including any cost, damage and expense by reason of any action or proceeding which may be brought by reason of said notes, debts and liabilities, or any act, matter or thing in relation thereto, arising out of any debt or liability against the bus owned by the other party. 10

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals this 30th day of December, A. D. Nineteen Hundred and Twenty-two. 20

ANDREW LOCKER (L. S.)

PELLEGRINO CERINO (L. S.)

JOSEPH VAN ORDEN (L. S.)

Signed, sealed and delivered in the presence of
Peter Hofstra.

Exhibit C3.

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Exhibit C3 is annexed to the bill of complaint.

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Exhibit C4.

March 24th, 1924.

Mr. Joseph Van Orden,
76 Arch Street,
Paterson, N. J.

Dear Sir:

- 10 Under and by virtue of the agreement between you and Pellegrino Cerino, dated December 30th, 1922, a partnership was entered into in respect to bus No. 141 on the Paterson-Prospect Park route. Mr. Cerino complains that you have violated the partnership agreement in the following respects:
1. That you have not divided the profits of the operation of the bus between the partners.
 - 20 2. That accurate books of account have not been kept by you of the receipts and disbursements and you have not made a full and complete statement showing receipts and disbursements during the continuance of this partnership nor has such statement been entered on the partnership books and been signed by each partner.
 - 30 3. That the partnership books have not been available to Mr. Cerino on his reasonable request; nor have you full information regarding letters, accounts, writings and other things which have come into your hands and to your knowledge concerning the business.
 4. You have purchased articles exceeding the value of \$5.00 without the previous consent of Mr. Cerino.
- Without waiving any right which Mr. Cerino has to resort to the Court of Chancery or other court for the purpose of the appointment of a receiver to dissolve the partnership, and solely for the purpose of complying with the provisions of paragraph twelve of said
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Exhibit C4

agreement, and neither admitting that the terms of paragraph twelve are applicable to the case, the said William Cerino refers the several matters herein referred to to Andrew Locker and hereby demands that you nominate some fit and proper person to represent you and to notify him of such appointment in the enclosed stamped envelope within five days from the date hereof. 10

Respectfully.

WILLIAM W. EVANS.

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CHAPTER

CHAPTER I
OF THE NATURE AND EXTENT OF THE
ARTS AND MANUFACTURES
IN GREAT BRITAIN
AND IRELAND
IN THE YEAR 1786

CHAPTER II

OF THE NATURE AND EXTENT OF THE
ARTS AND MANUFACTURES
IN GREAT BRITAIN
AND IRELAND
IN THE YEAR 1786

**NEW JERSEY COURT OF ERRORS AND
APPEALS**

PELLEGRINO CERINO, Complainant-Appellant,	} On Appeal from the Court of Chancery. Lewis, V. C. Decree Dis- missing Bill for Partnership Accounting.
vs.	
JOSEPH VAN ORDEN, Defendant-Appellee.	

BRIEF FOR COMPLAINANT-APPELLANT.

Statement of the Case.

The decree dismissed the bill which sought an accounting of partnership assets, and the dissolution of the partnership. There were written articles of partnership dated December 30th, 1922 (Exhibit C3, attached to bill, p. 7), between the parties, the business being "the jitney bus business," the property of the partnership is described as "Bus No. 141"; the agreement provided for division of profits, keeping accounts and for a term of five years.

Defendant denied the existence of the partnership and, further, that the permit for Bus No. 141 formed no part of any partnership assets.

The Court in dismissing the bill of complaint gave the following reasons, which reasons we take the liberty of quoting because of their brevity:

"There is no evidence to show that the complainant made any specific contribution to the alleged partnership fund. The evidence fur-

ther shows, that no application was made to the governing body of the City of Paterson to have the Permit No. 141 transferred to the partnership. If, therefore, any rights can be claimed under a partnership arrangement between the parties, it would present the situation of an application to this Court to take an accounting between two partners with regard to partnership funds resulting from an illegal transaction. The evidence shows convincingly, that all the parties, engaged in the formation of this arrangement, regarded the situation pertaining to the use of the permit as one which must be kept secret, and concerning which no mention of the real situation should be included in the written documents pertaining to it.

"It seems to me, that the statute and the ordinance relating to the operation of these jitney buses contemplate that the governing body of the municipality shall exercise a supervisory control over their activities; and that the permits which are issued are person to the one to whom the grant is given; and apply specifically to the bus to be operated under it. If the grantee of the permit could transfer it at will, or use it in conjunction with other persons by partnership or corporate arrangements among themselves, the whole purpose and object of the statute and the ordinance would be circumvented. This seems to have been the very thing which the parties sought to accomplish by their present arrangement.

"I am, therefore, of the opinion that the complainant has no status to appeal to this Court for an accounting between himself and his alleged partner in such an arrangement. Equity, under such circumstances, will leave the parties where it finds them. *Allfather v. Schlicher*, 86 N. J. Eq. 1; *E. & A. Somers v. Johnson*, 70 N. J. L. 695; *Church v. Muir*, 33 N. J. L. 318; *Paterson v. Saddler*, 71 N. J. Eq. 315."

The Court apparently held:

1: That there was no evidence to show that complainant made any specific contribution to the partnership fund, hence no partnership (notwithstanding the written agreement).

2: That even if a partnership existed, the agreed upon silence maintained by complainant and defendant with regard to the jitney bus *permit* made it an illegal transaction which precluded complainant from relief.

POINT I.

The existence of a partnership was fully proven.

There were the written articles of partnership (Exhibit C3, p. 7). The Court itself had said (p. 40), that it was inclined to the view that a partnership had been established. There had been previous written articles of partnership and a dissolution (Exhibit C2, p. 96). Seven witnesses produced by complainant testified either directly to the existence of a partnership, and the contribution made to it by complainant, or to acts by complainant and defendant which indicated the creation and existence of a partnership. It was clearly shown, and there was no contradiction worthy of the name, that there first existed a tri-party agreement of partnership between a certain Andrew Locker, Pellegrino Cerino, the complainant, and Joseph Van Orden, the defendant, under the terms of which they carried on the business, as partners, of operating two buses; that the assets of this tri-party partnership consisted of the two buses and two permits, No. 139 and No. 141, the latter being a part of the

subject-matter of this litigation; that this partnership after continuing for a time was dissolved by a written agreement drawn by Mr. Peter Hofstra, an attorney; that in dissolving, the assets were divided as follows: Andrew Locker retained as his share, Bus and Permit No. 139; Bus and Permit No. 141 were allotted to complainant and defendant; that the reason for the allotment of a one-half interest in Bus and Permit No. 141 to complainant was the fact that he had contributed \$1,800 to the tri-party partnership which was considered the equivalent of any property that was contributed by defendant; that thereupon a partnership agreement was signed by complainant and defendant at the office of Mr. Hofstra, the assets of the partnership being the said Bus and Permit No. 141; that they proceeded to operate the bus.

In the agreement no direct reference was made to permits for the reason that the parties, particularly defendant, believed that there might be some hostility on the part of the Board of Public Works, which issued permits, if the permit were transferred to the partnership.

It appeared that a bank account was opened in the Franklin Trust Company of Paterson, and that certain books were kept by defendant, showing some receipts and disbursements.

During the operation of this bus on Permit No. 141, complainant and defendant conducted themselves as partners and did innumerable things usual and incidental to the carrying on of a partnership. The partnership was never actually denied by the defendant until this suit.

During the discussion of the dissolution of the tri-party partnership and the formation of the partnership between complainant and defendant, all of the parties appeared before Mr. Hofstra, and all agreed that the permits were a part of the partnership assets

and not, as defendant now contends, the sole and separate property of the individual in whose name the permit stood.

There was ample evidence to show that complainant made specific contribution to the partnership. Andrew Locker, a member of the tri-party partnership, said (p. 21) :

“Q. Were you ever a partner in a partnership between Andrew Locker, Pellegrino Cerino and Joseph Van Orden? A. Yes, sir.

“Q. What was a necessary incident to the ownership of these buses? A. Two permits and the two buses.

“By the Court:

“Q. What was the conversation with respect to the permit? A. The conversation was with respect to the permits that they were to be included in the business of the buses.

“*FURTHER DIRECT:*

“Q. Was this partnership subsequently dissolved as between you, Pellegrino Cerino and Joseph Van Orden? A. Yes, sir.

“By the Court:

“Q. You dissolved, and then there was a splitting up of these things? A. Yes, sir; it was agreed between Mr. Van Orden and Mr. Cerino and myself, that I was to take one bus, No. 139; and that Mr. Cerino and Mr. Van Orden were to take one bus, No. 141; and it was mutually agreed that the permit was also to be included as part of the business.

“Q. How much did you put in when you started? A. I put in \$1,800.

“Q. How much did Cerino put in? A. He gave me \$1,800.

“Q. You both put in \$1,800? A. Mr. Cerino paid me \$1,800. Mr. Cerino put in \$1,800

in Bus 139, and I owned half of 139; he put that up against my permit and I also put up about \$1,800, which I can show, in checks and bills, for to put up against Bus No. 141, against Mr. Van Orden's permit.

"Q. How was this \$1,800 made up that Mr. Cerino put in? A. He gave me a check for \$1,000 and about \$400 in cash, and he gave me a car for the consideration of \$300.

"Q. That gave two permits to the organization? A. Yes, sir.

"Q. And two cars? A. Yes, sir."

William B. Laird testified that Locker, the previous witness, was the purchaser of Bus No. 141 to which this permit applied, thus showing that the payment of the \$1,800 by complainant to Locker went into the partnership fund to purchase this bus (p. 37).

Sands (p. 40) testified to a course of conduct by complainant and defendant with respect to the operation of the bus, clearly indicating the existence of the partnership.

Fumagelli, who was in the employ of Mr. Hofstra, the attorney, was sent to defendant's home to check up on the receipts. At this time complainant and defendant were together with Fumagelli. Defendant recognized the complainant as a partner and joint owner in the bus permit by permitting him to check up his accounts (p. 43).

The evidence of Mr. Hofstra, the attorney, who conducted the legal transaction, we urge, is conclusive that there was a partnership in existence; that the parties recognized each other as partners; that specific contribution was made by all the parties, particularly complainant, and that Permit No. 141 was considered part of the partnership assets (p. 45).

Complainant testified (p. 53) circumstantially to the formation and conduct of the partnership.

It will be noted that counsel for defendant admitted that he thought the money contributed by complain-

ant went towards the purchase of the bus (p. 54), which, if true, proves that complainant did make contribution towards the partnership fund.

Mercer (p. 63) proved the opening of the account in the Franklin Trust Company.

Defendant attempted to deny the partnership (p. 66), but we submit that a reading of what he said will indicate that no reliance whatever is to be placed upon his denials. No witness supported him.

All that is required to establish a partnership is:

“The existence of a partnership does not depend upon the fact that each partner has in all things complied with his agreement. If the contract has been made, property and labor distributed, and the partnership business commenced or carried on to any extent, there is a partnership.”

Hartman v. Woehr, 18 N. J. Eq. 383, 385.

“To constitute a partnership as between the parties themselves, there must be a joint ownership of the partnership funds.”

Robbins v. McKnight, 5 N. J. Eq. 642.

POINT II.

The silent arrangement between the parties respecting the jitney permit was not illegal. The doctrine of *in pari delicto* did not apply. The parties were not *in pari delicto*.

There is nothing in the Act of 1916, Chapter 136, entitled “An Act concerning auto buses, commonly called jitneys, and their operation in cities,” to support the conclusion of the Court,

“that the statute and the ordinance relating to the operation of these jitney buses contem-

plated that the governing body of the municipality shall exercise a supervisory control over their activities, and that the permits which are issued are personal to the one to whom the grant is given, and apply specifically to the bus to be operated under it. If the grantee of the permit could transfer it at will, or use it in conjunction with other persons by partnership or corporate arrangement among themselves, the whole purpose and object of the statute and the ordinance would be circumvented."

No such broad supervisory control over buses is given to the municipalities, or the agencies representing them, in directing the operation of buses, in this instance, the Board of Public Works of the City of Paterson. Taken section for section, or read as a whole, the only powers conferred by the act are those of forcing upon the operators of buses the procurement of insurance for damages on account of bodily injury or death, and the payment of the franchise tax to the various municipalities through which the buses operate.

The first section is devoted to the definition of the words "auto bus," "person" and "street"; the second prohibits the operation of auto buses without the consent of authorities controlling the streets through which they are to operate, and provides for the insurance and that the consent shall continue effective and such operation permitted only so long as such insurance shall remain in force. It also provides for a power of attorney to be executed and delivered to the fiscal officer appointing him attorney for the purpose of acknowledging service of process, and that the consent to run an auto bus may be revoked after notice and hearing of failure to furnish and keep in force such insurance and power of attorney or comply with the terms and conditions imposed by the body granting the consent.

The second section seeks only to force insurance upon auto bus owners for the protection of the public and to equip the authorities with the necessary instrumentalities to effectuate such enforcement.

The third section makes it obligatory to file with the city treasurer a sworn monthly statement showing the gross receipts during the preceding month and provides for the payment of a tax.

Sections four, five, six and seven have no effect on the situation here presented.

The act was not intended to give any supervisory control to municipal bodies other than the power to legally coerce the owners of buses to take out insurance and pay a franchise tax. If the Legislature had intended greater powers, it would have set them forth specifically. And unless the grant of power is clear and unmistakable, no additional or wider powers will be inferred.

Any reasonable doubt concerning the existence of the power will be resolved against the municipality:

“And in construing a grant of power to a municipality any fair or reasonable doubt concerning the existence of a power is resolved by the Court against the corporation and the power is denied.”

Meday v. Rutherford, 65 N. J. L. 645.

The Board of Public Works of the City of Paterson based its jitney bus traffic ordinance entitled, “An ordinance concerning motor buses, City of Paterson, passed April 13, 1920,” exclusively upon the Act of 1916:

“Section 1. Definitions: A. The terms ‘motor bus’ or ‘bus,’ as used herein, shall mean an auto bus, as defined in Chapter 136 of the Laws of 1916. B. The terms ‘persons’ and ‘street,’ as used herein, shall have the same respective meanings as defined in Chapter 136, of the Laws of 1916.”

Among the numerous topics dealt with, and not properly justified by the provisions of the Act of 1916, are the following: Applications for permits not to be made by persons less than 21 and not citizens; applications for permits not to be received in excess of the maximum number of permits authorized by Section 4 of the ordinance; when any permit is surrendered or revoked the Board of Public Works may grant new permits from applications on file to those who have made good records; permit may not be transferred; no permit granted to buses seating less than twelve passengers; if motor bus is not placed in operation within one month after granting permit, the permit can be revoked; permit cannot be transferred to other persons except by resolution of the Board of Public Works, and providing for a fine if transferred, and many others.

After reading the sweeping provisions of the ordinance, the rule laid down in *Meday v. Rutherford* (*supra*) becomes convincingly applicable, for most certainly a "fair and reasonable doubt" exists that no such broad powers as are embodied in this ordinance can be spelled from the reading of the Act of 1916.

In order that municipal bodies may properly exercise such supervisory control of buses as set forth in the Court's opinion, four things are requisite:

1. The Legislature must give the municipal authorities the power, for

"The Legislature, representing the state, has paramount authority over its public ways, including the streets in cities as well as the county roads, and the Legislature can at any time resume the power previously granted to municipal subdivisions of the state."

United R. R. and Canal Co., etc., v. Jersey City, 71 N. J. L. 80.

2. The power must be clear and leave no fair and reasonable doubt concerning it (*Meday v. Rutherford* [*supra*]).

3. There must be an ordinance (*Point Pleasant Elec. L. & P. Co. v. Borough of Bayhead*, 62 Eq. 296).

4. The ordinance must be reasonable (*Atlantic City v. Brown*, 72 N. J. L. 207). (This topic is taken up later.)

If it were not for the fact that the ordinance concerning jitney buses is based specifically on the Act of 1916, it might be that the Board of Public Works of the City of Paterson could pass a reasonable ordinance under the power conferred by the charter of the City of Paterson and also by the Laws of 1917, that is, as far as buses may be controlled under general traffic regulations authorized by such act and charter. If it be considered that the Board of Public Works had authority to pass a jitney bus ordinance under the Act of 1916, going further than necessary to enforce the procurance of insurance and the payment of the franchise tax, such authority could not exceed that granted by the charter of the City of Paterson and the Laws of 1917, for the reason that the language from which such authority could be inferred is less specific than the language of the charter of the City of Paterson and the Laws of 1917. The rights conferred by the charter of the City of Paterson are found in Section 26, paragraph XVIII, Title III, which reads as follows:

“In relation to the licensing and business of public cartmen, truckmen, hackmen, cabmen, omnibus men, express men, pawnbrokers, junk dealers, hawkers, peddlers, bootblacks, common criers and scavengers.”

The rights inferred by the Public Laws of 1917, Chapter 152, Section I, are as follows:

"The governing body of every municipality shall have power to make, enforce, amend or repeal ordinances to license and regulate:

"(A) Hacks, coupes, cars, omnibuses, stages, wheel chairs, and all other vehicles used for the transportation of passengers, baggage, merchandise and goods and chattels of any kind, and the owners and drivers of all such vehicles."

All ordinances drafted under the above laws must be reasonable (*Atlantic, Kip v. Paterson*, 26 N. J. L. 298; *State, Nicoulin Pros. v. Lowery*, 49 N. J. L. 391; *Atlantic City v. Brown*, 72 N. J. L. 207).

The ordinance entitled, "An ordinance concerning motor buses, City of Paterson, passed April 13, 1920," is unreasonable. Its provisions are more detailed and go beyond the expression of power granted by either the Act of 1916, the city charter or the Act of 1917.

In *State, Trenton Horse R. Co., Pros., v. Trenton*, 53 N. J. L. 132, the Court said:

"Where an ordinance is based upon a general power granted by the charter of a city and its provisions are more detailed than the expression of power inferred, the Court may look into its unreasonableness" (*State, Trenton Horse R. Co., Pros., v. Trenton*, 53 N. J. L. 132).

Section "G" of the ordinance is unreasonable:

"Section G: No permit shall be transferred to another person except by resolution of the Board of Public Works, and on the signing of such transfer by the person holding such permit and after the payment to the City of Paterson by the person making such transfer of a transfer fee of fifty dollars. This fee shall be charged for revenue as well as regulation."

This restriction upon a transfer is not needed to control the payment of insurance nor the payment of the franchise tax, nor is it a reasonable regulation of motor buses within the intendment of the city charter or the Act of 1917. The above section of the ordinance permits an arbitrary refusal to transfer any permit from one person to another, and it was the use of this arbitrary refusal in other instances which caused the silence to be maintained in the agreement referred to by the Court in its opinion with respect to Bus Permit No. 141. By this section the Board of Public Works of the City of Paterson attempted to unreasonably restrict the power of alienation.

It will be specifically noted also that while the Board gave itself extraordinary powers, there is no provision that a permit which does not contain all the names of the owners is void.

Section "G" provides the method of procedure for the transfer of ownership. It provides *no penalty for failure to transfer and does not void a permit for failure to state the parties truly in interest.*

For a contract to be unenforceable on the ground of illegality, the object to be accomplished must be expressly forbidden by law, or on its execution some rule of law must be positively and directly contravened. It is not left for the Court to read into the law something that is not expressly set forth therein or cannot with positive certainty be implied therefrom. This rule is well set forth by Williston:

"The general rule that an illegal contract is void and unenforceable is, however, not without exception. It is not universal in its application. It is qualified by the exception that where a contract is not evil in itself, and its validity is not denounced as a penalty by the express terms of or by rational implication from the language of the statute which it vio-

lates, and that statute prescribes other specific penalties, it is not the province of the courts so to do, and they will not thus affix an additional penalty not directed by the law-making power."

Note 72, *Williston on Contracts*, 3070-3071.

Applying the above rule in the instant case, the mere fact that all the names of the parties to the contract were not placed on the permit would not, in the absence of some legislation, be illegal, for there is no fundamental law of the land contravened. The mere absence of names on a permit, even if the absence is due to intention, is not an immoral act. And the only method by which this act can become illegal is by the enactment of a law making it illegal.

Therefore, when the Board of Public Works, having no right to restrict alienation and only having those general powers of control for the purpose of safety, health and public morals, arbitrarily refused the transference of permits for other causes than was intended by the said acts and municipal charter, the silence maintained by complainant and defendant as to Jitney Bus Permit No. 141 in the said partnership agreement was wholly natural and there was no violation of the purpose and objective of the statute or any right conferred thereunder.

Nor were the parties in pari delicto as is suggested by the Court in its opinion.

By the evidence it was shown that complainant placed money in the tri-party partnership; that the partnership was considered between the parties to have assets of two buses and two permits; that complainant derived his one-half right to Permit No. 141, together with the bus operated under the same by virtue of the dissolution of that agreement. The receipt of the one-half of the Jitney Bus Permit No. 141 by complainant was not in itself tainted with illegality;

he had a right to it as one of the partners, for it is the general rule that:

“A party may have relief as to a transaction in itself untainted, although his title to the subject-matter may have originally grown out of his wrongful acts not connected with the present controversy, as where the new transaction is based upon a valid consideration in which the original illegal or otherwise irregular transaction is merged, notwithstanding that such illegal or irregular transaction may appear in the course of the proceeding.”
21 *C. J.*, p. 188, Section 173 (b).

Complainant contributed the sum of \$1,800 to the tri-party partnership. That money went towards the purchase of a bus for the tri-party partnership. Of this there can be no doubt for the attorney representing the defendant admitted (on p. 54):

“Mr. Evans: Does counsel still dispute the fact that there was any consideration paid?”

“Mr. Shavich: I think the \$1,800 went towards the purchase of the bus.”

There was nothing which could be spelled into misconduct as to that.

As to complainant the Court has also branded the purchase of the jitney bus as a wrong, since the permit and the bus are inseparable, because a bus cannot be operated without the permit. This is contrary to the equitable rule that:

“Inequitable conduct in regard to the proof of some item or fact in a transaction does not preclude plaintiff from obtaining the relief sought as to the other items.”

21 *C. J.*, p. 188, Sec. 173 (b).

A reading of the evidence will also show that it was not complainant who desired that silence be maintained in the partnership agreement regarding the

jitney bus permit. Complainant was willing to set forth the transaction; it was defendant who insisted that no such direct mention of the permit be made. Such conduct by defendant is sufficient to prevent the rule of *in pari delicto* being applied, for it is also a rule in equity that:

“The conduct of the other party may be sufficient to prevent the maxim from being applied, as where the plaintiff’s misconduct toward the defendant was invited by him or waived. The Courts are inclined to measure the comparative guilt of the respective parties and extend relief to the one who is comparatively innocent.” 21 C. J., p. 189, Sec. 176 [e]; *Pendleton v. Gondolff*, 85 N. J. Eq. 308.

If the decree below is permitted to stand, it will mean that complainant, having honestly entered into a partnership agreement with defendant, paid a large contribution towards the partnership fund, and having acceded, through the requests of defendant, that silence be maintained regarding a jitney permit incident to the partnership, the defendant may unscrupulously and unconscientiously take advantage of his own misconduct and secure for himself the whole of the partnership assets. This is not equity.

“Even when the parties have been found to be *in pari delicto*, relief has at times been awarded on the ground that in the particular case public policy has been found to be best conserved by that course.” 21 C. J., p. 189, Sec. 175 [d]; *Pendleton v. Gondolff*, 85 N. J. Eq. 308.

Certainly public policy would not be benefited by permitting the defendant in a case of this kind to enhance himself materially by taking advantage of his own wrong.

The extent to which the Courts will go in avoiding

contracts as contrary to public policy has been well defined. We find them to be as follows:

- (a) contracts in restraint of trade;
- (b) contracts relating to wagers;
- (c) contracts which are usurious;
- (d) contracts made contrary to Sunday laws;
- (e) Champertous and maintenance agreements;
- (f) contracts tending to corruption and immorality.

The case under consideration cannot, by the greatest stretch of the imagination, come within the above rules.

And it will be observed that the ordinance provides that a fine, not exceeding \$50 and in case of failure to pay the same, a sentence, not exceeding 20 days, may be imposed against a person making such a transfer. Under no circumstances could the complainant, under this ordinance, come within the purview of that penalty. The defendant is the only one culpable under that ordinance. It is solely a prohibition against the defendant.

Under all circumstances, the contravention of the law, if any, by complainant was so slight that it comes within the rule of equity that:

“Where the parties to a contract against public policy or otherwise illegal are not *in pari delicto* or equally guilty, which they may not be, and where public policy is considered as advanced, by allowing either, or at least the more excusable of the two, to sue for relief against the transaction, relief is given to him.” 13 *C. J.*, p. 498, Sec. 442 (b).

A reading of the evidence leaves no room for doubt that complainant was the least culpable of the two,

in that he did not request that silence be maintained concerning the jitney bus permit, and did nothing to contribute to the illegality, if any, except to permit the defendant to maintain silence respecting said permit in the agreement, and being the least culpable of the two he is therefore entitled to relief, since public policy would be advanced by not permitting defendant to take so great an advantage of his own wrong.

“One cannot make a shield of a void contract to rob an associate.”

Williston, p. 3095, Sec. 1785.

This is exactly what the defendant has done.

POINT III.

There is no impropriety in a partnership operating a bus, notwithstanding that the permit stands in the name of an individual member of that partnership.

The purpose of the legislation and the ordinance based thereon is that the municipality may have someone to look to for insurance and for revenue. The operation of the bus by, or ownership by others of interests in the bus and in the business and in the proceeds, neither defeats nor tends to defeat this object. On the contrary, the municipality and the public may not only, under such circumstances, look to the title holder of the permit but also to the others interested with him in the operation of the bus so that the protection of the municipality is enhanced, not diminished.

There is no rule that we know of that requires that the bus should be physically operated by the title holder of the permit. A single individual in many instances holds several permits. It is impossible for

him, of course, to operate the several buses himself. He must employ agents for that purpose.

We know of no rule which forbids the holder of a permit taking others in with him and operating the buses as a joint enterprise. There is certainly no rule which forbids the division of profits.

The legislation is in derogation of the common rights of the people to use the streets and must be strictly construed. (*Public Service Railway Co. v. Reinhardt*, 112 Atl. 850, 92 Equity 365.) In which case the Court of Chancery held, and it was affirmed by this Court that the provisions of the statute and the ordinance adopted thereunder, could not be taken advantage of by anyone except the municipality or state authorities and the bill of the Public Service Railway Company was dismissed "regardless of whether the defendant is operating his auto buses without having the consent required under the Kates Act, and is guilty of a misdemeanor."

If the position taken by the Court be sound, then it would seem that no contracts whatever could be made with respect to these permits or the business of operating auto buses. It is a customary thing for owners of permits to agree to sell them. The Court of Chancery has in numerous cases, where such contracts have been made, enjoined the owners of the permits, who have agreed to sell to others, from disposing of their permits to third parties and that Court has also entertained suits for specific performance of such contracts. The right to operate under such a permit is a property right subject only to such reasonable regulation as is necessary to accomplish the object of the regulatory legislation. It is, and has been for many years, a common practice for those obtaining municipal licenses to conduct a certain business, a barber shop, a place for the sale of liquor prior to the Volstead Act and now for the sale of soft drinks, a bakery, indeed any busi-

ness where a municipal license is required, to take in partners in the operation of the business and no question has ever been raised that this is an illegal thing to do. And the reason why it is not illegal is because the public in fact gets more protection by such a procedure than if the holder of the permit alone conducted the business.

As stated above, it is not contemplated that the owner alone with his own hands and brain conduct the business. He must, in the nature of things, have employees and agents. It is better not only for him but for the public to have those actually conducting the business financially interested therein. For each person financially interested in the business the public secures just so much more protection, for the holder of the permit is himself responsible and those financially interested in the business also suffer if the business be not properly conducted.

All that the record holder of the permit in the instant case did was to agree to operate his bus under the license which he had by means of the complainant, financially interested with him in the proceeds.

If the partnership was not a proper one, where is the line to be drawn? It seems to us that there could be no pooling agreements of profits and yet this is the common practice as indicated by the record in this case.

Certainly such an operation of a bus business is not expressly forbidden by statute, and the rule is (13 C. J., *Title Contracts*, Sec. 4471, p. 505):

“Another distinction is sometimes made in the case of contracts which are simply unauthorized, but involve no moral turpitude and are not expressly forbidden by statute, in which case it has been held that they may be enforced if justice plainly requires it. So where the contract is merely *malum prohibitum* and the illegality does not arise from any elements of moral turpitude a recovery may be had of money or property parted with thereunder.”

POINT IV.

In any event complainant was entitled to an accounting and distribution of the assets of the partnership excluding the permit.

It is submitted that there can be no doubt but that complainant had the right to become interested financially in the proceeds of the operation of the bus and in the bus itself. Assuming that he had no right to become interested in the permit, as such, he would still be entitled to a dissolution of the partnership and to an accounting and a distribution of its assets.

The contract of partnership so far as the operation of the bus is concerned, the division of the profit and of the proceeds of a sale of the bus, if sold, can be carried out fully without any violation of the law. The general rule is stated (13 *C. J.*, *Title Contracts*, Sec. 472, p. 515):

“Where the agreement consists of several promises based on several considerations, the fact that one or more of the considerations are illegal will not avoid all the promises, if those which are made on legal considerations are severable from the others.”

And further:

“It has been held that a contract which at its inception was entire may still be severed in its performance and part of it legalized thereby.”

What the assets of this partnership may be, which can be disposed of, is a matter now not ripe for decision but which should be reserved until dissolution and liquidation is ordered.

Conclusion.

It is respectfully submitted that a strong case indeed is required before a person who has had the advantage of moneys contributed to a partnership can escape the obligation of accounting upon the ground that some element of the partnership violates public policy and that this case from the standpoint of the defendant is not sufficiently robust.

It is respectfully submitted that the decree below should be reversed and the record remitted with instructions to enter a decree for an accounting and for a dissolution of the partnership.

Respectfully submitted,

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Solicitor of Complainant.

MERRIT LANE,
Of Counsel.

