

FILE COPY

Mark, Supreme Court of Appeals
Richmond, Va.

Record No. 5008

In the
Supreme Court of Appeals of Virginia
at Richmond

JOHN R. CULLINGWORTH

v.

**LESLIE POLLARD, ET AL.,
T/A, ETC., ET AL.**

FROM THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

RULE 5:12—BRIEFS

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5008

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 13th day of March, 1959.

JOHN R. CULLINGWORTH, Plaintiff in Error,

against

LESLIE POLLARD, ET AL., T/A; ETC., ET AL.,
Defendants in Error.

From the Law and Equity Court of the City of Richmond

Upon the petition of John R. Cullingworth a writ of error is awarded him to a judgment rendered by the Law and Equity Court of the City of Richmond on the 6th day of October, 1958, in a certain motion for judgment then therein depending wherein Leslie Pollard and Ray Pollard, trading as Beaverdam Motor Company, were plaintiffs and Samuel R. Hubbard, Jr., and the petitioner, individually and trading, etc., were defendants; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said Law and Equity Court in the penalty of three hundred dollars, with condition as the law directs.

NOTICE TO COUNSEL

This case probably will be called at the session of court to be held.

You will be advised **NOV 1959** later more definitely as to the date.
Print names of counsel on front cover of briefs.

Howard G. Turner, Clerk

RECORD

Filed in the Clerk's Office the 8th day of November, 1957.

Teste:

LUTHER LIBBY, JR., Clerk
By EDW. G. KIDD, D. C.

MOTION FOR JUDGMENT.

Plaintiff moves the court for judgment against the defendants, severally and jointly, in the sum of THREE THOUSAND FOUR HUNDRED EIGHTY-NINE and 33/100 DOLLARS (\$3,489.33) and costs for the following:

1. On or about August 19, 1956, defendants associated themselves together to transact and carry on the general business of a used car dealer under the trade name of HUBBARD USED CARS, at 4105 West Broad Street, within the City of Richmond, Virginia, and as such did, in fact, transact and carry on said business as a partnership, which partnership on or about October 24, 1957, ceased to continue to do business.

2. On or about August 15, 1957, defendant Hubbard purchased from plaintiff for the business of HUBBARD USED CARS, a 1957 Ford Fairlane 500 for \$2,358.89 and a 1957 Ford Ranch Wagon for \$2,306.44. To apply against this indebtedness of \$4,665.33, HUBBARD USED CARS page 2 } transferred to plaintiff a 1951 Ford for \$300.00, a 1952 Pontiac for \$400.00, and the equity in a 1957 Chevrolet for \$476.00.

3. There remains due and outstanding the sum of \$3,489.33 to which defendants are justly indebted to plaintiff.

4. Wherefore, plaintiff demands judgment against the defendants, severally and jointly, in the sum of THREE THOUSAND FOUR HUNDRED EIGHTY-NINE and 33/100 DOLLARS (\$3,489.33) and costs.

LESLIE POLLARD AND RAY
POLLARD, TRADING AS BEAVER-
DAM MOTOR CO.,

page 4 }

Received and filed Nov. 29, 1957.

Teste:

LUTHER LIBBY, JR., Clerk
By EDW. G. KIDD, D. C.

John R. Cullingworth, one of the defendants herein, as and for his grounds of defense to the motion for judgment filed herein, says as follows:

1. This defendant denies the allegation contained in paragraph No. 1 of the motion for judgment that on or about August 19, 1956, he associated himself with Samuel R. Hubbard, Jr., the other defendant in this suit, to transact and carry on the general business of a used car dealer under the trade name of Hubbard Used Cars at 4105 West Broad Street, Richmond, Virginia, and further denies the allegation contained in paragraph No. 1 of the motion for judgment that this defendant and Samuel R. Hubbard, Jr., as such did, in fact, transact and carry on said business as a partnership until on or about October 24, 1957, when it ceased to continue to do business. This defendant further denies that any partnership ever existed between him and Samuel R. Hubbard, Jr., to carry on a general business of a used car dealer under the trade name of Hubbard Used Cars at 4105 West Broad Street, Richmond, Virginia, between August 19, 1956, and October 24, 1957, or at any other time, as alleged in paragraph No. 1 of the motion for judgment, as set forth in affidavit hereto attached and made a part hereof.

2. This defendant did not make or cause to be made the purchases of automobiles from the plaintiff on August 15, 1957, mentioned in paragraph No. 2 of the motion for judgment, and was in no wise connected with, nor did page 5 } he have any interest in or knowledge of, any of the alleged transactions had by the plaintiff with the other defendant, Samuel R. Hubbard, Jr., as alleged in paragraph No. 2 of the motion for judgment.

3. This defendant denies any liability, either individually, or as an alleged partner of Samuel R. Hubbard, Jr., arising out of any and all of the facts and circumstances set forth in the plaintiff's motion for judgment.

4. This defendant denies the allegation contained in paragraph No. 3 of the motion for judgment and further says he is not indebted, either individually or as an alleged partner of Samuel R. Hubbard, Jr., to the plaintiff in any amount and does not owe the sum of money, or any part thereof, as demanded in paragraph No. 3 of the motion for judgment.

5. That no judgment for any amount should be given against this defendant, either severally or jointly, as demanded in paragraph No. 4 of the motion for judgment.

6. This defendant reserves the right to file such additional grounds of defense as he may hereafter be advised it is proper for him to file.

WHEREFORE, this defendant prays to be hence dismissed with his costs.

JOHN R. CULLINGWORTH.

State of Virginia,
City of Richmond, to-wit:

This day personally appeared before me, the undersigned Notary Public for the City of Richmond, in the State of Virginia, John R. Cullingworth, who, being first duly sworn, made oath that the statements contained in the foregoing grounds of defense are true; that he subscribed his name thereto and that he denies that any partnership beginning on or about August 19, 1956, and continuing to October 24, 1957, or at any other time, ever existed between him and Samuel R. Hubbard, Jr., to transact and carry on page 6 } the general business of a used car dealer under the trade name of Hubbard Used Cars, at 4105 West Broad Street, Richmond, Virginia, and he further denies that he and the said Samuel R. Hubbard, Jr., did, in fact, transact and carry on said business as a partnership, as alleged in paragraph No. 1 of the motion for judgment filed by the plaintiff herein, and he further denies that he either individually or as a partner of Samuel R. Hubbard, Jr., owes the plaintiff the sum of money, or any part thereof, demanded in the motion for judgment.

Given under my hand this 29th day of November, 1957.

MARGARET WATT
Notary Public.

* * * * *

page 41. }

* * * * *

In the Law and Equity Court of the City of Richmond, the 6th day of May 1958.

MOTION.

This day came again the parties, by counsel, and came also the jury sworn in this case, pursuant to their adjournment on yesterday, and having fully heard the evidence, on motion of the plaintiff, by counsel, the Court doth enter summary judgment against the defendant, Samuel R. Hubbard, Jr., in the amount of \$3,489.33. Thereupon, the issue joined between the plaintiff and the defendant, John R. Cullingworth, being fully argued, the jury was sent out of Court to consult of a verdict, and after some time returned into Court with a verdict in the words and figures following, to-wit: "We, the jury, on the issue joined, find for the plaintiff and assess the damages at \$3,489.33."

Thereupon, the defendant Cullingworth, by counsel, moved the Court to set aside the verdict of the jury and enter up final judgment in his favor upon the ground that the verdict is contrary to the law and the evidence, and without evidence to support it, or in the alternative to set aside the verdict of the jury and award him a new trial for errors committed by the Court in the admission and rejection of evidence, misdirection of the jury and refusal to discharge the jury on motion of this defendant, all as noted in the reporter's transcript, which motion the Court doth continue for argument thereon.

A Copy—Teste:

LUTHER LIBBY, JR., Clerk.
By EDWARD G. KIDD, D. C.

OB 34, p. 326

page 42 }

INSTRUCTION NO. 1.

The Court instructs the jury that it has entered summary judgment in favor of the plaintiffs against the defendant, Samuel R. Hubbard, Jr., for the sum of \$3,489.33. You are concerned only with the issue between the plaintiffs and the

defendant, John R. Cullingworth, hereafter referred to in these instructions simply as the defendant.

G.

R. L. Y.

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INSTRUCTION NO. 2.

The Court instructs the jury that in order to recover in this case the burden is upon the plaintiffs to prove by a preponderance of the evidence that the defendant was a partner in the business of Hubbard Used Cars at the time the plaintiff's claim came into existence.

A preponderance of the evidence is the greater weight of the evidence. You are the sole judges of the credibility of the witnesses. A verdict should not be based upon speculation, surmise, conjecture or sympathy, but should rest entirely upon the evidence in the case and the instructions of the Court.

G.

R. L. Y.

page 44 }

INSTRUCTION NO. 3.

The Court instructs the jury that a partnership is an association of two or more persons to carry on as co-owners a business for profit.

Such partnership relations are formed by a contract or agreement, expressed or implied, between two or more parties for joining together their money, goods, labor or skill in a venture or business, upon an agreement to divide the gains or losses between them.

It is essential to the formation of a partnership that the parties charged as partners have a community interest as common owners of the business which constitutes the joint undertaking and that such community of interest be of such nature as makes each member a co-principal and an agent of all members, with joint authority or right in the administration, control, or disposal of the business or its property.

In this connection, you are told, as applicable to this case, that there is no exclusive test or general rule that can be stated in deciding whether or not defendant Cullingworth was

a partner and no one factor or circumstance can be taken as conclusive, for your decision should be made upon a consideration of all the facts and surrounding circumstances. However, the following are certain factors which you should consider: (1) whether the defendant Cullingworth had a voice in or exercise any control over the conduct of the business; (2) whether the defendant Cullingworth shared in the profits of the business; 3) whether he had a community of interest as a common owner of the business; (4) whether he kept up with or knew the condition of the business; (5) whether he took an active part in the operation of the business; (6) whether he put money into the business.

G.

R. L. Y.

page 45 }

INSTRUCTION NO. 4.

The Court instructs the jury that a contract or agreement to the effect that one person will lend money to another engaged or about to engage in business, such money to be used in the business, the lender to receive a rate of interest varying with the profits, or a portion of the profits of the business, in lieu of interest computed in the usual way, does not of itself, and standing alone, make such lender a partner. But the transaction must be a *bona fide* loan, and not a mere cover to conceal an actual partnership. If the substantial rights and powers of a partner are given to the alleged lender, he is properly deemed to be a partner. On the other hand, if he has no right to a voice in the control of the business and the employment of the assets of the business, he is to be regarded as a lender only, and not a partner.

G.

R. L. Y.

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INSTRUCTION NO. 5.

The Court instructs the jury that if you believe from a preponderance of the evidence in this case that the defendant was a partner in the business at the time the plaintiffs' claim came into existence, then you will find your verdict for the plaintiffs and assess their damages at \$3,489.33.

On the other hand, if the plaintiffs have failed to establish

that the defendant was a partner at the time mentioned; then you will find your verdict for the defendant.

G.

R. L. Y.

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September 23, 1958.

Harry P. Anderson, Jr., Esq.,
 Wilmer L. O'Flaherty, Esq.,
 G. Kenneth Miller, Esq.,
 Attorneys at Law
 Richmond, Virginia

In *Re*: Pollard *v.* Hubbard & Cullingworth

Gentlemen:

I have concluded that the motion to set aside the verdict of the jury should be overruled. An order to this effect, rendering final judgment against both defendants, may be presented.

It may very well be, as argued, that Mr. Cullingworth never intended to incur the potential liability of a partner. But that would be immaterial, or, at the very least, not controlling. Instruction No. 4 given herein was taken almost verbatim from American and English Encyclopedia of Law and is in accord with the later authorities. 68 C. J. S. 437 et seq.; 40 Am. Jur. 169, 170. In Lindley on Partnership, 5th Ed., p. 17, a most authoritative work many times cited by our Court of Appeals, the text is, in part, as follows:

“If, however, a lender stipulates for more than this (e. g., for a right to control the business or the employment of the assets, or to wind up the business) or if his advance is risked in the business, or forms part of his capital in it, he ceases to be a mere lender and becomes in effect a dormant partner.”

The only intent necessary in a case of this kind is an “intent to contract for those things which the law
 page 50 } declares constitute a partnership.” In such case,
 “they will be partners although they may have intended to avoid this consequence or may even have expressly stipulated that they are not to be partners.” 22

Amer. & Eng. Enc. Law 26. Thus, in Lindley, op. cit., at p. 12, it is said:

“If they have in fact stipulated for all the rights of partners, an agreement that they shall not be partners is a useless protest against the consequences of their real agreement.”

See Also 68 C. J. S. 414, et seq.; 40 Am. Jur. 168, 169. This is the rule in Virginia. *Atl. Coast Realty Co. v. Townsend*, 124 Va. 490, 499.

Many of the authorities examined distinguish between a true “loan” and an “investment in the capital assets” of a business. In this case there was abundant evidence to the effect that the original agreement was of the latter class. This, coupled with the admitted control over the business, in my opinion justified the finding of partnership.

As to Cullingworth being a partner at the time the plaintiffs’ debt came into existence, it is true that a dormant partner, who is a partner in fact, but as distinguished from a partner by express contract openly trading as such or an ostensible partner, sometimes known as a partner by estoppel, may withdraw and incur no liability after withdrawal. Lindley, op. cit., Vol. 1, pp. 211, 214. But the burden of proving complete withdrawal was upon Cullingworth. *Adkins v. Hash*, 190 Va. 86. And by his own admission his interest was only lessened, not cut off.

A person cannot evade the usury laws and the risks incident to a mercantile business and at the same time furnish the capital assets of the business and control sales, by which the amount of his profit is governed.

Yours very truly,

RLY/e

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ORDER.

This day again came the plaintiffs and defendant, John R. Cullingworth, by counsel.

And the Court having maturely considered said defendant’s

motions to set aside the verdict of the jury and enter up final judgment in his favor or award him a new trial, and now being advised of its decision to be rendered thereon.

Therefore, it is considered by the Court that the motions of defendant, John R. Cullingworth, to set aside the jury's verdict be, and the same hereby overruled, and that the plaintiffs, Leslie Pollard and Ray Pollard, trading as Beavertdam Motor Co., recover of defendant, John R. Cullingworth, the sum of Three Thousand Four Hundred Eighty-nine and 33/100 Dollars (\$3,489.33), in accordance with the jury's verdict, with interest thereon at the rate of six per page 52 } centum (6%) per annum from the 6th day of May, 1958, the date said verdict was rendered, as well as their costs in this behalf expended, to all of which action of the Court the defendant, James R. Cullingworth, by counsel, object and except, and said defendant having indicated his intention to apply to the Supreme Court of Appeals of Virginia for a writ of error from and *supersedeas* to this judgment, it is ordered that the execution thereon be suspended for a period of four months from this date, and thereafter, if such petition be filed within said time, until the Supreme Court of Appeals of Virginia shall have acted on said petition provided said defendant, John R. Cullingworth, or some one for him, within thirty (30) days from this date, enter into a bond in the penalty of Four Thousand Five Hundred Dollars (\$4,500.00), with surety to be approved by the Clerk of this Court, conditioned according to the law relating to suspending and *supersedeas* bonds.

Enter Oct. 6, 1958.

R. L. Y.

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Received and filed Nov. 14, 1958.

Teste:

LUTHER LIBBY, JR., Clerk
By EDW. G. KIDD, D. C.

NOTICE OF APPEAL AND ASSIGNMENT OF ERRORS.

NOTICE OF APPEAL.

Notice is hereby given that the defendant, John R. Cullingworth, above named, hereby appeals to the Supreme Court of Appeals of Virginia from the order granting final judgment in favor of the plaintiffs, also above named, entered in this action on October 6, 1958, which said order gave judgment for the said plaintiffs against him.

Dated this 14th day of November, 1958.

JOHN R. CULLINGWORTH
By G. KENNETH MILLER,
Counsel.

ASSIGNMENT OF ERRORS.

The defendant John R. Cullingworth, assigns the following errors:

(1) The Court erred in overruling the defendant Cullingworth motions to strike the plaintiffs' evidence as to this defendant and to set aside the verdict on the grounds that the evidence was insufficient to sustain a verdict that a partnership existed between the defendants upon which page 54 } liability to the plaintiffs' could be sustained against this defendant and that the evidence showed that no partnership existed and thus no liability under the evidence existed upon this defendant, which motions were made at the conclusion of the plaintiffs' evidence, at the conclusion of all the evidence, on objection to the giving of instructions, and were renewed upon a motion to set aside the verdict.

(2) The Court erred in overruling the defendant Cullingworth's motions to strike the plaintiffs' evidence as to this defendant and set aside the verdict on the ground that the evidence showed that no partnership existed at the time of the transaction between the plaintiffs and the co-defendant and thus no liability vested upon this defendant which said motions were made at the conclusion of the plaintiffs' evidence and of the entire evidence, upon objection to giving of instructions, and upon motion to set aside the verdict.

(3) The Court erred in permitting the plaintiffs to examine the defendant Hubbard as an adverse witness without a showing of an adverse interest.

Samuel R. Hubbard, Jr.

(4) The Court erred in admitting evidence of a partnership by estoppel when no allegation of such had been made in the pleadings.

(5) The Court erred in permitting the witness Wilkins to testify as to the books of Hubbard's Used Cars when he had not made the entries and the plaintiffs had summonsed the witness who had made the entries and who was present and available to testify.

(6) The Court erred in overruling the defendant Cullingworth's motion to declare a mistrial upon the page 55 } questions from the jury after the case was submitted which showed that the jury considered matters other than the evidence.

(7) The Court erred in overruling this defendant's motion to strike the plaintiffs' evidence as to this defendant at the end of the case.

(8) The Court erred in overruling this defendant's motion to strike the plaintiffs' evidence as to this defendant at the end of the entire case.

(9) The Court erred in overruling this defendant's motion to set aside the verdict as contrary to the law and evidence as to this defendant and enter judgment for this defendant.

JOHN R. CULLINGWORTH
By G. KENNETH MILLER,
Counsel.

• • • • •

5-5-58

page 3 }

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SAMUEL R. HUBBARD, JR.,

one of the defendants, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:

Q. Give us your full name, please.

A. Samuel R. Hubbard, Jr.

Q. What line of business have you been engaged in?

A. Well, I have sold cars for quite a few years. I worked

Samuel R. Hubbard, Jr.

for Richmond Motor Company for approximately about three years. I worked at Lynn Pontiac over on Hull Street for approximately a year and a half. Also I was with Poppas at the Blue Ribbon Motor Company, and from there to the Richmond Auto Mart for approximately two years.

5-5-58 Mr. Anderson: I am putting this man on as an
page 4 } adverse witness, sir, in case I have not so stated.
The Court: Yes, sir.

Q. When along the line did you become acquainted with Mr. Cullingworth?

A. Yes, sir; I did.

Q. I said when?

A. Oh, when Mr. Poppas bought Mr. Cullingworth out at the Richmond Auto Mart, at 331 West Broad.

Q. That is when you first became acquainted with Mr. Cullingworth?

A. Yes, sir. Well, we had been on the lot a couple of times. Well, I had met him previously to that while I was working at the Richmond Motor Company. I carried up a couple of cars to sell him.

Q. To sell him?

A. Yes, sir, for Richmond Motor Company, you know, because of the fact that we wholesale when they are thirty days old.

Q. That is when Mr. Cullingworth was operating—

A. The Richmond Auto Mart.

Q. And you said he sold that business to Mr. Poppas?

A. Phillip H. Poppas, yes, sir.

Q. Do you remember the approximate year?

5-5-58 A. I believe it was in '56. I believe that. We were
page 5 } there about eleven months before they sold it. It
might have been 1955.

Q. Mr. Hubbard, I understand that you knew Mr. Cullingworth before you went to work at the Richmond Auto Mart, but that is where you got to know him?

A. Yes, sir; that's correct.

Q. You became very well acquainted with him then?

A. That's right.

Q. What discussions did you have with him about opening up a business at 4100 West Broad?

A. Well, I was managing a lot for Richmond Auto Mart after Mr. Poppas had bought this from Mr. Cullingworth, and stayed with him approximately eleven months, until the prop-

Samuel R. Hubbard, Jr.

erty was sold out from under us, under him. And we went to 3311 West Broad. I also managed his lot there, and stayed there approximately seven or eight months.

Mr. Poppas and I, we were not getting along so good, and he cut my money off. So then I started to buying a couple of units. Mr. Cullingworth would buy them, and I would sell them and take a portion of the profit, and Mr. Poppas would take the reserve.

Q. What would Mr. Cullingworth get on a deal like that?

A. He would take part of the money that I made
5-5-58 on the car. So finally I decided to open up my own
page 6 } lot. I asked Mr. Cullingworth if he would back me.

He said if I would get my lot set up and completed that he would back me.

.

Q. What understanding or agreement did you have with Mr. Cullingworth about buying and disposing of automobiles on the lot?

A. Mr. Cullingworth had been around me approximately a year and a half or two years there. He said he knew I would wheel them and deal them if I was going to buy. We would buy and stock the lot. If the plan was to keep them, he did not want any portion of it. But the idea is if we would go ahead and wheel the units out right on up, that he would back me.

Q. By wheeling them out, do you mean—

A. Don't keep them. Don't keep them. Sell them anywhere
5-5-58 from the day after we have bought them, on. So I
page 7 } tried not to keep them over two or three weeks at the
} most.

Q. What was the understanding about the sharing of the profit on the sale?

A. Well—

Mr. Miller: That is a conclusion, sir. He is leading the witness.

The Court: He can ask him what he did with the profits, if any, what his understanding was.

Mr. Miller: I think the question should be what the financial arrangements were, sir, rather than him trying to suggest any sharing of the profit at all.

The Court: One thing, gentlemen, if it is going to make

Samuel R. Hubbard, Jr.

any material difference in the examination of this witness—he is adverse, as I understand it?

Mr. Anderson: Yes, sir, yes.

Mr. Miller: Your Honor, we wish to point out to the Court, sir—

The Court: Better take a short recess.

Note: At this time the Court and counsel retire to chambers, whereupon Mr. Miller stated:

5-5-58

page 8 } In Chambers.

Mr. Miller: Your Honor, the statute is 8-291. That says he can call him—that you can call a party in like that when that party has an adverse interest. In this case, sir, the defendant Samuel Hubbard has defaulted in the pleadings. He has, of course, admitted for the record his liability. Now he has no adverse interest to this gentleman here at all, certainly on the line of testimony which is coming in here. As a matter of fact, sir, on these questions his testimony is not adverse to Mr. Anderson. His testimony—

The Court: It does not make any difference what the answers are. If his answers are favorable or unfavorable, that does not make him an adverse witness or not, because we assume that what he is doing is telling the truth.

Mr. Miller: But he is looking for someone to share this liability of his.

The Court: That might be important.

5-5-58

Mr. Miller: That is the situation here, sir. Here page 9 } in this situation it would be to his advantage for Mr.

Hubbard to establish Mr. Cullingworth as a partner so that Mr. Cullingworth has to pay the liability of the business he is operating. Now that he has defaulted to the plaintiff his liability is determined as to the plaintiff. There are no responsive pleadings on his behalf, sir; so that all the issues between them have been resolved, sir, and been determined. The only issues now are between the plaintiff and the defendant Cullingworth, and here, sir, the only interest which is adverse is the interest to us, sir, and not the interest of the plaintiffs here, sir. For that reason we do not think he can be called an adverse witness.

Mr. Anderson: I take the position, Judge, that he is a defendant. He has been sued here. If his testimony indicates that

Samuel R. Hubbard, Jr.

there was a partnership, nevertheless that does not relieve
 5-5-58 him or make him less of a defendant or less adverse
 page 10 } because the judgment—that is, if the jury believes
 that—the judgment will go against him and Mr.
 Cullingworth. The best evidence as to a partner-
 ship and as to the arrangements or agreements between them
 comes from the individuals themselves. I submit that the line
 of questioning is entirely proper to bring out what this under-
 standing was. Also that here is a man who is a defendant, and
 he is faced with the prospect of being rendered liable for an
 amount of money. I think the statute says that any defendant
 can be called as an adverse witness. What Mr. Miller is talk-
 ing about is that if a witness proves hostile, or you can show
 that he has a pecuniary interest in the outcome, or is related
 by blood or marriage, something like that in addition, why, he
 can become an adverse witness by showing these things.

The Court: Anything else?

Note: Said point was now argued by counsel, whereupon
 the Court stated:

The Court: I overrule the objection. I rule that he can ask
 him leading questions. So we will not have so many
 5-5-58 interruptions, we will have it understood that your
 page 11 } objection will run throughout the examination of
 Mr. Hubbard, sir.

Mr. Miller: Yes, sir. We would like to note an exception on
 the grounds stated.

Note: At this time the Court and counsel returned to the
 courtroom before the jury;

IN OPEN COURT.

By Mr. Anderson (Continued):

Q. You stated, as I understand it, that Mr. Cullingworth
 said if you wheeled them and dealt them, he was interested
 in the proposition. Now what I am asking is, what was the
 arrangement or agreement as to the profits?

A. Well, I spent a minimum of \$200. \$100 to Mr. Culling-
 worth and \$100 to myself, over the reserve.

The Court: What is the reserve?

Samuel R. Hubbard, Jr.

A. Well, when you finance a unit for 24 or 30 months, the dealer gets 20 per cent of the insurance and carrying charges over the amount of money that they lend on the automobile.

Q. Who was to get the reserve?

A. Well, the reserve would come to me. I used the reserve to offset the rent, telephone, water and lights, and for part of the help on the lot.

5-5-58
page 12 } Q. Where were these cars acquired that were sold on the lot?

A. You mean where we bought them from?

Q. Where did you buy them?

A. The biggest portion of them were bought from the Windsor Auto Auction. Some were bought off of the street. That is customers who drove into the lot and sold us cars, but the biggest portion were bought from the auto auctions.

Q. When you went to the auto auctions, did Mr. Cullingworth go with you?

A. Yes, sir. We went together.

Q. Who made the decision about what cars were to be bought, and the amount of money you were to pay for them?

A. Well, we would look at them and drive them together, inspect them together. Lots of times he would see things I wouldn't see, and vice versa. Like probably it might be hit maybe on the right or left, and we would turn it down, or try to jaw the man down some on the car. Or else we would go ahead and purchase it. You either turn it down—you have the privilege to either purchase it or turn it down, either one, after you bid on it.

Q. Who paid for these cars?

5-5-58
page 13 } A. Well, I paid for some of them right at first. Then Mr. Cullingworth would reimburse me until we would see what would happen on them. Then he bought a portion of them—in fact, he bought most of them down there.

Q. In buying these cars, if Mr. Cullingworth did not want to buy a car, would the car be purchased?

A. No, I could not buy it without his money.

Q. When the cars got back to the lot up here on West Broad Street, how much of the time did Mr. Cullingworth stay at the lot?

A. Well, Mr. Cullingworth, he stayed around there practically all the time on the lot. He would go and come.

Q. How many days a week were you open?

A. Six days a week, and until 9 o'clock at night. Eight in

Samuel R. Hubbard, Jr.

the morning until 9 at night. Five o'clock on Saturday evening.

Q. How much of that time would Mr. Cullingworth be there, could you estimate that?

A. Well, he did not put in the hours I put in. He would come and go. I put in the biggest portion of the hours, or right many hours, anyway.

Q. Was he there 50 per cent of the time, or 75 per cent of the time, or what?

5-5-58 A. He was there at least 50 per cent of the time.
page 14 } He came, yes.

Q. Did he answer the phone?

A. That's right.

Q. Did he use the office?

A. Yes, he used the office.

Q. Did he wait on any customers or any prospective purchasers?

A. He sold several cars for me. I never paid him any commission on them.

Q. The only money that he got was the division of the profits?

A. That's correct.

Q. From the units which were sold?

A. That's correct.

Q. He had an automobile, did he not, a personal car himself?

A. Yes, sir.

Q. What kind of car was that?

A. '56 Cadillac.

Q. What license plates did he have on that car?

A. He used one of my dealer tags.

Q. You mean the tags of Hubbard Used Cars?

A. Yes, sir.

5-5-58 Q. For what period of time did he use the dealer
page 15 } plates of Hubbard Used Cars?

A. Well, he picked up a dealer tag right after we purchased them. And I gave him a registration card. And he kept on it down until after I went out of the business, got ready to turn my dealer tags in to the Division.

Q. When was that?

A. I believe it was sometime in September, if I am not mistaken. The Division has a record of when I turned them in.

Q. '57?

Samuel R. Hubbard, Jr.

A. Yes, sir.

Q. And you went in business when?

A. '56.

Q. '56?

A. Yes, sir, August of 1956.

Q. This arrangement you have spoken of, was the way you initially operated, is that true?

A. That's correct.

Q. And what occurred later on, say in 1957, the last six months in '57 that you were in business?

A. We did business right along for about six months. Of course, all the units we didn't make as much on. Some of them we didn't make \$100 apiece on them. You see, we kept those three or four weeks. Then as the market goes every week, well, sometimes it will drop. In fact, the biggest portion of the time it would drop. And I did not want to keep those cars too long. So we would get together and cut the price of them, cut it even down to within \$150, or even \$50. Sometimes even \$25 and zero on a couple of units.

Mr. Cullingworth and I did business right along for about six months. Then all at once he just, well, started reducing his inventory which we had there. Then in September when the final end of my business, I think we cleaned out the last two or three cars on the lot that he had equity or money in. This was a '53 Cadillac. That was the last one. Also it was a '54 Buick that he took off the lot. I don't know what happened to that. I had to look for some help.

Q. In other words, you are saying that he tightened up on the money, is that the idea?

A. That's correct.

Q. How was Hubbard Used Cars able to stay in business?

A. Well, I couldn't—my feet were tied. I invested money to get the lot open. Also my parents' farm was mortgaged. I was just handicapped, that's all.

Q. This book I hand you now is—well, can you identify that?

5-5-58 A. That is the ledger book.

page 17 } Q. Is that what you call the cash ledger?

A. Yes, sir.

The Court: Of what business?

A. Hubbard Used Cars.

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Mr. Anderson: We offer that in evidence as Plaintiff's Exhibit No. 1.

Note: Said book is now marked and filed accordingly.

Q. And the next book I have in my hand is what? Can you identify that?

A. That is my book. There are accounts in there, I think, yes. (Witness looking through said book.) That is correct. That is an accounts ledger.

Q. That is for Hubbard Used Cars?

A. Yes, sir.

The Court: What is that called?

Mr. Anderson: It is called an accounts ledger, I think.

Note: Said ledger is now marked and filed accordingly as Plaintiff's Exhibit No. 2.

Q. What is this book here (indicating)?

A. That book represents the various sales, the retail buyer orders of Hubbard Used Cars.

5-5-58 Note: Said book is now marked and filed accordingly as Plaintiff's Exhibit No. 3.

By Mr. Miller:

Q. Conditional sales contracts?

A. Yes, that is correct. I would give them a retail buyer's order of the car they purchased.

By Mr. Anderson (Continued):

Q. What is this other book here?

A. This book here, this is accounts receivable of Hubbard Used Cars.

Mr. Anderson: We would like to file that as the next exhibit, sir.

Note: Said book is now marked and filed accordingly as Plaintiff's Exhibit No. 4.

Q. Mr. Hubbard, I have in my hand two insurance policies, one is a garage liability policy of the American Insurance Company, insuring Samuel R. Hubbard Used Cars from Au-

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gust 1, 1956, to August 1, 1957; also a similar policy with the Aetna Casualty and Surety Company from April 5, '57, to April 5, '58. I now ask you if those are the liability policies insuring the automobiles in the business of Hubbard Used Cars?

A. Yes, sir.

5-5-58 Mr. Anderson: I offer these in evidence as Exhibit No. 5.

The Court: I will use No. 5 for both of them.

Note: Said two insurance policies are now marked and filed accordingly as Plaintiff's Exhibit No. 5.

Q. And were these the policies of insurance under which Mr. Cullingworth's Cadillac was insured?

Mr. Miller: I object to that, sir.

A. That is correct.

Mr. Miller.: I do not think his conclusion should be drawn as to the coverage of those policies, sir.

The Court: Well, this is a written document. Does it require testimony?

Mr. Anderson: Let me ask him this way.

Mr. Miller: I am asking that the last question and answer be stricken out.

The Court: I will have to know more about it before I can rule on it. You want to know the identity of the car? Was this a fleet, Mr. Hubbard? The vehicles are not described individually, are they?

5-5-58 A. Well, that policy there, I had to have that page 20 } with the Division to cover all my dealer tags.

By the Court:

Q. They did not require you to furnish schedules of the vehicles on that, isn't that true?

A. I had to file the garage liability before I could get the tags.

Q. But to determine whether or not one of the policies covered a particular car—

A. It covered all cars on my lot.

Q. But they did not require you to submit schedules and motor numbers from time to time?

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A. Oh, no, sir.

The Court: Then we have to know, gentlemen, whether it covered any particular car, we would have to know the circumstances surrounding the car.

Mr. Miller: Do I understand that Your Honor is tentatively ruling out the question and answer, but you are permitting him to examine him?

The Court: We just do not have any evidence on it as yet.

Mr. Miller: Exception.

5-5-58 } Q. With reference to the car of Mr. Cullingworth
page 21 } during the period that Hubbard Used Cars was in
 } business, I believe you have stated that he had Hub-
 } bard Used Car dealer plates on his car, is that
right?

A. That's correct.

Q. Well now, can you tell us whether that would be one of the cars covered by this policy?

A. Yes. That car would be covered. He had the registration card to the dealer tag that he had on the car. That car would be covered on those policies.

By the Court:

Q. What kind of registration card did he carry on the vehicle? In the name of Cullingworth or in the name of Hubbard Used Cars?

A. No, Hubbard Used Cars. I have eleven or twelve tags. It is one similar to that, sir, (indicating) except it was for a dealer tag instead of a private tag.

Mr. Miller: Let me see that, please.

A. It is just a registration card, just the same as you have.

Mr. Miller: I would like to see it.

A. Surely (handing same to Mr. Miller).

Mr. Miller: This is not yours. This is for Eugene McCaul.

A. That is what I am driving. I don't have a car. I have his car in my care today, so I have the registration card, too.

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page 22 } By Mr. Anderson (Continued):

Q. I hand you seven small photographs of an automobile, bearing dealer license plates. Can you identify that car and the plates?

A. Yes, sir. That is a '56 Cadillac with the dealer tag of Hubbard Used Cars.

Q. Whose car is that?

A. Mr. Cullingworth's.

Q. Is that the car he used?

A. It is the Cadillac.

Mr. Anderson: We would like to offer this in evidence as Exhibit No. 6.

Note: Said pictures are now marked and filed accordingly as Plaintiff's Exhibit No. 6.

Mr. Miller: I am going to have to move the Court to strike the last portion of the evidence, sir, on this ground. The pleadings in the case set up an agreement for these parties to go in and associate themselves as a partnership. It does not claim any partnership by estoppel or any theory of that whatsoever.

5-5-58
page 23 } Of course, I understand, sir, the law to be that the agreement itself can be established by the acts of the parties, and so forth. Therefore, we have tried to allow Mr. Anderson some latitude in establishing the agreement, sir. But the agreement is the critical thing, sir, and we think that the evidence which he is now attempting to insert here is beyond an attempt to introduce an agreement to show that a partnership was entered into between these parties, sir.

The Court: They have already said they had an agreement. I overrule the objection.

Mr. Miller: Exception on the ground stated.

The Court: What have you there?

Mr. Anderson: I will show you, sir (indicating).

Mr. Miller: I do think that those which are of a similar character, that we could perhaps combine those, and see if the witness is familiar with them.

Note: Off the record discussion.

The Court: See if he can identify them. If he cannot, just put them aside for the time being.

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page 24 } Q. Mr. Hubbard, I have in my hand a check dated August 3, 1956, payable to Samuel Hubbard, \$1,500, by J. H. Cullingworth—that is what it looks like—can you identify that check?

A. In what respect? The check is payable to me. That is my signature on the back. Are you asking me—

Q. Can you state whether that check was given to you in the business of Hubbard Used Cars?

A. I believe this is the first money that I got after I set my used car lot up.

Q. You said that this is the first money Mr. Cullingworth put in the business?

Mr. Miller: He did not say that, sir.

A. Yes, after I got my lot open, yes, sir.

Mr. Miller: I object to counsel's misstating what the witness has said. The money that he received was what he said, sir, after he got into the business. That is what he said, sir.

Q. Can you tell us whether that check was money that Mr. Cullingworth put into the business?

A. That is exactly right. In fact, it was a—I believe it was two or three units, I believe, with this

5-5-58

page 25 } Q. Now this next check here—well, if we are going to go through each of these checks individually, if the gentlemen do not mind—Mr. Hubbard, in order to save time, can you just go down that sheet of paper, then I will take up the checks later and ask you if you can identify those checks. If there are some that you cannot identify, you can so state that fact.

A. Well, I believe this was the second check—

Q. Which one are you referring to now?

A. The second check on this sheet. The date is 8-13-56.

Q. August 13, 1956?

A. Yes, sir.

Q. Who is that made payable to?

A. Hubbard Used Cars.

Q. How much is it for?

A. \$4,375.

Q. Who is the maker of it?

A. J. R. Cullingworth.

Samuel R. Hubbard, Jr.

Q. The next check is made payable to Windsor Auto Auction and also the next check, is that right?

A. Yes, sir, that's correct.

Q. Now can you identify either one of those?

A. The second check, or the third and fourth?

5-5-58 } Q. Well, you have identified the first and second
page 26 } ones. I am now referring to the third and fourth
checks.

A. The third one in the amount of \$805, payable to Windsor Auto Auction, for an automobile. Then the fourth check here—

Q. Was that automobile there included as a part of—

Mr. Miller: Just a minute. Your Honor, I think that he is asking the witness to identify the subject matter.

A. I can tell you what they are for, if that's what you want. The third and fourth checks are payable to Windsor Auto Auction for merchandise that we bought.

Q. By merchandise you mean automobiles?

A. That's right, automobiles.

Q. Which were for Hubbard Used Cars?

A. That's correct. It was \$805. And the fourth check is \$9,235.

Q. Do the same thing here. I don't want you to—

A. These here (indicating)?

Q. Just go down the list there the same as you did on this other page, state whether you can identify these checks, and what they were for.

5-5-58 } A. Yes, sir. This check at the top, Windsor Auto
page 27 } Auction, for \$5,500. That was also for cars.

Q. That is made by whom?

A. J. R. Cullingworth, payable to Windsor Auto Auction.

Q. Now the next one?

A. The next one is in the amount of \$1,000, which is payable to Sam Hubbard, Jr. That is for a '51 Cadillac which was purchased in front of the lot. It was driven in there for sale.

Q. What is the date of that check?

A. August 31, 1956.

Mr. Miller: How much was that one now?

A. \$1,000.

Q. And you said that was for a '51 Cadillac?

A. Yes, sir.

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Mr. Miller: Which you say was purchased right off the street?

A. Well, it has written here, "'51 Cadillac," on the corner. I am positive it was one which was bought off the street, or either a car which was traded in on a unit that we had on the lot.

Q. That car went into the business?

A. Yes, sir.

5-5-58 Q. What about the next check?

page 28 } A. The next check is September 4, 1956, payable to S. R. Hubbard, \$1,500.

Q. Was that money used in the business?

A. Yes, sir. These checks were endorsed by me and deposited in the Hubbard Used Car account.

Q. All right, sir. How about the next one?

A. Now the next check, September 6, 1956, Windsor Auto Auction, \$1,830, J. R. Cullingworth.

Q. Was that money used for automobiles or an automobile?

A. Yes, an automobile or automobiles. I don't know whether it was one or two. Apparently it was one '56 unit, I mean. That went into Hubbard Used Cars.

Q. Now I hand you another page here containing four checks, and ask you to go down the list there.

A. This is dated September 13th.

Q. What year?

A. '56. Check payable to Windsor Auto Auction for \$760, J. R. Cullingworth.

Q. What is the next one?

A. September 14, 1956, Samuel Hubbard, \$1500, J. R. Cullingworth.

Q. Did that money go into the business?

A. Yes, this was endorsed and went into the business.

Q. What is the next one there?

5-5-58 A. This one is dated 9-20-56. I believe it is
page 29 } Howell Motors. This is \$1,235. That was signed J.
R. Cullingworth.

Q. Was that for—

A. This is a car which was bought through Windsor Auto Auction, but it came through check-title attached, a '55 Chevrolet, for Hubbard Used Cars.

Q. Now the next one?

A. September 27, 1956. Windsor Auto Auction. \$1,460. J. R. Cullingworth. This is also cars for Hubbard Used Cars.

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Q. I hand you another page with four checks on it, and ask you if you can identify each of those?

A. Here is a check dated October 2, 1956, Sam Hubbard, \$50, J. R. Cullingworth. I believe this \$50 check will represent approximately \$100 profit. He got the whole check for this car, a straight sale, and I took the \$50.

Mr. Miller: I do not think the witness should testify as to what he believes, sir. If he is reasonably sure and know from his own knowledge, that is one thing. Otherwise, I object.

A. I was asked to identify them, sir. You asked me—

5-5-58

page 30 } Mr. Miller: No, I did not ask you.

A. Oh, I am sorry. Excuse me.

Q. How about the next check here?

A. The next check is dated October 5, 1956. Hubbard Used Cars, for \$1,880, signed by J. R. Cullingworth.

Q. And this is for a '55 Mercury; is that for the business?

A. Yes, sir.

Q. What's the next one?

A. October 11, '56. Windsor Auto Auction, \$2,556. Signed J. R. Cullingworth. This is also for Hubbard Used Cars.

Q. How about the next one?

A. This is dated 10-29-56, Hubbard Used Cars, \$2,000, signed by J. R. Cullingworth.

Q. Did that money go into the business?

A. Yes, this money went into the business, endorsed as Hubbard Used Cars, Samuel R. Hubbard, deposit Hubbard Used cars account.

Q. I now hand you one other page here containing three checks, and will ask you if you can identify each of those, sir.

A. October 11, 1956, Windsor Auto Auction, \$1,763. Signed J. R. Cullingworth. This is a car for Hubbard
5-5-58 Used Cars.

page 31 } The next one is dated October 18, 1956, payable to Windsor Auto Auction, \$1,678, signed J. R. Cullingworth.

Q. Is that for—

A. This is also for the business, Hubbard Used Cars.

Here is a check dated December 12, '56, Hubbard Used Cars, and in an amount of \$90, signed J. R. Cullingworth.

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The Court: Do you know what that is for?

A. He did not ask me that. It is \$90.

Mr. Miller: Are you reading off of the check, or do you know?

A. I am looking at it, if you don't mind. I would like to take a look at it. My memory is not too long. No, I am sorry, I cannot tell you exactly what that \$90 is for. I might could check back over the records, and give you an answer, but—

Q. But that was payable to Hubbard Used Cars?

A. Yes, sir.

Q. Was that deposited to the business, can you tell us that?

A. Yes. That was deposited to the business.

5-5-58 Mr. Anderson: Your Honor, we ask that as a matter of convenience that all of these be stapled page 32 } together and introduced as one exhibit. That will be Number 7, I believe, yes.

Mr. Miller: Is it understood, sir, that we object to any evidence which would tend to show, or attempt to show any estoppel theory. We object to these.

The Court: We have not taken that up, gentlemen.

Mr. Miller: I think His Honor has ruled that this is an attempt to show corroboration of the contract. Is that Your Honor's ruling?

The Court: An attempt to show a partnership. I don't know whether a partnership by estoppel has to be specially pleaded. Does that have to be specially pleaded?

Mr. Miller: We object to any evidence on that, sir. I hope the Court will allow that objection to run all through the case rather than for me to keep on repeating it.

5-5-58 Mr. Anderson: I do not think that has to be specially pleaded, if Your Honor please.

page 33 } The Court: It does not change he is operating under any specific agreement, either one. It says on or about August, defendants associated themselves together to carry on a general business.

Mr. Miller: Sir, the only way you can have a partnership by a contract—it does not allege any setting out or any

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estoppel. The two are obviously inconsistent positions. If he is claiming partnership, he is claiming liability on the basis—

The Court: Let me interrupt you there, please. Do you have any law that they are inconsistent?

Mr. Miller: Yes, sir.

Note: At this time the Court and counsel retire to Chambers.

In Chambers.

Mr. Miller: If the Court please, the allegations in the pleadings in this matter allege that, in Paragraph 1: "That on or about August 19, 1956, defendants associated themselves together to transact and carry on the general business of a used car dealer, under the trade name of Hubbard Used Cars, at 4105 West Broad Street, page 34 } within the City of Richmond."

Now, sir, that very definitely sets forth an association of two persons together to transact and carry on a general business. They seem agreed it was going to be a used car business, and they were going to operate it under the name of Hubbard Used Cars, and at that particular location. So that the allegations of the plaintiff here are of a specific association, a specific agreement, with the partners going out and trading under this specific name.

It then alleges: "And as such did in fact transact and carry on such business as a partnership, which partnership on or about October 24, 1957, ceased to continue to do business."

In those allegations there is no allegation in here, in the pleadings—I want to make that perfectly clear to the Court that the plaintiffs in this case allege—which is the estoppel theory—there is no allegation in the pleadings that there

was not a partnership in fact, but that the defendant Cullingsworth held himself out as a partner of Sam Hubbard, or that he permitted Sam Hubbard to hold himself out, sir. Estoppel, of

course, sir, is a pleading to deny—is in a position in which the basic fact upon which the liability is based—that the party who the estoppel is set against is not permitted to deny that that fact existed. It is based, sir, upon a holding out, when in fact there was no—

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The Court: What does that have to do with the objection to this evidence? He said they associated themselves together to operate a partnership. Now he is showing piece meal how they operated, isn't he?

Mr. Miller: I think for the purpose of estoppel, sir—now some of these questions, well, I think, for example, in his questioning about—

The Court: I am not taking up the instructions now. I am letting him prove his case if he can.

Mr. Miller: I am just saying this. I want my
5-5-58 position throughout this matter to be clearly de-
page 36 } fined. I object to it if the evidence is now being
attempted to be introduced upon a basis of es-
toppel, and the issue here is very clearly a contract, with an
actual forming of a partnership, sir, if that is understood,
sir, throughout the evidence, then we can proceed all right,
sir.

As a matter of fact, I think most of this evidence is not material to show any partnership. These checks do not hold anywhere—

The Court: They may be subject to explanation. I don't know. I think you have to find out who took the title to these cars, and a whole lot of things more in addition, but he cannot put it all on in one breath.

Mr. Miller: I understand that, sir, but at some times evidence may be admissible for two purposes. I want to be certain, sir, that I am being fair to the Court at the outset of this thing.

The Court: You tell me if you rely on partner-
5-5-58 ship by estoppel that you have got to plead it. In
page 37 } one suit if you fall down on proof by agreement,
but your proof does show by estoppel, can't you go
ahead and get judgment against both?

Mr. Miller: No, sir, not without the allegation. Estoppel as a defense always has to be specially pleaded, sir. As a defense it certainly has to be pleaded. If he wants to allege estoppel—

The Court: He alleges a legal conclusion, that they were in fact partners, and operated as such.

Mr. Miller: He alleges a contract at a specific time.

The Court: That does not make it a specific contract. That is the beginning of the course of the dealing. He does not allege any specific contract.

Mr. Miller: He alleges an agreement to create a partner-

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ship, sir. There is no allegation in here of anything except an association by two parties together to carry on a partnership. Said he did carry on as a partnership, sir.
 5-5-58 He said they started about August 19, 1956. He
 page 38 } said that the partnership continued until October
 24, 1957, and ceased to continue to do business at
 that time, sir. Now certainly, sir, that is setting out clearly
 an association for a contract to operate a partnership, sir.

Mr. Anderson: I do not agree with Mr. Miller's theory about this contract to operate. I think that it can be spelled out by acts, by the agreement of the parties, sir, but mainly, in getting back to his question of can a person against whom the proof is inadequate as to a partner in fact be held liable as a partner to third parties—the answer is right here in this case.

Note: At this time Mr. Anderson argues said point, whereupon the Court stated:

The Court: Show me the law which says that if you are going to make a man liable on the ground that he is estopped to deny partnership, you have to specially plead it.

Mr. Miller: I vouch that estoppel has to be specially pleaded. I vouch that.

Note: Off the record discussion.

5-5-58

page 39 } Mr. Miller: Your Honor, we do not want to
 waive our position that we specifically rely upon
 the motion for judgment, and that we object to the evidence
 being introduced for any other purpose than to prove the
 transaction to the agreement and the association by these
 two persons to carry on the business as is set forth in the
 pleadings, sir.

The Court: Well, the date is not a material allegation to him. If they were in fact operating as partners at the time these debts were incurred with the plaintiff, it does not make any difference whether it began the day before or on the date mentioned in the motion for judgment, does it?

Mr. Miller: Yes, sir; it would make a difference, sir. He has alleged something which occurred at a certain time. We come here prepared to defend upon the allegations in the motion for judgment. Now if he wants to allege something

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else, Your Honor, we must be apprised of what the claim in this case is. If he wants to prove something else, 5-5-58 sir, we take the position he should allege it and page 40 } prove it.

The Court: All the proof up to now has been in accordance with the claim set forth in the motion for judgment. Now whether or not he is entitled to an instruction on holding out and estoppel, notwithstanding the fact that they may not have been partners, we would have to complete that phase of it when all the proof is in. Then we can meet that. But I will have to be shown the law that you cannot show holding out and partnership in fact in the same case and recover on either one of them if the proof justifies it.

Mr. Miller: I want to say this, sir. Is it understood that I do not waive my position by continuously objecting upon this particular point, and the exception is noted?

The Court: Yes, sir.

Note: At this time the Court and counsel returned to the courtroom before the jury.

In open court.

By Mr. Anderson (Continued):

5-5-58 Q. Referring to the exhibit containing pictures page 41 } of a certain automobile there, sir, can you read the license plate, Mr. Hubbard?

A. Yes. It is UD-26-122.

Q. Is that on all of those pictures?

A. Correct, yes, sir.

Q. I hand you a certificate from the Division of Motor Vehicles, and ask you to examine that, and tell me whether the license plate that you read out is one of those which was issued to you? That is, issued to Hubbard Used Cars?

A. Yes, sir.

Q. Can you find it on there?

A. Yes, sir, right at the bottom. It is UD-26-122, issued in the name of Samuel R. Hubbard, trading as Hubbard Used Cars, 4105 West Board Street, Richmond, Virginia.

Q. That is for what year now?

A. '57.

Q. '57?

A. Yes, sir.

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Q. How many plates were issued to Hubbard Used Cars?

A. There were nine.

Q. That was one of them?

A. Yes, sir.

5-5-58

page 42 } By the Court:

Q. That means that the title to the car was in Hubbard Used Cars' name, doesn't it?

A. No, sir; these are dealer tags.

Q. But who had the title to that particular car?

A. Mr. Cullingworth had the title to that Cadillac. He held all titles.

By Mr. Anderson: (Continued)

Q. The car that we are referring to is the one that Mr. Cullingworth personally used, is that right?

A. Yes, sir; that is correct.

Note: Said picture just referred to is now marked and filed accordingly as Plaintiff's Exhibit No. 8.

Q. I am going to ask you to examine a certain number of checks and tell us whether those checks were drawn on the business of Hubbard Used Cars, and for what purpose. Now it is not necessary for you to go over each check. Just look at them. I think they are all for one purpose.

A. (Witness looking through same.)

Q. My first question is this: Were those checks drawn on the business account of Hubbard Used Cars?

5-5-58 A. That's correct.

page 43 } Q. And to whom was each of them made payable?

A. Payable to J. R. Cullingworth.

Q. Do they represent the money that Mr. Cullingworth received from Hubbard Used Cars from the checking account of Hubbard Used Cars?

A. That's correct.

Q. I also hand you a deposit book, in account Hubbard Used Cars, Virginia Trust Company, and ask you if you can identify that.

Mr. Anderson: We offer this as the next exhibit, as one exhibit, all these checks.

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Note: Said checks are now marked and filed collectively as Plaintiff's Exhibit No. 9.

Q. Can you identify this deposit book?

A. Yes, sir. It is my deposit book, Hubbard Used Cars.

Q. Hubbard Used Cars?

A. Yes, sir.

By the Court:

Q. You have not told us—now I realize you have not been asked this—these checks, they represent money, if they do, of Mr. Cullingworth. Now were they all for the same type of thing, or were some for one type page 44 } and some for others? Could you go through them and tell us what they were for? How you happened to draw them, and why the money is due, and so forth?

A. Well, each check I feel sure—I might check back, but each will represent a certain amount of profit which was made on that particular unit which the check was given on.

By Mr. Anderson: (Continued)

Q. Let's take for example the first check there. How much is that?

A. \$1,900.

Q. What you are saying is that it was the method of doing business, that that check, or a check similar to that would cover the amount of cost of an automobile, plus the profit in it?

A. Well, I think this check here of \$1,900, that represented roughly \$100 profit to him on this check here (indicating).

Q. What does the \$1,800 represent?

A. The purchase price of the vehicle.

Q. And is that—

A. That is \$100 to me would be on the trade-in of the unit.

5-5-58 It is hard for me to identify each check, because it could have been a straight sale. It could have had page 45 } a trade-in on it. That was working on a \$200 margin, sometimes it was less than that.

Mr. Anderson: If Your Honor please, we have an accountant who will come in here later and go through each one of these.

This book has been identified, sir.

Samuel R. Hubbard, Jr.

Note: Said book is now marked and filed accordingly as Plaintiff's Exhibit No. 10.

By Mr. Anderson: (Continued)

Q. These automobiles that were purchased, in whose name was the title vested?

A. The titles were in the name of Hubbard Used Cars. And these trade-ins—

The Court: Before you come to that, let me say this. I do not mean to interfere with the way in which you are putting your case on, but one thing has been bothering me. I would like to ask you this. When you go to a market and buy a car, and Mr. Cullingworth would have the money ready, and you would take the title you said in the name of Hubbard Used Cars?

A. Yes, sir.

By the Court:

5-5-58 Q. Do dealers actually get a title from the Motor
page 46 } Vehicle Department?

A. Yes, sir. They apply for it.

Q. Would it show any lien on it in favor of Mr. Cullingworth?

A. It is supposed to, yes, sir.

Q. Who would make the application for that title? Would you make it out in your office?

A. Yes, sir. I would apply for the title and sign it over to J. R. Cullingworth, with a lien to him, and in my name. You see, I would have to do that because the license, you know, so that the cars would be covered with insurance.

Q. Titled in your name with a lien in his favor, is that the way you worked it?

A. Yes, sir; yes, sir. We buy five cars, say, at the auto auction. They have to assign them to someone. The seller would have to assign the title over to some name, to the buyer, you see.

Q. The auction is a cash deal?

A. It would still have to have a name, sir.

Q. I understand, but no old liens are carried through auction sales, are they?

A. Oh, no, sir; no, sir; no, sir.

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By Mr. Anderson: (Continued)

5-5-58 } Q. Now these trade-ins that you mentioned, can
page 47 } you explain to us a car which was titled in the
name of Hubbard Used Cars would be sold, and if
there was a trade-in, how would that title be carried?

A. Well, I didn't have any excess money to take care of myself, and if we had \$2,000 in a unit, trying to work on a \$200 profit, and the trade would come in, say we would draw \$1,200 difference. I would take that \$1,200 and make a \$1,000 loan on the trade-in, which would give us \$200 profit. He would have the title.

Q. Mr. Hubbard, do you recall when Mr. Pollard here came to the lot over on the 4100 block West Broad?

A. Yes, sir.

Q. I believe that was in August of 1957?

A. Correct.

Q. Was Mr. Cullingworth there?

A. Yes, sir, he was there at that time.

Q. Did you introduce him, did you introduce Mr. Pollard to Mr. Cullingworth, do you recall?

A. I don't recall whether I introduced them or not. Mr. Pollard came on the lot several times. I don't know whether I introduced him to him at that particular time or not. I feel sure that I did before he left.

Q. And what did you tell Mr. Pollard about your relationship or association with Mr. Cullingworth?

5-5-58

page 48 } Mr. Miller: Your Honor, of course, that would
be objectionable, sir, unless the defendant Cullingworth was actually present. I would have to object to that question, sir.

The Court: Mr. Anderson, what about that?

Mr. Anderson: I think that there is a case, Your Honor, in which this was admitted. It is an admission. It is a statement by one of the alleged partners as to the partnership.

Mr. Miller: I think, sir, that if we go any further than this—and I hate to say this, but we are going to have to take this up in the absence of the jury.

The Court: Yes, that might be best.

Note: At this time the Court and counsel retire to chambers.

In Chambers.

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Mr. Anderson: We are in this position, Your Honor. The law with regard to holding out is that first of all there must be a holding out either knowingly by the individual to be charged there—there must be a holding out by
 5-5-58 him—or it may be knowingly or negligently made
 page 49 } by some other person.

The Court: And no steps taken to correct the impression.

Mr. Anderson: That is No. 1. Now the second step is that this must be brought home to the claimant, and the claimant, acting on the faith of such a representation, must have transacted the business. In other words, there are two cases on this point. The latest case is—

The Court: I do not understand this yet. You want to show partnership by having one of the partners say that he told a party who got injured in the transaction that this other fellow was his partner?

Mr. Anderson: That's right.

The Court: Is that the law? That you can make another liable as a partner in that manner?

Mr. Anderson: I don't think if you don't have any more than that—I think that if that statement was made and it was with either the express or implied consent of
 5-5-58 the party to be charged, that you can.
 page 50 }

The Court: Oh, yes, certainly you can, but that is back to your first proposition, that where there is a duty to correct an erroneous impression and the duty is not fulfilled, the man has to suffer the consequences. Is that going to be this situation? You just asked this witness a question: Did the admitted operator of the business say that somebody else was in back of him in the capacity of partner? That is the question that you put to this witness.

Mr. Anderson: That's right. Whether that assertion has been made, representation was made.

The Court: How is that binding on it? I am allowing you to put in everything to show that they operated as partners in fact. I am allowing you to put in everything that shows if they were not partners in fact, that the plaintiffs had a right to be of the opinion that they were. I think I am going to let you recover on either theory. But this proposition of making a man, without his knowledge or
 5-5-58 consent, a partner, I don't know whether that is
 page 51 } evidence or not.

Mr. Anderson: Well, how else can I bring home the fact

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that it was made known that my man was aware of it, that the plaintiffs here were aware of it? I mean, here is a fellow who according to the statements of the witness, he says that he was—he said, “This man is my partner.” He said, “We were in the business.”

The Court: The witness said—

Mr. Anderson: The witness said that. Now the license is in the name of the witness, of one of them; and the lease is in his name. So he goes over to make a deal with my man.

Note: Off the record discussion.

The Court: Gentlemen, I will have to rule this evidence out for the time being. Now if you make a jury issue on the question of estoppel, I will allow you to bring it up again.

Mr. Miller: Is the Court ruling then that you are going to permit the case to go forward on the basis of estoppel?

5-5-58 page 52 } The Court: I do not know what the evidence is going to be as yet.

Mr. Miller: We are surprised, sir, and will have to save our exception on that point, sir.

The Court: I will sustain the objection for the time being on that particular question.

Mr. Anderson: The plaintiff excepts on the ground that although the evidence may not be probative to show that a partnership in fact existed, nevertheless it would be probative to show that the fact of partnership was brought home to the plaintiffs, and they relied upon it.

Note: At this time the Court and counsel returned to the courtroom before the jury:

In open court.

By Mr. Anderson: (Continued)

Q. I was asking you about when Mr. Pollard came on your lot the first time. I asked you if Mr. Cullingworth was there, if you recall.

A. Yes. I am positive Mr. Cullingworth was there when Mr. Pollard came on my lot the first time.

5-5-58 page 53 } Q. You say that he made several subsequent visits to the Hubbard Used Cars lot?

A. Yes, sir, that is correct.

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Q. Is there any reason, so far as you know, why Mr. Cullingworth did not know that Hubbard Used Cars was negotiating or purchasing two units from Mr. Pollard?

Mr. Miller: I think the condition of his mind is not in issue here, sir.

The Court: I do not think so. Just get the facts as to how he happened to make those sales. I don't believe this witness can testify to what Mr. Pollard had an opportunity to observe, and so forth. I think that *porbably* would ultimately be a jury issue.

By Mr. Anderson: (Continued)

Q. When the two units were brought on your lot, that is the two automobiles which came from the plaintiffs, which were brought onto the Hubbard Used Cars lot, do you know whether Mr. Cullingworth was there at that time or at any subsequent time to see them?

A. I am positive he was there, because I went up and got them that afternoon, if I recall correctly.

By the Court:

Q. Is that the way this indebtedness arose? You 5-5-58 purchased some automobiles from these people? page 54 } A. Yes, sir. I had went out and gotten cars myself, and brought them back. He had subsequently stood for my getting them.

Q. Where was the deal accomplished? At their place in Beaverdam?

A. Yes. On one of them, and the other one at the lot.

Q. They brought it down and you examined it here?

A. I went up and one was delivered to me, sir. I bought one from Beaverdam and—

Q. The one you bought in Beaverdam, was Mr. Cullingworth with you when you—

A. Not on the one I got at Beaverdam, no, sir.

Q. How about the one which was delivered in Richmond?

A. He was there on the lot when the second one came in, yes.

Q. Did he examine it?

A. No. It was a new car, brand-new automobile, both of them.

By Mr. Anderson: (Continued)

Q. It is true, isn't it, that the first units which you spoke of,

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5-5-58 rather the first automobile that was purchased
page 55 } from the plaintiffs, delivery of the automobile, the
automobile was not delivered at Beaverdam but
was driven to Richmond, and it was delivered at
the lot in Richmond?

A. That's correct. He delivered me the title at first. Then the cars were delivered.

Q. The two cars?

A. The two cars were delivered to my lot later.

By the Court:

Q. Did you take up this matter with Mr. Cullingworth? Did he know you were to buy them?

A. No. They were brand-new cars. It was \$100 over dealer cost, which we considered to be a pretty decent buy.

CROSS EXAMINATION.

By Mr. Miller:

Q. You said that prior to the time that you went into business for yourself up on West Broad Street that you worked for Poppas Used Cars, or I believe it was Richmond Auto Mart, wasn't it?

A. Correct.

Q. And you worked there as a salesman, is that correct?

A. Manager.

Q. Manager?

5-5-58 A. Yes, sir.

page 56 } Q. Were you managing for Mr. Poppas, trading
as Richmond Auto Mart, is that the way it was?

A. Yes, sir.

Q. And you were there an employee of Mr. Poppas, is that correct, sir?

A. Well, I was hired in there as manager.

Q. You were paid a salary for your work there, weren't you?

A. Yes, sir.

Q. And there was a withholding tax taken from your salary?

A. Correct.

Q. Did you and Mr. Poppas get along all right?

A. We did fine for about, oh, I guess about a year and a half.

Q. But at the time you went up to West Broad Street next

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to Gilleo's, at that time, sir, you were not getting along so well, were you?

A. We were getting along all right then. That was after the property had been bought out from under us on West Broad.

Q. Well, the property was purchased then, without going too far in that matter?

A. We were just renting, yes.

5-5-58 Q. Where was that, sir?

page 57 } A. I believe I have forgotten that address.

Q. Was it across from where the Hot Shoppe is now?

A. Yes, sir; yes.

Q. Then Mr. Poppas moved west of there, didn't he?

A. Yes. 3311 West Broad.

Q. Did you go up there with him?

A. Yes, sir.

Q. You acted as manager of the business there?

A. Yes, sir.

Q. Then you and Mr. Poppas separated, you were no longer an employee of his, is that correct?

A. I stayed with him there for approximately nine months.

Q. And you left there in December of '56?

A. Correct.

Q. And when this idea came up, you were going to start your own business, isn't that correct, sir?

A. Yes, sir; that's correct.

Q. And I believe your first step was when you decided to go into this business—that you went to look for a good lot that you could operate this business on, isn't that right?

5-5-58 A. No, sir. My first step—I discussed it with
page 58 } Mr. Cullingworth. I had to have a partner. That
was my first step. My second step was finding a
lot.

Q. Now I ask you again, did you discuss with Mr. Cullingworth the question of financing of cars? That is what you discussed with him, isn't it, sir?

A. I discussed with Mr. Cullingworth coming in with me as a partner, or either trying to buy out Mr. Poppas at Richmond Auto Mart.

Q. Then did you start the business subsequent to that time?

A. I got Mr. Cullingworth's approval. Then I went looking for a lot.

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Q. Now you said you got his approval. Did you ask him would he lend you some money if you started this business on West Broad Street?

A. Yes, I asked him that.

Q. You asked him if he would finance some cars if you went into that business up on West Broad Street, isn't that correct, sir?

A. No, sir. He was to back me in the business one hundred per cent.

Q. When you back a man, Mr. Hubbard, you mean by that that he is going to finance automobiles in a used car business, isn't that correct, sir?

5-5-58 A. No, sir. The bank did the financing.

page 59 } Q. The bank did the financing?

A. Yes, sir, on the units that we had.

Q. How many units did the bank finance?

A. Well, we sell a car. They would—I would take a credit statement and call to the bank. They would approve the credit.

Q. When you went up to the lot on West Broad Street, sir, did you enter into a lease for the lot?

A. Yes, sir.

Q. And you entered into the lease for that lot, didn't you?

A. Mr. Cullingworth asked me to get my lot all set up, my insurance and everything, and then he would come in with me.

Q. He told you, sir, didn't he, Mr. Hubbard, before the arrangements were made—that the arrangements between you two would be that he would finance some cars for you, isn't that correct, sir, just like a bank?

A. Give me that first question again, sir. I did not understand you.

Q. I will ask you this again, sir. Who signed the lease for the premises on which the used car lot was to be used?

A. I signed the lease.

5-5-58 Q. I will ask you, sir, I will ask you to look at
page 60 } this lease and tell me whether or not that is your
signature on there?

A. That is correct.

Q. And this lease is between Joseph L. Gilleo and Samuel R. Hubbard, Jr., isn't that correct, sir?

A. I was renting from Schmidt & Wilson.

Q. They were the agents, isn't that correct, sir?

A. Yes.

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Q. But this lease is between you and Mr. Gilleo, isn't it, sir?

A. His name is there, but I dealt exclusively with—not Schmidt & Wilson, it was A. D. Smith on Main.

By the Court:

Q. Mr. Gilleo was the owner of the property, I expect.

A. Yes, sir.

Note: Said paper writing is now marked and filed accordingly as Defendant's Exhibit A.

By Mr. Miller: (Continued)

Q. You also, Mr. Hubbard, went out and made a contract for the lights with the lighting company, did you 5-5-58 not?

page 61 } A. That was after I got my approval from Mr. Cullingworth, yes, sir.

Q. And you entered into similar contracts like the lease with the light company and with the water company, too, didn't you?

A. That was our agreement, to get the lot open, and he would come to my rescue.

Q. You also have been in the used car business for some time, have you not, sir?

A. I have been selling for quite a few years, yes, sir.

Q. And a used car dealer has to have a license from the Division of Motor Vehicles to operate a used car business, does he not, sir?

A. That's right, sir.

Q. You went down and applied for a license to operate it, sir?

A. Correct.

Q. And you made application for that license under oath, did you not, sir?

A. Yes, sir.

Q. In that application, too, sir, did not you make oath first that this was to be operated as a full proprietorship with you as the owner?

A. I was the owner when I opened it up, yes.

5-5-58 Q. And did you make oath further, sir, that page 62 } the business of Hubbard Used Cars was not to be operated as a partnership?

A. I do not remember that, sir. I might have.

Q. Would you like to see your signature and refresh your

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memory? I will ask you first to look at the end of the paper and see if this is your signature (indicating)?

A. Yes, sir.

Q. I will direct your attention, then, sir, to Question No. 8 which says: "Is the business owned by an individual?" The answer that you made to that was what, sir?

A. I said, "Yes."

Q. Then the next question is this: "Give the name and residence of the owner." And you have put in there, "Samuel R. Hubbard, Jr.," haven't you?

A. At that particular time.

Q. Just stay right there for a moment, sir. The next question is: "Is the business owned by a partnership?" And you put in there, "No," didn't you, sir?

A. At that particular time, yes, sir.

Q. At the conclusion of it you signed the statement which states: "I do solemnly swear that the statements contained in the foregoing application are true and correct"?

5-5-58 } A. That's correct.
page 63 }

Q. "And that I as proprietor have authority to sign this application, and to make the statements contained herein." Is that correct, sir?

A. At that particular time, yes, sir. At that particular time.

Q. And that was made on the 31st day of July, 1956, isn't that correct, sir?

A. Right.

Q. And that is your statement, sir, that was the way it was when you first opened the business up?

A. That's right.

Q. Did you ever change that with the Division of Motor Vehicles, sir?

A. Never did.

Q. You never did?

A. No, sir.

Mr. Miller: I ask that this be marked as Defendant's Exhibit B.

Note: Said paper writing is marked and filed accordingly,

Q. Did you at any time change that statement with the

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Division of Motor Vehicles?

5-5-58

page 64 }

A. I never changed it as a partner.

Q. Then did you then have to get a license for each year that you operated, sir?

A. I did, sir.

Q. Didn't you go back in 1957 to also apply again, sir?

A. I did, sir.

Q. I will direct your attention to your statement of May 31, 1957, sir, and ask you first to look at this as part of Exhibit B.

A. Yes, sir.

Q. Look at Question No. 8 in that application; it says, "Is the business owned by an individual?"

A. I admit that I never changed it.

Q. You said, "Yes," didn't you?

A. Yes.

Q. And you also gave as the name and residence of the owner, "Samuel R. Hubbard, Jr.," didn't you, sir?

A. I agree.

Q. And the question: "Is this business owned by a partnership?" What answer did you give to that, sir?

A. No.

Q. "No," didn't you, sir?

A. Yes, sir.

5-5-58

page 65 }

Q. And that is subscribed and sworn to by you?

A. Yes, sir.

Q. One other thing, sir. Is Mr. Cullingworth the only person who gave you financial aid when you first entered into this business up on West Broad Street, sir?

A. Mr. Cullingworth was my partner from the beginning for about six months, and I think approximately a month and a half or two months, as I stated before, business was very good, and at that particular time—well, Mr. Warner from the Central National Bank approached Mr. Poppas and I—well, they asked me if I could take these units over. And then I—

Q. I do not mean to cut you off, sir, but—

Mr. Anderson: You asked him if he got any financial assistance from anyone else, and he is trying to tell you.

Mr. Miller: At the time he started his business.

A. That is what I am trying to tell you now, sir.

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Q. Excuse me, sir.

A. So Mr. Warner, assistant cashier from Central National Bank, approached Mr. Poppas and I. Mr. Poppas had a line of wholesale with the Central National Bank and the units were not moving. He asked me if I would
5-5-58 take them over, and I agreed to do so. And that
page 66 } was the only cars that I took over, which Mr. Warner from Central National Bank let me go down and move them up to my lot. Those were the only units I had on my lot other than the units Mr. Cullingworth had gotten.

Note: At this time a recess was taken for the lunch period. Following same, the examination continued:

By Mr. Miller: (Continued)

Q. Mr. Hubbard, referring back again to these licenses to do business, a used car dealer has to first obtain those licenses and then they post them in the office of their business. Is that correct, sir?

A. Well, I had to file an application for a license. Then—

Q. You got your license, did you not?

A. Yes, sir. I got my license.

Q. You got your license out of this (indicating), is that right?

A. Yes, sir; that is correct. I assume you are referring to the application.

Q. That is the application?

A. Yes, sir.

Q. And you obtained the license to do business?

A. That's correct.

5-5-58 Q. And then, of course, the license showed who
page 67 } the business was operated by, didn't it, sir?

A. Yes, sir. I was—it was in my name at that particular time.

Q. And at the time that you filed these applications with the Division of Motor Vehicles on the two dates in the two applications, you obtained a license to do business as a used car dealer pursuant to these applications?

A. Yes, sir.

Q. And those licenses, of course, stated: "Hubbard Used Cars, trading as Samuel Hubbard, Jr.," is that correct, sir?

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A. That's correct, sir.

Q. Now you as a dealer, of course, took that license and put it on a wall in your office, isn't that correct, sir?

A. That is correct, sir.

Q. Now that wall which we are speaking of, that is the building out there on the lot next to Gilleo's Restaurant where you operated Hubbard Used Cars dealership?

A. Correct.

Q. Is that more than one room, or is it one big room, sir?

A. Yes, sir, it was one large room, and two small—well, what I did, one I used for a tool room and put
5-5-58 equipment in to wash cars, and so forth.

page 68 } Q. And the license was posted in the large room where the public went in, is that correct, sir?

A. Yes, sir.

Q. That is where you dealt with people?

A. That's correct, sir.

Q. Now at the time that you went into this used car business, what employees did you have?

A. When I first went into the business?

Q. Yes, sir.

A. Well, I had my brother that came in with me as a salesman. And I had gotten the place opened and had this colored boy, Aubrey Wood, which came in as a mechanic, then also later on I had a white boy. His name was Huff, Curtis Huff, to come in and wash automobiles.

Q. You hired each of these persons, I assume?

A. Yes, sir.

Q. Did all of them stay with you until the business was finished?

A. They would stay and go—like a lot of them will, I mean—

Q. But you did the hiring and firing of these employees, if there was any firing or hiring?

A. Well, my brother, I do not have to hire him. He automatically came in.

5-5-58 Q. They were employees of the business and
page 69 } you had withholding statements of taxes and so forth?

A. Correct.

Q. And you paid their salaries out of the checks signed by you?

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A. Out of the business, that's right.

Q. Now then, were there any other employees hired other than those that you have named?

A. Well, I had—you see, at times when the lot was full of automobiles, it was impossible for one man to wash 40-some cars per day and do the other things; so occasionally we would pick up some help maybe for a couple of days, or, you know, help to wash a few, but not hire them, you know.

Q. When you say that that was done, you are referring to the fact that you went out and hired some additional help?

A. Well, there was always plenty of help coming by the lot looking for jobs. They would work a couple of days. Then you don't see them for a couple of weeks or a month. I was looking for someone regular on the job.

Q. You would, of course, hire and discharge them, or make the arrangements yourself?

A. That's right.

5-5-58 Q. And you had sole authority to go ahead and
page 70 } do that if you wanted to do that, isn't that cor-
 rect, sir?

A. Well, there wasn't too much authority needed to get a colored boy. Of course I did it.

Q. It was your business, you had the right to do that if you wanted to?

A. Yes, sir.

Q. Is that right, sir?

A. It wasn't my business. I did the hiring and firing, I mean of the colored boys when I picked up extra help, as I stated before.

Q. Well now, you obtained the license from the City of Richmond to operate the business, did you not, sir?

A. Yes. I set the complete business up at first. That was the agreement, that's right.

Q. And you got it in the name of Samuel R. Hubbard, trading as Hubbard Used Cars?

A. That was the understanding, yes, sir.

Q. You did that in '56 and again in '57, isn't that correct, sir?

A. Never changed it in '57, that's correct.

Q. And you paid the license taxes out of the accounts which you opened up in the banks, isn't that correct, sir?

A. The first, yes.

5-5-58 Q. What bank did you first open your deposit
page 71 } account with?

A. Central National Bank.

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Q. Central National Bank?

A. Yes, sir.

Q. I hand you a signature card of the Central National Bank, and ask you if that is your signature appearing on that card (indicating)?

A. Yes, sir; that is my signature.

Q. I also note for your attention the fact that next to that you put the word "owner," isn't that correct, sir? And at the top you put the words, "Hubbard Used Cars"?

A. No, sir. I did not write "owner."

Q. You did not write "owner" on there?

A. No, sir.

Q. Is that the way you wanted the checks written? That is: "Samuel R. Hubbard, Jr., owner of Hubbard Used Cars"?

A. No. I don't understand your question. Are you asking me did I sign the word "owner" here, or was that signed—

Q. I will put it this way. At the time you signed this card, was the word "owner" on there?

5-5-58 A. I don't know, sir. This is not my hand-
page 72 } writing on that. I signed it as Samuel R. Hubbard,
Jr.

Q. That is not writing, it is printing, isn't it, sir?

A. No, I would not say it is printing. I don't believe it is printing.

Q. You opened up this account, isn't that correct, sir?

A. I opened the account up, yes, sir. That is not my handwriting on the front either, sir.

Mr. Anderson: Do I understand that that is not in his handwriting?

A. That is not my handwriting on the front.

Mr. Anderson: To save time, we will stipulate this, that the account, the checks could be drawn only by Samuel R. Hubbard from that account. We will stipulate that.

Note: Said paper writing just referred to is now marked and filed accordingly as Defendant's Exhibit C.

Q. Now you spoke with someone at the Central National Bank about opening up this account, isn't that correct, sir?

A. That is correct.

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5-5-58 Q. And you requested that your checks show
 Samuel R. Hubbard, Jr., as owner of the Hubbard
 page 73 } Used Cars, isn't that correct, sir?

A. No. I don't remember making that statement, sir.

Q. I will hand you, sir, a check dated August 18, 1956—I believe this is one drawn at random here—to Walter W. Hubbard. That is your brother, isn't that correct, sir?

A. Correct.

Q. That is for \$50 and does not that check at the top show it is printed as Hubbard Used Cars, down in the right-hand corner Samuel R. Hubbard, Jr., owner?

A. That's correct.

Q. That is the way you wanted your checks, that is the way you signed them, isn't that correct, sir?

A. That's correct.

Q. Now could you tell us why this check of \$50 was given to Walter W. Hubbard?

A. This check—I don't know exactly what that is for. It might be for a commission. I don't know what it is for, but it might be that. I see it is endorsed by American Finance. He had a loan. It might have been advancing him \$50 to make a payment, I don't know.

Q. You did that, didn't you, sir?

A. Yes, that is my check.

5-5-58 Q. Payable to him. You decided whether or not
 page 74 } you would give him that check, sir?

A. It could be for commission, like I said. I hired him with a salesman's license.

Q. And your salesman had a license from the Division of Motor Vehicles, isn't that right?

A. Absolutely.

Q. And they had to keep those on them, didn't they?

A. Yes, sir.

Q. That is required by law, isn't it?

A. Yes, sir.

Q. I will ask you this then, sir. Here is a check for A. O. Wood, \$35, dated August 18, 1956. Now who is A. O. Wood, sir?

A. That is the guy I mentioned to you a while ago.

Q. You were paying his salary for the work performed—

The Court: I imagine that he would concede that he took care of all the expenses for the business.

Samuel R. Hubbard, Jr.

By the Court:

Q. You do concede that you took care of all the expenses and paid all the expenses of the business and its operation, and so forth, out of this checking account page 75 } count with the Central National Bank?

A. Yes, sir; that's correct.

By Mr. Miller: (Continued)

Q. Who was John H. Washington, sir?

A. I believe that is a colored boy that I got to help on the lot, too, if I am not mistaken. It is right hard to carry all of that stuff in my mind. I will do the best I can.

Q. I hand you a check dated August 18, 1956, payable to S. R. Hubbard, and signed by S. R. Hubbard, Jr., owner, and the same way these other checks are made payable. Is that your signature, sir?

A. Yes, sir.

Q. Who was that payable to?

A. To me, sir.

Q. Is that to you personally?

A. Yes, sir. I would think so.

Q. For \$25?

A. \$25.

Q. And you took cash out of the account?

A. Well, I kept some cash on me to buy things from persons like the Spotless Store, all like that—just all stuff like that, just petty cash. I would either turn in receipts to answer for this money—oh, apparently on the back page 76 } of this check here it indicates hardware store. That was Richardson Hardware Store, 3102 West Broad Street. That was apparently was for something to use on the lot, and so forth, such as a water hose or powder.

Q. Who was O. H. Whitten, sir?

A. O. H. Whitten. That is Mr. Whitten in Farmville that I mortgaged my mother and father's farm to get the business open. And it is the first payment back towards them.

Q. Mr. Whitten?

A. Yes, sir. He endorsed the loan. My mother and father put up their farm for me to get the business opened down here. I was asked to get it open. Then I would have—

Q. You said you got some money, you put that money into the business?

A. I spent it up there in that red mud of Mr. Gilleo's, getting it open, sir.

Samuel R. Hubbard, Jr.

Q. But the money you obtained from Mr. Whitten, did you buy an automobile with that, sir?

A. No, sir. That money did not come from Mr. Whitten. He just endorsed the note. My father and mother put up their farm.

Q. You have told us that three times. We are now talking about this fact. Did you buy any cars with it
5-5-58 is what I said.

page 77 } A. No, sir; no, sir.

Q. How about this one to Valentine Auction Company? Did you have any dealings with them?

A. Yes, sir. Bought several things from them.

Q. Did you buy any automobiles from them?

A. No, sir.

Q. What was this payment for, do you know?

A. I believe it is for a desk and something else. I am not sure. I believe it was for a desk and chair, and filing cabinet that I was supposed to have—had to have that in there in order to meet the Division's requirement, and so forth.

Q. Are you a member of the local Order of the Moose, sir?

A. No, sir. I paid \$10.

Q. Was this a contribution?

A. No, sir. I paid \$10 to join it and never have done it.

Q. How about the Reliable Furniture Company? What was that for?

A. Is it \$45?

Q. Yes, sir.

A. This is paid in full. Apparently something my wife got, or both, it might have been money that I owed
5-5-58 down there. I just can't tell you.

page 78 } Q. Did you have a personal account down at Reliable Furniture Company?

A. I did. I don't—I did have an account, yes, sir, but that is paid out.

Q. Did you ever buy anything from Reliable Furniture Company for the business?

A. My wife might have bought me a lamp or something, but other than that, I don't think so.

Q. Then this was really a payment on your personal account, wasn't it?

Samuel R. Hubbard, Jr.

A. I cannot say that it was.

Q. Would you say it was not?

A. Well, it was either for some small item in the office or my personal account.

Q. Did you have two accounts down there?

A. No, sir.

Q. And the account you had—

A. You see, my wife would have gone down and perhaps charged a desk or a lamp for me.

Q. But your wife was not operating the business with you, you were doing that?

A. Well, she ran a couple of errands for me, though.

Q. You would concede, sir, that all of these
5-5-58 checks are signed by you, isn't that correct, sir?
page 79 } Take a look at all of them (indicating).

Mr. Anderson: We concede that, Your Honor. The point has been made time and time again. I have stipulated it, that the checks drawn on that account were drawn by Mr. Hubbard.

Mr. Miller: All right, sir.

Q. I hand you then, sir, checks in October, '56, December, '56, March, '57, April, '57, February, '57, January, '57, November, '56, and ask you, sir, during this whole course of time in which you were in the business you did not sign your checks in the way that they are signed on those checks, sir?

A. That is correct, sir.

Q. And you decided when the checks would be paid, and so forth, and when bills would be paid and how they would be paid, didn't you, sir?

A. With the help of Mr. Cullingworth, yes, sir.

Q. With the help of Mr. Cullingworth?

A. With the help of him, yes, sir.

Q. Exactly what did he do, sir?

A. Well, you want me to finish with this first, or tell you—

The Court: He wants to know if you dis-
5-5-58 cussed the business expenses with Mr. Culling-
page 80 } worth.

A. That was discussed at the first, sir. As I stated before,

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we were working on a \$200 margin with reserve to offset the expense, which I stated, I believe, in Court this morning, and at times we would take less than true profit.

Q. I am asking if you did not make the bills and pay the bills for the business?

A. Yes, sir; yes.

Q. And you decided when and where and what they would be paid, and you wrote the checks and sent them out?

A. Yes, sir.

Q. Did Mr. Cullingworth have anything to do with that part of it?

A. No, sir. I made the bills.

The Court: I will mark all of these checks together as Defendant's Exhibit D.

Note: Said checks are now marked and filed accordingly.

Q. What was the bank that you dealt with after you stopped dealing with the Central National Bank?

A. I believe it was the Virginia Trust.

Q. The Virginia Trust Company?

5-5-58

A. I believe so.

page 81 }

Q. When you went and dealt with the Virginia Trust Company, sir, this was sometime in the spring of '57, isn't that correct?

A. I did not deal there but about a month. I don't remember the exact date when it was, sir. But the account will show the date that I opened it up and closed it.

Q. Could you tell us, sir, how you dealt with your banking at that institution? Did you not also sign a signature card and have the checks made payable to various persons, with you as the owner of Hubbard Used Cars, just as you had them with the Central National Bank, sir?

A. That will show there.

Q. Go ahead and look at it, sir.

A. That is correct, sir.

Q. And these matters were handled in the same way they were at the time of the Central National Bank?

A. That's right, sir.

Q. What was the next institution you dealt with, sir?

A. I believe it was First and Merchants.

Q. First and Merchants?

A. Yes, sir.

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5-5-58 Q. You also held yourself out there as the owner
page 82 } of the business, as Hubbard Used Cars, did you
not, sir?

A. If it is on the check, that is the way it was
set up, yes, sir.

Q. Look at it then and see if there is any doubt about
it.

A. Yes, sir. I would like to see it. Yes, you are exactly
right, sir.

Q. Is that right?

A. Yes, sir.

Q. Again that is Hubbard Used Cars, with Samuel R.
Hubbard, Jr., owner, is that correct?

A. Samuel R. Hubbard, that's right.

Mr. Miller: If the Court please, it might be well that I
collect all of these here together before I give them to the
Court.

Q. How about the savings—

The Court: Just a minute there, please. If you want the
Virginia Trust in, you better give them that next. Then
take that up next.

Mr. Miller: That would be Defendant's Exhibit E then.

5-5-58

page 83 } Note: Said group of checks are now marked and
filed accordingly as Defendant's Exhibit E.

Q. Now you dealt with the Savings Bank & Trust Com-
pany, also, did you not, sir?

The Court: No. If that is all for First and Merchants
now—

Mr. Miller: I believe that is all for First and Merchants,
Judge. Just give me a moment here, please.

Q. Now, when you opened up your account with the Sav-
ings Bank & Trust Company, you similarly opened it as
Samuel R. Hubbard, Jr., owner, isn't that correct, sir?

A. That's right.

Q. We talked about an insurance policy this morning with
the American Insurance Company. They cancelled that
policy, did they not, both of them?

Samuel R. Hubbard, Jr.

A. Is that for liability, sir?

Q. (Counsel handing a paper writing to the witness.)

A. I think this will identify a liability policy on the automobile which was in my name at the time that I opened the lot up. The company cancelled that policy and wrote a garage liability one, which covered all of the units on the lot. I think you will find that is what that is for right here (indicating).

5-5-58 Q. And you opened that up as Samuel R. Hubbard, Jr., trading as Hubbard Used Cars, isn't that correct, sir?

A. Well, the policy that I had previous to that was in my name, Samuel R. Hubbard, Jr., which is the way that I sign all of them.

Q. This one on the insurance on the lot, you have opened that one as Samuel R. Hubbard, trading as Hubbard Used Cars?

A. That's right.

The Court: I will now file these here as Defendant's Exhibits F, G, and H.

Q. During all this period of time, you dealt with people as Hubbard Used Cars, isn't that correct, sir?

A. Yes. That is the way I opened it up.

Q. We have shown you the checks from the time that you opened up until the time your business was closed, is that correct, sir?

A. That is correct, sir.

Q. You were present at the lot, I believe, every day, is that correct, sir?

A. Yes, sir. Just about every day. And at night, too.

Q. During that period of time you handled the transactions with all of these various people, the power company as to the lights, the leases, and with all the expenses of the business, is that correct, sir?

5-5-58 A. Yes, sir.

page 85 } Q. And you made the decision as to which ones would be paid and who they would be paid, and wrote the checks?

A. That is correct, sir.

Q. Mr. Cullingworth did not have anything to do with that, did he?

A. No, sir, not with writing the checks.

Q. Or making decisions as to how it would be paid?

Samuel R. Hubbard, Jr.

A. No, sir.

Q. He was not on a bank account of Hubbard Used Cars, only your name was on that?

A. He was not on the bank account book, but he helped to put it in there.

Q. But he did not have his name on accounts?

A. No, sir.

Q. He had no right to write checks on the accounts of Hubbard Used Cars, is that correct, sir?

A. Correct.

Q. A few months afterwards some of the checks that you gave to Mr. Cullingworth in payment of cars were returned to him as unsatisfactory payment, isn't that correct?

5-5-58 } A. Insufficient funds, a couple of them.
page 86 }

Q. At the time you went into the business on this lot where you started, did you have any cars other than those financed by Mr. Cullingworth?

A. Yes, sir; I think I had a couple of—two or three units that I had bought that I was in the process of repairing.

Q. Then that is right, sir?

A. Yes, sir.

Q. Could you tell us exactly where you got those vehicles?

A. Yes, sir. One of them was a '56 Pontiac that I got from Lumbermens Mutual Insurance.

Q. Did you fix that car up, sir?

A. Yes, sir.

Q. Do you remember how much you paid for it to Lumbermens Mutual?

A. I believe it was six or six and a half, if I am not mistaken. It has been a good while ago. But I think I am close.

Q. Do you remember how much you sold it for?

A. When I folded up my business, the business collapsed, I had it floor planned with Mr. Harrison.

Q. Do you still have that car?

A. Yes, siree.

5-5-58 } Q. You kept it for over a year?

page 87 } A. Yes, sir.

Q. Where else did you get—

A. That particular unit was in my name.

Q. In your name?

A. Yes, sir.

Q. Did you have any other units?

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A. Yes. I had a '56 Chevrolet in my name. I put that car in my sister's name.

Q. You put it in your sister's name?

A. Yes, sir.

Q. Why did you do that, sir?

A. To get my money back to repair it.

Q. You will have to make that a little clearer. Explain that to us, sir.

A. Well, these two units, the Pontiac caught on fire right on the inside, you see. I bought it. I was going to repair it myself. Also the Chevrolet.

Q. The Chevrolet, you said that belonged to you?

A. Yes, sir, I bought it.

Q. How much did you pay for it?

A. \$850.

Q. \$850?

A. Yes, sir.

5-5-58 Q. Did you repair it, sir?

page 88 } A. Yes, sir.

Q. Did you sell it?

A. No, sir. I didn't sell it. I had approximately \$2,000 in it, and it ended up stolen.

Q. It ended up stolen?

A. Yes, sir.

Q. Do you know where it is now?

A. No, sir. I saw it here last week. Some lady was driving it. It is in Richmond, but I don't have it, sir.

Q. You said you put it in your sister's name?

A. Yes, sir. I bought the car as a wreck. It was hit in the right-hand front. I was going to repair it. I did repair it right at the end before my lot collapsed, as I stated before. I got approximately \$2,000 in the car, and the car ended up stolen. It was taken away from me.

Q. It was taken away from you?

A. Yes, sir.

Q. Well now, what was it doing in your sister's name?

A. Well, you see, I bought the car for eight and a half. I paid for it, and I put it in her name in order to get my eight and a half back.

5-5-58 Q. Why did you have to do that, sir?

page 89 } A. I didn't have the money to just let it sit.

I had to have the money back in the business.

Q. Did she finance the car for you?

A. No, sir. I just used her name.

Q. Where did you get the cash for this car?

Samuel R. Hubbard, Jr.

A. She went to the bank, and I put the car in her name until I could repair it.

Q. Did you pay monthly payments on it?

A. Yes, sir.

Q. It was in her name, however?

A. Yes, sir.

Q. Were the monthly payments paid out of Hubbard Used Cars lot?

A. Yes, sir; yes, sir.

Q. Did you keep that car up there?

A. I brought it on the lot after it was repaired, yes, sir.

Q. Where was it before it was repaired?

A. At Turner Body Shop on Route 60.

Q. You said the car was stolen?

A. No, sir, I said it ended up stolen. The FBI said it was stolen.

Q. Where was it stolen from, sir?

A. Well, I got this man to repair the car. I paid
5-5-58 him \$800. And they said the car that I had was
page 90 } stolen.

Q. Was it stolen from the lot where you were operating the business?

A. No, sir.

The Court: It was a stolen car long before he had anything to do with it. I think that is what he means.

A. Yes, sir. That is correct. I had \$2,000 in the car myself.

Q. So what you purchased from this person was a stolen car, and they took it back, took it away from you, is that right?

A. As far as I am concerned, it was taken away from me, sir.

Q. Did you have any other vehicles on the lot when you opened up?

A. I don't remember right off-hand—as I testified a while ago, there were roughly \$8,000 or \$9,000 worth of cars that the Central National Bank asked to put on my lot and to dispose of, that Richmond Auto Mart had.

Q. So that there were about \$9,000 worth of cars financed by the Central National Bank which were on your lot when you opened up?

Samuel R. Hubbard, Jr.

A. No, sir, approximately two months later. A
5-5-58 month and a half or two months later.

page 91 } Q. A month and a half or two months later?

A. Yes, sir.

Q. You have an item here from the Central National Bank, dated August 1, 1956, for \$2,475. Do you know what that is, sir? What that is for?

A. \$2,475?

Q. Yes.

Mr. Anderson: I think it is only fair to let the man see the books if it will help him refresh his memory in any way.

Mr. Miller: Yes, sir. Yes, indeed.

A. That was a '55 Cadillac, Coupe de Ville, which I had bought wrecked, and fixed up and sold.

Q. Did you sell that car, sir?

A. I traded it in on a '56 convertible from Jones Motor Car Company.

Q. On a '56 convertible?

A. Yes, sir. After it was repaired, it kept on breaking, the windshield did, and so on and so forth.

Q. Was that a car which was for sale on the lot?

A. Yes. It was for sale for profit, yes, sir. Everything we had was for sale.

5-5-58 Q. You said you traded that car in on another
page 92 } one?

A. Yes, sir. It was a wreck. I bought it wrecked and repaired it. And I put in a couple of windshields. You see, the body was not lined up just right, or something.

Q. \$2,475. Now do you recall how many you traded in for on the other car?

A. That is what I bought the car for, about \$2,400 from Lacy's Auto Parts. Then I spent approximately \$1,200 or \$1,300 repairing it.

Q. Then how much did you trade it for?

A. I believe after repairing the car—I believe I gave eight difference, that difference, after the car was repaired.

Q. Then you got a car from Jones Motor Company in exchange, is that correct?

A. Correct.

Q. And you took the money out of your account from the Hubbard Used Cars to pay that difference?

A. No. I think Mr. Warner financed about \$3,300 for me.

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if I am not mistaken, at Central National Bank, in my name.

Q. That was on this car that you got from Jones Motor Company?

A. That's correct.

5-5-58 Q. Was that car ever sold, the one from Jones
page 93 } Motor Company?

A. No, still have it now. It was taken away from me. It was taken away from me when I closed my lot.

Q. Why was it taken away from you?

A. I couldn't pay for it.

Q. Did you have any other cars on the lot at the time? How about Lumbermens?

A. That was the one I told you about a while ago.

Q. What about this (indicating)? Does that say Commercial Credit? There is an item there for \$1,200?

A. Yes, sir.

Q. Well, were they financing a car on the lot, too?

A. No, that was a car traded in on a new unit, and it was—the bookkeeper got out of the books—it had not been paid off at that particular time.

Q. Did you sell that car, sir?

A. Yes, I assume so.

Q. Do you know how much profit you made on it?

A. No, sir; I don't. I would have to look up that car invoice and see.

5-5-58 Q. On this car like this one you sold (indicating)
if you sold that car that the Commercial Credit was
page 94 } financing, if you made \$200 profit, would that be
put into Hubbard Used Cars account?

A. No. Mr. Cullingworth got his portion, and a lot of times mine would be in the unit.

Q. Other than those financed by Mr. Cullingworth which he did not—if you sold those cars, you would put that money into Hubbard Used Cars account, is that correct?

A. No. It would come—wait a minute. Let me see if I understand you. You are talking about a car traded in on a unit that I have on the lot?

Q. No. Let's assume that one of these cars on the lot that is for sale—

A. Right.

Q. Now it is one of the cars other than those that Mr. Cullingworth has financed and had the title for, or the lien on the title, is that correct, sir?

A. Yes, sir.

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Q. Now one of those other cars, if it were sold and you made a \$200 profit or \$100 profit, was that deposited to the account of Hubbard Used Cars?

A. I don't think you will find any that he did not buy.

Q. Is that right?

5-5-58

A. Yes, sir.

page 95 }

Q. But assuming that you did sell one, would he be entitled to something in a car other than those he financed?

A. He would be entitled to his profit, that is correct, sir.

Q. Did you ever give him anything on any car other than the cars he financed?

A. As I stated a minute ago, I don't think you will find any which were not paid off, other than the one in my sister's name.

Q. After this time who else financed cars besides the Central National Bank for you, and Lumbermens Finance Company and Commercial Credit, any others who financed cars for you, sir?

A. Lumbermen's Mutual did not finance cars for me. That was a unit I bought from them. As to Commercial, now they did not finance any.

You see, if a man comes on the lot and he has a car, and he owes \$1,000—Universal CIT might be a lienholder, or the Bank of Virginia, or whoever it may be—that car is on my lot—and say I make another deal on the car, then I have to give the bookkeeper, let them know who this money is owed to in order to get a title, you see.

5-5-58 Q. Those cars, though, there were cars on there
page 96 } financed other than by Mr. Cullingworth?

A. Well, no. They were not financed. The purchaser who had the car had previously bought the other car—you know, from some other dealer. And it had been financed through them. Then when it came to me, I either had to have the title or find out where it was filed. Then I would call up and get it paid off.

Q. Mr. Cullingworth had the liens on the titles to the cars that he had financed, is that correct, sir?

A. Yes, the cars that was on the lot, yes, sir.

Q. And all of them that he financed he kept the liens on the titles, is that correct, sir?

A. He did not finance them. He stocked my lot.

Q. He did not?

A. No, sir.

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Q. And you say that he stocked your lot, but he kept the liens on the cars?

A. That's right, on some of them.

Q. When you went out and when you purchased an automobile, Mr. Cullingworth would tell you how much he would loan on that car, would he not?

A. Well, he would pay the full purchase price of it.

5-5-58 Q. But you would not buy it unless he would
page 97 } loan that much on the car, would you, sir?

A. Well, I have bought the cars, and bought the cars back on titles, and he reimbursed me until they were sold. Then we split it.

Q. When you went out and bought an automobile, you would ask him how much would he loan on that car, isn't that correct, sir?

A. Never did that.

Q. Never did, Mr. Hubbard?

A. No, sir.

Q. You did not?

A. No, sir.

Q. During this period was there—

A. I will take that back. After about six months, yes, after about six months, Mr. Cullingworth started to reducing his inventory. Then it was a very few that he bought that I could not get the amount that I really wanted on it, after doing business about six months.

Q. Mr. Hubbard, wasn't the only arrangement between you and Mr. Cullingworth that he would lend you so much on cars that he could see and determine how much he would make a loan on to you, isn't that correct, sir? Do you deny that, sir?

A. Yes, sir, I do deny that.

5-5-58 Q. Do you deny that the arrangement between
page 98 } you and Mr. Cullingworth was when he financed a
car for you that you would pay him a certain
amount of money, say \$25, if he financed a car up
to \$500, you deny that, sir?

A. Yes, sir.

Q. Do you deny, sir, that you would pay to him a specific sum for financing a car up to \$1,000 of \$50, sir?

A. I do, sir.

Q. Do you deny that you would pay to him a specific sum up to \$1,500 of, we will say, \$75?

A. That is correct, sir.

Q. And \$100 up to \$2,000?

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A. That's right.

Q. None of that was paid as far as you are concerned, is that true?

A. That's right. We arrived at those figures.

Q. What do you mean you arrived at those figures, sir?

A. Well, as I testified before, I had talked and discussed it with Mr. Cullingworth. I was to open the lot, along with mortgaging my mother and father's farm, to get it open. And Mr. Cullingworth said, "If you will wheel them and deal them, all right." I have testified to that before. He said, "But if you are going to keep them and leave them here, and ask a big profit, I don't want any part of it."

5-5-58 } So we worked a \$200 profit, plus the reserve,
page 99 } to offset the bills, sir. And at various times I paid
him \$75. Sometimes it would just be \$25 and \$25
and then it might even be nothing.

Q. You said you were to own the business, though, there is no question about that, is there?

A. Well, yes. I had to—I had to when I applied for a license and all. I owned it then because I had not received anything or gotten anything or had anything drawn up.

Q. When you applied for the license the next year, it was the same way, wasn't it, sir?

A. I admit they were not transferred.

Q. You owned the business, that's all there was to it.

A. It was in my name.

Q. Did you own it, sir?

A. No. It was in my name.

Q. Could you have sold Hubbard Used Cars if you wanted to?

The Court: I do not think that it is necessary to go into that.

Q. In approximately February of 1957, sir, you were looking for other people to finance cars for you, were you not, sir?

5-5-58 } A. Yes. I had to look for help.

page 100 } Q. And you went to a number of different
people, isn't that correct, sir?

A. I was desperate trying to get help anywhere I could.

Q. Would you tell us the names of persons other than Mr. Cullingworth who financed cars for you?

A. Well, I approached several people, and told them we had been very successful for five or six months, and that I was

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satisfied with the operation of the business. And after a couple of checks of mine bounced from Mr. Cullingworth, he started reducing cars that he had money in out there. I didn't have any choice but to try to get some help.

Q. What you would do, sir, was when you sold a car, you would give him your check for the amount of his loan, isn't that correct?

A. I would give him the check for the amount of his profit. Then he would then re-loan me on the trade-in to offset mine.

Q. But you would, in effect, when you sold an automobile, if you sold a clean deal, say you sold it outright, then you would then take and pay him a check for the amount of his loan, plus a certain amount, whether it was as we have said a specific amount for the loan or whether you say it

5-5-58 is a part of the profit, isn't that correct, sir?
page 101 } A. Yes. I said I would pay him his part of the profit. And he would then re-lend me mine on the trade-in.

Q. Wouldn't you pay him the principal first, sir?

A. Yes, sir.

Q. And the principal would be the amount loaned on this particular car, isn't that correct, sir?

A. Yes. The man was paid for it; plus the profit.

Q. Plus the profit or the amount we state was the specific amount above the amount of the principal?

A. Plus the profit of that car, yes, sir. We split it.

Q. In January or February of 1957, you were looking for a number of other people to finance cars?

A. Yes, sir.

Q. Would you tell us, sir, the names of those persons who you also got to finance cars?

A. Well, I got several guys from the Greyhound Bus Terminal to go and put units in their names.

Q. Who were they?

A. Well, I don't know. Let's see, one of them was—what was that guy's name? I think one of their names
5-5-58 was Mr. Brairford, Mr. Tolley, and I had a Mr.
page 102 } Ernest Mosby, Mr. Harris. Now let's see, Mr. Cook, Mr. Robert Cook.

Q. Were all of them at Greyhound, sir?

A. No, sir; no. Mr. Cook—

Q. Who was he with?

A. Colonial Stores.

Q. How would you work this?

A. Well, when I approached these guys, I told them I had

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been working on a \$200 profit, and that I was willing to give them \$100. Then if I took the loss, it would just be mine, that I would automatically give them \$100 to use for their credit, for using their credit, you know. And, of course, I would pay for the insurance. Then if I did not make a dollar or if I lost, it would just be mine, because I did not have any choice.

Q. When did you deal with these persons?

A. It was right along about the time, about six months later after I went in business, about the time those two checks bounced.

Q. In the fall of '56?

A. It was right around six months after I opened up the lot on Broad Street. I don't know what month it would be, but approximately right along in there.

5-5-58 Q. You opened the lot up when, July or August
page 103 } first?

A. August first, I believe.

Q. August first?

A. I believe so.

Q. You said that you operated the business that way until what time?

A. I think Mr. Cullingworth and I were together in real operation for about six months. Then when I folded my lots up, I still had a couple of units there that he had equity in.

Q. Then he was only in partnership, if there was one, about six months?

A. No. He had cars on the lot when I folded up in September.

Q. You said that it went about six months. Is that how long that you and he dealt together, under your way of putting it, sir?

A. Yes. We were really buying for about six or seven months, yes, sir.

Q. After that period, he did not have anything to do with it, sir, is that correct?

A. Yes, sir. He had something to do with it. He did not stock the lot anymore. He was reducing the money that he had out of the lot.

5-5-58 Q. He would not finance any more cars, would
page 104 } he?

A. Yes. He might have bought one or two, but

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not going to the auto auctions and spending \$11,000 and \$12,000 like we had done previously.

Q. Did he actually finance any cars then for you after December 1, 1956?

A. I don't know. I would have to look back.

Q. Look at your books there, sir, if you want to.

A. It might be—it might be one or two (witness looking through books). I don't know from here whether he bought any more or not.

Q. Let's leave it open to that point there on your book, sir.

A. Yes, sir.

Q. That is your register, is that correct, sir, which has previously been put into evidence?

A. This is one of them, yes.

Q. This is page 43?

A. That's right.

Q. Is that correct, sir?

A. Yes, sir.

Q. And it shows the floor plan?

A. Correct.

Q. For John R. Cullingworth?

5-5-58

A. That's correct.

page 105 }

Q. Is that correct?

A. That's right.

Q. And it shows credits to John R. Cullingworth and also debits, is that correct, sir?

A. Correct.

Q. And you kept a separate floor plan for John R. Cullingworth, is that correct, sir?

A. My bookkeeper set it up. It isn't mine.

Q. He was working for you, wasn't he?

A. That's right.

Q. What is a floor plan, Mr. Hubbard?

A. A floor plan is something where a bank will lend money on an automobile as a 6 per cent loan.

Q. So they finance automobiles on a floor plan, is that correct?

A. Yes, sir.

Q. Then the floor plan is a financing plan?

A. That's right.

Q. Turn over to page 50 there, and I will ask you, sir, if that shows, "Samuel R. Hubbard, Capital Account"?

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A. That's what he has got there, yes, sir.

Q. That is your book, isn't it, sir?

A. Yes, sir.

5-5-58 Q. On the next page is Samuel R. Hubbard
page 106 } again.

It says, "Samuel R. Hubbard, Drawing Account." Is that correct?

A. Yes, sir.

Q. There is no capital or drawing account for Mr. Cullingworth, is there?

A. No. As I stated before, he was paid his profit when I settled up with him each month. Mine was left in the trade.

Q. And the only capital put in the business was your capital, which was put in, is that correct?

A. Yes, sir. My mother's farm, and so forth.

Q. And the only drawing account was your drawing account, isn't that correct, sir?

A. Well, it was money which came from him on titles which were bought and deposited in.

Q. Did you go to see Mr. Harrison in about February of 1957 in regard to financing an automobile?

A. I went to Universal C. I. T.

Q. Did you have any transactions with Mr. Harrison down at Providence Forge?

A. I talked to Universal C. I. T. We got together, Mr. Harrison and I and C. I. T. And C. I. T. agreed to set me up at \$20,000, a \$20,000 line of floor plan for Hubbard Used Cars, with Mr. Ed Harrison's endorsement.

5-5-58 Q. Did Mr. Harrison get from you an itemized
page 107 } statement as to your assets, and so forth?

A. I believe he did, if I am not mistaken. I think so. It wasn't too much, I mean—

Q. I will ask you if you recognize the statement which was given to Mr. Harrison as the statement which was given—

Mr. Anderson: I am going to object to the relevancy of that. I think we have the books here. I do not understand the relevancy of that. I object to it on that basis.

A. That might have been something which my bookkeeper worked up. I don't see any names or signatures or anything. It might have been something he worked up. Mr. Harrison wanted to know approximately how the business was at that particular time.

Q. You did send Mr. Harrison a statement, did you not?

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A. Mr. Harrison and I and C. I. T. got together. After I discussed it with C. I. T., well, C. I. T. agreed to give me a \$20,000 line of wholesale, with his endorsement.

Q. Did he do it, sir?

A. Yes, sir; he did.

5-5-58 Q. You don't remember this statement. If you
page 108 } gave a statement to C. I. T., or to Mr. Harrison—

A. I said that my signature is not on it. Yes, sir. He asked me to work up some figures on how the business was, and so on and so forth. He asked for one. I don't know whether this was the one given to him or not, sir (indicating).

Q. Did you enter into a contract with Mr. Harrison?

A. Yes, sir. He had his attorney draw up some papers, and I got my attorney to look at it, and signed it, and started to doing business.

Q. Would you tell us if you can identify this copy of this contract, sir?

A. Yes, sir.

Q. That is a contract entered into by you with Mr. Harrison?

A. That is correct, sir.

Q. And I believe the contract is dated the 20th of May, 1957?

A. Yes, sir; that is right.

Q. And you had had some conversation with him for a couple of months in that regard, had you not, sir?

A. No, sir; not that long.

The Court: I will mark this as the next exhibit.

5-5-58

page 109 } Q. Did you then get some automobiles out of
this financing plan?

A. Yes, sir.

Q. Did you sell any of them?

A. Yes. We sold some of them, yes, sir.

Q. What did you do with the money on them?

A. Well, Mr. Harrison set-up in mind was that they attach my reserve instead of we keeping it at Central. The reserve and all was mine at the Central National Bank, but the C. I. T. attached my reserve. I had no portion of it, and do not have any portion of it today.

Q. You made a profit on those, did you not, sir?

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A. Yes, sir. I did on some of them. On some of them I came out just about even.

Q. If you sold an automobile, you would make a profit, and if you made a profit, you put it in Hubbard Used Cars account, isn't that right?

A. Yes, sir.

Q. Mr. Cullingworth did not have anything to do with that?

A. Not on the \$20,000 with C. I. T.

Q. Did Mr. Mack Coster finance any cars for you?

A. Yes, sir. He went to Central National. I used his credit along with these other 7 or 8 people that I mentioned to you a while ago.

Q. When did—

A. He did not take the profit. I just used his credit by putting them in his name. In other words, if I took a loss it was mine. It was not anything guaranteed.

Q. How much were you going to pay him to use his credit?

A. \$100.00 per unit.

Q. When did you start dealing with Mr. Mack Coster?

A. After the two checks bounced, that is when I went around getting these people up, trying to save my lot and everything.

Q. That was in the last part of the year, the fall of '56, isn't that correct, sir?

A. I don't know the date of it. It was after these two checks bounced, as I stated before, after that.

Q. Would you say—

A. Mr. Cullingworth started reducing the money he had in the lot.

Q. When you started going around to these other people, wasn't that in the late fall of '56?

Mr. Anderson: I think the witness has answered that to the best of his ability. He said he did not know the exact date.

The Court: I am not sure. It isn't very clear to me. The witness keeps on bringing in new people.

Q. Tell us the best you can the first time Mr. Mack Coster financed for you?

A. To be honest with you, I do not know the date of the first one that he put in his name.

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Q. Tell us approximately when it was then, sir.

A. To be honest with you, I don't know what date it was. It was First and Merchants Bank, but I don't know what date it was.

Q. Who else besides Mr. Mack Coster loaned you credit on these? How about Mr. Grinels?

A. Who?

Q. Mr. Grinels.

A. No, sir, I do not recall that name, sir.

Q. How about the Grinels Motor Company?

A. No, I don't believe so.

Q. Never heard of them?

A. No, sir; I don't believe so. Are you saying Reynolds or Grinels?

Q. Grinels, something like that. I may not be pronouncing it right.

A. I know a Reynolds Pontiac.

The Court: Grinels I believe is the name.

5-5-58

page 112 } A. No, sir.

Q. You don't know any Mr. Grinels?

A. No, sir.

Q. What about Odell E. Flippen. Who is he?

A. Up in Amelia.

Q. Did you finance any cars through him?

A. He held two or three for me, I believe.

Q. When did he finance them for you?

A. I don't know the exact date. As I stated awhile ago I had this lot up there and everything. I had to get help, had to get help in order to save it. I do not deny having these people's names there I put these units in, in order to save my lot and what I had there. Yes, these people, I used their names, but I cannot sit here and give you the exact date on each individual one.

Q. Surely, sir, you can give us within a month or two of when you met these people?

A. This stuff is about a year and a half old. I think I have done fairly well today, considering I cannot carry all that in my head.

Q. You have sat here and looked at checks. Surely you can tell us when you met Mr. Flippen, approximately?

A. I said I don't know the exact dates. I don't deny that he

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didn't handle three units for me. Yes, he handled three units for me.

5-5-58 Q. Was that in '56 or '57?

page 113 } A. No, that was '57.

Q. '57?

A. Yes, sir.

Q. In the early part of '57?

A. I believe so.

Q. January or February of '57?

A. Yes, sir; I believe so, around close to that, anyway.

Q. When you put the vehicles in his name, is that correct, sir?

A. Yes, sir; that is correct.

Q. And put them on your lot?

A. That's right. He bought three from me.

Q. And you would sell the cars, is that it?

A. That's right.

Q. And if you got a clean deal and got a cash profit out of it, how much would you pay him?

A. I would give him \$100, the same as the profit I was working on with Mr. Cullingworth on the car. If I took a loss or made more he didn't get anything, just more or less used his credit for \$100.

Q. You gave him \$100 for his credit, sir?

A. Yes, sir; that is the deal that I made with him.

5-5-58 Q. If you were to lose on the deal he still was entitled to his \$100?

page 114 } A. That's right.

Q. So if you made \$300 on the vehicle you would clear \$200 on it, is that right?

A. I would get it all, yes, sir.

Q. And you put that in Hubbard Used Car account, is that correct?

A. Yes, sir.

Q. Mr. Cullingworth did not get any part of that or have any right to have any part of it, did he?

A. Correct.

Q. It was yours, was it not, sir?

A. Yes, sir.

Q. Mack Coster, now was Mack Coster about the same time as Mr. Flippen?

A. Yes, I think so.

Q. And were they the same arrangements with Mr. Mack Coster and Mr. Flippen?

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A. Yes, sir.

Q. And Mr. Cullingworth had nothing to do with that, it was all yours, is that correct, sir?

A. Correct.

Q. How about George P. Hastings, who is he?

A. Mr. Hastings is a gentleman up there in
5-5-58 Amelia, too. I sold a car for him, and I could not
page 115 } get all the money to pay him. I still owe him to-
day. In fact right much.

Q. Did you use his credit also, sir?

A. No. He had a Chevrolet that I sold, and was going in re-
turn to give me a Ford. Then when all this just fell in on top
of me, I couldn't pay him. I still owe him today.

Q. I don't follow you. I don't understand what you mean.

A. You see, he gave me the title to his car, and I was to sell
it and get him a new Ford. And when this lot collapsed on me,
I couldn't pay him.

Q. Now Mr. Hubbard, would you say that he gave you the
title to his car?

A. Yes, sir.

Q. And were you to sell that car for him?

A. Yes, sir.

Q. And if you sold the car and made a profit how much of it
would he get?

A. He was not going to get anything. He gave me the car to
sell, and I was going to get him a new Ford. I got him a new
Ford, but after this lot of mine collapsed I couldn't give him
the title on it. I have not given it to him today.

5-5-58 Q. You did not sell the car he gave to you?

page 116 } A. Yes, sir; I sold that.

Q. How much did you sell it for?

A. I don't remember what I sold it for. I believe it was
about \$1,900, I believe.

Q. You made a profit then?

A. No, it was not a profit. He just give me the car to sell. I
was in return going to—

Q. What about Mr. Douglas Pulley?

A. Sir?

Q. Mr. Douglas Pulley?

A. I don't know. No, I didn't use that man's name.

Q. You don't know him, sir?

A. Not in dealing with new cars, not in dealing with any
cars for that matter, no, sir.

Q. What about C. A. Reynolds, Jr.?

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A. That is the one I was telling you about a while ago. I bought two cars, and still owe him today.

Q. Did he finance cars for you?

A. No, sir; just bought them.

Q. Just bought them?

A. Yes, sir.

Q. How about Asa D. Brown?

5-5-58 A. That man I still owe, too. He has one car
back, and I still owe the remainder.

page 117 } Q. Did he finance cars for you?

A. No, sir.

Q. Did he give you the car to put on your lot and sell it?

A. Well, it was—He is a new car dealer. I bought cars from him like I had been buying from these other new car dealers.

Q. You bought them yourself?

A. Yes, sir; I bought them for the company.

Q. Would he keep the lien upon the car?

A. No, sir; he held my check.

Q. He held your check?

A. Yes, sir. He just give me the cars and held my check, you see. And I would have to send him the money on back.

Q. And did he cash your checks?

A. No. Didn't have enough to make it good. I lacked \$1100 of having enough to cover it.

Q. But you gave him a check to hold it, is that the way it was?

A. That's right.

Q. And took the automobile on back to the lot to sell it?

5-5-58 A. I brought it down here. He was to hold it
page 118 } until I could arrange financing, and send the
money back.

Q. When did that occur?

A. Approximately about four or five months ago.

Q. Four or five months ago?

A. Yes, sir.

Q. That puts you in December, 1957. I understood that the business stopped last October?

A. Let's see—

By Mr. Anderson:

Q. Can you find that in any of your books?

A. No, I can't. These last units were not put down, Mr. Anderson, these last couple—well, these last four or five I would say—the last four or five were not put down that I had.

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By Mr. Miller: (continued)

Q. At any rate you were going to sell the car, is that right, sir?

A. Yes, sir.

Q. And if you made a profit on that you would put that in Hubbard Used Car's account, is that correct, sir?

A. That's right.

Q. And that was your property. Mr. Cullingworth did not have anything to do with that, is that right, sir?

5-5-58

page 119 } A. Yes, sir.

Q. Did you have anything to do with F. A. Clements & Son?

A. Yes, sir; I got a car from him.

Q. One car?

A. Yes, sir.

Q. Was that the same arrangement, sir?

A. Yes, sir.

Q. Who was Mack Jordan?

A. That's another one that I used his credit, just like most of them I told you about awhile ago.

Q. Isn't it true that your first loan with them was on or about November 8, 1956?

A. No. I sold him one unit, and he didn't like it. Then later on I used—well, like I told you, I got into this difficulty after Mr. Cullingworth started reducing his inventory—well, I had to get help. In fact, I think he was approximately maybe one of the first ones, along in there. I think I put two or three in his name in order to keep the lot going.

Q. Was that not in November or December, 1956?

A. It might have been.

Q. Isn't that correct, sir, according to your information and knowledge?

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page 120 } A. I cannot swear to it. It might have been.

Q. Is that about the time that it occurred?

A. It might have been approximately that time.

Q. Mr. Gordon L. McCune, you said you used Mr. McCune's credit?

A. McCune, yes.

Q. When you used his credit, you would give him a specific sum of money?

A. Yes, sir. I told him the profit we had been working on, and which had been very satisfactory. I was satisfied with the turnover. I agreed to give them \$100 on each car if I made a

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deal with them. I promised them \$100. And if I made a profit, all right. If I made a loss, it would just be mine. I didn't have any choice, to tell you the truth about it.

Q. So there was a deal in which there was \$100 on the loan?

A. On these peoples' names that I used, that is correct, sir.

Q. So your deal with them was for \$100 irrespective of the amount that they loaned?

A. That's right.

Q. Did you make out your Federal income tax returns for 1956 and 1957?

A. I have not for '57, sir.

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Q. You have not?

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A. That is correct, sir, no.

Q. In your taxes for '57—

A. I have called up and tried to get an extension. I want someone to help me take care of it.

Q. For your '56 taxes, sir, didn't you show your income as coming from the operation of Hubbard Used Cars by Samuel R. Hubbard, Jr.?

A. Yes, sir; that is correct.

Q. You did not make any claim of any partnership in there, did you, sir?

A. I stated before that I did not change the license. It was just like I had it set up at first.

Q. That is the way you filed your tax return, also, isn't it?

A. It was never changed.

Q. But that is the way you filed your tax return, too, isn't it, sir?

A. I had to, sir, yes, sir.

Q. You said that Mr. Cullingworth went down with you to the Windsor Auction?

A. That's right.

Q. And you said that some automobiles were purchased down there?

A. Yes, sir.

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page 122 } Q. And that Mr. Cullingworth at times, that he took a lien on the titles to the cars, is that right?

A. Well, he didn't take a lien on all of them.

Q. Well, the ones that he financed?

A. They were not all recorded. Some of them he just held himself and didn't record anything.

Q. But he held it as security for the money he put up?

A. He held the titles.

Q. As security for the money he put out, isn't that correct, sir?

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A. Yes, sir.

Q. Did you have any difficulty with Mr. Matthews down here at Windsor? Mr. Matthews is the operator of the Windsor-Auto Auction, isn't that correct, sir?

A. He is the owner.

Q. Owner and operator of the business?

A. Yes, sir.

Q. Would he accept your checks, sir?

A. He did at first, yes, sir.

Q. And then he stopped, didn't he, sir?

A. Yes, sir.

Q. And it was necessary that if you bought a car that Mr. Cullingworth's check be used, isn't that correct, sir?

A. Well, he asked me if I had a line of whole
5-5-58 sale or floor plan. I told him I had a check-
page 123 } ing account at the Central National Bank, but that
Mr. Cullingworth was my backer. So from then on
he wanted his check.

Q. This auction, the way that operates down there, that is an auction for wholesale dealers, isn't it?

A. Correct.

Q. And retailers are not permitted in there, is that correct?

A. They are not supposed to be in on it.

Q. And a dealer goes in there to buy a vehicle, and he tries to judge what that automobile will sell for, isn't that correct, sir?

A. Well, he tries to stay within the market value.

Q. He will try to see what the car will sell for, and he will pay what he thinks the wholesale value on it is, and then he can take it back and sell it at a profit, isn't that correct, sir?

A. That is correct, sir.

Q. So the amount paid for the cars at Windsor are the wholesale values of the cars, is that correct?

A. Well, a little better than wholesale, yes. That is considered wholesale.

5-5-58 Q. They are wholesalers?

page 124 } A. That's right.

Q. And the way you plan to make a profit is to come back and sell that car at a substantial amount in excess of what is paid at the auction, is that correct, sir?

A. Yes, sir. It doesn't carry too much profit to get rid of them.

Q. Mr. Cullingworth would not agree to make loans on all of those automobiles down there, would he, sir?

A. Well, a lot of times a car would be hit on one side. Then

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when that had been polished up, it would look very good. But I don't care how good you are, you can always overlook something. Nobody is perfect.

Q. With great frequency the lending institutions want to see the vehicle before they are going to lend on it, isn't that correct, sir, that some of them do that, in fact most of them?

A. What was that again?

Q. When lending institutions loan on vehicles, they want to see them, with great frequency, before they will lend on them, isn't that correct?

A. Yes. But not all of them.

Q. But some of them do?

A. Yes. Quite a few of them don't see them, though. They go to the bank and make their own loans and call up the dealer and record the liens.

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Q. Yes, if they have confidence in one. But you don't want to loan \$2,000 on a '56 Ford which is a total wreck, do you?

A. Well, if the man's credit is good enough, a lot of times I will lend \$2,000 on a man's credit.

Q. But ordinarily with the—

A. In a pinch, I would say.

Q. It depends on the vehicle, doesn't it?

A. I would say so.

Q. When you were down there, would you sometimes buy three or four or five vehicles?

A. We went together the majority of the time. I think I have showed you checks today where we only just bought one unit. At times it was \$10,000 or \$12,000 worth of cars purchased.

Q. How did you get them driven back?

A. Well, lots of times there would be Mr. Cullingworth and I. Then a couple of dealers down there that we knew. If there was anything left over, lots of times we would get a couple of drivers to drive them back, just young boys down there.

Q. You would talk to these young boys?

A. No, there were always 10 or 15 standing around there trying to make \$3 or \$4.

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page 126 }

Q. So you would go out and ask them to drive a car back to Richmond, is that what you did?

A. Yes.

Q. Did you pay them a specific amount to bring it back?

A. I think it runs about \$3 or \$4 for a driver to bring one back. Sometimes the dealer would drive them back for nothing, just to get a ride back.

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Q. If you had to deal with a driver, you had to pay him so much to drive the car back, didn't you?

A. Sometimes yes, sometimes no.

Q. Those that you did have to pay, did you give them a check out of Hubbard Used Cars?

A. I would take it out of petty cash. Very seldom did a check. I would just get a receipt from them, the name and address, to show the money I paid them.

Q. You made those arrangements for the cars to be brought back to Richmond when there wasn't either you or one of the other used car dealers there to drive them back, is that it?

A. Yes, I would find a driver, or Mr. Cullingworth would find a driver.

Q: But you would pay them out of the petty cash of Hubbard Used Cars, is that correct, sir?

A. That is correct.

5-5-58 Q. We talked earlier in the day about a Cad-
page 127 } illac that you put some pictures into evidence.

A. That's right.

Q. Was that a pretty good car?

A. It was bought new from Jones Motor Company.

Q. Did you ever show it for sale, sir?

A. It was for sale, yes, sir. We demonstrated it several times.

Q. And you had dealer license plates that you put on these cars, isn't that correct?

A. He had one tag which had been assigned to Mr. Cullingworth, and the registration card.

Q. How many times did you show that Cadillac, sir?

A. Cadillacs are right good sellers. That was demonstrated quite a few times.

Q. Did you ever sell it, sir?

A. No, sir.

Q. You could not get the price that you wanted for it, is that it?

A. Well, I guess that had something to do with it.

Q. You said you had a number of salesmen, did you not, sir?

A. No, I didn't say I had a number of salesmen. It was my brother and I, and Mr. Cullingworth.

5-5-58 Q. You had Mr. Cullingworth working for you?
page 128 } A. I beg your pardon?

Q. Mr. Cullingworth, did he ever sell any vehicles?

A. Yes, sir, he sold some units for me.

Q. To whom did he ever sell any cars?

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A. One of them was a person for a '53 Mercury. I think he was a bus driver.

Q. When did that sale occur?

A. I believe it was in '57, if I am not mistaken (witness looking through books). Here it is. That was September 5, 1956.

Q. Let's look at that, sir, where it reads, "September 5, 1956"?

A. That's right.

Q. Could you tell me who a gentleman by the name of House was?

A. Well, all dealers use that. Just like Richmond Motor Company. You will find Richmond Motor Company—anytime they wholesale a car, they put down the word, "House." Then for Commonwealth Motor Company, same way. All big dealers, or any dealer at least—don't have a salesman, they will put it down as "House."

Q. There is a memorandum for that sale, isn't that correct, sir?

5-5-58 that correct, sir?
page 129 } A. Yes. That is my bookkeeper's writing.

Q. There is no indication there that Mr. Cullingworth sold it, is there, sir?

A. I think Mr. Seay will testify that he bought it from him.

Q. Were you there?

A. I was there not long after he agreed to buy it and went to the bank and made his loan.

Q. The purpose of this (indicating) is so that the salesman will know how to figure his commission, isn't that correct, sir?

A. That's right.

Q. And the commissions went to Hubbard Used Cars there, isn't that correct, sir?

A. Well, I don't believe that it was much commission here. The car only brought—the car he traded in, we allowed \$550 and sold it for \$50, so it wasn't too much profit there.

Q. That certainly wasn't. I think we will all agree with that.

A. Now this particular unit (indicating), this is another unit we had had there awhile. We probably bought—

Q. Mr. Seay was a friend of yours, wasn't he?

5-5-58 A. Well, yes, his car was a good car.

page 130 } Q. But Mr. Seay was a friend of yours, isn't

that right?

A. Yes. I knew Mr. Seay.

Samuel R. Hubbard, Jr.

Q. You went out with him socially?

A. Well, I knew him.

Q. What does he do?

A. He is a bus driver.

Q. Did you ever use his credit, sir?

A. This is a unit I was telling you about a while ago. No, sir. I never used Mr. Seay's credit. I sold him this car. He sold this car to a friend of his at the Greyhound Bus Station. I sold him a station wagon. My lot collapsed, and I could not give him the title to it. I couldn't get the title.

Q. Who had the title?

A. First and Merchants had it.

Q. First and Merchants had it?

A. Yes, sir.

Q. They are holding the title for the financing then?

A. Yes, sir.

Q. But the statement there, on that place where it has listed "salesman," that does not put Mr. Cullingworth in there, does it, sir?

page 131 } A. Well, Mr. Cullingworth sold him the car.
And he had the title to this particular unit.

Q. I asked you, sir, if it indicates on there that Mr. Cullingworth sold that car, sir?

A. Not here, but he sold it. You see, he would—

Q. How about—

Mr. Anderson: Let him explain it, Mr. Miller, if you will.

A. Mr. Cullingworth approached the man when he came on the lot, and sold him a unit.

Mr. Miller: I am going to ask that that be stricken. The man said he was not there.

A. I came back that night when the deal had been approved. I had to take a credit statement on the man, a Form 17, and sign everything and report the lien. Now he did sell that car to him, and the car was delivered. His trade-in came in, and I sold his trade-in for \$50. The man was after a down-payment. His credit was good enough that the bank lent him \$1,095 on that particular unit.

Q. Did Mr. Cullingworth get anything out of that?

A. Half of the profit, yes, sir.

Samuel R. Hubbard, Jr.

5-5-58 Q. Had he financed that automobile originally,
page 132 } sir?

A. He bought that car. I think we paid approximately \$1,040 for it. We made \$105.00 on it.

Q. What make car was that, sir?

A. It was actually a '53 car, a title for '54.

Q. What make was it?

A. A '54 Mercury. You see, a lot of cars come out during the year, say '56 cars, which will be titled in '57.

Q. Could you tell us the motor number of that car, sir?

A. No, sir. All I have got is the license number. I don't have the motor number here.

Q. How much was—

A. I don't have the motor number on that, sir.

Q. How much was the profit made on that, sir?

A. Approximately \$100.

Q. \$100?

A. Yes. That was ten forty, yes, approximately \$105.

Q. Then Mr. Cullingworth was paid off?

A. That's right.

Q. And then a certain amount above that?

5-5-58 A. I wholesaled the car. He got half the profit. Sold it for
page 133 } \$50. The car was sold for \$50. I had, let's see,
the bank lent \$1,095 and \$50. That would be \$1,
145. That would be about \$105 profit.

Q. How much did you get then, sir?

A. I would have to look back there, back through there and see.

Q. How much would he be entitled to of this \$105?

A. Half of the profit.

Q. So that would be \$52.50, sir?

A. Yes, that's right, about \$50.

Q. In this statement to the Division of Motor Vehicles in May, 1957, you did not list anyone except you and Walter Hubbard as salesmen, did you, sir?

A. I don't know. I thought Mr.—yes, I am positive he had one assigned.

Q. You have listed just you and your brother.

A. Well, the man came around. Mr. Latham, or whoever it was, came up there and renewed the salesmanship licenses which we had

Q. Did you list you and your brother as the salesmen?

A. Yes, we were listed.

Q. Anyone else besides you and your brother as salesmen?

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A. That is the two I have.

5-5-58 Q. Is that also the statement which you made
page 134 } under oath to the Division of Motor Vehicles?

A. Well, I can't tell you by this (indicating)

whether he has a salesmanship license or not. If he is selling, he is supposed to have it. The application for license—

Mr. Anderson: Excuse me, but I do not think the witness understands the question.

Mr. Miller: It speaks for itself.

Q. Now, I call your attention to your conditional sales contract, these represent sales to other persons purchasing cars, sir?

A. Yes. This is a car which was sold to a purchaser.

Q. Each one of these, after the sale of a car on the lot, you would get a conditional sales contract, is that right?

A. This is the way the bank would pay it, so that I could bring the money into Hubbard Used Cars and straighten it up.

Q. Then you would get the money out of the sale of this particular car, sir?

A. Yes, sir, that's right.

The Court: I will mark this as Defendant's Exhibit J.

5-5-58 A. I can't always get my money out. Some-
page 135 } times, like this one here, it was \$550 involved,
and it was sold for \$50.

Q. Hubbard Used Cars closed in the fall of 1957?

A. Yes, sir, around September. Closed in the fall.

Q. Closed in September of '57?

A. Yes, sir.

Q. Where did you go then? What have you done since then?

A. Worked for Emrich Chevrolet for approximately three or four weeks, and I had to quit.

Q. I believe, sir, that there have been right many charges made against you growing out of this used car lot, isn't that correct, sir?

Mr. Anderson: Just a moment. I am going to object to this line of questioning that counsel is pursuing.

The Court: Well, if he is going to come under the statute

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and show the things allowed by the statute, that is all right, but not just charges.

Mr. Miller: All right, sir.

5-5-58 Q. Mr. Hubbard, have you been convicted of
page 136 } any crime coming out of Hubbard Used Cars
business which involves moral turpitude, sir?

A. Yes, I have been convicted of a felony.

Q. What is that, sir?

A. A bad check. It is in the process of being appealed to the Supreme Court. I have been dismissed on one, and also the first one.

RE-DIRECT EXAMINATION.

By Mr. Anderson:

Q. Mr. Hubbard, Mr. Miller has repeatedly used the term "financing cars." Did you and Mr. Cullingworth purchase these cars in the name of Hubbard Used Cars, or didn't you?

A. Yes. We purchased the cars in the name of Hubbard Used Cars.

Q. The title was taken in the name of Hubbard Used Cars?

A. Yes, sir.

Q. And that situation prevailed for the first calendar year, is that true?

A. That's correct, sir.

Q. And that was true of practically all of the cars that were sold by Hubbard Used Cars?

5-5-58 A. That is correct, sir.

page 137 } Q. There were certain exceptions which you
have mentioned?

A. That's right.

Q. These other people who have been referred to that you bought some cars from, and used their credit, that came about when Mr. Cullingworth began to reduce his inventory, as you stated?

A. That is exactly right.

Q. Let me ask you this. When all this other activity was going on, was Mr. Cullingworth coming to the lot every day?

A. Yes. He was still coming to the lot and staying there, answering the phone, but he wasn't helping me any.

Q. I believe you said you were open six days a week?

A. Correct. In fact, until nine o'clock on every night except Saturday. Sometimes it would be ten and eleven.

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Q. Would Mr. Cullingworth come to the lot every day?

A. Every day.

Q. But he would not put in as many hours as you did?

5-5-58 A. No. He didn't put in as many hours as I
page 138 } did. He put in quite a few.

Q. This is after you went to these various other people?

A. That is correct.

Q. I believe you said you don't know whether Mr. Cullingworth has a salesman's licence, is that true? In other words, a license?

A. I don't know whether he has one or not. He should have one if he is selling. I don't know whether he has one or not. I was under the impression that he had one by his being on the lot, but I cannot swear to it.

Q. But you did not list him as being one of the salesmen of Hubbard Used Cars?

A. No, sir, no.

Q. Now wasn't the deal, the arrangement between you and Mr. Cullingworth, that you were to have everything in your name?

A. That's right.

Q. In fact, that was the agreement from the start, that you would go ahead and get the lot set up first, that you were to be the man, you were to have your name on the lease, the license, and everything?

A. That is correct.

5-5-58 Q. And the lot was to be stocked by Mr. Cull-
page 139 } ingworth?

A. That is correct.

Q. By his money?

A. Exactly right.

Q. And that is what actually occurred?

A. That is what happened.

Q. Did Mr. Cullingworth receive any money, any share of the profits, other than the money which came through your books here?

A. Yes. He received quite a few checks coming from direct loans. People that would go down and get their own loans on cars—after a couple of my checks bounced, so-called bounced, it was found that they would prefer a cashier's check other than mine, which was logical. I endorsed it and gave it to him.

Q. That would not go through the books then?

A. No, sir, it would not show.

Samuel R. Hubbard, Jr.

Q. The cars—

A. In fact, the last car I think we sold was handled by a cashier's check from—I believe it was Central National Bank, on that '53 Cadillac.

Q. So the amount of profits which your books reflect that Mr. Cullingworth received does not reflect the entire amount that he received?

A. That is true, that is true.

5-5-58 Q. Mr. Miller brought up some question about
page 140 } these other people that you purchased cars from
and used their credit. Was there any difference,
and if so state it, between that operation and the activity
or operation of Mr. Cullingworth in the business?

A. Well, we did not always make \$200 profit plus the reserve. As I stated before, a lot of times we took less, figured \$150 profit on it, or \$75 apiece, or \$50 profit.

Q. Did these other people come to the lot?

A. Never did.

Q. Did they stay in the office?

A. Never did.

Q. Did they answer the phone?

A. No, sir.

Q. Did they sell any cars to anyone?

A. No, sir, never did.

Q. This automobile that Mr. Cullingworth has, was the title to that held by Hubbard Used Cars, or was it held by Mr. Cullingworth, this Cadillac automobile?

A. I don't think that he ran that car in Hubbard Used Cars. He had a car previously, a Coupe de Ville, which was sold. But this particular unit he had, it wasn't in my name.

5-5-58 Q. Was it Mr. Cullingworth's personal car, or
page 141 } a car of the business, is that what you mean?

A. Well, he was driving it, but the car was for sale, and he had dealer tags on it. He was driving it every day, but the car was left on the lot. It was for sale during the day and we demonstrated the car.

Q. When he went home at night—

A. He would drive the car with him.

Q. And when he would come down in the daytime?

A. Bring it back in the morning.

Q. Where is that car now? Rather, when the lot was closed up, what happened to that car?

A. Well, when I closed the lot, I had to turn in the dealer tag. I went up and got my dealer tag from him, and registra-

Joseph H. Wilkins, Jr.

tion card, and turned them in to the Division of Motor Vehicles. I think he bought a license for the car, I am not sure.

Q. It was his car?

A. Yes, sir, that is correct.

Q. These books which have been introduced in evidence, they cover the entire period that Hubbard Used Cars was in business, is that correct?

A. That's right.

Q. I do not believe they have been closed out for 1957?

A. No, sir, they have not.

5-5-58

Q. You mean you cannot tell?

page 142 }

A. I don't know where I stand, to be honest with you.

Witness Stood Aside.

JOSEPH H. WILKINS, JR.,

being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Anderson:

Q. Please state your full name?

A. Joseph Wilkins, Jr.

Q. What is your occupation?

A. C.P.A.

Q. How long have you been following the profession of accounting?

A. Yes, sir.

Q. I said how long.

A. Oh, I am sorry. About ten years.

Q. How long have you been a C.P.A.?

A. About three years.

Q. Are you presently engaged in accounting?

5-5-58

A. That's right. As a sole practitioner.

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Q. Did you at my request examine the books of Hubbard Used Cars?

A. I did.

Q. Where did you examine them?

A. In the room adjoining this courtroom.

Q. You mean right up here in the City Hall, in the next room?

Joseph H. Wilkins, Jr.

A. In the next room, yes.

Q. Did you make a transcript of the account as shown on the books of Hubbard Used Cars?

A. I did.

Q. I hand you such an account and ask you if you can identify it?

A. This is it (indicating).

Q. And the information contained on that account came from where?

A. It came from the general ledger account, No. 430, the general ledger of Hubbard Used Cars.

Q. What does that purport to show?

A. It shows those amounts coming from or credited to John R. Cullingworth, coming into the business. And it shows those amounts charged back against John Cullingworth. If there were other amounts paid to Cullingworth, they are not reflected in this account. This account only
5-5-58 reflects those amounts received from him and
page 144 } credited to his account, and those amounts
charged back. Every amount in excess of what is charged in this account could have been charged for a different account, but this only reflects those amounts charged and credited to John R. Cullingworth.

Q. What was the total amount which was charged to or came into the business?

A. \$435,597, credit.

Q. Turning back to the first page, what are the first dates that you have there?

A. August 9 is the first date, 1956.

Q. How much money did Mr. Cullingworth—how much is shown that he put into the business?

Mr. Miller: Just a minute, sir. I do not think that is a proper question.

Mr. Anderson: I said how much.

The Court: Yes, but I think that any reference to what he put into the business, whether he lent it on a car or cars, that that is the very thing the jury has to pass upon.

Mr. Anderson: All right, sir.

Q. What does the entry for August 9th show?

A. I have another schedule which I have prepared that explains these particular entries. I
5-5-58
page 145 } would have to see that schedule.

Q. I hand you such a schedule.

Joseph H. Wilkins, Jr.

Q. How about the next one, the next entry?

A. That was cash.

Q. I am now referring to your schedule, No. 2.

A. Yes. The next one is \$9,235 cash, but I will qualify that.

Q. I am asking for the total amount.

A. Total amount of cash, \$24,190.

Q. Do the books reflect any other assets or money which came into the business from Mr. Cullingworth?

A. Services of \$100, and automobiles, totaling \$19,307.

Q. That amounts to a total of what?

A. \$43,597.

Q. What do the books reflect were paid back to Mr. Cullingworth from the business?

A. I believe that is in another schedule. I would have to have that, sir. That would be \$49,879.

Q. What do the books reflect was the profit from the business for the first calendar year for Mr. Hubbard?

A. Approximately \$4,200.

Q. \$4,200?

A. Yes, sir.

5-5-58

page 148 } By Mr. Miller:

Q. Are you referring to some item in here (indicating), when you are talking about that, sir?

A. No, sir, I am not referring to an item on here. I am referring to the schedule there, schedule 3.

By Mr. Anderson (continued):

Q. What does that purport to be? Would you explain that, make a general statement as to what it is? I am not now asking you about individual items.

A. These are the amounts paid to John R. Cullingworth, either by cash from a checking account, paid by cash from a checking account, as I said, paid out of undeposited cash receipts, or other items, car inventory—you see, they are the amounts—when I say \$49,000, they are the amounts paid, you understand, not necessarily a check for every one of those amounts.

Q. Have you verified the amounts paid by checks?

A. Yes, I have, except I was unable to locate check No. 583.

Q. I believe they have been introduced. I wonder if we could see them, sir?

The Court: We do not have to go through them all, do

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5-5-58 we?
 Mr. Anderson: No, sir. I just want to hand
 page 149 } them to him.

The Court: We don't have to go through those
 that he went through already, do we?

Q. (Continued) Would you please examine Plaintiff's Exhibit No. 9 and tell us whether that is the verification of which you speak?

A. Yes I would consider that to be positive verification. It is made to John R. Cullingworth, or J. R. Cullingworth, payee, and endorsed by J. R. Cullingworth or John R. Cullingworth.

Q. I believe your schedule shows that some \$42,000—

Mr. Miller: That sounds like a leading question, sir. I think he should put it in a different way.

The Court: He has been over it once. He is just leading up to his question.

Q. (Continued) The schedule shows that some \$42,000—no, some \$43,000 was charged, was credited to Mr. Cullingworth during the first calendar year, is that correct? That is, is that statement correct?

A. \$43,000 was during the period from August 9 to October 31, 1957. There were \$42,919 at the end of the
 5-5-58 first calendar year.

page 150 } Q. Do you recall approximately what the net sales were during that period?

A. Roughly \$75,000. I believe it was a little less than \$76,000 and a little more than \$75,000.

Mr. Anderson: I would like to offer these schedules in evidence as the next Plaintiff's exhibit.

The Court: I will just staple them all together, and mark them as Plaintiff's Exhibit No. 11. I mark these here (indicating) as No. 10.

Q. Can you answer this question, please? Mr. Wilkins, as a C.P.A. and having examined these books, can you tell us whether there is any indication in the books from an examination of the books that Mr. Cullingworth was sharing profits?

A. I examined the entries as recorded by the books—

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Mr. Miller: Your Honor, I object to that, sir.

The Court: I do not think that "sharing profits" is within the field of an accountant. You may ask him about any specific items.

5-5-58 Mr. Anderson: I submit, Your Honor, that
page 151 } an accountant is in an eminent position of know-
ing.

The Court: Yes, I think they are, too, but unfortunately the jury and I have to decide that question.

Mr. Anderson: All right, sir.

Q. Of the amounts that were paid to Mr. Cullingworth, referring to your schedule 3, I noticed the first entry there shows—which you say is verified by check—shows \$1,900.

A. Correct.

Q. And that is divided into \$1,800, and \$100?

A. Correct.

Q. The \$1,800, where does that appear in the book?

A. I just charged it against the account of John R. Cullingworth, Ledger Account No. 43.

Q. Is the \$100 item contained or shown in the ledger account?

A. Not in the ledger account of John R. Cullingworth. It is charged in another account. It is charged in the cash receipts book by another—in an account other than John R. Cullingworth.

5-5-58 Q. And it is shown as coming to Mr. Culling-
page 152 } worth?

A. Yes, sir, as being paid to him, because it is contained in a check. It is part of the total check which was paid to John R. Cullingworth.

CROSS EXAMINATION.

By Mr. Miller:

Q. Did you check the deposit slips at the bank sir?

A. No, sir.

Q. Isn't the approved procedure for an accountant to determine whether or not cash is received to look at the bank accounts and see if there were deposits equal to the allegedly put in in cash, sir?

A. That is the usual procedure.

Q. Go ahead, sir.

A. I was engaged to determine what transactions were had with John R. Cullingworth. Some of them I could not sub-

Joseph H. Wilkins, Jr.

stantiate. The only thing I could positively substantiate were the checks that I mentioned in the exhibits.

Q. So that you do not know if cash was actually received and deposited to the account of this business at all, do you, sir?

5-5-58 A. Yes. I would say the cash was deposited. I have instances in there where receipts were re-
page 153 } corded and money did not go into the bank, but they were credited as coming from John Cullingworth.

Q. I am asking about these items listed here, and you have referred to, I believe, oh, about \$49,000 and you have—now let's see, how do we have it here? You said, I believe, that it was cash coming into the company.

A. I said it was recorded as cash.

Q. Recorded as cash, that is correct, isn't it, Mr. Wilkins?

A. Yes.

Q. You don't know if cash was actually received or not, do you, sir?

A. I did not examine the deposit slips. They were not complete enough for me to substantiate what was coming into the business.

Q. So you don't know if there was any cash actually paid into the company which was deposited in the bank account as cash or not, do you?

A. I cannot tie down exact figures.

Q. It could have been, sir, couldn't it, that automobiles were purchased, and that the cash was used, financed by Mr. Cullingworth for the purchase of automobiles, and that it was recorded as cash, when in fact the only thing received by the Hubbard Used Cars was an automobile with
5-5-58 a lien on it, isn't that correct, sir?

page 154 } A. I cannot say whether it is correct, with a lien on it, or not. I call attention to the second item of receipts, namely \$9,235. That was recorded as cash. But there is a check drawn by John R. Cullingworth purchasing an automobile, although it was recorded as cash, you see, sir. Now whether it came into the business or not, I am not saying.

I am saying it is recorded as cash, and it was made payable to the Windsor Auto Auction. And the indication as recorded on the books for those automobiles came through. But I am not saying it was any lien recorded by anyone.

Q. I think I understand you on that, sir. You don't know if there was a lien on those cars or not, do you, sir?

Joseph H. Wilkins, Jr.

A. I do not.

Q. So the item which you spoke of, this \$9,000 item, sir, you might refer to it specifically as \$9,235, sir, you found an inventory coming in of cars which matched that, isn't that correct, sir?

A. I found a like amount of a check drawn by John R. Cullingworth to the Windsor Auto Auction.

Q. And you did not find any deposit slip that any such money actually came into the Hubbard Used Cars at all, did you, sir?

5-5-58 A. It was indicated in that particular entry page 155 } that those cars were bought directly, and the money did not come in.

Q. But still it was listed in the cash account, even though it was not actually handled that way, sir?

A. That's right.

Q. Now the capital account in the books refers to Hubbard, isn't that correct, sir?

A. Correct.

Q. Did you find any capital account for Cullingworth, sir?

A. Did not. But I would not say that was conclusive, that it was not a capital account.

Q. You did not find one, however, did you, sir?

A. I did not find one designated as a capital account.

Q. Now the transactions with Mr. Cullingworth by Hubbard Used Cars and Mr. Hubbard were principally in the fall of '56, isn't that correct, sir?

A. Principally, yes.

Q. I believe, sir, that substantially that was the period during which the transactions were going on for the most part?

A. Substantially. There were some payments to Mr. Cullingworth. There was one payment which was on
5-5-58 —two payments in '57. And in schedule 3 there
page 156 } was a transaction which went to August 30, 1957.
Q. Look at that again. You said August 30, 1957.

A. There was a transaction of Mr. Cullingworth on August 30, 1957, that's right.

Q. That was in which he was paid some money, isn't that correct?

A. No, sir. That is as explained, recorded as a \$1,678 automobile received, less \$1,000 paid to John R. Cullingworth out of the general cash receipts.

Q. Just a minute. Tell me where you are now, sir.

Joseph H. Wilkins, Jr.

A. Schedule 2. August 30, 1957, recorded as \$1,678 automobile. The explanation recorded as a \$1,678 automobile received, less \$1,000 paid to John R. Cullingworth out of general cash receipts.

Q. So Mr. Cullingworth has been paid \$1,000, isn't that correct, sir?

A. An audit of the records indicates that an automobile came in on August 30, 1957.

Q. So they could have been selling a car, couldn't they?

A. No, no. I couldn't say they had been selling him a car.

5-5-58 } Q. That is possibly one conclusion which could
page 157 } have been drawn, isn't it, sir?

A. Well, I could draw a conclusion against that.

Q. Tell me what you mean in your schedule 3 by "cost of sales"?

A. "Cost of sales" as an accounting principle in the automobile business, you would think of that as just the automobile itself, the value of the automobile which was sold. The fact that it was charged to the cost of sales is not a conclusive accounting principle that it is a cost of sale. That is the way it was recorded in the books.

Q. And in the first part of the transaction it was credited to interest?

A. Charged to interest.

Q. And subsequently it was put under "Cost of Sales," is that correct, sir?

A. That's right. That is the way it was recorded on the books.

RE-DIRECT EXAMINATION.

By Mr. Anderson:

Q. Mr. Wilkins, you said you did not find an account designated as capital account. What did you find? What account did you find for Mr. Cullingworth?

5-5-58 } A. I found a ledger account containing these
page 158 } items that I have aforementioned. I found other
accounts with finance companies, and so forth.
But I found a separate account for Mr. Cullingworth.

Q. You mean that was treated—was that treated any differently than the other accounts that you just spoke of?

A. Yes. It appeared to be treated differently. It was a segregated account. I did not find evidence—well, I will qualify that. My examination involved primarily the transactions with

Leslie Pollard.

Cullingworth. There was an account on the books involving transactions with the bank and with the finance companies, sir. In a limited review of that account, I did not see any evidence of automobiles coming through that account. But the difference that I did find, one of the differences, was that Cullingworth account was segregated, a segregated account, and that automobiles were coming in through that account, being credited to Mr. Cullingworth.

Witness stood aside.

5-5-58

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LESLIE POLLARD,
one of the Plaintiffs, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:

Q. Mr. Pollard, would you state your name, please, sir?

A. Leslie Pollard.

Q. Your business?

A. I am a Ford dealer at Beaverdam, Virginia.

Q. Who are you in business with?

A. My brother.

Q. Did you have occasion to have any transactions with Hubbard Used Cars?

A. Yes, sir.

Q. When was that?

A. August 15, 1957. Mr. Hubbard came to Beaverdam and asked about some new cars. He offered me \$100 over invoice.

Q. For what car?

A. For a new car. I let him have one title, application for title, that day.

Q. What was the purpose of that?

A. To take it to set up on a floor plan, a bank or finance company.

5-5-58
page 160 } In your experience as a dealer, can you finance a car with a title alone?

A. Well, in most cases they want to see the car.

Q. What car was this?

A. A '57 Ford Fairlane, four-door.

Q. Who kept the car?

A. I kept the car.

Leslie Pollard.

Q. What occurred later?

A. Well, Mr. Hubbard called me and told me to bring another title by and that he would set them both up and pay me.

Q. Did you have occasion to come to Richmond?

A. Yes, I did, I came to Richmond.

Q. Did you go on Hubbard Used Cars' lot?

A. Yes, sir.

Q. Did you go in the office?

A. Yes, sir.

Q. Did you see Mr. Cullingworth?

A. Yes, sir.

Q. Did you meet him?

A. Yes, sir.

Q. At that time where were the two automobiles that you have referred to?

5-5-58 A. The two automobiles were at Beaverdam on
page 161 } my lot.

Q. On your lot?

A. Yes, sir.

Q. Did you know Mr. Cullingworth?

A. I had never met him before, but I had seen him around at auctions over the last six or seven or eight years, something like that.

Q. That was the first time you had met him?

A. That I had actually met him, yes.

Q. How many times would you estimate during the course of negotiations or dealing with Hubbard Used Cars did you come down and actually go on the Hubbard Used Cars' lot?

A. Oh, I would say from twelve to sixteen times.

Q. And of those times, how many of them were in 1957?

A. This was in '57, yes, sir.

Q. What month?

A. I believe he first came to Beaverdam on August 15. This was over a period of maybe approximately six weeks, I would say, or maybe a little longer.

Q. So it was during August and September?

A. August and September, yes, sir.

Q. Now of those twelve or fifteen times, how many times did you see Mr. Cullingworth on the lot?

5-5-58 A. I would say around ten or twelve.

page 162 } Q. What did you see him doing there?

A. Well, he was in the office, answering the

Leslie Pollard.

phone. Sometimes he was out on the lot talking to someone.

Mr. Anderson: Your Honor, we are now coming to the question again which came up this morning. Perhaps I could get at it in another way.

The Court: Gentlemen, I found a section which apparently covers this point exactly.

Q. Seeing Mr. Cullingworth on the lot, and in the office, being active around there, as you have stated, what effect, if any, did that have upon your future transactions with Hubbard Used Cars?

Mr. Miller: That is the point we would like to take up there with the Court, Your Honor. We object to that.

The Court: Gentlemen of the jury, would you retire to the corridor for a few minutes, please?

JURY OUT.

The Court: American Jurisprudence on this point says:

5-5-58 “The declaration of one alleged partner not made
page 163 } in the presence of the alleged co-partner are not
 } competent to prove the existence of a partnership
 } between them as against such other partner.
Hence in an action seeking to hold one person liable for goods sold to another on the ground that they were for the use of the partnership of which the defendant was a member, the issue of partnership cannot be proved by evidence of declarations made by the one to whom the goods was sold when the defendant was absent.”

I think we all understand that part of it. I am satisfied that that must be the correct rule. Now it seems to me that if you can show any facts that would lead a reasonable man—and I am not now necessarily speaking of this gentleman—that would be reasonably conducive to a reasonable man to assume that there was a partnership, you are certainly entitled to show all those facts. But I am not convinced that you can just ask him for his individual impression. That would immediately lead into the proposition as to what created
5-5-58 the impression. Then if there are any factors creating the impression, of course, they are admissible; separate declarations of Mr. Hubbard, for instance. Someone making Mr. Cullingworth a partner with-

Leslie Pollard.

out his being present so as to contest the inference, or anything like that. I think we should explore this with this witness at this time, so we will have no difficulty about it.

Mr. Anderson: You want me to ask him now?

The Court: Yes, sir.

Mr. Anderson: I suppose I can ask him this.

The Court: Ask him anything you want to in the absence of the jury. What we are trying to do is to properly establish what would be proper to introduce before the jury.

Q. What were you informed by Mr. Hubbard as to the relationship—

The Court: Let me ask him this question.

By the Court:

5-5-58 Q. Who did you think you were dealing with
page 165 } when you came down to Richmond?

A. Well, Mr. Hubbard came to Beaverdam, you see. Then when I went on the lot, I saw both of them. Mr. Hubbard told me Mr. Cullingworth was his partner, and I thought it was both of them then.

Q. Did Mr. Cullingworth, himself, do anything to confirm that idea?

A. No, sir, no more than seeing him there, just being around.

Q. Did he examine the cars, take any interest in them, or talk about price to you at all, or was that—

A. That was handled by Mr. Hubbard. We had gotten together on that when he was at Beaverdam, \$100 over invoice, my invoice.

By Mr. Anderson:

Q. You did not make any investigation or confirm Mr. Hubbard's statement about Mr. Cullingworth being his partner, did you?

A. No, sir.

By the Court:

Q. Who did you make the title out to, to Hubbard Used Cars?

A. One of them was titled in Mr. Hubbard's name. I don't remember how he set the other one up. I know he set up one

Leslie Pollard.

in his name.

5-5-58

page 166 } By Mr. Anderson:

Q. Do you know how the titles were transferred, in whose name they were transferred?

A. Well, they were floor-planned, but I think one—in fact, I went to the Division of Motor Vehicles with Mr. Branham up at Commercial Credit. I had the cars on floor-plan with Commercial. I owed for the cars, too, and went with Mr. Branham to get Mr. Branham to pull the application for title and one was in Mr. Hubbard's name.

Q. You don't remember about the other one?

A. I don't remember whose name the other one was in.

Q. Did you have any conversation with Mr. Cullingworth?

A. Yes, sir. I talked to him some. He told me that he understood that the Ford dealer in Louisa was thinking of selling his business. He told me that he started it. I just asked him if he was interested in buying it. He said no, that he wasn't.

Q. And you say that you have seen him over the years at these auto auctions?

A. Around at these various auctions, yes.

Q. Who is permitted to come to these auctions or to buy at these auctions?

5-5-58 A. Well, only dealers. Now you see some
page 167 } drivers, like a bunch of boys, they follow these
 things around. They drive cars. You see some of
them. But actually the dealers are the only ones who participate.

Q. They are the ones who you expect to see, is that it?

A. Expect to see, that's right.

The Court: I believe that his being accustomed to seeing him over the years at these auctions is the only new thing we have here. I believe I will have to rule all the rest of it out, gentlemen.

Mr. Anderson: Then we except to the Court's ruling.

The Court: All right, bring the jury back in here.

Note: At this time the jury returns to the courtroom.

JURY IN.

By Mr. Anderson:

Q. Mr. Pollard, you said that you had seen Mr. Cullingworth before you met him?

Leslie Pollard.

A. Yes, sir.

Q. At the auto auctions for the last how many years?

A. I would say seven or eight years.

5-5-58

Q. Who goes to these auctions?

page 168 }

A. Only dealers. That is, except for a few boys who hang around, who follow them and drive for

these dealers.

Q. In your transactions with Hubbard Used Cars, could you give us an account of what you sold Hubbard Used Cars and the balance that is due?

A. That is due?

Q. Yes.

A. I sold them two units which amounted to \$4,665.33.

Q. And credited against that?

A. \$1,176—

Q. Give me that again, please.

A. I said \$1,176 on units which I bought from him. That left a balance of \$3,489.33, I believe it was.

Q. How many units did you bring from Hubbard?

A. Three.

Q. And the purchase price of those units was credited against it?

A. Credited against the price of these two.

Q. They were old cars, is that right? You sold Hubbard new cars?

5-5-58
page 169 } A. Two new cars. Well, two of these cars, one was a '51 Ford. I allowed him \$300 on that. Another was a '52 Pontiac. That was \$400. Another was a '57 Chevrolet that he had some equity in. I bought the Chevrolet, and allowed \$476 equity on this Chevrolet. That made a total of \$1,176.

CROSS EXAMINATION.

By Mr. Miller:

Q. Mr. Pollard, you are in the used car dealer business, I believe, sir?

A. Well, it is really the new car business, but we, of course, handle used cars, too.

Q. You have a license?

A. I am licensed to handle new cars, but, of course, we handle used ones, too.

Q. You operate a partnership, I believe, sir.

A. That's right.

Leslie Pollard.

Q. Your license is in the name of your partnership, I believe.

A. Yes, sir.

Q. And you have that posted in your place of business, have you, sir?

A. I don't have it posted, but I have a dealer certificate there.

Q. That is for the purpose for the public to see
5-5-58 that you have complied with the law, isn't that
page 170 } correct, sir?

A. Well, it is there at any time they want to see it.

Q. I understand, sir, that you dealt, of course, with Mr. Hubbard in these transactions, is that correct, sir?

A. That is correct.

Q. I will hand you two checks, sir, and ask you, sir, if you will identify those two drafts, sir?

A. Yes, sir. I recognize them both.

Q. Those are the two drafts given to you by Samuel R. Hubbard, is that correct, sir?

A. That is correct.

Mr. Miller: We would like to have these marked as the next Defendant's exhibit, sir.

The Court: All right, sir. I will so mark it. That will be Defendant's Exhibit K, both of them together.

By the Court:

Q. Were they paid or were they turned down? This one apparently you never attempted to deposit that one, did you?

A. Well, he told me he didn't have anything behind that.

Q. Both of them are for the same item, aren't they?
5-5-58
page 171 }

A. Yes.

By Mr. Miller: (Continued)

Q. Then I understand, sir, that the total of those two drafts—

The Court: They are just ordinary checks, aren't they?

Q. —that the principal amount of the claim, less \$1,100 for

Leslie Pollard.

three cars which you purchased from Mr. Hubbard, is that correct, sir?

A. Principal amount, that's right.

Q. So that is the way you arrived at the amount that you are claiming?

A. That is right. At the \$3,489.33, I think it was.

By Mr. Anderson:

Q. One of these checks is dated August 15, 1957, and it is drawn on the Tri-County Bank. What was the understanding when this check was handed to you?

A. Mr. Hubbard gave me that check and told me to hold that, that he did not have any money in that bank, to hold it until he came back with cash or a cashier's check.

Q. And this second check is drawn on Hubbard Used Cars, and that is dated September 13, 5-5-58 } page 172 } 1957. When did you receive this?

A. I received it on September 13th. That was for the first unit, less that \$300 car, the '51 Ford.

Q. So you have no check representing tendered payment of the second unit then?

A. No, sir.

Witness stood aside.

Mr. Anderson: That is the plaintiff's case.

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5-6-58 }
page 3 }

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Mr. Miller: Judge, first, I do not want to waive our objection to any evidence on the question of estoppel, that it was not pleaded, and that we were taken by surprise. The Court, of course, has overruled us on that, to which we excepted, but I do want to point out that we think the Court should strike out any question now in the case of any claim of estoppel, sir.

The Court: Well. I cannot strike piecemeal.

Mr. Miller: I think, sir, it should be taken up at this

point as to what theory the case can proceed on, anyhow. The plaintiff, himself, has testified to facts which would bar any estoppel theories, and I find nothing in the evidence upon that basis, sir, and we, of course, want to be advised as to how to go forward with the evidence.

5-6-58 The second thing is the question of the partner-
page 4 } ship. I tried to look over these facts last night,
 and the situation is such, sir, that we ask the Court
to strike the plaintiff's evidence and enter up judgment for
the defendant as to a partnership in fact on the basis that the
evidence is insufficient to establish a partnership and is con-
trary to the plaintiff's evidence, and the plaintiff's evidence
clearly establishes that there was not a partnership.

Going over the evidence, substantially, Judge, we do have in the evidence a situation which under the plaintiff's evidence Sam Hubbard went up to open up his own business on West Broad Street and this is his own testimony. His contention is that the defendant, Cullingworth, said that he would back him. Now in his interpretation of that, that might make him a partner according to the claim of the witness, Hubbard, but in the law that does not make him a partner. The evidence was quite clear that the defendant, Cullingworth, was principally financing, or was in the business of financing, automobiles and taking liens back to secure the financing of an automobile.

Now, the witness, Hubbard, denied that there was a specific sum to be paid for the financing, but he did state,
5-6-58 sir, that the payment for the loan was going to be a
page 5 } part, or some part, of the profit from the sale of
 that vehicle; so that under his theory, sir, that
would simply be a means of paying for the loan. That, sir,
mere participation of those facts under the plaintiff's evi-
dence and under that theory would not make the plaintiff a
partner. (Citing and reading from cases)

The Court: It may be that it will shorten this if I read to you what I find the law to be and I would like to see if you agree with it. (Reading) A contract that a person who has lent money to another engaged, or about to engage, in business shall receive a rate of interest bearing with the profits, or a portion of the profits, of the business in lieu of or in addition to interest does not of itself make him a partner, but the transaction must be a *bona fide* loan and not a mere cover to conceal an actual partnership. If substantial rights and powers of a partner are given to the alleged lender, he is properly deemed to be a partner. That is to say, if he has a substantial say or control in the business and the manner in

Billy A. Melvin.

which the assets of the business are employed, then he must be regarded as a partner. However, the mere fact that his return on his money loaned is gauged by a portion of the profit does not in of itself, standing entirely alone, make him a partner.

Mr. Miller: That is the law. I believe that is correct.

Note: After further argument by counsel, the conduct of the hearing continues as follows:

Mr. Miller: Your Honor, another ground for our motion is that we also take the position that Mr. Cullingworth was not a partner in the first place because he did not have a joint interest or control in the business, and after six months Cullingworth was no longer a partner, anyhow, and this debt was incurred a year after the business was over, and cars were financed by Harrison and McOsker and others.

The Court: I will overrule the motion and I will let it go to the jury. I think there is some evidence of joint control and community of interests.

Mr. Miller: We except on the ground stated, Your Honor.

Note: At this point Court and counsel return to the Court-room, and in the presence of the jury the conduct of the hearing proceeds as follows:

5-6-58
page 7 } In open court.

BILLY A. MELVIN,

a witness introduced on behalf of the defendant Cullingworth, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Miller:

Q. Will you state your name for the jury, please?

A. Billy A. Melvin.

Q. What is your occupation?

A. I am a minister.

Q. Would you tell us whether or not you are presently living in Richmond?

A. No, I live in Norfolk.

Q. You have a church there?

A. That is right.

Billy A. Melvin.

Q. Were you formerly in Richmond?

A. Yes, I went to Norfolk the first of February.

Q. What was the church of which you were a pastor?

A. I pastored the First Free Will Baptist Church on Monument Avenue.

Q. Was the defendant, Cullingworth, a member of your congregation?

5-6-58 A. That is right.

page 8 } Q. Was he a close friend of yours?

A. Yes.

Mr. Anderson: Just a moment. I fail to see the relevancy of this testimony and I object to it.

The Court: Well, it is out of order, but I assume Mr. Cullingworth is going to take the stand and be cross examined. Isn't that right?

Mr. Miller: Yes, Your Honor.

The Court: Is this just character testimony?

Mr. Miller: No, sir, this is not just character testimony. I was just establishing the relationship.

The Court: Proceed.

By Mr. Miller: (Continued)

Q. Did you have occasion to see the defendant, Cullingworth, frequently or infrequently during the fall of 1956 and during 1957?

A. I saw Mr. Cullingworth quite frequently.

Q. How far from his house was the home that you were living in Richmond?

A. We lived two blocks from Mr. Cullingworth.

Q. Did you go to his home frequently or infrequently?

A. Yes, quite frequently.

Q. Could you tell us whether or not he was employed or working or not?

5-6-58 A. Mr. Cullingworth was retired, as far as I know.

page 9 } Q. Could you tell us whether or not you on any occasion had occasion to go to the place known as Hubbard's Used Cars on Broad Street?

A. Yes.

Q. Were you there with Mr. Cullingworth?

A. Quite frequently.

Q. Could you tell the jury why Mr. Cullingworth went there?

Mr. Anderson: I object to that, Your Honor.

Billy A. Melvin.

Note: After an off the record discussion, the conduct of the hearing continues as follows:

Mr. Miller: Your Honor, I am trying not to lead him and still ask the question properly.

By Mr. Miller: (Continued)

Q. On the visits to Hubbard's Used Cars when you were with Mr. Cullingworth and on the occasions when you saw him there and were with him, could you tell us what he was doing there?

Mr. Anderson: What he saw him do there?

Mr. Miller: Yes.

A. What I saw him doing there?

By Mr. Miller: (Continued)

Q. Yes.

A. Well, all I saw Mr. Cullingworth do was
5-6-58 standing around. I just went by, dropped in quite
page 10 } frequently to see him and visit with him. I
did have occasion to pass because of the location
of the lot to my home and to town and so forth, and I dropped
in and I would just visit, chat with him.

Q. Did you have occasion to know the home of Mr. Cullingworth?

A. Oh, yes.

Q. From your knowledge of Mr. Cullingworth and his position in life, could you tell us where he spent most of his time and where he was going and what he was doing?

Mr. Anderson: I object to that, Your Honor.

The Court: I think that is a proper question.

Mr. Anderson: I object to it on the ground that there has been no proper foundation laid. If he knows of places where the man went, he can say, but I do not think there has been any foundation laid for this gentleman to make a general statement or characterization of what Mr. Cullingworth was doing all the time.

The Court: He can state generally what activity Mr. Cullingworth was engaged in and as to where he would see him and such as that.

Raymond L. Malloy.

By the Court:

Q. Mr. Melvin, where did he spend most of his time, around his house or over on the lot or other places or where?

A. Well, it was about, I would say, 50-50.

5-6-58

Q. Fifty between the lot and 50 at his house?

page 11. }

A. Just generally.

Q. Did he have any other interests that took him other places to speak of?

A. Not to my knowledge outside of the church.

Mr. Miller: I have no further questions, Your Honor.

Mr. Anderson: I have no questions.

Witness stood aside.

RAYMOND L. MALLOY,

a witness introduced on behalf of the defendant Cullingworth, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Miller:

Q. What is your name?

A. Raymond L. Malloy, sir.

Q. What is your occupation?

A. Auditor.

Q. By whom are you employed?

A. The City of Richmond.

5-6-58

Q. Do you do any work as an accountant other than for the City of Richmond?

page 12 }

A. That is right, I do spare time bookkeeping

work.

Q. You say that you do some work other than for the City of Richmond?

A. I do some outside bookkeeping work in my spare time.

Q. Did you have occasion in 1956 and 1957 to do any accounting work for Mr. Hubbard?

A. I did.

Q. Would you tell us as to the name of the business that it was operated?

A. Hubbard's Used Cars.

Q. Who engaged you to set up the books of Hubbard's Used Cars?

A. Mr. Hubbard.

Raymond L. Malloy.

Q. Whom did you look to for payment of your salary and direction of the work of the business?

A. Mr. Hubbard.

Q. Was Mr. Hubbard as far as you knew the sole owner of the business?

A. That is right.

Q. Did you file the tax returns on behalf of Mr. Hubbard?

5-6-58 A. For 1956 I did.

page 13 } Q. Would you tell us whether or not you prepared those under Mr. Hubbard's direction?

A. That is right.

Q. Would you tell us whether or not you filed them as a sole proprietorship?

A. That is correct.

Q. Were his books set up as a sole proprietorship?

A. They were.

Q. Would you tell us how frequently you were at the place of business of Hubbard's Used Cars?

A. I was generally there sometime on every Saturday and occasionally one or two nights a week.

Q. Was it at that time that you would post the books and so forth, sir?

A. That is correct.

Q. Could you tell us the general nature of the records of Mr. Hubbard as to whether they were easy to post or difficult to post?

A. They were extremely difficult at time. Much of the information, there was nothing in writing on it. Sales were made without complete information on the sales invoice. Checks were written without the check stubs being filled in.

Much of the information would not be obtained, except through transactions that occurred later on, such as an automobile being sold and could find out that
5-6-58 page 14 } that car had been traded in on another car, which had no record of ever being in the business.

At times it was impossible to reconcile the bank account. Frequently, you couldn't find out what a check was written for until such time as a canceled check came back from the bank.

Q. Would you or not say the books represented the best information you could get under the circumstances?

A. The books represent the best information that I could

Raymond L. Malloy.

find available, but I do not believe they are completely accurate.

Q. Were the books kept current?

A. Well, that would depend on your definition of current. The information was not posted daily or anything like that. It should have been posted weekly. Frequently, it would be several weeks or a month or more before the information, the complete information, or as much as I could get, would be available to be posted.

Q. Would then the entries have to reflect a guessing date or a date on which you obtained the information?

A. Well, a lot of the information, the actual date was available. Other times the dates were not available and frequently dates are an estimate.

Q. Did you make up the withholding statements 5-6-58 for Mr. Hubbard, too?

page 15 } A. That is right.

Q. He paid the employees, of course?

A. That is correct.

CROSS EXAMINATION.

By Mr. Anderson:

Q. Mr. Malley, you say you filed the tax return for Mr. Hubbard for 1956?

A. That is correct, sir.

Q. Would you refer to your books if necessary and tell me whether it is true or not that the net profit distributed to Mr. Hubbard for the first calendar year of the business was \$4,289.56?

A. Let me have that figure again.

Q. \$4,289.56?

A. That is correct.

Q. And you do not know of any agreement or arrangement between Mr. Hubbard and Mr. Cullingworth, do you? You do not know if there was one?

A. Well, that would depend on what kind of agreement you were talking about.

Q. Well, let me be more specific then. Would you refer to your cash receipts and disbursement book, please, sir?

A. Yes, sir.

5-6-58 Q. Would you turn to page No. 2 of that book
page 16 } and the entry that was made on August 22, 1956?

There was a check made payable to John R. Cullingworth for \$1,900.00, is that right?

Raymond L. Malloy.

thing there is no such evidence in the record and the second thing is they are asking for a conclusion.

The Court: I think that is a legal question. I do not think it belongs in this gentleman's specialty and I will sustain the objection.

5-6-58 Q. As an auditor, can you find any relationship
page 18 } of interest between the \$1,800.00 and the \$100.00?
A. In the first place, let me state that I was not working for Mr. Hubbard as an auditor. I was working as a bookkeeper, and the two things are entirely different. The information that was put on that book under the date of August 22 was not put on at that time. I do not remember exactly when I opened these books up, but it was several months after August 1st. All this information, I had to go back and compile it.

Q. I have just asked you as to one entry there that you said was verified by check. That is certainly true, isn't it? There is certainly nothing incorrect about that one entry, is it?

A. As far as I am concerned with the information I have available now, no.

Mr. Anderson: I wonder if we could hand the gentleman the exhibit that was introduced yesterday? I think it is probably Complainant Exhibit 11 or 12.

Mr. Miller: Your Honor, I would object to that. That is the testimony of one witness. I do not think one witness should comment on the testimony of another witness.

The Court: One expert can be asked to review the work of another.

5-6-58
page 19 } Note: At this point a paper writing is tendered
the witness.

By Mr. Anderson: (Continued)

Q. You will recall I telephoned you some week or so ago, I believe, and asked you if you would get some information from the books for me.

A. That is correct.

Q. And you told me at that time that you had been employed—

Raymond L. Malloy.

A. That is right.

Q. That was verified by check, also, was it not? Did you verify that by check?

A. I would assume that this came from the check stub, sir.

Mr. Miller: Your Honor, I must move that that be stricken. We do not want any assumptions.

Mr. Anderson: We can get the check. It is check No. 187.

Note: At this point a check is handed witness, after which time the conduct of the hearing continues as follows:

By the Court:

Q. You assume that you posted the entry from that check, Mr. Malloy?

A. (Examining paper writing) No, sir, from the check stub.

Q. From the stub, you think?

A. Yes, sir.

By Mr. Anderson: (Continued)

Q. I asked you if the check you have in your 5-6-58 hand, check No. 187, does not verify that *disburse-* page 17 } *ment* of \$1,900.00?

A. That is correct.

Q. I ask you to refer to your general account ledger for the same date and tell us how much was charged to Mr. Cullingworth's account from that check, from that disbursement.

A. \$1,800.00.

Q. The difference there of \$100.00, how do you have that entered?

A. Interest.

Q. You have stated that the books were set up on the basis of a sole proprietorship. I ask you, as an auditor, if the entry that was made for August 22, 1956 for \$1,900.00 resulted from the sale of an automobile for \$2,000.00, and \$100.00 of the profit was paid to Mr. Cullingworth and one hundred dollars was paid to Mr. Hubbard? If that is true, wouldn't that indicate to you as an auditor that there was a sharing of profit as to that transaction?

Mr. Miller: I object, if Your Honor please. The first

Raymond L. Malloy.

Mr. Miller: Is he going to testify now? I object to him testifying.

The Court: He is on cross examination.

Q. —and you told me at that time that you had been employed by Mr. O'Flaherty and Mr. Miller to get some information some months previous to that?

A. At some time previously.

Q. I told you in view of that I would seek the services of someone else, isn't that true?

A. That is true.

Q. I would like for you to look at Schedule 1 that you have before you and refer to your general ledger account No. 43. I do not think this will take very long. Will you tell us if that Schedule No. 1 is a correct statement from your books?

A. Are you asking me if this is an exact transcript of that?

5-6-58 page 20 } Q. No, I am not asking you that. I am asking you if Schedule 1 is a correct statement taken from your books?

A. This does not include everything that is in that account. Is that what you want to know?

Q. What doesn't it include?

A. There is an entry here of August 30, 1957 for \$678.00 which is not shown on here as credited to Cullingworth.

Q. Would you turn to the next page? I believe you will find it on the next page. That is made up of two pages.

A. I am sorry.

Q. Do you see it on there now?

A. I see it. They agree in substance.

Q. It shows a total charge to the account of Mr. Cullingworth of \$42,919.00, is that correct?

A. That is correct.

Q. That represents disbursements made to Mr. Cullingworth, is that true?

A. Without looking up each one of these entries, I could not say if that was a disbursement or not.

Q. As an auditor in keeping the books, doesn't that indicate generally to you that it is a disbursement, money paid over?

5-6-58 A. It would not necessarily have to be money.

page 21 } Q. It would not have to be money, but it would have to be money or goods, would it not?

A. That is correct.

Q. Would you turn to Schedule 2 and would you get the

Raymond L. Malloy.

cash receipts and disbursements book and would you open that to August 1, 1956, page 1, and I believe the first entry there is \$5,425.00, which is credited to cash, is that true?

A. That is correct.

Q. Your books show that that cash came from whom?

A. Mr. Cullingworth.

Q. Your next entry in regard to Mr. Cullingworth is August 23. What does that show coming from Mr. Cullingworth?

A. \$9,235.00.

Q. The next entry is August 30 on page 3. What does that show?

A. You say that the next entry as far as Mr. Cullingworth is concerned—

Q. Yes, August 30, page 3, "Automobiles, \$3,555.00." Do you find that?

A. Well, I would have to disagree with you, sir. I see Mr. Cullingworth's name again on page 2.

Q. What do you find on page 2?

A. Check No. 198, \$1,200.00.

Q. How much did you say that was, \$1,200.00?

5-6-58 A. \$1,200.00.

page 22 } Q. That would be a disbursement to Mr. Cullingworth then?

A. That is true.

Q. I am not asking you about disbursements to Mr. Cullingworth. I am asking you about money and goods which he put into the business.

A. I understood you to say that you were taking the next entry in regard to Mr. Cullingworth.

Q. I incorrectly stated that. On August 30, page 3, do you not have an entry of \$3,555.00 in automobiles which Mr. Cullingworth put into the business?

A. There is a little more to that entry than that particular thing.

Q. All right, sir, would you explain it?

A. Because it shows that Check No. 230 was drawn to Mr. Cullingworth for \$960.00.

Q. For how much, sir?

A. \$960.00; \$860.00 was credited to his account and \$100.00 to interest and also that \$3,555.00 was for automobiles was set up on the records.

Q. As coming into the business?

A. As coming into the business.

Raymond L. Malloy.

that is entirely different than having them recorded exactly as they transpired.

Q. As I understand it, you recorded the transactions to the best of your ability based upon the information you had at hand? Isn't that true?

A. I don't think I got across to you I was trying to state that as far as I was concerned there was an asset there. Whether it was cash or automobiles purchased, or whether the cash had come into the business or the automobiles had come into the business, that didn't make much difference to me. The end result was getting automobiles on the books, which

I had found through one source or another had
5-6-58 been purchased.

page 25 } Q. But it is true you have some entries there
which indicate cash and some which indicate auto-
mobiles? Isn't that true?

A. That is true.

Q. Referring to Schedule 2, I ask you again are the items which we have covered so far or have they been correctly stated from your books?

A. As far as the way they are recorded on the books, yes. As far as whether or not they actually transpired that way, I cannot say.

Q. In order to save time I will ask you this: When you are excused, if you will take Schedule 2 and check it with your books, as well as these other schedules, three schedules, and if you find any inaccuracies or errors, would you be good enough to come back and tell us about them?

Mr. Miller: I object to that. That is putting upon the witness something which the plaintiff cannot do.

Mr. Anderson: I am just trying to save time. I do not want to go down each entry on these schedules.

The Court: I do not think he should have to do that.

By Mr. Anderson: (Continued)

5-6-58 Q. Did you have a total of the amount of money
page 26 } and goods which were paid to Mr. Cullingworth?

Did you make up any schedule to show the amount of money in goods paid to Mr. Cullingworth from the business?

A. I can't recall anything right now.

Q. You did not do that?

Raymond L. Malloy.

Q. From him?

A. That is true.

Q. Without going down each item there on Schedule 2, does that schedule appear to be in order to you?

5-6-58

page 23 } Mr. Miller: Your Honor, I object to that. I object to him trying to adopt a whole schedule. If he has something specific to point out, I think he should do it.

The Court: The witness is verifying each figure in his answer.

Q. Does that appear to be in order?

A. I haven't checked everything on here. I have no way of saying.

Q. Well, I ask you so far as we have gone does it appear to be in order?

A. For the three items we have examined, yes, sir.

Q. Well, let's go ahead, sir. Let us take up September 7, page 4, and I will ask you if you find an entry of \$1,500.00 cash being put into the business by Mr. Cullingworth?

A. That is correct.

Q. On that same date there is also an entry of \$1,830.00 coming into the business by Mr. Cullingworth in the form of automobiles, is that true?

A. That is correct to a certain extent, but I am not in a position to state from the information I have right now whether or not that is automobiles and cash coming in or whether that is the way it just happened to be

5-6-58 recorded.

page 24 } Q. That is the way you recorded it, though, is it not?

A. That is true, but I don't know when that was recorded or exactly what information I had.

Q. Well, as an accountant or as an auditor you would make an effort, would you not, to record it correctly?

A. As an auditor I would not be keeping books. As an auditor I would be verifying somebody else's books. When I was keeping these books, I tried to have the books show as nearly as I could the net results of the transaction. That information was not available, as I have said before, to put it down properly. To get the end result as far as I was concerned at that time, not having any idea that these books were going to be shown in Court and each item questioned,

John R. Cullingworth.

A. Well, it would depend.

Q. Would it be a capital account?

A. That would depend on whether the individual, it was
5-6-58 the individual's business, or it was an outsider or
page 28 } who it was.

Q. If it was an individual business, what type of
account would it be?

A. The individual business would have a capital account
opened.

Q. Are there any capital accounts in the books of Hub-
bard's Used Cars?

A. Yes, sir.

Q. For whom?

A. Sam R. Hubbard.

Q. Anyone else?

A. No, sir.

RE-CROSS EXAMINATION.

By Mr. Anderson:

Q. There is an account in the books for Mr. John R. Cul-
lingworth, is it not? It is called "Floor-Plan," but it is
separated and it is a separate and distinct account from any
of the others, is it not?

A. Yes, sir, and I believe you will find several others.

Q. Will you please show them to us, those that are separate
and distinct and so designated?

A. Here is one on notes payable, O. A. Whitten, a separate
and distinct account. Here is one on E. E. Harri-
5-6-58 son. That is all.

page 29 } Q. Two others?

A. Yes, sir.

Q. By "notes payable," what does that indicate?

A. That money was loaned and a note was made by Mr.
Hubbard.

Q. The Harrison account, is that a similar account to the
Whitten account?

A. It is not so indicated. It says, "Floor-Plan."

Witness stood aside.

JOHN R. CULLINGWORTH,
one of the defendants, first being duly sworn, testified as
follows:

Raymond L. Malloy.

A. I don't recall anything, but I may have done it.

Q. I am referring to Schedule 3 which purports to do that.

By the Court:

Q. I expect you did it in the spring of 1957 when you got up the 1956 return, but I do not believe you said you had really wound up the books when the business closed, did you?

A. No, sir, I don't recall offhand when the last time I worked on these books was, but I would say somewhere probably around October or November of 1957.

Mr. Anderson: I have no further questions.

RE-DIRECT EXAMINATION.

By Mr. Miller:

Q. With regard to being employed, were you employed as an expert, sir, or were you asked merely to come up and explain part of the transaction of the books which 5-6-59 had been brought at the request of the plaintiff to page 27 } the Clerk's Office?

A. Employed by who?

Q. Actually, were you actually employed as an expert or did you just come up to explain the books of the partnership at the request of counsel, the books that had been produced in the Clerk's Office?

A. I was not employed as an expert.

Q. Secondly, sir, in regard to clarifying some of these items, I understand that you have testified that items such as \$9,235.00, which were entered as cash, actually were put that way but represented a total number of automobiles that had been—

Mr. Anderson: If Your Honor please, I think Mr. Miller is leading the witness, and I object to that.

The Court: He is your witness, Mr. Miller.

Mr. Miller: I will withdraw the question, sir.

By Mr. Miller: (Continued)

Q. If a person invests cash in a business, what type of account is opened for the investor?

John R. Cullingworth.

Q. Then subsequent to that time did you have occasion to know whether or not, or were you familiar with the business of Hubbard's Used Cars, sir?

A. What do you mean "familiar with it"?

Q. I mean you know where the lot is located, do you not?

A. Yes, sir.

Q. I think you went there with some frequency, did you not?

A. Yes, sir.

Q. Going back to 1954, is that the time that you say you sold your business to Mr. Poppas?

A. Yes, sir.

5-6-58 Q. You retired at that time, sir?

page 32 } A. Yes, sir.

Q. Have you engaged in the business since then, sir?

A. No, sir, no more than financing some cars for Mr. Poppas and financing some for Mr. Hubbard here.

Q. Did you finance some cars for Mr. Hubbard?

A. Yes, sir.

Q. Would you tell us the arrangements for your financing of cars?

A. Well, Mr. Hubbard asked me to finance some cars for him and I financed them for him, and he would pay me \$25.00, some of them \$50.00 on \$500.00 to a thousand dollars and some of them \$100.00 over \$2,000.00, and some of them, if he made a good deal on it, he would pay me a hundred dollars, and I think it was on one that I know of on a thousand-dollar deal.

Q. Did you ever enter into any partnership with Mr. Hubbard?

A. Never was a partnership mentioned in any state or form. The first thing I knew about a partnership was when the warrant was served on me as a partner. I didn't have any idea.

Q. Did you have any control of the business?

A. No, sir.

5-6-58 Q. Did you ever hire or fire any of the employees
of the business?

page 33 } A. That was none of my business. That was
Mr. Hubbard's. I didn't have any business doing
any of that.

Q. Did you have anything to do with the contracts for the lease of the property?

A. No, sir.

John R. Cullingworth.

DIRECT EXAMINATION.

By Mr. Miller:

Q. What is your name, sir?

A. J. R. Cullingworth.

Q. Your age?

A. 67.

Q. What is your occupation?

A. Well, I am not doing anything. I have been
5-6-58 retired since 1954.

page 30 } Q. Where do you live, sir?

A. 4813 Monumental Street.

Q. Are you married, sir?

A. Yes, sir.

Q. You say you have been retired since 1954?

A. Yes, sir.

Q. Could you tell us whether or not you have ever been
engaged in the used car business yourself?

A. Oh, I have been in it practically all my life, that and
the wrecking business.

Q. You say you are 67 and you are going on 68, sir?

A. Yes.

Q. When will you be 68?

A. The 19th of October.

Q. Did you attend school, sir?

A. No, sir, I didn't get nowhere in school. My dad went
blind when we were young children and I had to carry papers
and we had to keep the family going.

Q. How far did you go in school?

A. The second grade.

Q. You say that you were in the used car business part of
your life?

A. Yes, sir.

5-6-58 Q. How long have you known Samuel Hubbard;
page 31 } the co-defendant here?

A. Well, Mr. Hubbard, when I sold out to Mr.
Poppas, that was the first of any knowing of him.

Q. That was the first that you knew him?

A. Yes, sir.

Q. What year was that, sir?

A. That was 1954.

Q. At that time who was Mr. Hubbard working for?

A. Well, I thought they was partners or something, and I
come to find out that he was just managing the business for
Mr. Poppas.

John R. Cullingworth.

Q. Or anything to do with the business transactions?

A. Not a thing in the world.

Q. May I ask, sir, what security did you have for the cars which you financed?

A. Well, I always took the titles and held the titles for the security, and when he paid out a car or two cars at a time, why, I give him the titles, so the checks started bouncing on them and my wife's nerves went all to pieces, which she is ready to go to the hospital at the present time, and she has been all to pieces, and he give me a few checks that come back. Well, they had come back to the house and that is what tore her all to pieces.

Q. About what time was this, sir?

A. That was I think about November.

Q. Of 1956 or 1957?

A. 1956. I never had anything in 1957 in, or at least I had four or five cars in there, but they were left over after I had stopped financing for him in 1956.

Q. Did you ever contribute any cash to the business of Hubbard's Used Cars or was yours purely
5-6-58 } the financing of automobiles?
page 34 }

A. All mine was checks; I handled everything by check.

Q. But I am talking about whether or not you had any participation in the business or did you contribute to the business anything other than the financing of cars?

A. No, sir.

Q. Now I ask whether or not you borrowed money to finance these cars or did you—

Mr. Anderson: I object to that.

The Court: I do not think the source makes any difference.

Mr. Miller: I think that it is rather important. Counsel yesterday tried to indicate that this gentleman tried to loan something like \$40,000.00, and I want to show that it was a revolving matter.

The Court: I will sustain the objection. I not think it makes a particle of difference.

Mr. Miller: We except, if Your Honor please.

By Mr. Miller: (Continued)

Q. The transaction on which this suit is brought, did you finance it, sir?

A. I just don't know what you mean by that.

John R. Cullingworth.

The Court: He means did you finance the purchase of that new Ford car.

5-6-58

page 35 } Q. When did you cease to finance cars for Sam Hubbard?

A. Oh, it was in August.

Q. August? When are you talking about?

A. I think the first one I financed was August 3rd.

Q. Is that 1956, sir?

A. Yes, sir.

Q. How many months did you finance cars for him?

A. Well, I think it went along until the middle of December. It was just before Christmas that I stopped financing.

Q. Was that because as you say of the checks that were beginning to bounce, sir?

A. Yes, sir.

Q. Was the principle amount of the financing that you did in 1956, sir?

A. All of it I done in 1956.

Q. Were there other persons financing cars for Mr. Hubbard, too?

A. Oh, Mr. Hubbard had seven, eight or ten different people financing.

Note: After a short recess is had, the conduct of the hearing continues as follows:

5-6-58 Q. Mr. Cullingworth, did you have any control or
page 36 } direction of the salesmen of Hubbard's Used Cars?
A. No, sir.

Q. Did you have any control of the sales of the automobiles at all?

A. No, sir, I had no control of nothing of Mr. Hubbard's at all. He done all his selling and I loaned him the money on the cars.

CROSS EXAMINATION.

By Mr. Anderson:

Q. Mr. Cullingworth, you say you had been in the automobile business, used car business, about all your life?

A. Practically all of it, in the wrecking business for years and years and then I sold used cars afterwards.

John R. Cullingworth.

Q. You know your way around, in other words, in the used car business? Is that a fair statement?

A. Yes, sir.

Q. You say when you met Mr. Hubbard you thought he was a partner of Mr. Poppas?

A. I thought they were. I thought they were in partners when they run the Blue Ribbon place, but when I sold out to Mr. Poppas, I found out he wasn't a partner.

Q. You were at that time running the Richmond Auto Mart, is that true?

A. Yes, sir.

5-6-58 Q. What kind of business was that?

page 37 } A. That was a used car business.

Q. Is it a wholesale business?

A. No, sir, a retail business.

Q. Where was that operating?

A. At 2315 West Broad.

Q. That was in 1954?

A. Yes, sir.

Q. You sold that to Mr. Poppas?

A. Yes, sir.

Q. Then you had some discussions with Mr. Hubbard about opening a lot out here on West Broad, didn't you?

A. No, Mr. Poppas—we stayed around there about a year or more, and then Mr. Poppas' lease was taken away from Mr. Poppas and sold the ground under him, and then Mr. Poppas went to 3311 West Broad, and I went up there with him and financed cars for him.

Q. You had some discussions with Mr. Hubbard along about June or July of 1956 about opening up a lot on West Broad Street? Isn't that true?

A. Well, Mr. Hubbard was talking about he was getting tired there of Phil's and he was talking about going in business for himself and asked me would I finance cars for him, and I said, "I don't know, Sam." I said, "If you get your lot and everything is all right, why, maybe I will finance some for you."

5-6-58 Q. Didn't you assure him that, if he went out
page 38 } and got a lease and got enough money together to
improve a lot so it could be used for the used car business, you
would back him?

A. No, sir.

Q. You did not assure him of that?

A. No, sir.

Q. Well, being in the used car business as long as you have,

John R. Cullingworth.

sir, you know, do you not, that a man can't go into the business unless he does have financial backing, can he?

A. No, sir, but he had cars of his own and he had cars he would sell for different people.

Q. You say that the only understanding that you had with him was that you were to finance some cars and that is all?

A. That is correct.

Q. So he opens up his lot and you come up there and you stock his lot, isn't that true?

A. No, sir.

Q. That is not true?

A. No, sir.

Q. Did you go to these various auctions with him and, particularly, Windsor Auto Auction and purchase cars with him?

5-6-58 A. Well, Windsor Auto Auction, Mr. Hubbard
page 39 } was going there and buying some there and they
wouldn't take his check there, and he asked me
would I go and see Mr. Matthews, and Mr. Matthews told him,
no, he would not take his check, but he said he would take
Uncle John's check. He always called me Uncle John, and I
paid for the cars for Mr. Hubbard and kept the titles.

Q. You mean the only reason you paid for the cars is he wouldn't take Mr. Hubbard's check?

A. That is correct.

Q. You were supposed to stock his lot, were you?

A. No, sir.

Q. Why were you buying these cars for him?

A. Well, I was helping him to get started in business. I think it was helping.

Q. You had no idea of sharing in the profits of the business?

A. No, there was no profits shared with him.

Q. You were doing this as a friend?

A. Well, as a friend you might say, and I thought I could make a few dollars. He wanted it financed the same as the bank did, and I thought I was doing like the bank was.

Q. You thought you were doing like the bank was?

A. The banks were financing before I was.

5-6-58 Q. We will come back to that later. You said
page 40 } you thought you could make a few dollars out of it?

A. Yes, sir.

Q. By that just what did you mean?

A. Well, he would promise me \$25.00 on cars around \$500.00,

John R. Cullingworth.

and \$50.00 on cars around a thousand dollars and \$100.00 on cars around \$2,000.00.

Q. Didn't you tell him, if he wasn't interested in wheeling and dealing them or in a fast turn-over, that you were not interested in the business?

A. I had nothing to say about that at all.

Q. I am asking you if you didn't make that statement?

A. No, sir.

Q. You mean you did not tell him you would be interested if he had a fast turn-over?

A. No, sir.

Q. Was there any understanding between you and Mr. Hubbard about selling the cars so there would be a \$200.00-profit and you would take a hundred dollars and he would take a hundred dollars?

A. No, sir.

Q. No such understanding as that?

A. No, sir, it was never mentioned in no way, shape or form.

Q. It is a fact, is it not, that you did split the profits on those cars that were sold?

5-6-58 page 41 } A. No, sir, I never split any profit.

Q. You didn't split any profits?

A. No, sir.

Q. Well, this money that you got, what do you call it?

A. I call it financing, interest on the money I financed the cars for.

Q. What interest is it, Mr. Cullingworth, that you thought you would receive a hundred dollars for \$1,800.00 loans? What kind of interest do you call that?

A. Well, I didn't know anything about interest. I just knew what Mr. Hubbard promised me when I went in there.

Q. Wasn't that a 50-50 deal?

A. No, sir.

Q. He didn't promise that he would take a profit on the automobiles and give you half and he would take half?

A. No, sir, that was never mentioned no way, shape or form.

Q. But, as a matter of fact, that is what did occur. Isn't that true?

A. No, sir.

Q. That did not occur?

A. As far as I know of, it did not occur.

John R. Cullingworth.

5-6-58 Q. Now the first check there, you received that
page 42 } for the \$1,900.00?
A. Yes, sir.

Q. That was for selling an automobile at \$2,-
000.00, was it not?

A. No, it couldn't have been.

Q. It couldn't have?

A. Couldn't have been \$2,000.00 because this check that he
give me would be, maybe, \$50.00 profit or \$70.00. I wouldn't
know what he would get for the car.

Q. Let me refer you to the books. The books indicate that
you out of that \$1,900.00 received a hundred dollar profit.

A. Well, now I couldn't say that.

Mr. Miller: The books do not say profit. The books say
interest for one thing.

The Court: Well, he got a hundred dollars.

Q. You got a hundred dollars to put in your pocket out of
that check?

A. I couldn't tell you. Look at the books and see what car,
what I loaned him on it.

Q. Mr. Cullingworth, suppose you look at the cash receipts
and disbursement book, it is right there before you.

A. Well, I wouldn't know how to check that for you. You
can get somebody else to check it. I wouldn't know how to
work on these books or what about them.

5-6-58 Q. You have owned an automobile business?
page 43 } A. Well, I never did any book work. I haven't
had the education to do any book work. That is the
thing that held me down in life.

Q. And you say that has held you down?

A. Yes, sir.

Q. You cannot tell us whether you got a hundred dollars
out of that deal?

A. No, sir, I couldn't say to save my life whether it was
\$50.00 or a hundred dollars.

Q. Well, turn to the next check. That is check No. 198.
How much is that check for?

A. \$1,200.00.

Q. You got \$150.00 out of that check and put in your pocket,
didn't you?

A. No, sir, I never got \$150.00 from no car.

Q. You didn't?

John R. Cullingworth.

A. No, sir.

Q. Well, let us check that one right now. You see this entry here (indicating)?

A. Yes, sir.

Q. That is \$1,050.00, is it not?

A. Yes, sir.

Q. That was charged to your account. You were pretty certain about the money you paid in that you got it back, weren't you?

5-6-58
page 44 } A. Yes, sir.

Q. You were also certain that in addition to that you got what was coming to you on the deal, were you not?

A. What was coming to me on the interest.

Q. On interest?

A. Yes, sir.

Q. For that \$1,050.00 you got \$150.00 interest, did you not?

A. No, sir.

Q. You did not?

A. No, sir, what they put on the book, I don't know.

Q. That is what they put on the book, is it not? There it is right now.

A. Well, I can't help it. I never received more than a hundred dollars on no car that was sold down there.

Q. But you got that check?

A. Yes, sir.

Q. Your account here, you were pretty certain that you were getting your money back, were you not?

A. Yes, sir.

Q. Your account here was charged with \$1,050.00, isn't that true?

A. Well, I don't know about that. I just know what I done.

5-6-58 Q. You know what you did?

page 45 } A. Yes, sir.

Q. Look at the next check, Mr. Cullingworth.

How much is that?

A. \$960.00.

Q. Out of that check you got \$100.00, didn't you, to put in your pocket?

A. Just now that is what I can't say. You will have to check back to the books.

Q. All right, we will verify the books. Look at the next check, Mr. Cullingworth. How much is that check?

A. That is \$1,730.00.

John R. Cullingworth.

Q. Do you know how much you got out of that check?

A. I couldn't tell you what I got out of any of these checks unless you look at my book.

Q. Look at your book?

A. Well, yes, sir.

Q. Did you keep books?

A. No, sir, I had a statement where I sat down every car I sold and what interest that I received from it.

Q. Every car that you sold?

A. Every car that was sold at the lot, my interest, the ones that I had loaned on.

Q. Well, you sold some cars yourself, didn't you?

A. No, sir.

5-6-58 Q. You did not?

page 46 } A. No, sir. I heard Mr. Hubbard say I sold one yesterday, but he couldn't prove that to save his life.

Q. Didn't you sell a car to the gentleman who was in here and testified, the Reverend Mr. Melvin?

A. Mr. Melvin? Mr. Hubbard knew all about that deal. I didn't make a nickle out of it. Mr. Hubbard told me about the 1954 Cadillac that the gentleman had in South Richmond and Mr. Hubbard got him over there and my pastor to look at the automobile, and he drove it and liked it and we traded right there for it.

Q. Didn't you buy a 1954 Cadillac at the Windsor Auto Auction?

A. Well, now, I couldn't say right offhand.

Q. Your pastor ended up with a 1953 Cadillac automobile, didn't he?

A. Yes, sir.

Q. Whatever profit was made on the deal, you got it, didn't you?

A. It wasn't any profit made on it. I told Mr. Hubbard at the present time I would like to help him get a good automobile, and Mr. Hubbard was the one explained about this fellow he knew over, I think it was, at Reams and Lynn who had a 1954 Cadillac. He had been in there and tried to trade for this car, and I think Mr. Hubbard asked

5-6-58 him \$1,100.00 on the car for trade, and they had my
page 47 } pastor and they got together there that night and drove each other's car.

Q. Well, the car that your pastor got was owned by a mechanic at Lynn's, was it not?

A. Yes, sir.

John R. Cullingworth.

5-6-58 A. It looks like \$10,090.00.
 page 49 } Q. You mean \$1,090.00?
 A. Yes, sir.
 Q. Would you go through all of those checks and
 tell us if it isn't true that you received that amount of money?

A. What would that be there (indicating white slip of paper)? I don't know anything about this.

Q. That is the certified check, is it not? It is a certificate of the certified check that was made payable to you?

A. Well, I guess that is what it could be, yes, sir. I guess that must be the same thing, another one.

Q. You mean a certificate of a certified check?

A. Well, I guess, but I wouldn't know that.

Q. You know whether you got the money or not, do you not?

A. No, sir, I couldn't tell until I seen the check.

Q. How much is that certificate that you are looking at?

A. \$350.00.

Q. You do not know whether you got that or not?

A. No, sir, I don't know.

Q. How about the other checks? Did you get that?

A. Yes, sir.

5-6-58 Q. In addition to that, on October 31, 1956, you
 page 50 } were paid \$3,020.00 in cash? Isn't that true?

A. I never received any cash. Mr. Hubbard never paid in any cash.

Q. So if that is entered on the books as coming to you and being charged against your account there, that is incorrect?

A. I don't know how he got his books fixed or anything about that, but I know I never received any cash.

Q. You are pretty certain of this, are you not, that you were paid back the amount of money you had invested in the business, plus? You are pretty certain of that, are you not?

A. I never had any invested in it. I only had money financed on the cars.

Q. But the money you had financed on the cars, you are pretty certain that you got that back?

A. Yes, sir.

Q. Plus?

A. Plus \$25.00 or \$50.00 or whatever it would call for, except in maybe two or three of them cars he claimed he didn't make any profit on, and he just didn't give me no profit on them. He just paid me back on the cars. When they stand long, you want them moved. Banks don't want you to hold them. They want you to move them.

John R. Cullingworth.

Q. You sold the mechanic at Lynn's a 1954 Cadillac for which he traded in the 1953 Cadillac? Isn't that correct?

A. That is correct.

Q. Who made the profit on that deal?

A. There wasn't any profit made on the deal.

Q. Wasn't there money exchanged?

A. Yes, sir.

Q. Who put that money in his pocket?

A. Well, Mr. Hubbard give me a check for a thousand dollars, or, let's see now. Now, I don't remember whether Mr. Hubbard gave me a check or—no, that was straightened out through the bank. I think the gentleman over at Reams and Lynn went and got a check and give me a check for a thousand dollars.

Q. And that does not appear anywhere in the books, does it?

A. I don't know, sir.

Q. You do not know?

A. No, sir.

Q. You put that check in your pocket, that \$1,5-6-58 000.00?

page 48 }

A. That is correct.

Q. Then your pastor comes along and he acquires a 1953 Cadillac?

A. That is right, and they traded for the Cadillac. That is where the check came in from.

Q. He traded what? What did your pastor pay for the 1953 Cadillac?

A. He traded a 1953 Ford in—no, 1955 Ford.

Q. But there was some money paid, wasn't there?

A. Yes, sir.

Q. All right, who got that money? Didn't you get it?

A. It was a thousand dollars that was paid.

Q. Paid to you?

A. Yes, from the deal that was made, the mechanic that traded the car in, and Mr. Hubbard taken my pastor's car at \$1,300.00, which I allowed him \$1,500.00, the reason didn't make any money. I was trying to get him a car, a good car. He had been after me a good while.

Q. You got all the money in the deal, but there was no money made?

A. Mr. Hubbard will verify that.

Q. Will you go on with the checks there that you have? What is the next check for?

John R. Cullingworth.

5-6-58 Q. How about Mr. Cullingworth?
 page 51 } A. I wouldn't want them to stay too long.
 Q. You would want a fast turn-over?
 A. Not a fast turn-over, but if a car stays on the lot six or eight weeks, I think it ought to be sold. That is the way I handled my business.

Q. On December 3, 1956, you were paid out of cash \$1,600.00. Do you recall that?

A. Mr. Hubbard never paid me in any cash money. He always gave me a check for it.

Q. Do you recall receiving a certified check for that amount of money?

A. I believe right offhand that I couldn't say.

Q. There were so many transactions between the two of you that it is hard to keep track of them in your mind?

A. Well, I just wouldn't know them in my mind.

Q. In addition to that, on June 20, 1957, you received out of cash or certified check \$225.00, did you not?

A. Well, that was for a car that was sent up. Mr. Philip Poppas owed me \$2,475.00 and Mr. Hubbard was supposed to take care of that for Mr. Poppas for the money that Mr. Hubbard owed Mr. Poppas, so Mr. Hubbard was paying me \$250.00 each month on that, and they claimed they paid me seven or eight notes on that, but there was one they didn't pay, and Mr. Poppas gave me a note for the difference which was \$400.00 when it was wound up, but it was really 5-6-58 \$895.00 that he owed me.

page 52 } Q. Let us go into that. When you sold your business to Mr. Poppas, Mr. Poppas paid you a certain amount of money and agreed to pay you a certain amount more? Is that true?

A. No, he gave me a check for the money and said that Mr. Hubbard would take it over, but I wouldn't hold Mr. Hubbard for it because Mr. Hubbard didn't have anything to do with that. That was up to Mr. Poppas, but Mr. Poppas let Mr. Hubbard pay off to me.

Q. Is it not true that before Mr. Hubbard set up his lot and he was talking to you about going into business and securing your backing, that he told you he would pay off this obligation that Mr. Poppas owed you for some 24 or 25 hundred dollars?

A. That is right.

Q. So you say, "Well, all right, Sam, you go out and set up your lot and put it in your name and I will back you," and that is what happened, is it not?

John R. Cullingworth.

A. No, sir.

Q. Well, he paid off that indebtedness, didn't he?

A. Well, he paid some of it off for Mr. Poppas, but I was holding the check for Mr. Poppas, on Mr. Poppas.

Q. Your records indicated that he didn't pay off as much as he said he paid off?

5-6-58 A. That is right.

page 53 } Q. You keep pretty good records in matters of finances, do you not?

A. I try to.

Q. You know where your money is and how much has gone into various items, do you not?

A. I try to.

Q. And you know how much you have got coming back to you. Isn't that true?

A. That is right.

Q. You say you were nothing more than a banker in this case?

A. Well, I acted like a banker and loaned him the money on the cars. That is what I thought.

Q. Does a banker go down to an auction such as Windsor Auto Auction and purchase cars like you did?

A. No, sir.

Q. You did that, didn't you?

A. Well, I didn't have anything to do and I was interested in going around and talking to people. Mr. Hubbard asked me to go down and look over some cars for him, and I did. I had been going to auctions a long time before Mr. Hubbard ever came along.

Q. Did you do it for the purpose of making money or didn't you?

5-6-58 A. Well, I couldn't say, except in a way I would
page 54 } look at it in the interest that I would get out of it,
yes, sir.

Q. As a matter of fact, we have an exhibit here which is No. 7 and has four pages of checks made by you and containing four checks each and a fifth page containing three checks, some of which are paid to Sam Hubbard, Hubbard's Used Cars, and some to Windsor Auto Auction?

A. Yes, sir.

Q. When you went down to these auto auctions, you say you didn't have any control over the business?

A. No, sir.

John R. Cullingworth.

A. That is correct.

Q. And he didn't buy them?

A. Well, he didn't have any money to buy them. I didn't have anything to do with that.

Q. You speak of financing. The money that you paid was the full price for the automobiles, was it not?

A. What do you mean by the full price now?

Q. I mean this check right here for over \$9,000.00. That paid for the cars, didn't it?

A. Yes, sir.

Q. And the cars were titled in the name of Hubbard Used Cars?

A. Yes, sir, they were transferred over in Mr. Hubbard's name with a lien against them for J. R. Cullingworth.

Q. All of them didn't have a lien, did they?

A. Yes, sir, unless there were some on the yard that Mr. Hubbard would give me the title that I would loan him some money on, and they was never recorded and I just held the titles.

Q. You just took the titles and put them in your pocket?

A. Yes, sir.

5-6-58 } Q. Getting back to this relationship between you
page 57 } and a bank, banks make six per cent interest on the
money they loan, isn't that true?

A. Yes, sir.

Q. How much did you make on the money you loaned?

A. Well, I didn't know. I didn't know anything about that interest. I was just taking up what Mr. Hubbard promised to give me on each car he sold.

Q. A bank doesn't go to the business or to the lot every day and sit in the office and answer the telephone and talk and wait on customers, do they?

A. I didn't do that either.

Q. You went to the lot every day, didn't you?

A. No, sir.

Q. You did not?

A. No, sir.

Q. You heard your pastor testify you spent 50 per cent of your time there?

A. I don't mean that I went to the lot all the time. Sometimes I would go down to the lot 10 o'clock or 11 o'clock and leave 2 o'clock or 3 o'clock, and Mr. Hubbard will verify that.

Q. But you went every day?

John R. Cullingworth.

Q. Don't you consider that a person who makes a decision as to how a used car lot is stocked, what cars should be put on the lot, has some control over the business?

A. No, sir, I wouldn't think so.

Q. You wouldn't?

A. I never bought any cars to go on the lot. That was up to Mr. Hubbard.

Q. You didn't buy any cars to go on the lot? I am referring to Exhibit No. 7, Mr. Cullingworth, and just picking out one of the checks for \$9,235.00 made payable to Windsor Auto Auction. Where did those cars go?

A. Mr. Hubbard bought the cars his ownself.

Q. But you paid for them with your own check?

5-6-58

A. I paid for them, that is correct. I paid for page 55 } them because Mr. Matthews wouldn't take Sam's check, and Sam told me he couldn't buy nothing unless I paid for it.

Q. Didn't you pick out the cars?

A. No, sir.

Q. Didn't you help pick out the cars?

A. No, sir, that was up to Mr. Hubbard. I had nothing to do with picking out his cars.

Q. If I understand your testimony, and you correct me if I am misstating it, you just went down there to the Windsor Auto Auction and Mr. Hubbard decided to buy a certain lot of cars and he says the bill is \$9,235.00, and you wrote out a check for it without looking at them?

A. Well, no, sir, that is not right. The cars would come up for sale and Sam would bid on them, and he would ask me, "How much are you going to loan me on this one," and if it was a good clean car and the book—

Q. What do you mean by "book"?

A. It is a book published about what price a car is if it is good and clean, about what you ought to pay for it and what you ought to get for it.

Q. Didn't you go over and look at the cars and determine whether it was good and clean if he asked you how much you would loan him on it?

A. Yes, I looked at some of them, but sometimes 5-6-58 he would want to buy wrecks and I just wouldn't page 56 } buy any wrecks and I wouldn't finance any wrecks for him.

Q. So there were some cars that he wanted to buy that you wouldn't buy?

John R. Cullingworth.

A. No, there was a lot of days I didn't go that I
5-6-58 didn't feel like I could go or my wife was sick and I
page 58 } couldn't go.

Q. Out of the six days of the week how many
days do you estimate you went to the lot?

A. I would say sometimes three, sometimes four and some-
times five.

Q. You sat there in the office, didn't you?

A. Well, I would be around the yard or setting in the
office or something of that kind. I have answered the phone,
as you say. Mr. Hubbard would go out and ask me to answer
the phone for him.

Q. You were doing the financing and Mr. Hubbard was sell-
ing the cars and paying you so much and paying himself so
much and that was true for about the first six months, was
it not?

A. I don't know what he was paying himself, but I know
what he was paying me.

Q. You mean you didn't know how much profit was made
on the car?

A. No, I didn't have a thing in the world to do with the
profit or what he sold it for.

Q. You mean the money that was paid to you, you just
accepted it?

A. I had to have what I had paid for the car, what I would
loan him on the car.

5-6-58 Q. But you got something in addition to that,
page 59 } did you not?

A. Yes, sir, with the exception of some two or
three, as I told you.

Q. Weren't you pretty certain that there was a certain
margin of profit there and you were getting your share of
it?

A. Well, I didn't know what the profit was on them. That
is something I didn't know.

Q. You were on the lot, weren't you, when Mr. Pollard
came in?

A. I don't remember.

Q. Well, you remember meeting him there on the lot, do you
not?

A. I never did know Mr. Pollard as I know of. I may have
met him.

Q. Do you not recall being introduced to him there on the
lot?

John R. Cullingworth.

A. I couldn't say yes or no. I just don't remember and that is the truth, gentlemen.

Q. You do remember seeing him on the lot, though?

A. No, I can't say I do.

Q. Do you mean that you cannot say of the 10 or 12 times, 12 or 15 times, that Mr. Pollard came to the lot you do not recall ever seeing him there?

5-6-58 A. I never paid any attention to people coming page 60 } on the lot. I had no attention to pay to it.

Q. You knew after the first six months or so about the business affairs of Mr. Hubbard, didn't you, the business there on the lot?

A. No, sir, I had nothing to do with that.

Q. You didn't know anything about it?

A. No, sir. What do you mean by "business affairs"?

Q. Well, I mean didn't you know where these cars were coming from and didn't you know how much money was owed on them and didn't you know whether they were being sold or not?

A. I didn't know anything about owing on any cars. All I would do, we went to Windsor sales and when he would buy the cars, I would pay for them, and if cars came on the lot, he would ask me to look at it and see what I would loan him on it, and some of them he wanted more money and I would say, "Sam, I just can't do it," and he would turn around and I would say, "You will have to get somebody else if that doesn't suit you."

Q. I believe you continued to go on the lot until it folded up in September or October of 1957, didn't you?

A. Well, I wouldn't say that. After I stopped financing I would go down there two or three days a week. I had six or seven cars left there after I had stopped financing.

5-6-58 page 61 } Q. On October 31 the books indicate that a car was distributed to you valued at \$1,580.00. You know about that, do you not? That is 1957?

A. No, sir, I never loaned any money on cars in 1957.

By the Court:

Q. Did they turn an automobile over to you in the fall of 1957?

A. Turn it over to me? How do you mean "turn it over to me"?

Q. I mean did they physically turn over a car to you and give you the keys to it and so on in the fall of 1957?

John R. Cullingworth.

A. No, sir, no more than a Buick that belonged to me, where I had financed Mr. Poppas and Mr. Poppas sent the cars to Mr. Hubbard to sell.

Q. That was turned over to you in the fall of 1957?

A. It wasn't turned over to me. I taken it to the auction and sold it.

By Mr. Anderson: (Continued)

Q. You took it from the lot, did you not?

A. Yes, sir, Mr. Hubbard knew about it.

Q. That happened in the fall of 1957, last year, 5-6-58 did it not?

page 62 } A. Yes, I had five or six cars in in that time. I don't know about in that time, but after I had left the lot, and then after I had left the lot, Mr. Hubbard didn't seem to care whether he sold those I had financed for him or not.

Q. You said after you had left the lot.

A. When I stopped financing for him.

Q. You never left the lot, did you? I mean you kept coming back to the lot right up until October of 1957, didn't you?

A. Well, off and on I would come back, but I didn't come there through on out like I was in 1956, because I was kind of looking after my interest and I had nothing else to do, and I would go from there downtown and other lots and sit around and talk, and me and my pastor, he would come around and talk and he loved to look at cars.

Q. He knew where to find you and that was at the lot?

A. Sometimes he would find me there and sometimes he would find me at home.

Q. You said that you didn't know anything about the business, Hubbard's Used Car business?

A. No, sir, I had nothing to do with his business or anything.

5-6-58 Q. Yet, you made the statement on direct exami-
page 63 } nation that Mr. Hubbard had seven or ten different people financing cars for him?

A. That is right.

Q. Well, you knew about that, didn't you?

A. Well, he would tell me. He said, "I can get anybody to finance them for me." He would get different people. I wouldn't know from his books or anything what he was doing. I had no concern in looking at his business.

Q. You were there in the office and the telephone would

John R. Cullingworth.

ring and a person would make an inquiry about a car, and wouldn't you attempt to answer it?

A. Yes, sir, if they wanted to talk about a car, I would get Mr. Hubbard or call Mr. Hubbard and say, "Somebody wants to see you about buying an automobile, wants to talk about what price it is."

Q. This automobile that you had, Mr. Cullingworth, pictures of it have been introduced as Plaintiff Exhibit No. 6 and that automobile was in your name, was it not?

A. Yes, sir.

Q. Title to it in your name?

A. Yes, sir.

Q. The license plates on there are "Hubbard's Used Cars," is that right?

A. Yes, sir.

5-6-58 Q. I believe the garage liability insurance policy page 64 } covered the operation of that car—

Mr. Miller: If Your Honor please, that is asking for a conclusion.

The Court: He can answer if he knows. He can tell whether he had a separate policy.

A. Well, I don't know whether that included that or not.

Q. You didn't carry separate insurance on that?

A. I never carried any insurance on any automobile that I drove.

Q. Can you tell us were you an employee of Hubbard's Used Cars?

A. No, sir.

Q. Were you a partner of Hubbard's Used Cars?

A. No, sir.

Q. Do you not know that in order to carry the license plates and be covered by the insurance you are supposed to be a partner or an employee? Just what were you?

A. Well, I wasn't—I don't know. Mr. Hubbard just loaned me a set of license plates to put on there the same as—I did the same thing at Richmond Auto Mart when I was financing cars for them, and I had my car for sale, which Mr. Hubbard can tell you, two or three times we tried to make a deal and just couldn't get together.

5-6-58 Q. Is it not a fact that you were paid either in page 65 } cash, or in the one case an automobile, the sum total of \$49,879.00 from this business?

A. Well, whatever these checks show, that is what I got.

John R. Cullingworth.

Q. You haven't got any idea, have you, the difference between that figure and the amount you put into the business?

A. I just don't quite catch that.

Q. How much did you put into the business?

A. I don't know that.

Mr. Miller: I think that is an improper question and I ask that it be stricken. There has been no testimony that he put any money into the business. In fact, it's been the other way.

A. I never put any money into the business. If you call it financing, then it would be money in the business because that is what I did.

Q. Can you tell us how much of that you did? You call it financing and I call it putting it in the business. We mean the same thing. Do you know how much you financed?

A. Well, I couldn't say. When we sell a car in two or three days, take that money and turn it over again and just keep turning it over, and Mr. Hubbard is setting back there, and, if he will tell you the truth, he will tell you I never was a partner in that business.

5-6-58

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RE-DIRECT EXAMINATION.

By Mr. Miller:

Q. Was the amount that you paid and the amount that was loaned on these automobiles purchased from Windsor Auto Auction the wholesale price of the automobile?

A. Yes, sir.

Q. Not the retail price?

A. No, sir, that is the wholesale price.

Q. In the fall of 1956 were you in the hospital, sir?

A. Yes, sir.

Q. How long were you in the hospital?

A. 1956?

Q. Yes, sir.

A. I think it was a little over 8-days; I think it was 8 or 9 days.

Q. Were you sick at home, too?

A. Yes, sir.

Q. How long were you confined?

A. I was at home three or four days there.

Q. These checks that were paid to you, on occasions did they involve sometimes more than one automobile?

Samuel R. Hubbard, Jr.

A. Oh, yes, they involved five or six cars at times.

Witness stood aside.

5-6-58

page 67 } Mr. Miller: The defense rests, Your Honor.

The Court: Is there any rebuttal?

Mr. Anderson: I would like to recall Mr. Hubbard.

The Court: All right.

SAMUEL R. HUBBARD, JR.,

recalled for rebuttal testimony, having previously been duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:

Q. Mr. Hubbard, can you throw any light on this transaction that occurred—

Mr. Miller: May I interrupt to object? Your Honor ruled yesterday to let him be called as an adverse witness. I ask that he be recalled as his own witness. He conferred with him during recess.

The Court: I think the same rule will apply.

Mr. Miller: Exception, if Your Honor please.

By Mr. Anderson: (Continued)

Q. Mr. Hubbard, can you throw any light on this transaction which occurred involving Reverend Melvin?

5-6-58 } A. I can, sir. It was a 1954 Cadillac coupe bought
page 68 } at Windsor Auction and was sold to Mr. Foggett
at Lynn Pontiac, and he traded a 1953 Cadillac in,
and that car was sold to Reverend Melvin in the back.

Q. Did any of that money come through the Hubbard Used Car business?

A. No, Mr. Cullingworth bought the car and made the deal and went over and collected the money from the bank over on Hull Street and handled it right down the line himself, every dollar of it, and you won't find no record out of these books of that.

Q. Were any of those cars on Hubbard's Used Car lot?

A. Yes, sir, the Cadillac was brought back from Windsor Auto Auction and he also paid the purchase price of the cars and brought them back and sat them on the lot.

Billy A. Melvin.

5-6-58

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BILLY A. MELVIN,
recalled as a witness for rebuttal testimony, having
previously been duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Miller:

Q. Reverend Melvin, right much has been made over an automobile that you purchased. Could you tell us who you dealt with when you made this transaction?

A. Well, I would like to and the best way to answer that question is to tell how it occurred. I think Mr. Hubbard was aware of the fact that I was interested in an automobile. This automobile was brought to my attention, and when we began to consider the price and the deal, Mr. Hubbard was very congenial about it, I thought, and was interested in getting me a good car at a good price as a favor to me, and so we began to consider the prices and so forth, and as I understood it, the transaction was to be made and there was to be no profit realized any way around. It was just a personal favor to me, and I don't know about the 1954 car. I can't say anything about that, but I understood the 1953 Cadillac belonged to the mechanic over at the Pontiac place, and I traded a Ford in on it, and I do know that the deal

5-6-58

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was handled in the name of Hubbard's Used Cars.
Q. Did you discuss and deal with Mr. Hubbard in the transaction?

A. With Mr. Hubbard?

Q. Yes, sir.

A. Well, Mr. Hubbard was there and he handled the papers that transferred the car and all.

CROSS EXAMINATION.

By Mr. Anderson:

Q. In discussing the transaction did you discuss it with Mr. Cullingworth?

A. Yes, sir. I would like to say why, if I may.

Q. It is all right with me.

A. Because I don't know cars and Mr. Cullingworth is a friend of mine and has been in the car business and, naturally, I would seek his advice.

Billy A. Melvin.

Q. So that is the only reason that you discussed it with him?

A. Yes, sir.

Q. Didn't he tell you that he would make an effort to secure you an automobile, a good automobile?

A. He said he would be on the look-out for me.

Q. You do not know how much profit, if any, was made on the 1954 Cadillac that was sold to the mechanic, do you?

5-6-58 } A. No, sir, I don't know anything about that.
page 71 }

Q. You do not know how much profit or anything about the transaction concerning your Ford which you traded in?

A. No, sir.

Witness stood aside.

The Court: Is that all of the evidence?

Mr. Miller: Yes, Your Honor.

Mr. Anderson: That is all we have.

Note: At this point the jury is excused until 2:15 p.m.

Court and counsel retire to Chambers and the conduct of the hearing continues as follows:

IN CHAMBERS.

Mr. Miller: Is the Court going to instruct on estoppel?

The Court: No.

Mr. Miller: We want to renew our motion.

5-6-58 } The Court: Motion is overruled.
page 72 }

* * * * *

Mr. Miller: The defendant, Cullingworth, moves the Court to strike the plaintiffs' evidence and enter up judgment for the defendant, Cullingworth, on the ground, one, the evidence is insufficient to establish a partnership of which the defendant, Cullingworth, was a party and fails to show the right and control over the business that is necessary to show in a co-ownership of the business, and, also, upon the ground that the evidence shows that a partnership was not created.

Further, the defendant, Cullingworth, moves the Court to strike the evidence and enter up judgment in favor of the defendant, Cullingworth, on the ground that the evidence shows that the partnership was not in existence at the time the transaction with the plaintiffs was entered into.

The Court: I overrule your motions.

Mr. Miller: The defendant, Cullingworth, objects and
 5-6-58 excepts on the ground stated. The defendant,
 page 73 } Cullingworth, also objects and excepts to the giv-
 } ing of any instructions on the grounds stated in
 } the motion to strike.

Note: After a discussion between Court and counsel on instructions, the conduct of the hearing continues as follows:

Mr. Anderson: The plaintiffs object and except to the Court's refusing Instruction Nos. 6, 7, 8, 9 and 10 offered by the plaintiff's on the grounds that they correctly state the law and are supported by the evidence.

The plaintiffs object and except to the Court's refusal to instruct the jury on the question of the holding out of the defendant, Cullingworth, as a partner and its refusal to instruct the jury that, if they believed a partnership existed during the first six months of operation of Hubbard's Used Cars, there was a presumption until proved to the contrary that it was in existence at the time of the transaction with the plaintiffs.

In Open Court.

5-6-58 Note: After a recess for lunch the instructions
 page 74 } of the Court are read to the jury, following which
 } closing argument by counsel ensues, which is here-
 } by deleted in the interest of brevity.

• • • • •

Note: After closing argument by counsel, the jury retire to their jury room at 4 o'clock p.m.

During the absence of the jury the conduct of the hearing proceeds as follows:

Jury Out.

Mr. Miller: I do not believe he is entitled to put this in.

Samuel R. Hubbard, Jr.

He did ask Mr. Pollard and the Court did not let him put that in.

The Court: I do not believe you got that in the 5-6-58 record.

page 75 } Mr. Anderson: I was asking Mr. Hubbard when he was on the stand the first time we went in Chambers, and that was the point taken up at that time.

The Court: To make sure we had better get that in.

Mr. Miller: I am glad for him to put in what he took objection to, but I do not think it should be something that no objection or exception has been taken.

SAMUEL R. HUBBARD, JR.,
recalled for further examination, having previously been duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:

Q. Mr. Hubbard, when Mr. Pollard came on the lot of Hubbard's Used Cars, was Mr. Cullingworth present the first time? Do you recall?

A. Yes, Mr. Cullingworth was there.

Q. Did you introduce Mr. Pollard to Mr. Cullingworth?

5-6-58 } A. I don't remember whether I introduced him
to Mr. Cullingworth at that particular time or not.
page 76 } Q. Did you see them talking together?

A. Yes, they were chatting together, but I don't remember introducing him to him or not.

Q. What, if anything, did you tell Mr. Pollard was your relationship with Mr. Cullingworth?

A. Well, I told Mr. Pollard and all these people I had been buying cars from that Mr. Cullingworth had been backing me, had been my partner; that I didn't have anybody else to turn to.

Q. Did you make that statement to Mr. Pollard in the presence of Mr. Cullingworth?

Mr. Miller: Now, Your Honor, I object to that. There has been no evidence of that whatsoever and no question asked of that.

Mr. Anderson: I think he is going to say no.

A. No, I didn't make that statement before Mr. Pollard.

Samuel R. Hubbard, Jr.

By the Court:

Q. Before Mr. Cullingworth?

A. Before Mr. Cullingworth.

Mr. Miller: No questions.

Witness stood aside.

5-6-58

page 77 } Note: After a recess is had, the jury return to
the Courtroom at 5:49 p.m., and the conduct of the
hearing continues as follows:

Jury In.

The Court: I believe you gentlemen have some question you wish to ask?

A Juror: Yes, sir. Would the liability of Mr. Cullingworth in this case, which is three thousand and some odd dollars, in the event that we return the verdict against Mr. Cullingworth, would the liability, would he be liable for all of the debts of Hubbard's Used Cars?

The Court: Do you gentlemen wish to talk to me about it?

The Juror: I have another question. We are also—I am also disturbed. I am under the impression that Mr. Hubbard is bankrupt and for how much—I would like to know. We have different opinions, and it is very much contingent upon my thinking; and is that a permissible question to ask?

5-6-58 The Court: I will give you the answer when we
page 78 } come back.

Note: At this point Court and counsel retire to Chambers and the conduct of the hearing continues as follows:

In Chambers.

Mr. Miller: Judge, I hate to say it, but I believe we have a mistrial in the case. It appears to me that the jury is considering matters outside of the evidence. The only thing I know to do is ask for a mistrial.

The Court: I overrule your motion.

Mr. Miller: We except to Your Honor's ruling.

Mr. Anderson: The first question, the verdict of the jury in this case does not affect any other claims which may be against Hubbard's Used Cars. I mean each of them are individual cases resting upon separate facts, and this is an action by two plaintiffs.

The Court: Really they should not decide the case on that basis. I think I will tell them they ought not to consider the point.

Mr. Miller: Now the second question, Your
5-6-58 Honor.
page 79 } The Court: On either one, I cannot answer
either one.

Note: Court and counsel return to the Courtroom and in the presence of the jury, the conduct of the hearing continues as follows:

In Open Court.

The Court: Gentlemen, I suppose it is only natural that some of these questions should occur to you in considering these cases, but one of the reasons why there is no evidence on either of those two questions is they are not pertinent to the decision in this case. I mean you must not consider other collateral or even associated problems that these two gentlemen must have. The issue really relates to this particular claim of these particular plaintiffs, and the liability of Mr. Cullingworth or his non-liability is solely governed by the instructions, and you will just have to do the best you can with it by weighing the evidence in the light of the instructions.

On matters as to the financial worth of the parties, whether or not one of them may or may not
5-6-58 page 80 } be eventually in bankruptcy or whether or not it
will affect other claims and that sort of thing, really, you must not allow those things to influence your verdict in this particular case.

I am sorry, but I believe under the law both of the questions relate to matters collateral to the issues in this case. I will ask you to return to your room.

Note: At this point the jury return to their jury room, and the conduct of the hearing continues as follows:

Jury Out.

Mr. Miller: Let the record show we object and except to the Court's statement to the jury upon the same ground as stated in chambers.

Mr. Anderson: The plaintiffs except to the Court's explanation to the jury on the ground that the first question should have been answered in the negative; that this case does not mean that all claims of Hubbard's Used Cars will have to be borne by Mr. Cullingworth.

Note: At 6:18 p.m., the jury return to the Courtroom and the conduct of the hearing continues as follows:

5-6-58

page 81 } The Court: Gentlemen of the jury, have you agreed upon a verdict?

The Foreman: We have.

Clerk: (Reading) "We, the jury, on the issue joined find for the plaintiffs and assess the damages at \$3,489.33, (Signed) Newton Jackson, Foreman."

Is that your verdict, gentlemen?

The Foreman: Yes, sir.

Note: At the request of Mr. Miller each member of the jury is polled, and they all state that it is their verdict.

The jury is excused from further attendance on the Court. and the conduct of the hearing continues as follows:

Jury Out.

Mr. Miller: If Your Honor please, the defendant, Cullingworth, moves the Court to set aside the verdict on the grounds that it is contrary to the law and the evidence and that there is insufficient evidence to show a partnership. In fact, the evidence shows that there was no partnership, and that even if a partnership was created, it was not in existence at the time the transaction occurred.

We further object on the ground of the admission of evidence during the course of the trial to which objections and exceptions were made and, further, on the ground that the questions asked by the jury we think show that the jury has considered matters out of the record, and we further object and except for misdirection of the jury, if Your Honor please.

The Court: All right, gentlemen, I imagine you would like to be heard on this motion.

Mr. Miller: Yes, sir.

The Court: Very well, the motion will be continued to a date to be later agreed upon.

• • • • •
A Copy—Teste:

H. G. TURNER, Clerk.

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