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Supreme Court of Appeals
Richmond, Va.

Record No. 5169

In the Supreme Court of Appeals of Virginia at Richmond

FRANCES KLOTZ

v.

ALEX KLOTZ

FROM THE CIRCUIT COURT OF THE CITY OF FREDERICKSBURG

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. 5169

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 4th day of March, 1960.

FRANCES KLOTZ, Appellant,

against

ALEX KLOTZ, Appellee.

From the Circuit Court of the City of Fredericksburg

Upon the petition of Frances Klotz an appeal is awarded her from decrees entered by the Circuit Court of the City of Fredericksburg on the 25th day of September, 1959, and on the 9th day of October, 1959, in a certain chancery cause then therein depending wherein Alex Klotz was plaintiff and the petitioner was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of five hundred dollars, with condition as the law directs.

RECORD

* * * * *

Filed May 6, 1958.

M. H. WILLIS, Clerk
By ELLEN G. MILLS, Deputy.

BILL.

To: The Honorable Leon M. Bazile, Judge of said Court.

Your complainant, Alex Klotz, would respectfully show unto the Court as follows:

1. That your complainant and the respondent were lawfully married on the .... day of May, 1924, in Elkton, Maryland, and have resided for many years preceding the institution of this suit in the City of Fredericksburg, Virginia.

2. That difficulties and differences arose in the marital relationship existing as a result of the marriage, resulting in a separation between the parties, both of whom are still, however, *bona fide* residents of and domiciled in the City of Fredericksburg, Virginia.

3. That since the 1st day of August, 1946, the parties hereto have operated under a partnership agreement a business in the City of Fredericksburg, Virginia, under the partnership name of KLOTZ'S, a copy of said partnership agreement being attached hereto.

4. That the strained relations existing between your complainant and the respondent make it impossible for your complainant to continue to properly operate the business as a partnership.

page 2 } 5. That during all of their married life, your complainant has done everything possible to provide a proper home and support for the respondent and the children born as a result of the marriage, Ruth and Alex, both of whom are now of age, married and maintaining separate domiciles of their own; that your complainant has been unable to agree with the respondent upon any satisfactory terms for the division of their properties or a reasonable support and maintenance for the respondent.

6. That your complainant has always been and still is ready to provide such support and maintenance for the respondent as this Court should deem just and proper, taking into consideration all of the factors and circumstances involved.

WHEREFORE, your complainant prays that Frances Klotz be made a party respondent hereto; that proper process issue; that the partnership formed on August 1, 1946, be dissolved; that the property rights of the parties hereto be established and adjudicated; and that this Court shall determine and order such sum or sums as the Court may deem reasonable and proper that the complainant should pay to the respondent for her maintenance and support; and that he be granted such other and further relief as the nature of this case may require or to equity may seem meet.

Respectfully submitted,

ALEX KLOTZ.

COLEMAN & GIBSON
Attorneys for Complainant
403 William Street
Fredericksburg, Virginia,
By WM. J. GIBSON

page 3 } COPY.

PARTNERSHIP AGREEMENT
Between
ALEX KLOTZ
and
FRANCES KLOTZ

To operate the Business of a Dealer in new and Used Automobile Parts, Iron, Rags, Furs, Hides, Paper, and Junk.

Effective August 1, 1946.

page 4 } Undersigned, ALEX KLOTZ, whose post office address and place of residence is 1600 Franklin Street, Fredericksburg, Virginia and FRANCES KLOTZ, whose place of business is located at 310 Charlotte Street, Fredericksburg, Virginia, do hereby associate themselves as general partners in the operation of business as a dealer in new and used automobile parts, iron, rags, furs, hides, paper, and junk, and the carrying on of other related business and affairs in the State of Virginia and elsewhere, with the principal place of business of the partnership located in Fredericksburg, Virginia, and, until otherwise changed at No. 310 Charlotte Street, Fredericksburg, Virginia, under the Laws of the State of Virginia applicable to general partnerships and ac-

ording to the following terms and provisions not inconsistent with said laws:

1. The name of the partnership shall be KLOTZ'S.

2. The main or general place of business of the partnership shall be at Fredericksburg, Virginia, and until otherwise changed shall be at No. 310 Charlotte Street in said City, and the partnership shall have the right to open other offices or places *pf* business in the State of Virginia or elsewhere as from time to time determined.

3. The partnership shall begin on August 1, 1946, and shall continue for a period of ten (10) years thereafter, unless sooner terminated in a manner provided by Law; and at the expiration of said ten (10) years, in the absence of a written notice from either party to the other not less than six (6) months previous to the expiration of said ten
page 5 } (10) years, shall be renewed for an additional period of five (5) years, and successively for similar periods unless such written notice shall be given as herein provided, before the expiration of any period, or unless the partnership shall be terminated otherwise as provided by Law.

4. The capital of the partnership shall consist of the business and contributed to the partnership by ALEX KLOTZ on August 1, 1946, (which partnership capital was contributed one hundred per cent (100%) by ALEX KLOTZ) plus such additional contributions of capital hereinafter made by each of the partners, in the proportion from time to time agreed on by the partners, whether new money is paid in or the profits, or a portion thereof, of the partnership determined to be necessary for the business and affairs of the partnership and agreed by all of the partners to remain in the assets of the partnership until additional partnership funds shall have been paid into or permitted to remain in the partnership. The interest in the capital in the partnership in event of dissolution thereof, shall be on the basis of sixty-six and two thirds per cent (66 1/3%) thereof to ALEX KLOTZ, and thirty-three and one-third per cent (33 1/3%) thereof to FRANCES KLOTZ.

The capital of the partnership contributed on August 1, 1946, as hereinbefore set forth, shall be in the aggregate of the amount set forth on the opening balance sheet of the partnership as of August 1, 1946, a copy of which is attached to the original executed copy of this partnership agreement.

5. The fiscal *peroid* of the partnership shall be as the

partners from time to time determine.

page 6 } Until otherwise determined, the fiscal period shall begin on the first day of , 1946, and end on the day of , 194 .

6. The partners shall all be general partners, and they shall have the authority as they shall from time to time determine to employ all agents, representatives and employees of the partnership; to enter into and execute on behalf of the partnership all agreements, contracts and engagements of all kinds and have full and complete management of the business and affairs of the partnership. In addition, they shall select in a manner determined by them from time to time depositories; determine how all checks, drafts and orders for the payment and handling of moneys of the firm shall be signed; and each of said partners will at all times diligently employ himself in the business of the partnership and carry on the same for the greatest advantage of all of the partners, and neither one of them, except upon previous consent in writing, shall engage in any business except the business of the partnership and upon its account.

7. Each of the partners shall receive a *mangement* salary or drawing account as from time to time shall mutually be agreed upon, before any profits are to be divided amongst the partners, and until otherwise changed, this amount shall be at the rate of One Hundred Dollars ($100.00) a week for ALEX KLOTZ, and Fifty Dollars ($50.00) a week for FRANCES KLOTZ, which payment shall be made periodically, weekly, or monthly, or otherwise, to each of the partners as they from time to time determine. All remaining net profits or net income of the partnership, determined for each fiscal period in accordance with sound principles of accounting, are to be divided amongst all of the partners on the basis of Sixty-six and Two-thirds Per Cent (66 2/3%) to ALEX KLOTZ and Thirty-three and One-third Per Cent (33 1/3%) to FRANCES KLOTZ.

page 7 } When the partners shall determine that a portion of the net profits of any year, or period, distributable in the proportions herein set forth, or as otherwise changed hereafter by the partners to each of the partners, is needed as additional working capital for the partnership, and all the parties hereto agree, such amount shall be permitted to remain in the partnership and become a part of the capital of the partnership, and the balance of net profits, if any, over and above such amount will be available for withdrawal by the partners in the proportions of the *of the* distributive share of each. Where the partners shall all agree that one or more partners may leave in the partnership a portion of his distri-

butive share of the net profits differing in proportion from that hereinbefore set forth, such amount so left with the partnership shall be considered as borrowed money, and the partnership, shall, until otherwise changed by unanimous action of the partners, allow interest to accrue thereon at the rate of three per cent (3%) per annum, which amount shall be payable by the partnership as and when and upon such notice as the partners from time to time shall agree. In event of liquidation of the partnership, amounts loaned by any one of the partners under this paragraph shall be paid, together with any interest thereon, before any distribution of capital shall be made to the partners.

8. The partners shall cause the books of the partnership to be kept in accordance with sound accounting principles and to be closed annually at the end of each fiscal period of the partnership and a statement of the business and affairs of the partnership furnished to each of the partners as soon after such closing date as shall be reasonably practical and convenient, and the partners may cause the books to be closed and statements drawn off at such other time or times as they shall from time to time determine.

page 8 } 9. No new partner may be admitted into the partnership except by unanimous consent of all of the partners and upon such terms as shall be mutually agreed upon.

10. In event of complete dissolution of the partnership, each partner shall be entitled to his pro rata of the net capital of the partnership in addition to his pro rata share of the then undistributed earnings, if any.

11. If on account of illness or other cause one of the partners is unable to perform his regular duties to the firm, his periodic drawing account during such period shall be as mutually agreed upon by all the partners.

The partners may assign the work and duties performed by such partner to the other partners of the firm, as may be mutually agreed upon, and may allow to them or any of them a special drawing account for such services, the amount of which shall constitute a fair and reasonable compensation for such additional services actually performed.

12. The partners shall see that all books and records of the firm are carefully and accurately kept; that proper record is made of the name of the partnership; that all proper tax records and returns are kept and filed and that all provisions of Law applicable to the formation, operation and other business and affairs of the partnership are complied with in accordance with their respective true intent and purpose.

WITNESS the following signatures and seals at Fredericksburg, Virginia, this 1st day of August, 1946.

/s/ ALEX KLOTZ (Seal)
/s/ FRANCES KLOTZ (Seal)

* * * * *

page 12 }

* * * * *

Filed May 23, 1958.

M. H. WILLIS, Clerk
By CHARLES H. BERRY, Deputy.

ANSWER OF RESPONDENT.

Comes now your respondent Frances Klotz, by counsel, and for answer to the bill of complaint against her filed, respectfully says:

1. The respondent admits the allegations of paragraph 1 of the bill of complaint, except that the respondent says that the parties hereto were married on the 24th day of August, 1923, and not in May 1924, as therein alleged.

2. The respondent admits the allegations of paragraph 2 of the bill of complaint and for further answer thereto avers that the difficulties and differences between the parties referred to therein have arisen as a result of the actions of the complainant who, on or about February 1956, wilfully and without just cause deserted and abandoned your respondent.

3. The respondent admits the allegations of paragraph 3 of the bill of complaint, except that respondent avers that a copy of the partnership agreement referred to in said paragraph was not attached to the copy of the bill of complaint served on the respondent, and asks strict proof of the terms of said partnership agreement.

4. The respondent admits the allegations of paragraph 4 of said bill of complaint.

5. Answering paragraph 5 of the bill of complaint, the respondent avers that during the early years of their
page 13 } married life the complainant did provide a proper
home and support for the respondent and the children of the parties hereto. Respondent avers, however, that in recent years the complainant has become completely

uncooperative in his relations with the respondent and has failed properly to provide for her. The respondent admits that she and the complainant have been unable to agree upon any satisfactory terms for division of their property or for reasonable support and maintenance for the respondent.

6. The respondent neither admits nor denies the allegations of paragraph 6 of the bill of complaint and demands strict proof thereof.

7. Further answering said bill of complaint and each and every paragraph thereof, the respondent avers:

(a) The respondent at all times during her marriage with the complainant has been a faithful and dutiful wife, that except for her interest in the partnership heretofore referred to, respondent is without any means of support, and that she is entitled to support and maintenance from her husband in an amount sufficient to maintain her in the manner and custom of their station in life, taking into consideration the substantial financial means of the complainant.

(b) That the books and records of the aforementioned partnership have been at all times under the control of the complainant; that until shortly prior to the institution of this suit the respondent had been refused access to the same or the right to inspect and copy them, and has been wrongfully excluded from the partnership business; that said partnership books and records as presently kept are inaccurate in that they do not reflect the true partnership account, and in that large sums have been improperly charged against the interest of the respondent in said partnership and improperly credited in favor of the interest of the complainant in said partnership.

page 14 } WHEREFORE, having fully answered said bill of complaint filed against her, the respondent prays, as follows:

(a) That the respondent may be awarded proper temporary and permanent maintenance and support from the complainant, and that she be awarded reasonable counsel fees and suit money incurred by her in the defense of this cause.

(b) That this Court may decree dissolution of the partnership between complainant and respondent, and that the accounts between the partners may be settled and the assets of the partnership distributed between them as provided by law and the terms of the partnership agreement.

(c) That any and all other property rights between the parties subject to termination by the Court at this time may be declared and determined.

(d) That the respondent may have such other and further relief as the nature of this case may require or to equity may seem meet.

FRANCES KLOTZ
By Counsel.

EDMUND D. CAMPBELL
GRIFFIN T. GARNETT, JR.
Counsel for Respondent
2066 N. 14th Street
Arlington 1, Va.

GARNETT & HUNTER
Of Counsel.

* * * * *

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* * * * *

ORDER.

This cause came on this date to be heard upon the papers formerly read, and was argued by counsel.

Upon consideration whereof, and it appearing to the Court, as evidenced by the signatures of counsel hereto, that the parties hereto have agreed to dissolve the partnership heretofore conducted under the firm name of Klotz's, as of June 7, 1958, all of which is Adjudged, Ordered and Decreed.

And it is further ordered that as of the 7th day of June, 1958, Alex R. Klotz shall become the sole owner of all of the partnership assets, including any real estate that may belong thereto, and shall assume all of its liabilities, and shall pay to Frances Klotz therefor such an amount as may be determined to be due her when her interest therein has been adjudged in this cause. Adam A. Weschler and Sons of Washington, D. C. shall inventory and appraise as of June 8, 1958, all of the tangible personal assets of the partnership exclusive of any real estate, which appraisal values shall be binding upon the parties hereto; provided that either party shall have the right to question the valuation of specific assets in the event of ascertainable mistakes.

page 16 } It is further ordered that Alex R. Klotz shall pay to Frances Klotz interest at the rate of five per cent per annum from the seventh day of June, 1958, upon her

interest in the partnership including the value of any real estate which may be adjudged to belong thereto, as adjudicated by this Court and a lien is hereby reserved in favor of Frances Klotz for her interest therein upon such real estate as may be determined to be partnership property until the payment thereof, and it is further Ordered that Alex R. Klotz may make payment to Frances Klotz for her interest in any partnership real estate in whole or in part by conveying to her his interest in other real estate owned by him at such values as may be adjudicated by the Court.

And it is further ordered that this cause be, and it hereby is, referred to Ralph Weschler, one of the Commissioners in Chancery in and for the Circuit Court of the City of Fredericksburg, who is directed, pursuant to Title 50, Article 6 of the Code of Virginia, 1950, to take evidence and report to the court the respective property interests, rights and liabilities in the partnership.

It is further ordered that in addition to the maintenance heretofore decreed for Frances Klotz, Alex R. Klotz shall pay to her the sum of Four Hundred Dollars ($400.00) per month to be charged agaonst her inferest in the partnership until such time as she may be paid for her interest provided, however, that final payment for said interest (other than real estate) shall be made in no event later than January 1, 1959; and meanwhile Frances Klotz shall be solely responsible for all bills, taxes, expenses etc., necessary for her support and maintenamce including those incurred by reason of her residence at 1600 Franklin Street, Fredericksburg, Virginia, until the further order of this court.

It is further ordered that Frances Klotz deliver to Alex R. Klotz his personal effects.

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* * * * *

Enter June 16, 1958.

LEON M. BAZILE, Judge.

* * * * *

page 18 }

* * * * *

ORDER.

This cause came on this date to be heard upon the Bill of Complaint heretofore filed, the answer of the Respondent, and the motions for separation of issues and temporary maintenance, and was argued by counsel.

Upon consideration whereof IT IS ORDERED, That:

The matter of the dissolution of the partnership be, and it hereby is, ordered to be heard separate and apart from the question of maintenance and support to be provided for the Respondent by the Complainant.

AND IT IS FURTHER ORDERED, That Alex R. Klotz do pay unto Frances Klotz for her temporary support and maintenance the sum of two hundred and ninety dollars ($290.00) on or before June 30, 1958, and a like payment monthly thereafter until further order of the court.

Enter 16 June 1958.

LEON M. BAZILE, Judge.

* * * * *

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* * * * *

Commissioner's Office
Fredericksburg, Virginia

To the Honorable Leon M. Bazile, Judge of said Court:

Your undersigned Commissioner in Chancery would report to the Court that pursuant to a decree of reference in this cause entered June 16, 1958, and at the request of Counsel, he gave notice for the taking of depositions on the 22nd day of September, 1958, in the Courtroom of the Courthouse, Fredericksburg, Virginia, original of which notice, with acceptance of service thereon, is returned herewith as a part of this report; and that he proceeded at said time and place to take the testimony of witnesses, which is returned in the form of depositions, along with exhibits offered by both parties, as a part of this report. There is likewise returned herewith memoranda of Counsel, for each party to this cause, submitted to your Commissioner during the month of December 1958

and January 1959, and now having considered said evidence, would report as follows:

Inasmuch as the least troublesome and least contested phase of the partnership dissolution involves the real estate, your Commissioner would first report his findings in relation thereto: Reference is made to Plaintiff-Defendant's Exhibit No. A jointly offered by Counsel for both parties, page 54 } wherein three reputable real estate firms in the City of Fredericksburg have affixed their names to statements which set out their opinion and determination of the fair market value of all real estate owned by the parties, individually and jointly. This appraisal covers twelve (12) tracts or parcels of land with buildings thereon and rights appurtenant thereto. Your Commissioner finds these properties to be free and clear of liens in favor of third parties as of December 26, 1958. A summary of the appraisal is as follows:

These tracts known as Klotz Junk Yard:

Tract #1—1.60248 acres of land sometimes known as the "Lyons Lot" upon which is constructed three masonry warehouses numbered 3, 4 and 5 .....$80,000.00

Tract #2—Consists of 3.75 acres of land, formerly known as "Virginia Central Railroad Shop" upon which is constructed masonry warehouses 1 and 2, a two-story masonry office building, four small masonry utility buildings, one old frame shed and a railway siding approximately 600 feet long $52,500.00

Tract #3—Consists of 3.66 acres of land with a small masonry building for storing hides and a high mesh-steel fence enclosing storage lot for junked automobiles $10,500.00

Total appraised fair market value of above is set out at $143,000.00.

The above statement of appraisal is dated September 20, 1958, and is signed by Pates-Massey Insurance & Realty by J. S. Pates; Hawkins and Janney by J. I. Janney; and Johnson & Glazebrook by Orrick F. Johnson. Also as a part of this exhibit is an appraisement as to fair market value bearing the same date and signed by the same appraisers covering the following property:

612 Princess Anne Street—Brick building and lot $20,000.00

306 Charlotte Street—Identified as "A," brick front iron clad commercial building and lot, together with adjoining vacant lot $18,000.00

page 55 } 308 Charlotte Street—Identified as "B," brick commercial building and lot fronting approximately 60 feet on South side of Charlotte Street with an approximate depth of 160 feet $17,500.00

400 Charlotte Street—Identified as "C," brick office and lot fronting about 115 feet on South side of Charlotte Street and back about 240 feet. Also on this lot is an improved cinderblock shed which runs across the back lot line and part way along the sides of the lot $22,500.00

404 Charlotte Street—Identified as "D," fronts about 110 feet on South side of Charlotte Street and has an estimated depth of 120 feet. There is a cinderblock shed across the back and a cinderblock wall along its west boundary $9,000.00

412 Prince Edward Street—Frame dwelling and corner commercial lot fronting about 94.5 feet on the East side of Prince Edward Street and having an approximate depth of 79 feet—

924 Kirkland Street—abandoned frame dwelling and large parcel of land fronting on Kirkland Street, Sunken Road and Mercer Street $10,000.00

1601 Sunken Road—Frame dwelling and corner lot $14,000.00

1600 Franklin Street—Stone dwelling and corner lot with two adjoining lots $37,500.00

Total appraised fair market value on the above nine described properties amounts to $156,000.00.

It is stipulated by Counsel (R., pp. 133, 134, 135) that all of the above properties belong to the partnership regardless of how legal title stands, *with the exception of four* of the properties, to-wit:

612 Princess Anne Street—appraised at $20,000.00,
924 Kirkland Street—appraised at $10,000.00,
1601 Sunken Road—appraised at $14,000.00,
1600 Franklin Street (home formerly occupied by Mr. and Mrs. Klotz)—appraised at $37,500.00,

and it is likewise stipulated by Counsel that the premises at 1600 and 1601 Franklin Street are owned by Mr. and Mrs. Klotz as joint tenants with right of survivorship, and that the premises at 924 Kirkland Street and 612 Princess Anne Street stand in the name of Alex Klotz, only subject, of

course, to Mrs. Klotz's inchoate right of dower.

page 56 } On the basis of the above, your Commissioner would, therefore, report the total appraised value of all property owned by either party and/or the partnership to be $299,000.00. Mr. Klotz owns, subject only to the inchoate dower of Mrs. Klotz, property valued at $30,000.00 and that Mr. and Mrs. Klotz own as joint tenants with the right of survivorship, property at an agreed value of $51,500.00, and that by agreement heretofore set out there is owned by the partnership real estate valued at $207,500.00, of which one-third, should the Court see fit to apply the terms of the partnership agreement, would belong to Mrs. Klotz at a valuation of $69,166.67.

Before reporting on the appraisal and inventory of the partnership stock, merchandise and equipment, your Commissioner would point out that there was a Partnership Agreement entered into by and between the parties hereto and said agreement is attached hereto as Defendant's Exhibit No. 1. Said agreement because effective August 1, 1946, and appears to have been executed by Alex Klotz and Frances Klotz on ".... day of August, 1946."

There is no doubt from the evidence appearing in the depositions that a partnership was formed purely for tax purposes, inasmuch as prior to 1947 a husband and wife could not file a joint federal return but as partners this was permissable. It also appears that the rule or law in this regard was changed in 1947 to allow joint returns by H & W and from that time on the original reason for the partnership ceased to exist, but the partnership continued until dissolved by the Court.

Your Commissioner would report that there seems to be no doubt from the Court Order and the testimony, that Adam A. Weschler & Sons occupied the status of Court appraisers.

There seems to be some controversy in the record

page 57 } as to instructions given these appraisers, but, be that as it may, the appraisal was made and received in evidence as "Exhibit offered by Defendant pursuant to Court Order." However, the Court's decree of June 16, 1958, provides in part as follows:

"* * * which appraisal values shall be binding upon the parties hereto; provided that either party shall have the right to question the valuation of specific assets in the event of ascertainable mistakes."

The Weschler appraisal was vigorously questioned by Counsel for Mr. Klotz by way of cross examination; the testimony of Jacob Schein, a scrap dealer from Baltimore, and there

were also several hours spent by Counsel, Mr. Klotz, and your Commissioner in viewing the equipment and materials at the junk yard and offices of the former partnership located in the southeastern section of the City of Fredericksburg.

It has, therefore, been necessary for your Commissioner to consider all of the foregoing factors in arriving at a valuation, and in most instances each item in question was dealt with in view of both appraisals, the testimony in regard to each questioned item, plus the opinion of your Commissioner based upon the view of the premises and *all of the testimony* on the subject.

In this regard, Counsel for Mrs. Klotz, in their Memorandum, state that the Commissioner may not consider the Schein appraisal because, among other faults, it "shows only a difference of opinion and not any 'specific' ascertainable mistake." It is your Commissioner's understanding that any and all appraisals are based upon the opinion of the particular appraiser or appraisers, which opinion is in turn based on the appraiser's knowledge of the subject matter, its uses and its market value. It is, therefore, concluded that these "opinions" may in some instances be based on an ascertain-
page 58 } able mistake.

Therefore, the Schein appraisal has been considered, along with all the other factors in evidence, in attempting to arrive at a fair value.

In the determination of fair values for items of stock and equipment appearing in the Weschler appraisal and questioned by plaintiff, your Commissioner will not set out in detail the factors and testimony considered in arriving at a certain value. The testimony, however, given by the Weschlers, Jacob Schein, and Mr. Klotz has been reviewed numerous times and has been considered with the following qualifications or disqualifications of the witnesses in mind:

1. The Weschler people are principally auctioneers and appraisers. They do not buy, but sell on a commission basis. They made these appraisals on May 8, 1958. They used a New York trade journal in arriving at their values on scrap. They determined junk from saleable items on the basis of their auctioneering experience. The appraisal was concurred in by Weschler and his sons. There is no evidence that Weschler ever appraised or conducted sales in the immediate Fredericksburg area. Also, the Weschlers considered a great many articles as useable from an auctioneering standpoint, whereas it was obvious to your Commissioner from a view of the articles on the ground that a great many of the

items so considered by Weschler were and are not useable and saleable as such.

2. Jacob Schein used the items listed on the Weschler appraisal and also viewed the items on the premises. Schein, as well as the Weschlers, operates for the most part in a large city. He has been in the scrap business for forty years as a dealer or buyer and seller of scrap. He, as well as the Weschlers, claimed to have based his figures on Fredericksburg, Virginia values. Mr. Schein made his appraisal "in the neighborhood of the 1st or 15th of July." He claims his appraisal was on Fredericksburg price and that Weschler's was based on the mill price as to scrap. The difference on scrap here and at the mill is, according to all of the testimony, about 30 per cent less (there is no evidence of a percentage differential of less than 30 per cent). Since this is not an industrial town, there is no local market for scrap and Mr. Schein considered no items other than equipment as scrap. Mr. Schein realizes the processing necessary to make scrap saleable at the mills and he likewise appears to know what is acceptable at the mills as scrap and what is refused. All through the Schein testimony it is obvious that he viewed the items as a prospective purchaser, which element of consideration brings his figures closer to the differential of fair market value rather than the preliminary appraisal of an auctioneer. Mr. Schein appeared to be well acquainted with procedures and processing done in a junk yard and the utility of much of the equipment, such as power shears, etc. Mr. Schein has known Mr. Klotz seven or eight years and has done business with Mr. Klotz. It is to be noted that he was requested to make the appraisal by Mr. Klotz. Schein spent five hours on the appraisal and made it alone. Jacob Schein is not an appraiser nor does he sell at auction. Schein was not as accurate in his measurement of scrap heaps or lots and he followed, for the most part, the Weschler list; however, he states he used his own judgment in arriving at his figures.

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3. Alex Klotz has been in the junk business in Fredericksburg for thirty-two years. He claims (and it is not disputed in the evidence) a 30 per cent differential in junk prices set out in the Weschler appraisal. He made an analysis of the Weschler report. He claims that most of the items listed by Weschler as saleable are, in reality, scrap and that only an occasional sale is made of such items and then, in many instances, only after a number of years of storage or holding. It must be borne in mind, however, that Mr. Klotz is an interested party in this proceeding.

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4. The last factor considered was an hour and twenty

minutes tour of the Klotz Junk Yard and buildings, during which tour the piles of scrap were viewed and all of the items which were listed in the Weschler appraisal as saleable were viewed on the ground or in the buildings. This view of the premises was conducted after the testimony of Weschler, his son, and Mr. Schein and was quite helpful in the determination of the questions raised as to what items of stock were readily saleable or should have been classed as junk. It likewise threw considerable light on the equipment questions raised by plaintiff's Counsel as to the values set out in the Weschler appraisal.

It is obvious from the testimony of Jacob Schein, Alex Klotz, and particularly William P. Weschler, the son of Ralph Weschler, that the 'stock' figure of $78,667.90, as set forth in the recapitulation of the Weschler appraisal, is erroneous (record—pages 44 and 45, testimony of William P. Weschler) for the reasons that it was based on wholesale mill prices at the mill. The evidence is clear that the cost of transportation, bailing, cutting, etc. amounts to a differential of 30 per cent, which, in the opinion of your Commissioner, leaves a 'stock' value of $55,067.53, rather than $78,667.90 shown in the recapitulation of the Weschler appraisal.

This 30 per cent reduction is not necessarily reflective of the 30 per cent reduction due to shipping costs of processable scrap to the mills, as shown in plaintiff's Exhibit No. 4 and testimony on this subject. It might be stated here that nowhere in the evidence was the 30 per cent differential successfully contested and in fact, as stated before, the evidence of defendant's own witness, William Weschler, confirmed the fact that their scrap appraisal was too high. It is true that this is the same 30 per cent reduction insofar as the $23,235.00 worth of saleable processable scrap is concerned, but, in addition to this, your Commissioner's 30 per cent figure on the remainder of the $78,667.90 stock or appraisal by Weschler was arrived at only after due and lengthy consideration of the previously analized factors, the evidence of all parties on what was saleable and what was not saleable, and, therefore, in view of the factors above involved in the various appraisals and evaluations of the stock on hand in the A. R. Klotz Junk Yard on approximately June 7, 1958, your Commissioner feels that his last stated figure of $55,067.53 is a fair and equitable value for the stock-scrap inventory.

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EQUIPMENT—In considering the items in the equipment inventory, on which specific objections have been raised by Counsel for the plaintiff, your Commissioner followed the

procedure and guiding factors hereinbefore outlined in attempting to arrive at a fair value of each item. Your Commissioner is empowered only to determine values on specifically contested items of equipment (in this respect your Commissioner's hands are tied as to other phases of equipment listed in the Weschler appraisal on which there was no definite conflict of evidence or ascertainable mistake). He has found by again reviewing the testimony on this phase of the case, with particular reference to the cross examination of Mr. Weschler, Sr., that the following items were specifically attacked by Counsel for plaintiff, and it will also be noted the great degree of variance between the testimony of plaintiff and defendant as to values:

page 62 } ITEM—1946 White Truck, 3 Ton Open Top Cargo Body, Mo. 216323, Va. Title No. 6851958
Schein Appraisal—$200.00; Weschler Appraisal—$300.00.

ITEM—International (U. S. Surplus) Truck Chassis w/Forward Stiff Leg Derrick and Power Take-off Winch
Schein Appraisal—$10.00; Weschler Appraisal—$150.00.

ITEM—Air Compressor w/1½ H. P. Motor
Schein Appraisal—$20.00; Weschler Appraisal—$200.00.

ITEM—Insley Crane w/Chrysler Gas Engine, 30′ Boom, Cable and Electric Controller, Co.'s No. 3-SW Magnet, Kohler Mod. 5MH11, Electric Plant Included
Schein Appraisal—$5,000.00; Weschler Appraisal—$9,500.00.

ITEM—Aligator Power Shear, 30″ w/Century 10 H. P., 60 Cycle, 3 Phase Motor
Schein Appraisal—$500.00; Weschler Appraisal—$1,500.00.

ITEM—1950 Chevrolet 1½ Ton Dump Body Truck w/Hydraulic Dump, Mo. LEA-105544, Va. Title No. 6894888
Schein Appraisal—$40.00; Weschler Appraisal—$425.00.

ITEM—1950 GMC "450" 3 Ton Stake Body Truck, Mo. 270832121, Va. Title No. 8810452 (1955 Engine)
Schein Appraisal—$350.00; Weschler Appraisal—$850.00.

ITEM—1947 Dodge 2½ Ton Truck, Stake Body, Mo. T 136-4192
Schein Appraisal—$10.00; Weschler Appraisal—$300.00.

ITEM—Dempster Balester Type D, Model 275-S-1-CD,

Serial 530 (10/3/53) Allis 75 H. P. Induction Motor and All Equipment Attached thereto and used in conjunction therewith
Schein Appraisal—$7,500.00; Weschler Appraisal—$15,000.00.

ITEM—Aligator Power Shear, 48″ Blade, w/G. E. 7½ H. P., 60 Cycle Motor
Schein Appraisal—$400.00; Weschler Appraisal—$2,500.00.

ITEM—Dodge and Kirsten, No. 2L Power Aligator Shear, 21″ Blade w/American 7½ H. P., 60 Cycle Motor
Schein Appraisal—$300.00; Weschler Appraisal—$1,500.00.

ITEM—Cleveland "Towmotor" Fork Lift, Model LT44, No. 52143, 4,000 Lb. Capacity
Schein Appraisal—$300.00; Weschler Appraisal—$850.00.

ITEM—Logemann Manually Operated Rag Bailer, No. 11052
Schein Appraisal—$25.00; Weschler Appraisal—$225.00.

It is readily seen from the above that the difference in values on these items is so large as to be not readily explainable on the basis of mere difference of opinion alone. In some instances there was testimony by Klotz as to the actual cost of items and this figure was far less than the page 63 } Weschler appraisal for the article which had been used for some time. Likewise the testimony of Mr. Klotz, given as to the utility of some of these items, is much more consistent with the Schein figure than the Weschler appraisal. In some instances, a piece of equipment appraised at a high figure by Weschler was found, by uncontroverted evidence and view, to be obsolete and useless in the junk yard business at this time.

On the above thirteen items of equipment, the total Schein appraisal is $14,655.00; whereas, the total appraisal on the same pieces of equipment by the Weschler appraisal is $33,-300.00.

Your Commissioner has assigned a value to the disputed items by taking the Schein figure and adding to it 30 per cent of the difference between it and the Weschler figure in order to add what would seem to be an equitable and fair adjustment figure between the divergent appraisals. This calculation gives as a final figure on the disputed items $20,248.50 as contrasted with the Schein figure of $14,655.00, and the Weschler figure of $33,300.00 for these same items. This reduces the total Weschler equipment figure of $43,827.50 by

$13,051.50 (the difference between the Weschler figure and your Commissioner's adjusted figures for the disputed items), leaving a final total figure for the equipment inventory of *$30,776.00.* This figure, when added to your Commissioner's adjusted figure on scrap of *$55,067.53,* gives a sum total of *$85,843.53* as your Commissioner's recommended evaluation of the personal property used in the partnership business, namely, the inventory and equipment.

page 64 } With regard to the distribution of partnership assets and the proper amounts to be credited to each of the partners upon dissolution of the partnership, your Commissioner would report as follows:

The original Partnership Agreement, dated August 1, 1946, specifies that:

"4. The capital of the partnership shall consist of the business and contributed to the partnership by ALEX KLOTZ on August 1, 1946, (which partnership capital was contributed one hundred per cent (100%) by ALEX KLOTZ), plus such additional contributions of capital hereinafter made by each of the partners, in the proportion from time to time agreed on by the partners, whether new money is paid in or the profits, or a portion thereof, of the partnership determined to be necessary for the business and affairs of the partnership and agreed by all of the partners to remain in the assets of the partnership until additional partnership funds shall have been paid into or permitted to remain in the partnership. The interest in the capital in the partnership in event of dissolution thereof, shall be on the basis of sixty-six and two-thirds per cent (66 2/3%) thereof to ALEX KLOTZ, and thirty-three and one-third per cent (33 1/3%) thereof to FRANCES KLOTZ.

"7. Each of the partners shall receive a management salary or drawing account as from time to time shall mutually be agreed upon, before any profits are to be divided amongst the partners, and until otherwise changed, this amount shall be at the rate of One Hundred Dollars ($100.00) a week for ALEX KLOTZ, and Fifty Dollars ($50.00) a week for FRANCES KLOTZ, which payment shall be made periodically, weekly, or monthly, or otherwise, to each of the partners as they from time to time determine. All remaining net profits or net income of the partnership, determined for each fiscal period in accordance with sound principles of accounting are to be divided amongst all of the partners on the basis of sixty-six and two-thirds per cent (66 2/3%) to ALEX KLOTZ and thirty-three and one-third per cent (33 1/3%) to FRANCES KLOTZ.

"When the partners shall determine that a portion of the net profits of any year, or period, distributable in the proportions herein set forth, or as otherwise changed hereafter by the partners to each of the partners, is needed as additional working capital for the partnership, and all the parties hereto agree, such amount shall be permitted to remain in the partnership and become a part of the capital of the partnership, and the balance of net profits, if any, over and above such amount will be available for withdrawal by the partners in the proportions of the distributive share of each. Where the partners shall all agree that one or more partners may leave in the partnership a portion of his distributive share of the net profits differing in proportion from that page 65 } hereinbefore set forth, such amount so left with the partnership, shall, until otherwise changed by unanimous action of the partners, allow interest to accrue thereon at the rate of three per cent (3%) per annum, which amount shall be payable by the partnership as and when and upon such notice as the partners from time to time shall agree. In event of liquidation of the partnership amounts loaned by any one of the partners under this paragraph shall be paid, together with any interest thereon, before any distribution of capital shall be made to the partners.

"10. In event of complete dissolution of the partnership, each partner shall be entitled to his pro rata share of the net capital of the partnership in addition to his pro rata share of the then undistributed earnings, if any."

The reference of this matter to the Commissioner in Chancery by the Circuit Court of the City of Fredericksburg, instructed said Commissioner "to take evidence and report to the Court the respective property interests, rights and liabilities *in the partnership.*" It is to the consideration of these matters that your Commissioner now proceeds.

From lengthy consideration and reconsideration of the testimony which has been offered in this case, the following facts are plainly evident: Alex Klotz and Frances Klotz entered into a Partnership primarily for tax purposes, which purposes ceased to be *necessary* after one year from the inception of the partnership, but the partnership was allowed by the parties thereto to continue in force much as a matter of convenience and custom. Mr. and Mrs. Klotz continued to live together as man and wife from the formation of the partnership until approximately three years ago when, apparently, marital difficulties arose. During the intervening years the business was operated much as it had been before the partnership was formed; that is to say, Mr. Klotz ap-

peared to be the true head of the business and personally supervised the great majority of the firm's business dealings and also appeared to be primarily responsible for any and all of the business progress and maintenance. It would page 66 } appear that Mr. Klotz and his wife carried on their lives in their customary ways, giving very little, or no, explicit thought to the economic end of the partnership and allowing said partnership relationship to have negligible overt influence or effect upon their daily living relationship and habits. They lived in what appears to be an extremely comfortable fashion with Mr. Klotz apparently advancing funds to his wife when she showed desire or need for such. It is to be assumed, since there is no evidence to the contrary other than a list of annual expenditures for the upkeep of the Klotz household, and it appears that this money came from the business owned jointly by Mrs. Klotz and her husband. Their manner of living appears to be that of the normal couple in most respects. However, Mrs. Klotz's financial relationship to Mr. Klotz was *not* that of an *ordinary* wife to her husband, because she had the added responsibility and *obligation* of a business partner. In view of this, your Commissioner raises the question whether or not Mrs. Klotz should not have also been expected, and indeed *obliged,* to pay her full one-third (1/3) share of all of the couple's living and domestic expenses? She admittedly left the majority of the burden of handling both the family and partnership finances to her husband, trusting him to do the fair and correct thing.

For his part, Alex Klotz engaged in certain practices which can certainly be questioned from the standpoint of their not being the *best* business and/or accounting practices, but it has nowhere been suggested or shown in any of the evidence that he acted deliberately out of spite, greed or vindictiveness. He used the partnership account as a personal bank, running through it his private funds and monies from his outside sources of personal income, and using it as a page 67 } checking account through which all or most of his and Mrs. Klotz's family, living and incidental expenses were paid. This, beyond a doubt, is a poor practice from an accounting standpoint, (and indeed is the basis for much of the contention in the present instance), but it can certainly be tolerated as nothing more than a normal eccentricity or deviation from approved methods for a man who has built and run his own business in the manner he saw fit for a great number of years, with no need or occasion ever arising for him or other persons to question said practice. It is likewise obvious from various testimony that the total amount of all the items which the defendant's Counsel say were incor-

rectly charged or credited against Mrs. Klotz's account by Mr. Klotz during the period the partnership was in effect, amounted to considerably less than what would have been her full one-third (1/3) share of the couple's total living expenses during that period. Let it be here noted that by the testimony of Mr. Forrest W. Brown, Jr., C. P. A. (R., pp. 160-61) "*both* Mr. and Mrs. Klotz used the partnership as if it were a personal bank account, and insofar as the audit engagement was concerned, it would take *endless time* for us to look at each department store bill or statement to see if it was properly charged * * *"

Finally, let it here be stated by your Commissioner, that it is his firm opinion that Mr. and Mrs. Klotz, as an operating partnership, conducted the junk and scrap business as a single lump enterprise, a business entity, and that they so treated it and allowed it to be taxed as such while both of them, *in fact* and for all practical interests and purposes, disregarded what went on insofar as actual accounting practices were concerned. Items were reported to the Government and carried on the books as they were, primarily and effectively for accounting and tax purposes only. It would page 68 } seem to your Commissioner that for the Court to undertake the tremendous (and perhaps impossible) task of delving back into the records of each and every charge on the books of the partnership and to endeavor and attempt to split hairs as to right and wrong in specific instances, would be both impractical and foolish. Your Commissioner feels that such action is unnecessary for the rendering of a fair, just and equitable decision in this case.

Now, your Commissioner should like to proceed to an examination of certain specific issues which have been raised by both parties and give his recommendations to the Court as to what he feels, after due deliberation, would be a fair and just action for the Court to take.

Since the matter of real property has been previously dealt with in this report, it seems fitting to initially dispose of the contentions which have arisen concerning the Sunken Road property. Inasmuch as Mr. Klotz purchased this property with funds *from sources other than the actual partnership account,* and inasmuch as this particular property is one of the four stipulated exclusions from the group of real estate parcels to be considered in dividing the partnership assets, your Commissioner feels that it does not fall within the scope of his power to include it as a part of existing partnership assets. Likewise, he does not feel he can justly recommend that Mr. Klotz be permitted to credit any part of its purchase price against Mrs. Klotz's share in the partnership.

Your Commissioner wishes to state that, by virtue of the same reasoning which led him to conclude that it would be unnecessary to delve back into the specific instances where Counsel for Mrs. Klotz alleges she was improperly charged with certain items, he has also concluded that the Court's best approach to the problem of fairly distri-
page 69 } buting the assets of the partnership as of June 7, 1958, would not be served by becoming involved in tedious and uncertain attempts at rectifying past errors *committed and condomed* by one or either partner, even though Mrs. Klotz's condemnation may merely have taken the form of failure to inquire, either because she felt no interest, or pressing need to do so. Your Commissioner feels and recommends that this must be the Court's approach to the several itemized instances charged by Mrs. Klotz, such as Christmas Savings, insurance policies, income tax charged to her, U. S. Bonds, schooling for Max Klotz, payments for electrical appliances, and payments to department stores, etc.

It would be possible for your Commissioner to consider every individual practice which has enured to the benefit and/or detriment of either or both of the parties over the years the partnership existed, and attempt to reach some conclusion upon which to base the allocation of the assets to the respective parties. However, it seems to your Commissioner that such action does not fall exactly within the duties of the Commissioner as set forth by the Order of the Court and the terms of the original Partnership Agreement. (See clauses 4, 7 and 10 cited above). Mr. Klotz stands to lose, when we consider the private monies from outside sources, such as the share of stock which he ran through the partnership books. On the other hand, Mrs. Klotz undoubtedly paid more income tax than might have been necessary, due to the practice of splitting the tax one-third and two-thirds, also probably (R., p. 159) having paid some of the tax on Mr. Klotz's private income which was included in the books of the partnership. Your Commissioner feels, therefore, that it is his duty to ascertain, *under the terms of the partnership agreement,* the fair share of each partner upon dissolution of the partnership and with this belief firmly in mind, he is led to conclude the following:

page 70 } There is no dispute between the parties concerning the terms of the agreement that upon dissolution the partners should receive respective interests in the capital of the partnership of one-third (1/3) to Mrs. Klotz and two-thirds (2/3) to Mr. Klotz. The contention arises over the question of the *undistributed profits* left in the part-

nership over the years and how said funds should be properly treated in making the division and distribution of assets. Counsel for Mrs. Klotz contend that these additional monies were put into the firm as "additional investments" by Mr. Klotz, thus forming part of the capital of the partnership as distinct from loans to the partnership. It has been shown, on the other hand, by the testimony of Mrs. Klotz, and indicated by the testimony of Mr. Forrest Brown, that said funds were *never* made the subject of *any specific agreement* between the partners, and, therefore, *under the terms of the original partnership agreement,* cannot be considered as "additional investments." Neither can Mr. Klotz, through similar reasoning, be credited with any interest on his share of the undistributed profit which he left in the firm, because such funds cannot be considered as having been loans in the absence of any *specific agreement* between the partners to that effect.

It is the recommendation of your Commissioner that Counsel for the parties or the Court examine and review the audits of the partnership account made by A. M. Pullen & Company, and included with the exhibits herein, for the purpose of determining, as nearly as possible, the amount of the net profit for any and all years which was not actually drawn as salary by either partner and credit the plaintiff and defendant with the respective amounts due them *solely on the basis of undistributed net profit.* Under all of the circumstances, page 71 } it is your Commissioner's firm conviction that this procedure would be the fairest and most equitable solution for all parties concerned. Of course, Mr. Klotz should be credited with two-thirds (2/3) of his original capital investment and Mrs. Klotz should be credited with one-third (1/3) of it.

In dealing with the question of Mr. Klotz's salary, we find the same general problem as above. In the case of the undistributed profits they were apparently "plowed back into the business" more for ease of bookkeeping than for any other reason. In the instance of the $20,000.00 per year salary, testimony shows that Mr. Klotz received said amount merely as a formality to comply with the Government's demand that he draw this much, otherwise it was not a true partnership when considered taxwise. After 1947, according to the firm's existing records, he did not receive the larger salary. Again, as in the above instance, *there is no formal record of any agreement between the partners to effect an increase in Mr. Klotz's salary.* It is, therefore, your Commissioner's recommendation that Mr. Klotz receive credit for the additional $14,800.00 salary upon which he paid tax for the year 1947,

but that he should not receive credit for any subsequent year or years.

Counsel for Mrs. Klotz, in their briefs or memoranda, have cited the case of *Smiley* v. *Smiley's Administratrix.* Your Commissioner does not feel that that case is applicable to the present situation, because in that case the "original contribution" of one party was substantially more than that of the other party, but *both parties* contributed at least equally to the joint effect of carrying on the business thus formed. It cannot be seriously contended that Mrs. Klotz shared equally with her husband the burden of operating the scrap business.

That this partnership and its financial affairs were
page 72 } handled as they were chiefly for reasons of expediency in reporting and tax filing is evident to all concerned.

Your Commissioner feels that it was Mrs. Klotz's duty and obligation, as a partner in an operating business concern, to have kept herself informed as to the current bookkeeping and business practices of the firm at any given time and to have raised an objection she might have had to any specific practice repugnant to her at the time it occurred. Your Commissioner likewise feels that Mr. Klotz's practice of using the partnership account as a personal bank and failure to either draw his salary and share of the profits of the business each year or make definite agreements with his wife and partner as to under what arrangements such funds were to remain in the firm, constituted a grave business malpractice on his part.

Your Commissioner would, at this point, cite the case as partial authority for this proposition, of *Ryman* v. *Ryman,* 100 Va. 20, 40 S. E. 96; *Foster* v. *Rison,* 17 Gratt. 321; also cited in Michie's Digest, Vol. 8, Sec. 122, p. 61, is the case of *Clarke's Administrator* v. *Clarke, et als.* These cases set forth the general proposition that it is the *duty* of *each* member of a partnership to keep a correct account of his transactions and if, through the negligence of one of the members of a firm, the evidence of the partnership transaction has been lost or the accounts have been kept in such a confusing way that the Court cannot see how to do justice between them, it will not order an accounting but will dismiss the bill.

Your Commissioner is not an accountant and it would seem that the parties themselves or their counsel can best arrive at an agreement as to the figures in this respect. Even the accountants who testified were not in accord as to the method

of charging one item against another and to run
page 73 } down each and every item would be a voluminous
task of which your Commissioner does not feel he
is competent to do.

In connection also with this phase of the matter, it is your Commissioner's firm conviction that he is not dealing with the equities of Mr. and Mrs. Klotz as husband and wife. That is to be determined, and the payment, if any, on the basis of this relationship, is not before your Commissioner, but he must deal with Mr. and Mrs. Klotz merely as business partners and for that reason he has previously recommended that Mrs. Klotz could very well and fairly be charged with one-third (1/3) of the household maintenance expense. Your Commissioner states this realizing that a husband is bound to keep his wife; nevertheless the equities between the husband and wife are not before your Commissioner.

In conclusion, your Commissioner would like to state that the Memoranda of both Counsel for Mr. and Mrs. Klotz is attached hereto and, while not considered as evidence, was most helpful to your Commissioner in the formulation of this report. The recommendations herein set forth and reported will probably not meet with the approval of Counsel for either party, but it represents your Commissioner's best effort with an extremely voluminous and complicated situation. Your Commissioner would likewise offer his apologies to both Counsel and the Court for the time which has elapsed since the filing of the last Memorandum in January, but the delay was unavoidable.

The statement of Weschler and Sons, in the amount of $895., is approved by your Commissioner as part of the costs of this proceeding, as well as the statement of S. A. Cunningham, Shorthand Reporter, Louisa, Virginia, in the amount of $345. Both statements are filed herewith. It is requested that your Commissioner's fee be fixed by the Court.

Respectfully submitted:

RALPH M. WHITTICAR, JR.
Commissioner in Chancery for
the City of Fredericksburg.

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DECREE.

This cause came on this day to be heard upon the papers formerly read and upon the report of Ralph M. Whitticar, Jr., Commissioner in Chancery, filed on the 22nd day of April, 1959, and was argued by counsel.

Upon consideration whereof and by agreement of counsel for the parties hereto, it is ordered that this matter be re-referred to Ralph M. Whitticar, Jr., Commissioner in Chancery, for the purpose of making a financial computation of his findings in the report and submit it to the Court; it is further ordered that Ralph M. Whitticar, Jr., may, if he should be so advised, employ an independent accounting firm to assist him in such computation and charge the costs thereof to the costs of this suit.

The right of counsel for either party to file such exceptions as they may be advised is suspended until the Commissioner shall file his supplementary report in accordance with the terms of this decree.

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page 75 }

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Enter May 1, 1959.

LEON M. BAZILE, Judge.

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Filed May 28, 1959.

M. H. WILLIS, Clerk
By CHARLES H. BERRY, Deputy.

SUPPLEMENTAL REPORT.

To the Honorable Leon M. Bazile, Judge of said Court:

Your undersigned Commissioner in Chancery would, pursuant to a Decree of this Court dated May 1, 1959, supple-

ment his original report which was filed April 22, 1959 as follows:

First, it appears that Paragraph One on Page Four of the original report was inadvertantly dictated into the report from your Commissioner's notes and said Paragraph One on Page Four is to be disregarded since it is inconsistent with the findings of your Commissioner as set out in his report.

The decree of re-reference directs that the Commissioner "make a financial computation of his findings in the report" and authorizes him to employ an accountant to set out this computation. Your Commissioner has, therefore, sought the assistance of the firm of Baker, Brydon, Rennolds and Whitt, Certified Public Accountants, with a branch office in the City of Fredericksburg, in charge of William Thompson, Jr., Certified Public Accountant, a member of the firm, in this regard and their complete report is attached hereto and made a part of this report to be considered as the findings in figures which figures are consistent with the findings of
page 77 } your Commissioner as to the equities and values in controversy.

It is understood that the fee of the aforementioned accounting firm is to be considered as a part of the cost of this cause and their statement for service is attached hereto and recommended for payment by your Commissioner.

Respectfully submitted,

RALPH M. WHITTICAR, JR.
Commissioner in Chancery for
the City of Fredericksburg.

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LEON M. BAZILE, Judge.

30 October 1959.

May 25, 1959.

Mr. Ralph M. Whitticar,
Commissioner in Chancery
For the City of Fredericksburg,
Fredericksburg, Virginia.

Dear Sir:

We submit herewith financial statements of KLOTZ'S, A PARTNERSHIP, FREDERICKSBURG, VIRGINIA for the period from August 1, 1957, to June 7, 1958, as listed below:

Exhibits		*Page*
"A"	Balance Sheet	2
"B"	Statement of Partners' Capital	3
"C"	Income Statement	4

These statements were prepared by us from financial statements previously submitted in the case of Klotz *v.* Klotz with changes therein as recommended in your report to The Circuit Court of The City of Fredericksburg.

Respectfully submitted,

BAKER, BRYDON, RENNOLDS
& WHITT
By WILLIAM THOMPSON, JR.,
C. P. A.
Member of Firm.

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KLOTZ'S
(A Partnership)
Fredericksburg, Virginia
BALANCE SHEET
June 7, 1958

EXHIBIT "A"

ASSETS

CURRENT ASSETS:			
Cash on Hand and On Deposit		$ 2 486 31	
Accounts Receivable:			
Trade Debtors	$2 286 07		
Less: Reserve for Doubtful Accounts	500 00	1 786 07	
Merchandise Inventory (See Note Below)		55 067 53	
Prepaid Expenses:			
Interest	$ 244 54		
Taxes	604 53		
Insurance	1 099 12	1 948 19	
Deposits on Bids		1 000 00	
Total Current Assets			$62 288 10
FIXED ASSETS (See Note Below):			
Land, Buildings and Improvements		$207 500 00	
Furniture, Fixtures, Equipment, Automobiles and Trucks		30 776 00	238 276 00
			$300 564 10

LIABILITIES

CURRENT LIABILITIES:			
Accounts Payable—Trade		$ 5 860 94	
Employees' Income Tax Withheld		376 72	
Notes Payable		27 500 00	
Accruals:			
Social Security Taxes	$226 60		
Interest	1 09		
Salaries and Wages	178 17	405 86	
Total Current Liabilities			$ 34 143 52
PARTNERS' CAPITAL (Exhibit "B")			266 420 58
			$300 564 10

NOTE:
Merchandise inventory and the fixed assets are valued in accordance with the findings of the Commissioner in Chancery as stated in his report to The Circuit Court of The City of Fredericksburg.

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EXHIBIT "B."

KLOTZ'S
(A Partnership)
Fredericksburg, Virginia

STATEMENT OF PARTNERS' CAPITAL

For the Period From August 1, 1957, to June 7, 1958

	ALEX R. KLOTZ	FRANCES KLOTZ	TOTAL
BALANCE—August 1, 1957 (Per Books)	$160 317 47	$29 930 15	$190 247 62
ADD:			
Additional Investment	28 624 69	-	28 624 69
Net Income for Period (Exhibit "C")	8 399 71	4 199 86	12 599 57
Total	$197 341 87	$34 130 01	$231 471 88
DEDUCT:			
Withdrawals During Period	23 340 71	12 707 87	36 048 58
BALANCE BEFORE ADJUSTMENTS	$174 001 16	$21 422 14	$195 423 30
ADJUSTMENTS:			
To Increase Real Estate to Market Value	46 790 97	23 395 49	70 186 46
To Increase Equipment and Other Property to Market Value	540 55	270 27	810 82
To Credit Partner with Salary Allowance for Year 1947	14 800 00	-	14 800 00
To Distribute Decrease in 1947 Income Due to Additional Partner's Salary	(9 866 67)	(4 933 33)	(14 800 00)
BALANCE—June 7, 1958	$226 266 01	$40 154 57	$266 420 58

(Exh. "A")

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Filed June 5, 1959.

M. H. WILLIS, Clerk.

EXCEPTIONS TO REPORT AND SUPPLEMENTAL REPORT OF COMMISSIONER IN CHANCERY.

To the Honorable Leon M. Bazile, Judge:

Comes now the defendant Frances Klotz and objects and excepts to the report and supplemental report filed by Ralph M. Whitticar, Jr., Esquire, Commissioner in Chancery in the above entitled cause (said supplemental report having been filed on May 28, 1959), in the following respects:

I.

The Commissioner erred in law and in fact in the following valuations made by him of the partnership assets, as of June 7, 1958:

(A) The valuation of land, buildings and improvements made by the Commissioner in the amount of $207,500 constitutes a mathematical error on the part of the Commissioner. The figure should have been $220,802, being the amount shown by agreed appraisal of said properties introduced in evidence before the Commissioner. p. 133 of transcript.

(B) The valuation of merchandise inventory in the amount of $55,067.53, made by the Commissioner, is in error in the following respects:

(1) Said valuation is contrary to the appraisal of Adam A. Weschler & Son, Inc., offered in evidence (Tr.,
page 79 } p. 4) pursuant to court order. By order of this court entered herein on June 16, 1958, Adam A. Weschler & Son, Inc. were directed to appraise these assets as of June 8, 1958, and said order provided that said "appraisal values shall be binding upon the parties hereto;

provided that either party shall have the right to question the valuation of specific assets in the event of ascertainable mistakes." There was no evidence introduced before the Commissioner indicating ascertainable mistakes in the valuation of specific assets in said appraisal, which was in the amount of $78,667.90. The purported appraisal of inventory made by Jacob Schein in July 1958 (approximately one month after the date of the valuation provided for by this court) was incompetent because it was admittedly of an appraisal of different assets. Said Schein appraisal was also incompetent and did not point out any specific ascertainable mistakes on the part of the court appraisers.

(2) Said valuation is contrary to the admissions of Mr. Klotz himself, who testified before the Commissioner (Tr., pp. 265 and 325) that a fair sale value for the merchandise inventory as of the date of the partnership was not less than $60,000.

(3) The correct valuation which should have been given by the Commissioner for the merchandise inventory was $78,667.90.

(C) The valuation of furniture, fixtures, equipment, automobiles and trucks, in the amount of $30,776, made
page 80 } by the Commissioner, is in error in the following respects:

(1) Said valuation is contrary to the appraisal made by the court appraisers, which appraisal was in the amount of $43,827.50. Said appraisal was made pursuant to the court order referred to above, and is binding upon the parties in the absence of proof of ascertainable mistakes in the valuation of specific assets. No such proof was shown on behalf of plaintiff Alex Klotz, and the testimony of Jacob Schein offered with respect to valuations which he made one month later was incompetent.

(2) The valuation of said furniture, fixtures, equipment, automobiles and trucks should have been $43,827.50, which is the figure shown in the Weschler appraisal.

(D) Total value of partnership assets. By virtue of the errors referred to in items (A), (B), and (C) above, the Commissioner erred in finding the total partnership assets to be $300,564.10. Said total partnership assets should have been found to be $350,517.97.

II.

The Commissioner erred in law and in fact in finding the amount of the partnership capital assets as of June 7, 1958, to be $266,420.58. Said figure is arrived at by deducting from the partnership assets the amount of partnership liabilities. No objection is made to the Commissioner's ascertainment of partnership liabilities which were found to be in the amount of $34,143.52; but if these liabilities are deducted from the correct partnership assets of $350,-
page 81 } 517.97, the net partnership capital is $316,374.45.
The Commissioner should have found the partnership capital to be in said last mentioned amount.

III.

The Commissioner erred in law and in fact in not holding that upon the dissolution of the partnership Frances Klotz is entitled to one-third of the net partnership assets, i. e., one-third of $316,374.45 (see Exception II above), or a net figure of $105,458.15 and in not holding that Alex Klotz was entitled to only two-thirds of the net partnership assets. Such finding should have been made pursuant to the provisions of Article 4 of the partnership agreement (Defendant's Exhibit 1) which provides that "the interest in the capital in the partnership in event of dissolution thereof, shall be on the basis of sixty-six and two-thirds per cent (66 2/3%) thereof to Alex Klotz, and thirty-three and one-third per cent (33 1/3%) thereof to Frances Klotz." The findings of the Commissioner should have been that Frances Klotz is entitled to one-third of $316,374.45 or $105,458.15, and that Alex Klotz is entitled to two-thirds of $316,374.45 or $210,916.30.

IV.

The Commissioner erred in law and in fact in not increasing the capital account of Frances Klotz in the partnership by the following items which the evidence before the Commissioner showed were improperly charged against said capital account by direction of Alex R. Klotz:

1. Individual income taxes incorrectly charged to drawing accounts of Frances Klotz	$21,703.89
2. U. S. Bonds purchased by Alex R. Klotz for his own account or for the account of his grandchildren	2,100.00

page 82 } 3. Christmas Saving Accounts of Alex R. Klotz which were not for the benefit of Frances Klotz 6,385.00

4. Incidental expenses of schooling for Max Klotz charged to Frances Klotz without her knowledge or consent 1,612.25

5. Electrical home appliances for residence, purchased by Alex R. Klotz 2,451.31

6. Payments to Washington, D. C. department stores for accounts of Alex R. Klotz, representing items of his own 2,665.45

7. Payments for fuel, electricity, etc. for residence 630.07

8. Premiums paid on life insurance policies in which Frances Klotz had no interest 1,516.09

9. Certain miscellaneous bills incurred by Alex R. Klotz and erroneously charged to Frances Klotz' account 2,709.38

$41,773.44

The foregoing items totaling $41,773.44 are described in detail in Defendant's Exhibit #5, reference to which is hereby made. They were erroneously disallowed in their entirety by the Commissioner, contrary to the evidence. Credit for the said items should be given to the capital account of Frances Klotz, and a corresponding deduction should be made against the capital account of Alex R. Klotz.

V.

The Commissioner erred in law and in fact in crediting Alex R. Klotz with a salary allowance for the year 1947 in the amount of $14,800, contrary to the partnership agreement between the parties.

For a more particular statement of the grounds of the foregoing objections and exceptions, reference is page 83 } hereby made to memorandum on behalf of the defendant Frances Klotz filed before the Commissioner in this cause, copy of which memorandum is annexed hereto.

WHEREFORE, THE PREMISES CONSIDERED, the defendant Frances Klotz prays the court that the foregoing objections and exceptions to the Commissioner's report may be heard by the court and found to be well taken, and that a

decree may be entered herein modifying the Commissioner's report in the respects hereinabove mentioned.

EDMUND D. CAMPBELL
GRIFFIN T. GARNETT, JR.
Attorneys for Defendant
Frances Klotz.

* * * * *

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* * * * *

OPINION OF THE COURT.

The parties, who are husband and wife, on the 1st day of August, 1946, entered into a partnership agreement, apparently for tax purposes. At that time they could not file a joint return and thereby reduce their taxes; whereas, if they were partners, they could in this way effect some tax saving.

All of the capital of the business was furnished by the husband, the contract providing that in event of dissolution of the partnership the husband was to receive two-thirds and the wife one-third of the assets of the business.

Alex Klotz operated the business, which was a junk business, and over the years they have prospered and are among the wealthy people of this city. Unfortunately, page 105 } all their wealth did not bring happiness, and they now have a divorce suit pending in this court.

This suit is for the purpose of winding up the partnership.

There being many complicated matters involved, the cause was referred to Ralph M. Whitticar, Jr., a competent commissioner; and he has filed a report which indicates that he did much work, and he filed an excellent report.

This matter now comes before the court on exceptions filed by the defendant to the commissioner's report.

The first exception is that he erred in the valuation of the land and improvements, and that he also erred in the valuation of the personal property.

As to the real estate, the commissioner reported the value as being $207,500.00. It is contended that the correct figure should be $220,802.00.

The Court does not understand this exception, as the Commissioner reported the value of partnership real estate to be largely in excess of the $220,802.00 figure.

As to the second part of the exception: in the decree of reference it was there provided that the interest of Frances Klotz in the partnership be determined:

"And that Adam A. Weschler and Sons of Washington, D. C. should inventory and appraise as of June 8, 1958, all of the tangible personal assets of the partnership
page 106 } exclusive of any real estate, which appraisal of values should be binding upon the parties hereto; provided, however, either party shall have the right to question the valuation of specific assets in the event of ascertainable mistakes."

Weschler and Sons made their inventory and appraisal of the personal assets of the partnership and reported them to be worth $78,667.90.

The plaintiff vigorously assailed the correctness of the valuations made by Weschler and Sons and introduced the evidence of another appraiser whose valuations were much lower than those made by Weschler and Sons.

It appears from the testimony that Weschler is an auctioneer and an appraiser (R., p. 4). Weschler testified that the values of the "the equipment and machinery and office furniture used in the conduct of this business were based on a figure a little higher than a liquidation basis. We saw an operating business and valued those articles except the scrap for a figure in excess of what we could get for it at public sale." (R., pp. 8-9) He was asked "Well, on what basis did you value it?" He answered, "We figured the basis, the amount we could get for it, and added anywhere from thirty to fifty per cent, depending upon the article."

Certain other items he appraised at what they could be sold to a dealer for, in other items what he would have expected to be paid for them at public auction.

As to the scrap he established his valuation from a trade paper published in New York (R., p. 12).
page 107 } He appraised a Kranekar crane truck with a gooseneck wench at $300.00. On cross examination he was asked:

"Q. Would it surprise you to know that it cost $195.00 in 1948?

"A. I don't know.

"Q. * * * I am telling you that it was the price in 1948. That would not change your testimony?

"A. Not a bit, sir."

He appraised an Insley crane with Chrysler gas engine at $9,500.00, because: "We believe we could sell it at that price if we were selling it as a part of a going business to someone to operate that business with this piece of equipment."

"Q. You couldn't sell it for anything like that to somebody to take and move it, could you?

"A. No, sir, I think you would possibly have a difference of at least thirty per cent less than this. (R., pp. 28 to 29)."

He did not know the age of this item or its life expectancy at the time he appraised it (R., p. 29), nor did he know its cost when new.

He appraised a Dempster Balester at $15,000.00 without knowing the age or life expectancy of it and without knowing its replacement cost (R., p. 31).

He also testified that he did not consider the location of the property as entering into his valuation (39-40).

page 108 } Under examination by counsel for the defendant, Mr. William P. Weschler, who helped his father make the appraisal, was asked this question:

"Q. In your opinion at a properly advertised auction sale would the stock bring as much as $78,667.90?

"A. I would say no. (R., p. 45)

"Q. Now the equipment which is valued at $43,827.50 if sold by a willing seller to a willing buyer, for use at Fredericksburg, would that bring as much as $43,827.50 in your opinion?

"A. Would it bring that much?

"Q. Yes, sir.

"A. No, sir, it would not." (R., p. 45)

On cross examination he was asked:

"Q. As I understand your answer to Mr. Campbell in so far as the inventory is concerned if they had a public sale at Fredericksburg it wouldn't bring $78,000.00, was that your answer?

"A. Yes.

"Q. What would it bring?

"A. At this time I am not prepared to say.

"Q. So you do not know what the market would be as to the inventory at public sale in the City of Fredericksburg?

"A. That is correct." (R., p. 48)

page 109 } He was later examined as follows:

"Q. You have previously given the valuation on this type of merchandise, and I am asking you now if you feel that it is worth $78,000.00, if he is willing to sell the whole lot for $62,000.00, do you think you could find a buyer that would pay that for it?

"A. No, sir."

Certainly this evidence shows that Weschler's appraisal indicates that they made many mistakes therein, which fully justified the plaintiff in questioning their appraisement, and from an examination of the record the Court is of the opinion that Commissioner Whitticar's report is about as accurate as is possible in such a complicated case. Therefore, this exception is overruled.

What has been said as to the former part of this exception applies also to the third section thereof.

The second exception is based on the sustaining of the first exception. That exception not having been sustained, this exception must therefor fall. It is overruled.

Exception Three is likewise based on the erroneous assumption that Excepiton One should be sustained. It is also overruled.

Exception Four relates to certain items which it is alleged were wrongfully charged to Mrs. Klotz.

page 110 } One of these is an item of income taxes alleged to have been wrongfully charged to Mrs. Klotz. Income taxes when returned on a joint account are required to be signed by both the husband and the wife. When these returns were made by the parties was the proper time to object if there was any wrongful allocation of the tax paid by Mrs. Klotz. One cannot stand idly by without protest over a period of ten or twelve years and then protest. This item is, therefore, disallowed.

The next item relates to $2,100.00 worth of U. S. Saving Bonds bought by Klotz for his grandchildren and was charged to Mrs. Klotz without her knowledge. This item should be sustained.

The next item relates to Christmas savings accounts amounting to $6,385.00, which Klotz appears to have received the benefit of. This item should be sustained.

The next item is electrical home appliances for the residence charged to Mrs. Klotz. This item seems to have been for the benefit of both parties, and Mrs. Klotz occupies the home. This item will, therefore, be rejected.

The next item involves payments to Washington, D. C.

department stores charged to Mrs. Klotz and alleged to have been Mr. Klotz's bills. Klotz denies that they were his bills (R., p. 273), and Brown, the auditor, was unable to say whose bills they were. Klotz insists that they were his wife's bills. His wife disputes this by saying that she paid all the bills sent to her for the items at the Washington stores.

page 111 } She admits, however, that the accounts stood in her name (R., p. 318). The evidence on this item is too conflicting and doubtful to sustain this item. It is disallowed.

The next item is for $630.07 for electricity paid for the residence. This item is on the same basis as Item Five, and the exception as to this item is disallowed.

The eighth item is for premiums paid on life insurance policies in which Mrs. Klotz had no interest and which were charged to her. This account amounts to $1,516.09. The exception as to this item is sustained.

The last item is certain miscellaneous bills alleged to have been incurred by Klotz and charged to his wife's account amounting to $2,709.38. The record consists of three hundred and eighty-four pages. The Court has no time to search through this record to ascertain what these items are. If counsel cannot definitely point out to the Court what the items consist of and where it appears that Mrs. Klotz was charged with the same erroneously, the Court, who is not an accountant, has not the time or the inclination to search through the voluminous record to attempt to pick out such items. The exception to this item is, therefore, disallowed.

Item Four should be sustained.

The items of exceptions sustained are the following:

Item 2—	$ 2,100.00
Item 3—	6,385.00
Item 4—	1,612.25
Item 8—	1,516.09
Total—	$11,613.34

page 112 } The Fifth Exception is to the allowance of a salary item for 1947 of $14,000.00 to Klotz. This was done because the Federal Tax Department required Klotz to pay an income tax on a salary of $20,000.00 that year. The Court finds no error in the report as to this item.

In conclusion the Court expresses its gratitude to Mr. Whitticar for the excellent report he has made under most trying and difficult circumstances and with a most burdensome

record. Unfortunately, the Court knows nothing about accounting and has done the best it could with this case.

It is satisfied that it has decided it correctly as to the matters of law involved.

LEON M. BAZILE, Judge.

4 day of September, 1959.

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* * * * *

DECREE.

This cause came on this day to be heard upon the papers formerly read, the report of Ralph M. Whitticar, Jr., Commissioner in Chancery, and his supplement thereto, together with the evidence and exhibits taken and produced before him, including the financial statements of Baker, Brydon, Rennolds & Whitt, and the exceptions to the reports filed by Edmund D. Campbell and Griffith T. Garnett, Jr., Attorneys for Frances Klotz, and was argued by counsel.

Upon the consideration whereof, the Court is of the opinion from the reports of the Commissioner in Chancery and the evidence produced before him, together with the Exhibits filed therewith, that the exceptions filed by counsel for respondent should be overruled, and the report of the Commissioner should be sustained and confirmed with the following exceptions:

Exception No. 4.

Item 2. U. S. Savings Bonds	$ 2,100.00
Item 3. Christmas Savings	6,385.00
Item 4. Expenses of schooling for Max Klotz	1.612.25
Item 8, Premiums paid on life insurance	1.516.09
Totaling	$11,613.34

all of which is ADJUDGED, ORDERED and DECREED.

It further appearing to the Court that the interest of Frances Klotz in the Klotz's partnership amounts
page 114 } to the sum of Fifty-one Thousand, Seven Hundred and Sixty-eight Dollars ($51,768.00), subject to the following credits:

1. A good and sufficient deed having been tendered in open court by Alex R. Klotz for his interest in the Franklin Street and Sunken Road properties standing in their joint names and the property located at 612 Princess Anne Street standing in the name of Alex R. Klotz. Alex R. Klotz shall be credited with the sum of $45,750.00	$45,750.00
2. The sum of $6,509.00 having been advanced to Frances Klotz by Alex R. Klotz pursuant to the terms of a decree heretofore entered on 16 June, 1958	6,509.00
Totaling	$52,259.00

leaving a credit to Alex R. Klotz of Four Hundred and Ninety-one Dollars ($491.00), all of which is ADJUDGED, ORDERED and DECREED.

It is further ORDERED, ADJUDGED and DECREED that Frances Klotz be allowed interest at the rate of five per cent (5%) per annum from June 7, 1958, upon the sum of Forty-eight Thousand five hundred Dollars ($48,500), Alex R. Klotz to be credited with the sum of $491.00, leaving balance due of $2,640.00.

It is further ADJUDGED, ORDERED and DECREED that so soon as a receipt signed by Edmund D. Campbell, Counsel for Frances Klotz, for the amount of interest due hereunder shall be filed in the papers in this cause, or the amount thereof shall be paid to the Clerk of this Court to the credit of the Court in this cause, William J. Gibson be, and he hereby is, appointed a Special Commissioner to convey to Alex R. Klotz, or to whomsoever he shall designate, a good and sufficient deed to all of the assets of Klotz's partnership, specifically including the real estate adjudged to belong thereto.

To which order of the Court counsel for Alex R. Klotz excepts for the reasons stated in open court to this
page 115 } order of the court in so far as the report of the Commissioner was overruled as to Items 2 and 3 of Exception Four in this Order, to-wit:

$2,100.00 on account of bond purchase
$6,385.00 on account of Christmas savings funds

Counsel for defendant, Frances Klotz, except to this decree in the following respects for the reasons stated in open court and for the reasons heretofore set forth in the defend-

ant's "Exceptions to Report and Supplemental Report of the Commissioner in Chancery":

(a) in that the decree fails to sustain this defendant's exception I(A) to the Commissioner's report with respect to the valuation of the partnership land, buildings and improvements, it being the position of the defendant that the Commissioner made a mathematical error in this valuation.

(b) in that the decree fails to sustain this defendant's exception I(B) to the Commissioner's report with respect to the valuation of the merchandise inventory of the partnership.

(c) in that the decree fails to sustain this defendant's exception I(C) to the Commissioner's report with respect to the valuation of the partnership furniture, fixtures, equipment, automobiles and trucks.

(d) in that the decree fails to sustain this defendant's exception I(D) to the Commissioner's report with respect to the total value of the partnership assets.

(e) in that the decree fails to sustain this defendant's exception II to the Commissioner's report with respect to the amount of the net partnership capital.

(f) in that the decree fails to sustain this defendant's exception III to the Commissioner's report and fails to allot to this defendant upon dissolution of the partnership one-third of the net assets of the partnership business.

pge 116 } (g) in that the decree fails to sustain this defendant's exception IV(1) to the Commissioner's report with respect to individual income taxes in the amount of $21,703.89, which the defendant claims were taxes of the plaintiff improperly charged against defendant's account on the partnership books.

(h) in that the decree fails to sustain this defendant's exception IV(5) to the Commissioner's report with respect to electrical home appliances allegedly purchased by Alex Klotz in the amount of $2,451.31, and improperly charged against defendant's account on the partnership books.

(i) in that the decree fails to sustain this defendant's exception IV(6) to the Commissioner's report with respect to alleged Washington, D. C. department store accounts of Alex Klotz in the amount of $2,665.45, claimed to have been improperly charged against the defendant on the partnership books.

(j) in that the decree fails to sustain this defendant's exception IV(7) to the Commissioner's report with respect to miscellaneous bills allegedly incurred by Alex Klotz and

improperly charged by him against this defendant's account on the partnership books, in the amount of $2,709.38.

(k) in that the decree fails to sustain this defendant's exception V to the Commissioner's report in which the Commissioner credited Alex Klotz with a salary allowance for the year 1947 in the amount of $14,800.00, which the defendant claims to have been in violation of the partnership agreement.

It is further ORDERED that the opinion of the Court heretofore rendered in this cause be, and the same hereby is, made a part of the record of these proceedings.

And plaintiff, by his counsel, signifies to the court her intention of taking an appeal from this decree to the Supreme Court of Appeals of Virginia.

page 117 } We ask for this:

COLEMAN & GIBSON
Attorneys for Complainant
403 William Street
Fredericksburg, Virginia
By WM. J. GIBSON

Seen and objected to:

EDMUND D. CAMPBELL
Attorney for Respondent
822-830 Southern Building
Washington, D. C.

Enter 25 September, 1959.

LEON M. BAZILE, Judge.

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ORDER AMENDING DECREE OF SEPTEMBER 25, 1959.

This cause came on *on* the 9th day of October, 1959, to be heard upon the pleadings formerly filed, including the decree heretofore entered in this cause on the 25th day of September, 1959, and upon motion of counsel for defendant

to amend said decree, and was argued by counsel.

Upon consideration whereof, and it appearing to the Court that the decree heretofore entered in this cause on the 25th day of September, 1959, has not become final and that both parties have agreed that the said decree should be amended as herein set forth,

It is therefore ADJUDGED, ORDERED and DECREED that the decree heretofore entered in this cause on the 25th day of September, 1959, be and the same is hereby amended in the following respects:

(1) The words "to the credit of the court in this cause," appearing on the 8th line from the bottom of page 2 of said decree, are hereby changed to read "to the credit of the defendant in this cause."

(2) The last paragraph of page 4 of said decree is hereby stricken and in lieu thereof the following paragraph is added to said decree:

"And defendant, by her counsel, having signified to the Court her intention of taking an appeal from this page 122 } decree to the Supreme Court of Appeals of Virginia, and the plaintiff, by his counsel, having indicated an intention in such event to take a cross-appeal, the plaintiff is hereby authorized to make tender and payment of his obligations hereunder, and the defendant to receive tender and payment of such obligations, without prejudice to the rights of either party to appeal from said decree and the findings of the court to the extent of exceptions heretofore filed or noted in this cause."

The rest and residue of the decree dated the 25th day of September, 1959, is hereby ratified and confirmed.

Enter 9 October, 1959.

LEON M. BAZILE, Judge.

SEEN AND AGREED:

WM. J. GIBSON
Counsel for Complainant.

EDMUND D. CAMPBELL
Counsel for Respondent.

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Filed October 20, 1959.

M. H. WILLIS, Clerk.

ASSIGNMENTS OF ERROR.

Frances Klotz, respondent (defendant) in the above cause, hereby assigns the following errors to the decree of this court entered September 25, 1959, as amended by order entered October 9, 1959, on her appeal to the Supreme Court of Appeals of Virginia:

1. Although the opinion of the court attached to the decree declares that Frances Klotz was entitled, upon dissolution of the partnership, to one-third of the net assets of the partnership business, the court in its decree erred by awarding Frances Klotz a substantially lesser sum.

2. The court erred in failing to sustain this defendant's exception I(A) to the Commissioner's report with respect to the valuation of the partnership land, buildings and improvements, the Commissioner having made a mathematical error of $10,000, in this valuation which had been agreed upon by evidence jointly introduced by the parties hereto.

3. The court erred in failing to sustain this defendant's exception IV(1) to the Commissioner's report with respect to individual income taxes in the amount of $21,703.89, which this defendant claims were taxes of the plaintiff improperly charged to defendant's accounts on the partner-
page 125 } ship books.

4. The court erred in failing to sustain this defendant's exception I(B) to the Commissioner's report with respect to the valuation of the merchandise inventory of the partnership.

5. The court erred in failing to sustain this defendant's exception I(C) to the Commissioner's report with respect to the valuation of the partnership furniture, fixtures, equipment, automobiles and trucks.

6. The court erred in failing to sustain this defendant's exception I(D) to the Commissioner's report wtih respect to the total value of the partnership assets.

7. The court erred in failing to sustain this defendant's

exception II to the Commissioner's report with respect to the total amount of the net partnership capital.

8. The court erred in failing to sustain this defendant's exception IV(5) to the Commissioner's report with respect to electrical home appliances allegedly purchased by Alex Klotz in the amount of $2,451.31, which this defendant claims were improperly charged against her account on the partnership books.

9. The court erred in failing to sustain this defendant's erception IV(6) to the Commissioner's report with respect to Washington, D. C. department store bills allegedly incurred by Alex Klotz in the amount of $2,665.45, which this defendant claims were improperly charged against her account on the partnership books.

10. The court erred in failing to sustain this defendant's exception IV(6) to the Commissioner's report with respect to miscellaneous bills allegedly incurred by Alex Klotz, which this defendant claims were improperly charged against her account on the partnership books, in the amount of $2,709.38.

11. The court erred in failing to sustain this defendant's exception V to the Commissioner's report, in page 126 } which the Commissioner credited Alex Klotz with a salary allowance for the year 1947 in the amount of $14,800, which this defendant claims to have been in violation of the partnership agreement.

FRANCES KLOTZ
By Counsel.

EDMUND D. CAMPBELL
GRIFFIN T. GARNETT, JR.
Counsel for Frances Klotz
2066 N. 14th Street
Arlington 1, Virginia.

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Filed October 29, 1959.

M. H. WILLIS, Clerk.

NOTICE OF CROSS-ERROR.

To: The Honorable Mason H. Willis, Clerk:

Having received copies of communications to you from Edmund D. Campbell, Counsel for Frances Klotz, under date of October 19, 1959, giving notice of her intention to apply to the Supreme Court of Appeals of Virginia for an appeal from the final decree of the Court entered herein on September 25, 1959, as amended by order entered October 9, 1959, I, as counsel for Alex R. Klotz, hereby notify you of assignments of cross-error to the final order as follows:

1. The Court erred in overruling the report of the Commissioner in charging Frances Klotz with Twenty-one Hundred Dollars ($2,100.00) on account of bond purchase upon the books of Klotz's partnership for the reason that the action of the Court was in direct conflict with the evidence before the Commissioner and the law applicable thereto.

2. The Court erred in overruling the report of the Commissioner in charging Frances Klotz with Six Thousand, Three Hundred and Eighty-five Dollars ($6,385.00) on account of Christmas savings funds upon the books of Klotz's partnership for the reason that the action of the Court was in direct conflict with the evidence before the Commissioner and the law applicable thereto.

ALEX R. KLOTZ
By Counsel.

page 130 } COLEMAN & GIBSON
Attorneys for Complainant
403 William Street
Fredericksburg, Virginia
By WM. J. GIBSON.

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page 1 }

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The depositions of Ralph A. Weschler and others taken before Ralph A. Whitticar, Master Commissioner of the

Circuit Court of the City of Fredericksburg, pursuant to notice given by the said Commissioner, at Fredericksburg, Virginia, in the Court Room of the Circuit Court of the City of Fredericksburg, commencing at 10 o'clock A.M., on September 22, 1958. To be read in evidence in aid and assistance of the Report of said Master Commissioner filed in the above styled cause in obedience to a decree of reference entered therein.

Present: William J. Gibson, Esquire, of the Law Firm of Coleman & Gibson, Fredericksburg, Va. Edmond D. Campbell, Esquire, Arlington, Va., and Griffin T. Garnett, Jr., of the Law Firm of Garnett & Hunter, Arlington, Va.

page 2 }

* * * * *

Mr. Campbell: The Commissioner will note that in that order it was directed that Adam A. Weschler & Son shall appraise the personal property, other than the real estate. They have made such appraisal and we would like to offer that in evidence. It should be offered in evidence—

page 3 } I don't know that it should be offered as an exhibit of either party. It is here and we wish to examine Mr. Weschler with respect to that. I don't know that it is a defendant's exhibit.

The Commissioner: You are going to clarify this?

Mr. Campbell: And with agreement with Mr. Gibson, because of the fact that Mr. Weschler has some other committments, he has agreed that I may examine him at this time.

Is the Commissioner going to give a number to that?

The Commissioner: I think I shall mark it Defendant's—

Mr. Campbell: I don't really know whether it is a Defendant's Exhibit. It is an appraisal made in accordance with the order of the Court.

The Commissioner: I will mark it "Appraisal offered by the Defendant.

Mr. Garnett: Could we just put on there "Pursuant to Court order"?

The Commissioner: Yes, sir.

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page 4 }

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RALPH A. WESCHLER,
a witness of lawful age, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Campbell:

Q. You are Mr. Ralph A. Weschler?

A. Yes, sir.

Q. And your profession, Mr. Weschler?

A. Auctioneer and appraiser.

Q. Are you a member of the *frim* of Adam A. Weschler & Sons?

page 5 } A. President.

Q. You are President. How long has that firm been in existence?

A. Personally I have been over forty years in it, and my Dad almost seventy years.

Q. And your principal offices are in Washington?

A. Yes, sir.

Q. Who is associated with your firm now?

A. Three sons.

Q. Your three sons?

A. Yes, sir.

Q. And their names?

A. Ralph A., Jr., Benjamin E., and William P.

Q. Now, Mr. Weschler, will you state to the Commissioner please what your business is and what experience you have had in it, and what sort of work you do?

A. We are general auctioneers and appraisers handling all of the Washington Bankruptcies, as well as a number of nearby Maryland, and a few Virginia cases. We are official auctioneers for the Metropolitan Police Department in Washington; appraisers for the United States Marshall; and special sales agents and also auctioneers for the Small Business Administration. We work all over the country in conducting sales for them and general consignments of every description for estates. We do not buy, like most of our com-
page 6 } petitor, or like most auctioneers do; we sell on a commission or fee basis.

Q. You made an appraisal in accordance with the Court order of certain property of the Klotz Partnership, did you not, in Fredericksburg?

A. I did.

Q. Who participated in that appraisal with you?

A. My three sons.

Ralph A. Weschler.

Q. Did all four of you visit and look over the plant of the Klotzes?

A. We did.

Q. On what day?

A. It was on Sunday, I think, June 9th.

Q. Was it the date shown on your appraisal that has been filed here?

A. I believe so.

Q. The appraisal says as of June 8th?

A. June 8th.

Q. Did you as a result of that appraisal make notes, which were later embodied in the report, which has been filed under your signature with the Commissioner?

A. I did.

Q. Did your sons participate in that with you?

A. They did.

Q. Did you examine all of the items that are set forth in that report?

page 7 } A. We did.

Q. Now, among the items there are items of scrap and items normally found in junk yards, are there not?

A. That is correct.

Q. Have you had any experience in appraising such items?

A. I have.

Q. What sort of experience have you had?

A. Do you want definite cases and dates?

Q. Well, yes—Well had you in many instances appraised those kind of items?

A. I have.

Q. Is there a reasonable basis on which you can ascertain values of scrap?

A. Well, as far as scrap values are concerned, we make reference to trade papers to get accurate values of scrap materials.

Q. And did you do that in this instance?

A. We did.

Q. Included in your appraisal, for example, are 72 automobiles—

A. I have a copy available, if I may use one, sir?

Q. Will you please.

A. Yes, sir, page three, Mr. Campbell, fifth from the bottom.

Q. 72 automobiles and trucks, wrecks, parts miss-

page 8 } ing, $1008.00?

A. Yes, sir.

Ralph A. Weschler.

Q. For example, was that put on the basis of so much per car?

A. I believe this value is $15.00 each.

Q. What experience have you had in appraising such cars?

A. We appraised automobiles every day and we sell them; we sell for the Police Department an average of every three weeks; we will have anywhere from sixty to a hundred and twenty-five automobiles and trucks.

Q. Are they automobiles, which are comparable to these?

A. No, these had more parts missing from them than the ones we sell for the Police Department; we do have parts missing, but these seventy-two had more than you usually find.

Q. Did you, for example, take that into consideration in making your appraisal?

A. I did.

Q. What would be the normal junk price for automobiles sold at auction?

A. We sell cars for the Police Department that average about $30.00 each.

Q. Now sir, without going into individual items, will you state to the Commissioner the basis on which you made these valuations?

page 9 } A. Our valuations on the equipment and machinery and office furniture used in the conduct of this business were based on a figure a little higher than a liquidating basis. We saw an operating business and valued those articles, except the scrap for a figure in excess of what we could get for it at a public sale.

Q. Well, on what basis did you value it?

A. We figured the basis, the amount we could get for it and added anywhere from thirty to fifty per cent, depending on the article.

Q. Did you value those items on the basis of what you would consider that a willing buyer would pay a willing seller?

A. Yes, sir, that was the reason for putting the additional value on those items.

Q. You put that only on the items, which were in use in the business?

A. That is correct.

Q. On such items that are not used in the business, is it correct to say that you put those *on* on a strictly auction basis, and on those items which are in use in the business you put those on not a strictly auction basis, but on the basis that a willing buyer would pay to a willing seller?

Ralph A. Weschler.

A. That is correct.

Q. And in your opinion are the items, which are used in the business, and which you so valued, valued on an equitable basis?

A. I would consider so, yes, sir.

page 10 } Q. The other items, which were found in the junk yard for sale—

A. Yes, sir.

Q. On what basis did you value those?

A. There are certain items in the yard proper, bath tubs and things of that kind, that have a value other than junk value, and we, of course, priced them accordingly.

Q. Did you price them on the basis of what they could be sold for?

A. What they would be sold to a dealer in such items, what he would have paid for them at public auction.

Q. What a dealer in such junk would pay for them at public auction?

A. That is correct.

Q. In your opinion was your value so designated in your appraisal?

A. Yes, sir.

Q. Was your appraisal concurred in by all three of your sons, who participated in it with you?

A. Yes, sir.

Q. And did you make careful notes of each item as you went over it?

A. Each item was inventoried separately.

Q. Did you and your three sons confer with respect to those valuations, which you would put on each item?

page 11 } A. As each lot was valued we did. There was certain items not valued right at the premises that day, that is the 8th day of June, they were not valued until we had access to trade papers to find the market value of certain items that we considered strictly scrap.

Q. Is it a fact that as to the items, which were there for sale in the junk yard, that you appraised them on what you considered a dealer would pay for such items?

A. That is correct.

Q. As to the items actually used in the business you appraised those on the basis of what a willing buyer might pay to a willing seller for such items?

A. That is correct.

Ralph A. Weschler.

Mr. Campbell: That is all.

CROSS EXAMINATION.

By Mr. Gibson:

Q. Mr. Weschler, who gave you your instructions in the appraisal of this property?

A. Well, I don't know what you mean by instructions. Mr. Campbell asked us to come down here and make an appraisal of this property, the date was arranged, and I don't know what specific instructions we had.

Mr. Campbell: Mr. Gibson, in fairness I made that request in your presence in your office over the telephone, page 12 } when we were both there.

Mr. Gibson: I am just asking, I am not saying there was any impropriety.

Q. You don't recall any—

A. We had no specific instructions.

Q. All right, sir. Now, you say that you got the price for the articles from trade papers?

A. Yes, sir.

Q. What trade papers were they?

A. There was only one, I don't recall the name, may be my son does, if you care to ask him.

Q. Where was it published, do you recall?

A. In New York.

Q. Did you use, when you put the price on the scrap, did you use the quotations on those articles as of June 7, 1958?

A. It was the 7th or 9th, I am not sure which, the day before or the day after.

Q. In other words, you took the price that appeared in the trade publication and placed it upon the quantity of articles that you judged to be there on the yard?

A. We estimated some quantities and we were given inventories of certain articles.

Q. I understand, but your inventories that you used and the quantities that you judged to be there, you page 13 } took those and applied the value in the trade paper?

A. That is correct.

Q. Now, Mr. Campbell has asked you about these sinks and basins and you have valued them at $2.00 apiece. What was the basis of that valuation?

Ralph A. Weschler.

A. We have sales of miscellaneous personal property at our place of business twice a week and it is very seldom we don't have similar articles at regular sales and they bring far in excess of $2.00 apiece at our regular sales, and we have one two or three times a week.

Q. You wouldn't have the number of 134, would you?

A. No, sir.

Q. So, if you had in Fredericksburg 134, it would be quite a proposition to sell them over any reasonable period of time?

A. Well no, it would be no trouble, we would notify people, who would buy them in large lots.

Q. Look on your first *shee,* you have 129 metal drums containing white metal and aluminum scrap, and you have that down for $1450.00?

A. Yes, sir.

Q. What was the value that you placed upon the contents of that?

A. Per ton. I don't know.

Q. You don't know?

page 14 } A. I cannot figure it out here.

Q. You don't know what the price of it was at that time?

A. I cannot tell you now, no, sir.

Q. Now, looking on page 2 for example, you have 8 steel brooms at $400.00?

A. Yes, sir.

Q. Do you know the basis that you used in putting that price on those?

A. We thought they would bring that much if they were sold at public sale.

Q. Do you know whether those things presently have any usable value?

A. Yes, they have a usable value.

Q. For what purpose?

A. As steel brooms.

Q. So you considered that they were usable brooms?

A. I believe so, yes, sir.

Q. All right. Will you look further down there and you have a lot of tube steel—

Mr. Campbell: What page are you talking about now?

Mr. Gibson: Page 2.

Q. Which you have listed at $710.00. Now what was the

Ralph A. Weschler.

basis of that?

page 15 } A. May I refer to the original?

The Commissioner: Yes, sir.

A. The tube steel, I cannot tell you, because I don't have any notation on the margin here. It was probably counted—it had to be counted to arrive at a price, an uneven price of $710.00.

Q. But you cannot account for it now?

A. No, sir, I cannot.

Q. Now, let's go down to the contents of Cinder Block building, consisting of electric motors, pumps, compressors, etc. I think that is the third item from the bottom?

A. Yes, sir.

Q. That you listed for $1200.00?

A. Yes, sir.

Q. And you think that is the fair market value?

A. That is a question, sir, on account of not being able to have access to the building itself. There was a young man, who was following us around a part of the time, that told us what was in this building and told us about things there that we couldn't see, and we just, the four of us, got together and decided that was a fair value for it.

Q. If it were offered to you for $250.00, would you buy it?

A. I wouldn't give a dollar for it, I don't buy anything.

page 16 } Mr. Campbell: You wouldn't give a dollar for it?

A. No, I am an auctioneer selling on commission only.

Q. And you wouldn't take it for $250.00?

A. I am not a dealer.

Q. Now, you have 51 gas ranges on page 3 for $306.00?

A. Yes, sir.

Q. What was that based on?

A. I sell gas ranges twice a week the year around at my place, anywhere from three to ten each time twice a week.

Q. They would be usable ones that were sold at your place, would they not?

A. I consider some of these, the ones covered up with canvass were usable.

Q. In other words, you consider that these are gas ranges that would be sold for somebody to be used in the home?

A. Probably not that 51, but the greater portion of them, yes, I would.

Ralph A. Weschler.

Mr. Campbell: That is how much per gas range? Did you say $3.00?

A. No, 51 gas ranges $306.00.

Q. Now, Mr. Weschler, you have 14 steel underground tanks at $180.00. What was the basis of that price?

A. That is what we thought we could get for them, sir.

Q. Did you consider them to be usable tanks?

A. I cannot answer that.

page 17 } Q. You cannot answer that?

A. No, sir, because I don't recall the particular lot, whether it was considered on a junk basis or whether it had any salvage value.

Q. Would it change your opinion if I tell you that these all had holes in them? In other words, that they were defective?

A. As I recall the lot, they didn't seem to be beyond repair.

Q. But you don't know whether that would change your opinion or not?

A. (The witness made no audible reply)

Q. Now, look at your item down a little further, a lot of sheet steel, parts bins, truck and auto wheels, generators, etc. Did you consider them as junk, or did you consider them as salable individual items?

A. I am just trying to figure, sir, where they were. That is the price that we figured we could get for them; that is the only answer I can give you.

Q. All right, next is the item, Contents of open front frame shed. What was the basis of that?

A. My answer is the same, it is what we thought we could get for it, if we sold it at public sale.

Q. But you were not considering these articles as junk or scrap were you?

page 18 } A. Some part of them were. We didn't inspect the articles in detail, each and every piece. We saw a hospital bed, they were in great demand, and the truck and car chains there is always a good market for them.

Q. In other words, you figured the market for the item?

A. The market for the items, other than as scrap.

Q. That is right, that would be a fair statement to say that *wen* on all the way through your appraisal. You appraised these articles not as scrap value, but as the value of a usable piece of equipment?

A. Not necessarily so, no, sir.

Q. But mostly?

Ralph A. Weschler.

A. The 71 automobiles, ordinarily we get $30.00 for those, and I appraised them at $15.00 as strictly scrap.

Q. I am talking about as a general proposition, you appraised the articles as usable and not as scrap?

A. Certain of the items we did.

Q. Now, you have 72 automobiles. Didn't all these automobiles have the motors missing?

A. I don't know about all of them, sir.

Q. When you are talking about selling these cars for the Washington Police Department, that is a running automobile, isn't it?

A. No.

Q. What is it like?

page 19 } A. Abandoned property.

Q. I know but it has all of its parts,—

A. May be seventy per cent of them have all their parts when they reach the Police Department, and then things happen to them after that usually.

Q. Now, look on page four, Mr. Weschler, and you will see under the third item, A lot of baled miscellaneous scrap, and you have $7,000.00 for it?

A. Yes, sir.

Q. What is the basis of your valuation?

A. We measured that. Could I have my son help me with this, I have a little trouble with my eyes.

Mr. Gibson: Certainly.

A. See if you can find that, it is on page four of the typed copy.

We figured 500 tons in that pile, the pine was 49 feet in length and 45 feet in width, and 12 feet in height. We figured about 500 tons were in it.

Q. And how much did you value it a ton?

A. I cannot tell you now, sir.

Q. You don't know.

Now, the item right underneath that, what was the basis of that?

A. That was 30 feet in length, 32 feet in width and 8 feet in height. We figured there were 200 tons in that.

page 20 } Q. Do you know the price per ton that you used?

A. At this time I cannot tell you, sir.

Q. Now, look down at the bottom of the page there, you have a 1952 Chevrolet 1½ ton state body truck?

A. Yes, sir.

Ralph A. Weschler.

Q. What was the basis of your appraisal of that item?

A. We sell lots of automobiles in bankruptcy cases and for the United States Marshall, and we also sell a lot of trucks for the Southern Hotel Suppliers, and we thought it would bring that much.

Q. And that would apply to the Ford underneath it?

A. All of the automobile equipment was the same.

Q. That was based on the price of an automotive unit?

A. On what we sell them for.

Q. Now, look down at page 5, Kranekar Crane Truck, what was the basis of the appraisal that you had on that?

A. We figured we could get that much for it at a properly advertised sale.

Q. Would it surprise you to know that that cost $195.00 in 1948?

A. I don't know.

Q. If it was bought new for $195.00—

A. This crane with a gooseneck winch that you had on it.

Q. I understand that. I am telling you that if that was the price in 1948, that would not change your testimony?

page 21 } A. Not a bit, sir.

Q. Now, look down at the item F. E. Reed Engine Lath, 6′ bed.

A. Yes, a 6 foot bed.

Q. What was the basis of the appraisal of that?

A. We think we can sell it for that much money.

Q. If I told you it was purchased two years ago for $25.00, would that change your opinion?

A. Not the least bit; he was a good buyer.

Q. You must be a good salesman.

Now, look down further on the same page where you have 40 electric motors, various sizes, and then 96 electric motors and pumps, various sizes.

A. I recall them.

Q. What was the basis of your appraisal of those items?

A. The same as the answer to the last two questions.

Q. In other words, you didn't base it on a scrap valuation?

A. No, they were in building number 5, and appeared to have salvage value other than for scrap.

Q. So it was not for scrap.

All right. This lot of USA Engine road machinery and miscellaneous parts. You didn't value that as scrap value, did you?

Ralph A. Weschler.

A. We did not.

page 22 } Q. You think those things have a ready market?

A. A ready market, no, that is why it was put in for $1500.00.

Q. You would have a hard time selling those, wouldn't you?

A. No, I wouldn't, not for this price.

Q. They are old, aren't they?

A. They are old.

Q. How old?

A. It was of different ages.

Q. But you considered selling those as usable equipment?

A. Yes, that lot.

Q. All right now, this 26 rolls of Kraft paper. What did you base your valuation of that upon?

A. We had some similar paper in a bankruptcy case within the past 90 days, and we based it upon what that brought?

Q. Well was that which you sold in the Bankruptcy Court clean paper?

A. I wouldn't call it clean, no. The wrappers weren't clean, I believe the inside was all right.

Q. Would it change your appraisal if you knew there was tar in this paper that rendered it practically useless?

A. If I knew that. yes.

Q. It would?

A. Yes.

page 23 } Q. All right now look on page 6, Mr. Weschler—

A. Yes, sir.

Q. And you will see a lot of scrap sheet and cast aluminum, copper, brass, monel and stainless steel—

A. About midway.

Q. Yes, sir. What was the basis of your appraisal of that?

A. We estimated that as 9 feet by 52 feet by 7 feet high, that isn't quite plain as to how many tons were in that, it is written over that—I am reading my notes.

Q. Were those metals considered ready for shipment to the mill?

A. Certain metals, sir, were.

Q. I mean in this particular lot?

A. I don't know on this particular lot, no, sir.

Q. That is what I am referring to.

A. I don't know whether this was ready for shipment or not.

Q. What did you base your price upon?

A. On the basis of tonnage.

Ralph A. Weschler.

Q. Without regard as to whether it was ready for shipment or not?

A. That wouldn't make any difference.

Q. Now look down further at a lot of brass M-1 Shell cases on the same page.

page 24 } A. Yes.

Q. Now, what was the basis of your appraisal of that, Mr. Weschler?

A. We figured they weighed about ten pounds apiece, that is how we arrived at that value.

Q. Ten pounds apiece?

A. Yes, sir.

Q. Did you consider the condition of them?

A. They were scrap.

Q. I say, do you consider that as scrap ready for shipment to the mill?

A. They were just laying there in a pile, sir.

Q. Is that *they* way you considered it, as scrap ready for shipment to the mill?

A. Yes.

Q. Now look at your 17 bales of scrap aluminum. What was the basis you used on that?

A. 4,865 pounds we had estimated is in there.

Q. What did you put a pound on it?

A. I couldn't tell you.

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page 25 }

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Q. Now, on page 7, under Building No. 2, you have—the second item in building No. 2, you have 12 bales of white cotton flannel rags, at $306.00 what was the basis of that?

A. They were—we found some weight markings on the bales and just averaged them at 102 pounds each.

Q. And what was the price then that you put on it?

A. That is twenty-five cents a pound.

Q. Twenty-five cents a pound you put on it?

A. Yes.

Q. Now, let's come down further on that same column to 6 bales of wool rag clippings, averaging 300 pounds each, and you have an item of $270.00. How did you figure that?

Ralph A. Weschler.

A. An average of fifteen cents a pound.
page 26 } Q. Fifteen cents a pound?
A. Yes, sir.

Q. If they were offered to you for $25.00 in the same condition, would you be willing to take them?

A. I only sell, I am not a dealer; I am one of the few auctioneers that doesn't buy and sell goods; I wouldn't give you a dollar for everything down in this yard, sir.

Q. Look at the top of page 8, you have got 62 automobiles and trucks, parts missing. How did you appraise those? As usable units or as scrap?

A. No, sir, $10.00 each, they were appraised at.

Q. Were you appraising them as usable units?

A. No, sir.

Q. What were you appraising them as?

A. As junk.

Q. Were you appraising them as junk, all right, sir—

A. However, there are certain salvagable parts in them.

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RE-DIRECT EXAMINATION.

By Mr. Campbell:

Q. Mr. Weschler, when you made your appraisal with your force with you, your sons, who else was present?

A. When we went to the premises, I believe Mr. Klotz was there.

Q. Mr. Alex Klotz, who is sitting here at the end of the table?

A. I cannot say that I recognize him completely, sir.

Q. What was the answer?

A. I cannot say that I completely recognize him
page 36 } as the gentleman.

Q. Did the gentleman at the end of the table, Mr. Alex Klotz go around with you or give you any information or suggestions with respect to anything there?

A. No, he did not.

Q. Was Mr. Gibson there?

A. Mr. Gibson?

Q. The gentleman who was just asking you questions.

Ralph A. Weschler.

A. I don't recall seeing him.
Q. Was I there?
A. No, sir.
Q. Did you not in arriving at the valuations of these items arrive at them on your best judgment?
A. Yes, sir.
Q. Did you after you had made your inspection go back to your office and you and your sons, where you weren't sure of the reasonable value, check at such sources as you thought proper to ascertain their value?
A. We did.
Q. How many auction sales have you conducted in your life, would you say? 1,000?
A. I don't know, it has been over forty years.
Q. 5,000 or 10,000?
A. I wouldn't want to guess, Mr. Campbell.
Q. It is obviously more than 1,000, isn't it?
page 37 } A. We do a tremendous auction business.
Q. How many does it average a week?
A. Some weeks we will have five, other weeks we will have twenty.
Q. Are you the largest auctioneer and appraiser—that is do you think anyone in the Washington area does a larger business than you?
A. We do with the exception of real estate.
Q. I mean with respect to personal property?
A. Personal property, we are the only general auctioneer's in the City.
Q. Are you the largest south of Baltimore?
A. I wouldn't know that.
Q. Can you tell me in making appraisals of this type, have you had experience, following your appraisals, of actually making sales?
A. Yes, sir.

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Q. Have you had occasion to follow your appraisals that you have made prior to sales and to check them against the actual sales?
A. Yes, sir.

Ralph A. Weschler.

Q. As a result of that, have you through the years reached a range there where you can tell within a comparatively narrow range how close your appraisal would be to your auction sales?

A. I have not figured it personally, however, the Referee in Bankruptcy in Washington—

Mr. Gibson: I object.

The Commissioner: Just tell what you have done.

A. I haven't checked.

Q. But you do check them against your sales from time to time?

A. Well—

Q. I mean, check your appraisals against the prices you get?

A. Only in the entirety.

Q. That is what I mean. What I was really trying to get at is this: When you are appraising a group of articles, do you find that one is easy and another is hard to

page 39

put down, and vice versa?

A. Oh sure.

Q. And as an entirety, they are apt to come out accurately?

A. That is correct, yes, sir.

Q. Now, in appraising the property, which was offered for sale, I mean the property that was in the yard for sale, as distinguished from property in the yard for use, I ask you to assume, sir, that you as an Auctioneer were asked to come down to Fredericksburg and after due advertisement sell those articles to dealers or anyone who wished to buy them, but to sell them so that the entire articles would be sold in one day or two days or whatever length of time it would take to sell them at auction, would you state whether or not in your opinion the total price, which you put for the stock in tract is approximately the *kprice,* which you think you can get for it under the circumstances?

A. The stock in trade?

Q. Yes, sir.

A. Yes, sir.

Q. An auction sale at which the entire stock in trade was being sold after due advertisement?

A. Yes, sir.

Mr. Gibson: That is in Fredericksburg?

Ralph A. Weschler.

A. Well, I don't consider the difference in loca-
page 40 } tion to enter into the valuation.

Q. Let me ask you this: In that connection, in this kind of sale do you have a large number of dealers, whom you would notify of the sale?

A. Oh, surely.

Q. Do those dealers come to other jurisdictions or to another State for such sale?

A. Oh, surely.

Q. In your opinion, would the fact that it was held in Fredericksburg, rather than Richmond, Washington or Baltimore, effect the price?

A. No, sir.

Q. Is it fair to say that the prospective purchasers at such sales would come from anywhere in the area of two or three hundred miles?

A. Yes, sir, I would say three hundred miles.

Q. Now sir, you have no personal interest in this appraisal, do you?

A. None whatever.

Mr. Campbell: That is all.

RE-CROSS EXAMINATION.

By Mr. Gibson:

Q. You say Mr. Weschler, that the price would be the same of the inventory of the merchandise in Baltimore as in Fredericksburg?

page 41 } A. I would think so, yes, sir.

Q. Would it be the same in Fredericksburg as in Pittsburgh?

A. No, not in Pittsburgh.

Q. How much difference would it make?

A. Probably the freight cost difference.

Q. How much would that be, do you know?

A. No, sir, I don't.

Q. Do you have any idea of the cost of freight?

A. No, sir.

Q. So, you didn't consider that in your valuations, did you?

A. No, sir.

Mr. Gibson: That is all.

By the Commissioner:

Q. May I ask just one question. I am not attempting to cross examine you at all, but I want to clear something up in my mind.

On page 3, I am just interested in the method you were using. On page *you* you list 72 automobile and truck wrecks, parts missing at $1008.00; then on page 8, I think it is, you have 62 automobiles, of the same category, and trucks, with parts missing at $620.00, and I believe I heard you testify that on the 62 automobiles you arrived at it but stating the value at $10.00 apiece—

page 42 } A. I think that was $15.00 apiece on the first lot.

Q. That is what I want to get, and on the first lot you put $15.00 apiece?

A. That is right.

Q. And the second lot $10.00?

A. That is right, there were more parts missing, on inspection we found more parts missing and we reduced the price, accordingly, $5.00 each unit.

Q. By that I understand you to say that at the time you looked at them that the group of cars in yard two were ones that were in better shape, let's say, than the group in the other yard?

A. It wasn't the shape, it was the parts missing. The second lot had more parts missing than the first lot.

Q. I just wondered what the difference was.

A. That is it.

And further this deponent sayeth not.

WILLIAM P. WESCHLER,

another witness, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Campbell:

Q. Will you state your name?

A. William P. Weschler.

Q. And you are the son of Mr. Ralph Weschler?

page 43 } A. Yes, sir.

Q. And you are associated with him in the business of Adam A. Weschler & Son?

A. Yes, sir.

William P. Weschler.

Q. And did you along with Benjamin E., and Ralph A., Jr., participate in the appraisal about which your father has just testified?

A. Yes, sir.

Q. You have heard your father's testimony. Did you exercise your own independent judgment in arriving at these valuations with your father?

A. Oh, yes.

Q. Were the valuations, which were arrived at, the composite valuation of all four of you?

A. Yes, sir.

Q. Have you, along with your brothers and father, been engaged in this business?

A. Yes, sir.

Q. How long have you personally been engaged in the business?

A. I have been in it for two years.

Q. How long has Benjamin been in this business?

A. It is longer than I have, I don't know exactly, sir.

Q. And Ralph Weschler, Jr., how long has he been it?

A. The same length of time as I.

page 44 } Q. Have you and your brothers all conducted and participated in auction sales, yourselves?

A. Yes, sir.

Q. Of similar property?

A. Conducted or participated, yes.

Q. Do you recall, in connection with this particular appraisal, whether or not following the appraisal there was a check of trade records and other sources for appropriate valuations?

A. Yes.

Q. Can you tell me whether based on your experience and your work in this business, whether or not an auction sale properly advertised of the stock in trade in Fredericksburg of this business, which is listed in this appraisal would bring a total of $78,667.90, which is your recapitulation shown on the last page?

A. Breaking down stock in trade, I am talking about what he retailed, if you are including scrap in that, I would say, no.

Q. I am referring now, if you were conducting an auction sale of the inventory less the equipment. Now, do you understand what I am referring to?

A. Well the inventory in here is your junk and what we call stock, so called, in that valutation it takes in your salvage together with your scrap.

William P. Weschler.

Q. Yes, I am trying—If you will look on the last
page 45 } page of your appraisal. You will see the equipment is differentiated from the other stock?

A. Yes.

Q. In your opinion at a properly advertised auction sale, would the stock bring as much as $78,667.90?

A. I would say no.

Q. How much less would it bring?

A. We have arrived at the scrap prices from the Daily Metalb Report, which is a daily price.

Q. Is that the regular dealer's price?

A. That is what it is being sold for at the mill.

Q. At wholesale?

A. Yes, sir, that is what the mill pays for it.

Q. The other items were put in at auction value?

A. That is correct.

Q. And the two items together aggregate in your opinion $78,767.00?

A. Yes, sir.

Q. Now the equipment, which is valued at $43,827.50, if sold by a willing seller to a willing buyer, for use at Fredericksburg, would that bring as much as $43,827.50, in your opinion?

A. Would it bring that much?

Q. Yes, sir.

A. No, sir, it would not.

page 46 } Q. I am speaking now of a willing buyer and a willing seller—

Mr. Gibson: He has answered the question.

A. When you say that are you referring to an auction sale?

Mr. Gibson: I don't think he ought to lead the witness.

The Commissioner: I want to get all the facts I can unless it is too serious a case of leading.

Q. I am referring now to a willing buyer and a willing seller. I am not referring to an auction sale. In your opinion is the $43,827.50 a fair market value of that equipment?

A. Yes, it is.

Mr. Campbell: You may cross examine.

William P. Weschler.

CROSS EXAMINATION.

By Mr. Gibson:

Q. You heard the questions that I asked your father?

A. Yes, I did.

Q. If I asked you the same questions, would your answers be substantially the same as his?

A. Only in probably a couple of instances where you asked him about a truck, which we considered as being a piece of equipment, which was used in a going business. There is a difference in a piece of equipment that is used in a
page 47 } going business and a piece of equipment that is sold at a forced sale.

Q. I say substantially.

A. It wouldn't be any substantial difference.

Q. There wouldnt't be any substantial difference between your answers and the answers of your father?

A. Yes, sir.

Q. So, they would be pretty much the same?

A. That is right.

Mr. Gibson: That is all.

By the Commissioner:

Q. These scrap pieces generally were arrived at by first of all your knowledge and by consultation and looking over trade journals?

A. That is correct.

Q. And that was as of June 9th or 10th?

A. Yes, it was a daily report that was received.

Q. And your figures, that you checked on your daily reports of June 8th or 10th, are set out in your report of June 25th?

A. That is right, the valuations are of around the 8th.

Q. One more question for my information. How big a variance has there been, as reflected by the trade journals, in scrap?

A. It is like the stock market it is up and down, you just never know.

page 48 } Q. Your determination was as of June 8th or 10th?

A. That is right.

By Mr. Gibson:

Q. As I understood your answer to Mr. Campbell, insofar as the inventory is concerned, if they had a public sale at Fred-

ericksburg, it wouldn't bring $78,000.00, was that your answer?

A. Yes.

Q. What would it bring?

A. At this time I am not prepared to say.

Q. So, you don't know what the market would be as to the inventory at a public sale in the City of Fredericksburg?

A. That is correct.

Q. It could vary considerably, couldn't it?

A. Like I stated these mill prices are what is on the scrap, and of course, there would be a difference.

Mr. Gibson. That is all.

RE-DIRECT EXAMINATION.

By Mr. Campbell:

Q. And your statement that you didn't think it would bring that much was because of the fact that the mill prices would vary?

A. That is right.

Q. Excluding the mill prices are the prices that you have placed upon the inventory the fair valuation of that property?

page 49 } A. Not for liquidation.

Q. But for the auction sale for the rest of the property excluding the scrap, would the prices fixed by you be approximately what it would bring?

A. Yes, I would think it would be the same.

RE-CROSS EXAMINATION.

By Mr. Gibson:

Q. But I asked you about the inventory, and you said that the inventory wouldn't bring the $78,000.00 you have on it?

A. By inventory, you will have to clarify what you mean by inventory.

Q. The inventory of the merchandise, you said two or three times that wouldn't bring $78,000?

A. It wouldn't.

Q. All right, let me ask you something else, has the inventory of scrap gone up or down since June 7th?

A. It has gone down.

Q. It has gone down?

A. Not too much, but it has changed a little bit.

Jacob Schein.

Q. Would you change your figures, your values on account of the change in the market?

A. This report is as of a certain date.

Q. I am just asking you this question, sir, do you think that those values should be changed on account of the market?

page 50 } A. It would be based on the same values, based on the same journals, what the mills are paying for it.

Q. It wouldn't be very much difference, would it?

A. It would be a little bit.

Q. If Mr. Klotz were to offer it for sale at $62,000 do you think you could find a purchaser for it?

A. I am not in the scrap business, we are auctioneers.

Q. You have previously told us the valuation on this type of merchandise, and I am asking you now, if you feel it is worth $78,000.00, if he is willing to sell the whole lot for $62,000 do you think you could find a buyer that would pay that for it?

A. No, sir.

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JACOB SCHEIN,

another witness, called by the complainant, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Gibson:

Mr. Gibson: Mr. Commissioner, here is the inventory Mr. Schein used. I have only one copy, and I am going to hand it to him so he can have it, and at the conclusion of his testimony I will introduce it.

page 51 } The Commissioner: Are you going to introduce it or do you wish me to accept it the same as the other.

Mr. Gibson: No, I am going to exhibit it as Plaintiff's Exhibit one.

The Commissioner: All right.

Mr. Garnett: We are admitting that appraisal, but we don't admit the relevancy and materiality of it.

The Commissioner: This document and the other one previously allowed are accepted in the manner offered and will be attached to the report.

Jacob Schein.

Mr. Campbell: One is a Court appraisal.

The Commissioner: I understand that, and the other is filed as an exhibit.

Mr. Campbell: That is right.

Q. Mr. Schein, would you state for the record your name and age?

A. Jacob Schein, age sixty.

Q. And your occupation?

A. Scrap dealer.

Q. And where do you reside, sir?

A. Baltimore.

Q. How long have you been in the scrap business?

A. Oh, forty years.

page 52 } Q. In what capacity?

A. Dealer.

Q. And as a dealer what do you do?

A. Buy and sell scrap.

Q. You buy and sell scrap. At the request of Mr. Klotz did you make an appraisal of the commodities on his yard in Fredericksburg, Virginia, that are listed on that paper, which I hand you? (Handing witness Plaintiff's Exhibit 1)

A. Yes.

Q. Now, I will ask you if it was torn in the manner in which it now is when it was handed to you?

A. That is the way it as handed to me.

Q. This is a copy of one of the Weschler reports, is it not?

A. Apparently so, I saw that the other day.

Q. When this was given to you the prices had been cut off and removed, had they not?

A. I didn't see any prices, that is the way it was handed to me, with it torn off.

Q. So, you didn't see in making your appraisal—

A. No.

Q. Now Mr. Schein, I want to ask you a few general questions.

You heard Mr. Weschler's testimony and that of his son. What is the main difference in the valuations that

page 53 } you have placed upon the property from the valuations that they have placed upon it?

A. Well from what I heard there is quite a difference, but apparently their figures were based on the mill prices and I was basing my values on the value in Fredericksburg, as I saw the material.

Jacob Schein.

Q. We are speaking of only the inventory, we are not speaking of the equipment?

A. The scrap.

Q. What would be the differential, Mr. Schein, between the price of the inventory at Fredericksburg and the price at the mill in New York?

Mr. Campbell: You haven't identified when this appraisal was made by Mr. Schein and what it was made of, and I don't believe it is going to be admissible for that reason alone.

The Commissioner will note that under the terms of the Court order Mr. Klotz became the owner of all the partnership property as of June 8th, and we don't know what property Mr. Schein inspected.

The Commissioner: I expect they will bring that out. As I understand it he took the appraisers' listings, without the prices. I don't know whether he went down the list page 54 } or whether he made a new list.

Mr. Gibson: That will come out.

A. I will explain that. This was handed to me, this list here, and I was asked to put a price on it. The bulk of it, I would say fifty per cent of it was the price as of that date—

Q. Let me further identify it, Mr. Schein. Did you inspect the items listed on that exhibit at the Klotz yard.

A. Oh, yes, I had this for identification, to check every item on here.

Mr. Campbell: When?

Q. Approximately when was that?

A. I think it was early in July, if I remember correctly; I don't recall the date.

Q. But it was early in July to the best of your recollection?

A. I think so.

Mr. Campbell: That brings up the point, we can get it, of course, on specific questions, but the inspection of the condition of an automobile, etc., in July, might not be relevant to June.

A. Wait a minute. It is about five or six weeks ago, I would say six; about that.

Jacob Schein.

page 55 } Q. That would be either the first of July—somewhere in the neighborhood of the first or fifteenth of July?

A. I would say, yes.

Q. Mr. Schein, I think you started it, but you were interrupted there and I think we lost it, we lost the trend. From the testimony that you have heard what is the main difference between the appraisal you put on this property and the appraisal the Weschlers have put on it?

A. Well, I would say the difference between the price here in Fredericksburg and the mill price on quite a bit of the items.

Q. Now let me ask you this: They testified, I think you heard them testify that they based their valuation of this inventory upon the prices appearing in the New York trade papers. Now—

Mr. Campbell: Mr. Gibson, I take it that you are going to distinguish between the scrap and other things. The scrap was the only thing that they based their valuation on these trade papers.

The Commissioner: We use the word in the Weschler Report, the stock and equipment. We have two main categories and you are inquiring on the scrap stock?

Mr. Gibson: That is right.

page 56 } Q. Would you go ahead. Mr. Schein, and make your explanation as you see it the major difference between the two appraisals?

A. Well, I guess the difference in the price—it is approximately thirty per cent difference, I would say.

Q. The difference in the price where?

A. Fredericksburg and delivered to the mill.

Q. In other words, the price that appears in the trade papers in New York is the price paid at the mill, is that correct?

A. Yes.

Q. So that the man who owned that scrap in the City of Fredericksburg, Virginia, would have to pay the freight charges from Fredericksburg to the mill?

A. Oh, yes.

Q. And what would that average?

A. Well on steel as high as $13.00 a ton delivered to Pittsburgh; I think it is $8.00 a ton delivered to Sparrows Point from here, so that is quite an item.

Jacob Schein.

Q. Now, as to the scrap on the yard, what would you say would be the difference in its value according to the New York trade papers and the value on the yard in Fredericksburg in percentages?

A. Oh, overall, I would say approximately twenty-five to thirty per cent.

Q. So the freight charges would result in a dif-
page 57 } ferential of from twenty-five to thirty per cent in the Fredericksburg prices and the mill prices?

A. Oh, yes.

Q. Now Mr. Schein, leaving out the fact that naturally some of these articles there could be used locally. as to the great bulk of it—of the scrap or stock, as it is referred to here, it has a value only at what place?

A. At the mill.

Q. There is no place in the Fredericksburg area that it could be used?

A. No—No, this is not an industrial town.

Q. So, to sell this you would have to ship it to the mill?

A. Yes, absolutely.

Q. All right now, what other large differential was there between their appraisal and the price that you have put on it?

A. Well, there were a couple of items there—

Q. Without going into specific items. You say that one of the differences in the price is the price at the mill and the price here in Fredericksburg, that was one consideration. What is the other consideration, which makes up the major portion of the difference between the two appraisals?

A. Well, I guess the handling.

Q. In other words, you treat a great deal more
page 58 } of this material as junk than they did?

A. Oh, yes, I call on scrap dealers exclusively and I know what the headaches are. I call on them all over the east. I have seen items that are marked here a certain price and I have seen them in scrap yards and they are glad to get rid of them at any price. Of course, they might have a potential value but that is all. The first item here the eleven bath tubs. I marked them $2.00 apiece. I looked at them and most of them are five foot bath tubs, five foot tubs go big in a city like Baltimore, but they will eventually wind up going in the scrap pile. Ninety-nine per cent of the material coming into a scrap yard is junk and winds up in scrap.

Q. Their valuation of a large part of these items is based on the assumption that you could sell a bath tub as a bath tub, for instance?

Jacob Schein.

A. You might once in a while.

Q. And you put your valuation on them as junk?

A. That is right.

Q. That is a large part of the differential. For example look at the next item.

A. 134 sinks and basins. I wouldn't take them for a gift for this reason. Most of them are porcelain and in handling them nine out of ten will crack and then will have no value; they are not even iron and that kind of material is ob-
page 59 } jectionable to the mills. People I know have had shipments rejected because they have had this porcelain material in it, the mill wouldn't accept them at any price, and then if you have only a small portion of that material in it they may cut the price as much as $5.00 a ton, because of the material in it.

Q. Mr. Schein, would you go further down on that page where you see the "Contents of freight car, including lined burlap bags, etc—

A. Yes, I had samples of these bags one time and I tried to move them and I was offered one cent apiece for them delivered to Baltimore if they were brought in in a specified time.

Q. What value did you put on them?

A. Nothing.

Q. They have a value of $410.00 on that.

A. I have my value at $50.00 for the material in there and I based it on scrap, what I figured on was on the scrap. You see this burlap, in particular, I remember distinctly, it has a lining in it that has tar in between and you cannot even sell it for scrap, nine out of ten junk dealers will take them out to the dump and burn them up.

Q. Look at the next item 109 metal drums, what did you put on that?

A. I looked at that lot particularly because I was
page 60 } interested in that, that is worth a cent and a half a pound.

Q. What price did you put on the lot?

A. $700.00 for the lot*h*; I think they average close to 4,000 pounds, and at a cent and a half, or in the neighborhood of that.

Q. Has the market on those items been any higher than you have listed from June 7th to today?

A. Slightly on some of the items.

Q. Slightly?

A. Yes.

Q. That has happened since June 7th?

Jacob Schein.

A. Yes.

Q. It would not have been higher prior to that?

A. No.

Q. Let's go to the next page and they have 8 steel brooms, and Mr. Weschler has testified that they were worth $400.00, and that they are usable. Would you care to comment upon the valuation put on that.

A. If I can remember correctly, to me they are nothing but scrap, and they will never be sold, a dealer will carry them forever practically before he can find a user for them; that is what I base my value on those for, in fact almost everything there.

Q. Coming down further on the same page you have got a lot of tube steel, which they appraised at page 161 } $700.00. Would you care to comment on that?

A. That I figured as scrap only, it is hard to sell, if it were pipe it would be a different story, pipe they can thread and use, somebody will come in and buy a little pipe and use it for water lines, etc., tubes you cannot thread, and it was used for some special purpose apparently.

Q. So, you could not thread it and it had no value other than as scrap or junk value?

A. That is right.

Q. Come on down further on the same page. "Contents of the Cinder Block building" Do you see that?

A. Yes, sir.

Q. They have that listed for $1200.00. What are your comments on that, Mr. Schein?

A. Let's see, there are electric motors, pumps, compressors. You see a lot of this stuff in junk yards and they wind up in the junk pile. I based it all on scrap.

Q. You don't think these items had any value other than junk value?

A. Well once in a blue moon somebody may need a switch or something, very, very seldom, and come in and buy it, but you cannot carry a big stock of these things just for one or two items to be picked out.

Q. Let's go to the next page, page 3, and there is a item of 51 gas ranges. I understood Mr. Weschler's testi-
page 62 } mony that in part the valuation was placed on these as usable items. What is your comment on that?

A. Here is the situation with gas ranges and refrigerators. A lot of dealers will not accept them free in their scrap yard, most of the scrap yards will not let them dump them off because that is objectionable material to the mills, and the mills

have been rejecting all these cars that have that stuff in them.

Q. Could you say that these ranges had any utility out there?

A. No, not out there.

Q. All right, there are fourteen steel underground tanks, that they valued at $180.00—

A. The same page.

Q. Yes, sir, down about three lines.

A. They are weather beaten and full of holes and anybody that is going to put a tank in certainly wouldn't put one of those in, because the cost of putting them in shape would be more than the cost of a new one.

Q. In other words, they have holes in them, so it only has a junk value?

A. That is all.

Mr. Gibson: Mr. Campbell, perhaps I should have him testify as to each individual item and the value he page 63 } has placed on it, unless you are willing to agree that these are the prices he has placed on them.

Mr. Garnett: We would certainly admit the price he has listed is the price of his appraisal; there is no question of that being his appraisal.

Q. Let's come on down on the same page, and you have a lot of sheet steel, parts bins, truck and auto wheels, etc., and they have them listed at $175.00. What comment would you care to make on that?

A. Where is this?

Q. On the same page down about six lines.

A. Sheet steel, parts bins. I only figured that as scrap.

Q. You figured that as scrap?

A. That is all.

Q. Now, the next two items under that, contents of open front frame shed, and the item under that, a lot of assorted metal. How did you consider that?

A. That lot in particular—I just don't recall a lot of assorted metal or how much weight was there or where it was located. Where was this located, do you recall?

Q. It doesn't say where it was located.

A. Well, I think along with the next item that it must have been outside of that frame building. That was junk.

page 64 } Q. Both of those items were considered as junk value?

Jacob Schein.

A. That was mixed metal, it wasn't assorted and there were a couple of drums outside of that open frame shed.

Q. All right now, let's come down to the item, Boxed pipe fittings, metal shavings, etc., on the same page, they have that item at $375.00, what was the—

A. I shouldn't admit it, but I went up to Mechanicsburg and bought some material and I have to take a licking on it, it is parts, you know, metal.

Q. What price did you put on that?

A. Pipe fittings, $25.00.

Q. What did you consider that to be?

A. Junk.

Q. Just junk?

A. Yes, sir.

Q. All right now, two more items down, four grader blades. they are listed in their appraisal at $240.00. How did you treat those?

A. Scrap iron.

Q. What price did you put on those?

A. The prevailing price, I don't recall.

Q. What was it you put on it?

A. $75.00.

Q. On the 72 automobiles, and truck wrecks, parts missing, what value did you put on those?

page 65 } A. I put $3.00 apiece, but I wouldn't pay that myself and take them away from there, because I noticed that a lot of the motors were missing. Of course, a lot of automobile wreckers buy them for the parts they can salvage out of them. I don't treat them as such, because I wouldn't consider any of the parts as being salable.

Q. You wouldn't consider the parts as salable?

A. No, most of these, the motors are missing and it is a junk item.

Q. So you consider those as junk value?

A. Yes, sir.

Q. Now, let's go to the top of page four, under a lot of baled miscellaneous scrap, they have it at $7,000.00. What valuation did you put on that?

A. $2500.00.

Q. $2500.00, and the item right under it, they have cast iron and steel scrap, and they have it at $5500.00. What value did you place on that?

A. $3600.00. I based all these on prevailing scrap prices FOB Fredericksburg.

Q. All right—

Jacob Schein.

A. Not mill prices.

Q. All right. Now come on down two or three more items, another lot of same, mostly engines, do you see that?

A. Yes.

Q. They have $1500.00 under those items. What
page 66 } was the basis of your valuation of those items?

A. $600.00.

Q. Did you consider them as what? Scrap?

A. Scrap that is all it could be. You see in those engines, they are what they call unclean engines; they are contaminated, and I know that some of the dealers pay as much as $5.00 to separate them.

Q. Coming down to the item of 82 scraper blades that they have at $164.00. What was the basis of your valuation of those?

A. Scrap iron.

Q. Scrap iron?

A. Absolutely.

Q. And as scrap iron what was the valuation?

A. $32.00.

Q. Down at the bottom of that page is a 1952 Chevrolet 1½ ton stake body truck, and they have it at $550.00. What valuation did you put on that.

A. 1952 Chevrolet truck, scrap $10.00. I didn't take into consideration that any parts were on it that could be sold, it is possible that some of the parts could be sold, but I was not concerned with salvage.

Q. The 1949 Ford, right under that. Did you treat that as scrap, too, as having only junk value?

A. That is all.

page 67 } Q. Let's go to the next page. Come down to the item, F. E. Reed, Engine Lathe, etc., what valuation did you put on that?

A. $50.00.

Q. What did you consider it?

A. Scrap.

Q. The item right under it, Mead "Mighty Mouse" Bulldozer. What did you consider that?

A. $100.00.

Q. Did you consider that as its scrap value?

A. Absolutely.

Q. All right now, coming to Building Number 5, you will see 40 electric motors and pumps, various sizes, and right under that 96 electric motors and pumps, various sizes, and those two items have been appraised at $1560.00. Mr. Weschler testified

Jacob Schein.

that they were usable items. What would you say to that?

A. Well, I will say this: Most of them were obsolete motors, they are out of date; there is a possibility of somebody coming in once in awhile and may be picking up one, and by that time they will deteriorate so that they will be frozen stiff; so, I treated them as scrap.

Q. And you considered that they had no value other than as scrap?

A. Yes, sir.

page 68 } Q. Coming down to the lot of USA Engine, Road Machinery and miscellaneous replacement parts, which was listed at $1500.00, and it was testified that they were usable items. What did you treat them as?

A. I didn't treat them as usable items, scrap is all.

Q. Do they have any sale value as usable items today?

A. The reason a lot of this stuff comes into a junk yard is because it is obsolete, and there is a remote possibility that somebody might come along once in a great while and pick out a piece or two, but I junk all that kind of material.

Q. The time right under that, the 26 rolls of No. 44 Kraft paper. What is the condition of that paper?

A. I think that is wax paper and I wouldn't haul it out of the place.

Q. It is no good because it has this wax on it, is that correct?

A. No, it is no good, not even as scrap value.

Q. All right, on page 6, about half way down, you see a lot of scrap sheet and cast aluminum, copper, brass and monel and stainless steel, they have the price of $1800.00. What is your price on that?

A. $650.00.

Q. Would you explain to the Commissioner the difference there in that price?

page 69 } A. First of all it is contaminated material. I know that it costs anywhere from three and a half to five cents a pound to separate the attachments one from the other. You see brass with aluminum attached to it has very little value because they don't mix*x*. I know it costs a cent and a half a pound to assort that material, and the cleaning is approximately three or three and a half cents a pound, that is the average price on that.

Q. That lot of material has to be assorted and cleaned and processed before it is ready to be shipped to the mill?

A. Oh, yes.

Q. Had it been assorted and cleaned then the $1800.00 would have been a reasonable price, is that right?

Jacob Schein.

A. It probably would.

Q. Let's come down to the Lot of M-1 brass shell casings, they have $1400.00 on that item. What value did you give to those?

A. I think it was 1200 pounds of that.

Q. That is right.

A. And the prevailing price at that particular time of brass shells was fifteen cents a pound.

Q. Was that brass contaminated?

A. Yes, I think they had steel primers in it, which had to be removed, the mill will not accept it with those.

page 70 } Q. So they would have to be cleaned and processed for the mill?

A. Oh, yes.

Q. What price did you have on it?

A. $180.00.

Q. Had they been processed and cleaned, would you say that the $1400.00 would have been a reasonable price?

A. Oh, no.

Q. It would still have been high?

A. Oh, yes.

Q. Let go to the next page, in Building Number 2, the second item there, 12 bales of white cotton flannel rags, averaging 102 pounds each, and they have a $306.00 appraisal on here. What did you appraise that?

A. I have $120.00, ten cents a pound.

Q. All of these prices you were giving here were the prices as of June 7th?

A. Yes, and that is all they were worth at that particular time because I have handled rags—some of that kind of rags before.

Q. All right, Mr. Schein, coming down a little further and you have 6 bales Wool Rag Clippings, average 300 lbs each, which they have down for $270.00. What did you have on those?

A. I had a bitter experience just a few weeks ago. I took some of the same material into a wholesale rag dealer and he

page 71 } pleaded with me not to even bring them in. You see this stuff is nothing but sweepings and it is contaminated and the cost of labor in cleaning it is more than the value of the material.

Q. In other words, the cost of processing the material is more than it is worth?

A. Oh, yes, considerably more.

Q. And you had that at what value?

Jacob Schein.

A. About a quarter of a cent a pound, $5.00 a ton. I wouldn't pay that for them myself.

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CROSS EXAMINATION.

By Mr. Garnett:

Q. Mr. Schein, how long have you known Mr. Klotz?

A. Oh, I guess seven or eight years.

Q. And you have done business back and forth with him?

A. Yes, I have done business with him.

Q. He asked you to come down and make this appraisal, did he not?

A. Yes.

Q. When did you come down?

A. I think it was the early part of July, I am not positive.

Q. How long did you stay?

A. Oh, I must have been there five hours.

Q. Who was with you?

page 77 } A. No-one.

Q. You were by yourself?

A. Absolutely.

Q. Now, you say you came, you think in the first week or so of July?

A. I think it was, I am not sure, don't pin me down to any particular day, because I don't recall. You see I came down here and Mr. Klotz handed me this and asked me to check these items and put down what I would give for some and what are they worth, and I based my figures on my opinion.

Q. When you came down did you buy any stuff from Mr. Klotz?

A. No. Did I come down to buy anything?

Q. Did you buy anything?

A. I don't think I did.

Q. Can you remember?

A. I don't know whether I bought anything or not.

Q. Had you bought anything from him subsequent to that time?

A. No, I used to buy a few pounds of rags from him once in awhile.

Jacob Schein.

Q. Did you buy anything from him within any reasonable length of time prior to the time you came down to make your appraisal? Let's say two or three months before that time?

A. Yes, I bought some material from him.

page 78 } Q. Can you remember the last time you purchased that material from him?

A. No.

Q. You were handed this document here by Mr. Klotz?

A. Yes, sir, just the way it is.

Q. Just the way that is?

A. Yes.

Q. And was anybody in the room when this was handed to you? Was Mr. Gibson there?

A. No.

Q. Did Mr. Klotz tell you why he wanted you to come down and make this appraisal?

A. No, sir. He asked me to come down to look at the material, but I had no idea why he was asking me to appraise this material. He just handed me his inventory.

Q. Do you mean to tell us that he didn't tell you that there was a suit?

A. Absolutely not.

Q. Did he call you about coming down or did he write you a letter?

A. No. I used to call on him about every five or six weeks and try to buy a little material, and I think he called me and asked me to come down and appraise this material.

Q. You say you have been in the business for forty years?

A. Yes.

page 79 } Q. You aren't an appraiser and you don't sell at auction, do you?

A. No.

Q. Junk material or material of this type, you buy for your own purposes?

A. That is right.

Q. Or for resale or to sell to the mills?

A. Yes, sir.

Q. Mr. Schein, let's go back and take a look at a couple of these items. Let's take a look on page four at the Lot of Galvanized Baling wire scrap?

A. Yes.

Q. How much baling wire did you find there that day?

A. How much baling wire?

Q. Yes. On what basis did you make your appraisal?

Jacob Schein.

A. By looking at the pile and estimating the weight and the price at that particular time.

Q. How large was that pile?

A. Well, I don't recall.

Q. You didn't take any measurements of it, did you?

A. I paced it off.

Q. Now, what did your paces show?

A. I didn't keep a record of it. You see I didn't know why I was asked to appraise this material. I didn't keep a record of it.

page 80 } Q. Then you don't know whether this was the same lot of galvanized baling wire that was there on June 8th or not do you?

A. No. I wouldn't swear to it; that could have been moved and bought and handled probably a half a dozen times.

Q. And Mr. Klotz was still in the junk business at that time, wasn't he?

A. Yes.

Q. He was still working at the business?

A. Oh, yes.

Q. Let's go to this Cast Iron and Steel Scrap, heavy, it is the third item on page 4, which was put in your appraisal at a $3600.00 valuation. How did you arrive at that?

A. By looking at the pile and estimating it, that is all.

Q. You didn't take any actual measurements of it, at all, other than to step it off again?

A. That is right.

Q. And you don't know whether it was the same pile or not?

A. No.

Q. In connection with any of these lots, where it is on an estimated pounds basis, you have no idea whether or not it was the same pile that you put an appraisal on as was originally appraised? You don't know whether it

page 81 } was the same pile of material or not, do you?

A. I couldn't swear to it.

Q. In other words, you were given a list and you followed this list?

A. I followed this list. To me scrap is scrap.

Q. Let me ask you this: Did you make a count of any of these items or articles, other than to just identify them on this list?

A. No.

Q. In other words, you took this list at its face?

A. That is right.

Q. And without making any independent count or any

Jacob Schein.

independent search as to the articles, you then just placed a valuation on them of your own?

A. Exactly, because the bulk of the material I buy, I inspect and buy it on the basis of my judgment, and I am not perfect, I can be wrong lots of times.

Q. You say you spent five hours there?

A. I would say altogether about five hours.

Q. Altogether about five hours. How did you come down?

A. I drove down.

Q. You came down in the morning and went back in the afternoon?

A. Yes.

page 82 } Q. Let's go to some of these articles that you have discussed before. On page one, we will start at first the 129 metal drums containing white metal and aluminum scrap. You put a figure of $700.00 on that?

A. That is right.

Q. What was in those drums?

A. What we classify as die castings, which is a low grade zinc based metal, and that is the price I would have paid at that particular time.

Q. That is the price you would have paid?

A. Yes.

Q. Do you know what the market price for those drums was?

A. Oh, yes.

Q. What was it at that time?

A. What did you say?

Q. What was the market price of those drums at that time?

A. You see this material had to be cleaned—

Q. I am just asking you what the market price of that material was at that time.

A. There is no market price on those particular items, because it is based on zinc content and aluminum content. I know Iron die casting allows approximately forty per cent. Today they are paying five to five and a half cents a pound

page 83 } for the recovered die castings, and when you pay for the cleaning and assorting that brings it to about two and a half cents a pound.

Q. Were these drums full and crammed?

A. No, they weren't crammed; they were full but stacked up.

Q. Now, these prices you are quoting on this material, is that the price the day you inspected this material?

A. Yes.

Jacob Schein.

Q. You don't know what the price was on June 8th?
A. No.
Q. In other words, to be fair with you every price you put on there was as of the day of your inspection?
A. It was the price of that particular day, what I would pay—I would say this, the price I put on this was the price I would have paid that day, and a lot of it was the price he could get at the mill or rather FOB Fredericksburg for the scrap.
Q. Can you tell me what you would have paid on June 8th for these 129 metal drums?
A. I don't know, no.
Q. Do you know whether the condition of the material had deteriorated between June 8th, and the time you examined it?
A. That I couldn't tell you.
Q. Do you know what the condition of these
page 84 } drums were on the day of June 8th?
A. I wasn't there June 8th.
Q. Now, let's go down a little bit further on that same page one and take another article. You have a Climax Blue Streak Engine, Model R-61, size 6x7. Will you tell the Commissioner what your price is on that article?
A. $100.00.
Q. What is that based on?
A. Scrap.
Q. That is based on scrap?
A. Yes.
Q. What was that article? What is that Blue Streak Engine?
A. I don't recall exactly what it is now, but I based my price on the weight, so much per ton.
Q. How much did it weigh?
A. At that time—I don't know, apparently it has $100.00 value.
Q. How do you arrive at the $100.00 value, you say it was based on weight, what did it weigh?
A. After all I cannot answer those things now. There may have been a piece or two on *their* that you could salvage, but to me it was scrap.
Q. You say you based your value on weight, and I am asking you how much did it weigh?
page 85 } A. I told you that ninety-nine per cent of this material I based it on as scrap iron.
Q. If you based it on scrap iron, how much did it weigh?

Jacob Schein.

A. This may have had some non-ferrous metal attached to it, which could have been removed and non-ferrous metal is valued at anywhere from fifteen to nineteen cents a pound.

Q. Do you know what the weight is?

A. I can't recall.

Q. That is what you would have paid for it?

A. Yes.

Q. As it set, with whatever it had on it?

A. Yes, sir.

Q. Based on your experience on what you could resell it for or get for scrap for it?

A. That is right.

Q. Let's take the item, Pumps, Pump Housings, Rotary Cutters, etc. What value did you place on that?

A. $200.00.

Q. How did you base that estimate?

A. Apparently I based my value on scrap.

Q. How many were there?

A. I can't recall.

Q. Did you base that on weight also?

A. Probably so.

Q. Did you approximate that weight?

page 86 } A. May be.

Q. Do you know how you arrived at the valuation, you are in this business?

A. You see I call on these dealers and I look at a pile of material and I say, "I will give you so much for it." There are times we can move it and there are other times that certain material has no value and I couldn't handle it, so I don't give anything for it, I will quote a ridiculously low price with the hope of finding a user for it.

Q. Do you mean to testify that some of these articles are valued at a ridiculously low price, because you couldn't use them?

A. Not a ridiculously low figure, as scrap, that is the way I based my values.

Q. I am asking you how you based your value on these pumps, pump housings and rotary cutters?

A. On scrap.

Q. On scrap. What weight did you put on them?

A. Everything I based my value on as scrap, is as I said—

Q. What was the weight?

A. I don't recall. If I knew I was to go all through this I would have made records of everything I checked, but I

Jacob Schein.

was handed this and asked to put a price on it, what I would pay for it and what it was worth.

page 87 } Q. Then you went along and put prices on this stuff of what you would pay for it?

A. On fifty per cent of it.

Q. On fifty per cent you put price of what you would pay?

A. The other fifty per cent, I wasn't interested in, and I probably put what it would bring FOB Fredericksburg.

Q. I want to make this clear: You went through this inventory and on fifty per cent of it you based your price—

A. On what I would pay.

Q. On what you would pay?

A. That is right, and what items I based that on I would have to look at the material.

Q. And the rest you based your price on what you thought it would bring at the mill?

A. No, what I thought it would bring FOB here, I wasn't interested in that.

Q. What items weren't you interested in?

A. I couldn't say off hand, but there were a lot of items I would have been interested in having at my price.

Q. All right, sir, would you tell us some of the items you would have been interested in at your price?

A. Off hand, no.

Q. Let's go on to the top of page 2, item 5, Refrigerating and Air Compressors, what price did you have on those?

page 88 } A. Refrigerating and Air Compressors. I don't know whether that was the price they should bring from a dealer or whether it was the price I would have paid for them.

Q. Could it have been that you had somebody looking for a couple?

A. No.

Q. Will you please give the price?

A. My price here was $300.00.

Q. Do you know what that was based on?

A. That was either based on what I could get for it or what I would pay for it. These particular items I don't recall what they were, after all you have a couple of hundred items here; I cannot remember each one.

Q. Let's drop on down six or eight or ten lines, and there is an item of 10 Reeves Pulley Boxes. What price did you put on those?

A. $30.00 each—$300.00.

Q. And how was that based? Was that a scrap basis?

Jacob Schein.

A. Probably so.
Q. It was?
A. Apparently so.
Q. What was that scrap value based on?
A. If it was a scrap price it was all based on weight.
Q. I am not asking you if.
A. That is the only answer I can give you, if it was based on the price of scrap it had to be on weight.
page 89 } Q. How much did these Reeves Pulley boxes weigh?
A. I don't remember.
Q. What should they weigh? Are you familiar with them?
A. No, to me it was scrap; they may have been valuable items to somebody that could use them, but to me it was scrap because I don't sell salvage.
Q. Let's go down to the Contents of the Cinder Block Building. Did you go in that building?
A. No, I looked in through the window, I don't know what was covered or not, but on a gamble I figured from what I could see it had a potential value of $250.00.
Q. What time of the afternoon was it when you looked in the building? Do you remember that?
A. I would say I got there at probably nine or ten o'clock in the morning.
Q. What time did you look in this building?
A. Oh, I would say probably—I am guessing now—one or two o'clock.
Q. And actually you are taking the information off of here—off the copy of the appraisal, which you had, as to what was in there?
A. That was a gamble what was in there.
Q. That was just a gamble, you thought that would be just approximate?
A. On the basis from what I could see I figured
page 90 } it had that value. If there was anything hidden underneath the bags that it had an increased value that was to the buyer's advantage.
Q. Now on page 2, again, the time of 1196—55 gallon steel drums—
A. Yes.
Q. What was your valuation on that item?
A. $1.00 apiece.
Q. $1196.00?
A. Yes, sir.
Q. What was that based on?

Jacob Schein.

A. As a drum.

Q. That wasn't scrap then?

A. No, that particular item was a usable drum, because a lot of scrap dealers buy drums to pack material in, and they pay anywhere from fifty cents to a dollar for them.

Q. Do you think that there are scrap dealers in this immediate area that could use 1196 drums?

A. Yes—not in this immediate area, no.

Q. Then, do you think there would be any transportation cost?

A. Yes. I don't say based on scrap prices, as scrap only they are worth twenty cents apiece.

Q. You say it was worth $1.00 apiece plus transportation charges?

page 91 } A. Yes.

Q. If any of these articles had a valuation other than as scrap, they would have that value plus transporttion charges, is that correct?

A. Yes. The prices were all based FOB Fredericksburg.

Mr. Gibson: Excuse me, Mr. Schein. He asked you would they be worth a price plus the freight.

A. Delivered to Baltimore, where there is a market for these drums, it would probably cost you thirty-five to fifty cents apiece to transport these drums to Baltimore.

Q. You have already put the price on them and you said it would be worth that plus transportation?

A. Yes.

Q. You would pay that in Fredericksburg?

A. Yes, sir.

Q. Let's go to the top of page 3. Cash Iron Supporting Beams and pipe. Will you please give your valuation on that?

A. $200.00.

Q. Upon what do you predicate that valuation?

A. It must have been scrap.

Q. Do you know whether it was scrap?

A. To me it was all scrap.

Q. You haven't indicated on any of these

page 92 } whether it was usable or scrap.

A. It says, "Cast Iron Supporting Beams" It sounds like salvage to me, to me all this stuff was scrap, I didn't base my value on any of these for anything but scrap.

Q. Didn't you just say that you didn't base your valuation on the drums as scrap?

Jacob Schein.

A. A drum is a drum.

Q. The same thing is true with supporting beams and pipe, you can also use them?

A. 1196 drums, you can go right to a drum man and sell 1196 or 11,000 drums. You have a man come in looking for cast iron supporting beams and may be you will sell him one or two, but you cannot sell a whole lot unless he has use for them. They have got to figure as scrap.

Q. On what did you base your valuation of this item?

A. Scrap only.

Q. Scrap only is it based on a pound basis?

A. Yes.

Q. How much poundage was there?

A. I wouldn't know it.

Q. You don't know whether it was the same size pile that you saw there as against June 7th or 8th, or not, do you?

A. That is right, I don't.

Q. In other words, that pile could have been increased or decreased by the time you saw it?

page 93 } A. It could have.

Q. Now 51 Gas Ranges. You say that they are absolutely worthless?

A. To me, yes. To you they may be worth a couple of dollars apiece.

Q. I want to ask you one other thing. Do you know of any place in the market where they have a value?

A. No, I don't.

Q. But you aren't familiar with other portions of the trade, other than junk dealers, who may want to use these items as a saleable item?

A. No, I don't, but I know 51 gas ranges they go into junk, ninety-nine out of a hundred would have very little value, if any.

Q. It wouldn't take much value to get $2.00 apiece for them, would it?

A. It certainly would unless you find a buyer. You see for scrap this is objectionable material. Now, there is a possibility you may find somebody, may be I could salvage a half a dozen or a dozen, and he would gamble on getting a dozen out of the lot to take parts out of.

Q. Let's drop down to another item—to these fourteen steel underground tanks—Excuse me. Did you inspect these 51 gas ranges?

Jacob Schein.

A. I think some of them were under canvass. No
page 94 } I didn't move the canvass, I saw them, and I know
what they are.

Q. You don't know whether they are all scrap or not, then?

A. If you have been around a junk yard as long as I have and know what portion of material is salvage when it comes down to us, household goods particularly, you would call them scrap, and they could be in perfect condition.

Q. And you didn't look to see whether or not they were in perfect condition?

A. No, not all of them, but from what I saw I assumed the rest were about the same.

Q. You don't know as a matter of fact that there were 51 there?

A. No, I take this for granted.

Q. All these quantities set forth, you are taking their word that they were there?

A. Yes.

Q. The 14 steel underground tanks, you have already testified that you put no value on those?

A. Well, I will tell you, to me they were of no value for this reason—

Q. Let me ask you this question: Did you inspect those tanks?

A. Yes, I looked at them.

Q. All fourteen of them?

page 95 } A. No, I couldn't get into all fourteen, but I
looked at most of them.

Q. What did you find with respect to them?

A. Holes in them, rust, and staying out in the weather they are naturally going to deteriorate.

Q. These were outside?

A. Yes, sir.

Q. And they have no value for scrap or otherwise?

A. They have some value, to me they had no value, and I will explain why. The cost of cutting them up to the size that is acceptable in mills is almost the value.

Q. What would be the value of these tanks?

A. To me they were worthless.

Q. What would be the value of those steel tanks whether from the standpoint of the metal in them or from a resale standpoint?

A. I guess as scrap at that time, that particular type was worth twelve to fifteen dollars a ton.

Q. How many tons were there?

Jacob Schein.

A. I don't remember.

Q. You deal solely in scrap and I presume you are familiar with this kind of tank?

A. Wait a minute. I deal in the material I am interested in particularly.

Q. What is that material?

page 96 } A. Mostly non-ferrous.

Q. Well, do you mean that you really don't know a whole lot other than as to non-ferrous materials? That is your interest?

A. Oh, I handle scrap too, I handle scrap when I can buy it by the lot and turn it over; other than that I don't handle it for the mill.

Q. What is your business primarily made up of in the junk business? What do you deal in mostly?

A. Non-ferrous materials that I, myself, can buy and turn over at a profit. Now, this scrap iron here, I don't fool with it, it involves too much.

Q. Then, do you mean to tell us that all these items with scrap iron, you have been discussing, you really don't handle that?

A. I don't buy iron if I can help it.

Q. Then, these prices that you have given us of what you would have paid are materials you wouldn't normally carry any way?

A. That is right.

Q. You are now testifying, insofar as all of these scrap iron materials, baling wire, etc., as an expert on material, which you don't handle as a general practice in business?

A. I handle it at times. I have gone all over the

page 97 } country and appraised material time and again, looking at piles and inspecting it.

Q. For whom?

A. And putting a price on it. I was with K. Hettleman and Sons for seven years; and whatever I could buy for myself that were non-ferrous metals I bought.

Q. They again were non-ferrous metals?

A. Yes. I was with United Mine and Metal Company for awhile buying non-ferrous.

Q. Let's drop down on that same page to the item, Lot of Sheet Steel, Parts Bins, Truck and Auto Wheels, etc. What price did you put on that?

A. $50.00.

Q. Do you deal in that kind of scrap?

A. I would have paid $50.00 for it.

Jacob Schein.

Q. Just answer my question. Do you deal in that kind of scrap?

A. At times.

Q. Do you regularly deal in that kind of scrap?

A. No, not regularly. I would have paid that for it and taken a chance.

Q. On what do you predicate this price?

A. On my judgment, what I could probably get for it.

Q. You wouldn't worry about weights?

A. I must have arrived at some figure to quote

page 98 } $50.00.

Q. Do you know how much was there?

A. Off hand, no.

Q. Down about three or four items, Boxed Pipe Fittings, Metal Shavings, Mutilated Steel Tank, Co2 Fire Extinguishers, tanks and carriers. Will you please give us your valuation on that?

A. $250.00 for the lot, that is probably what I would have paid for it.

Q. What was it worth? I am not asking you what you would have paid for it.

A. I told you that half of this stuff I based my price on what I would pay for it; that was one of the items I would have paid for it.

Q. What was it worth?

A. I don't know, it had to be worth above what I would have paid for it to make a fair profit, to take care of expenses of loading and hauling it and delivering it. that costs a lot of money, that probably would be worth $100.00.

Q. It probably would have been worth $100.00?

A. I say probably.

Q. And it is based on your judgment?

A. That is right.

Q. Let's go down to the next item or two down, 4 Grader Blades—First the one above that 8 Textile Machines, obsolete. What was your valuation on those?

page 99 } A. $225.00.

Q. What did you predicate that value upon?

A. Probably on the weight as scrap iron.

Q. But you don't handle scrap *ior?*

A. I buy scrap iron, yes.

Q. Would you have bought this?

A. I probably would, that might have been one of the items, I cannot recall.

Q. How heavy were they?

Jacob Schein.

A. I don't remember.
Q. Did you have any way of determining the weight?
A. No, I estimated.
Q. You estimated the weight. What did you estimate the weight to be?
A. Enough to pay $225.00 for it, so you can figure it out.
Q. That is the way—
A. That is the way I buy. I look at a lot of material and put a price on it, if the man wants to sell it, all right, if not, all right. I have been known to have overpaid many times.
Q. Let's direct your attention to page 4, and to the item about 7 down. Ammunition Transporting Tools.
A. Yes.

page 100 } Q. What price did you put on those?
A. $3,000.00.
Q. How did you base that?

A. Well, I looked at the pile and figured the weight and how much weight was there and what he could probably get for it.
Q. What were they made out of? What were these tubes made of?
A. Light iron.
Q. White iron?
A. Light iron.
Q. How much did you figure was there?
A. I don't recall, whatever the market price was enough tonnage to bring it up to $3,000.00, that was my figure, I wouldn't pay that for it.
Q. That was FOB for it?
A. Yes, sir.
Q. You weren't in that business, so you wouldn't pay that for it?
A. That is right.
Q. You aren't in that kind of business?
A. Yes, sir.
Q. In your opinion there was $3,000.00 worth on July whatever the date was?
A. Yes, sir.

page 101 } Q. Let's drop down to the next two items, a lot of Miscellaneous scrap steel and another lot of same. What valuation did you place upon that?

A. $7,500.00.
Q. Was that in one pile or two piles?
A. Apparently it was in two piles.

Jacob Schein.

Q. How much of it was there? You have got that as one price.

A. I don't recall. I didn't make any record of these. I figured the tonnage while I was there and while I was inspecting these piles and put down that figure.

Q. Was the price you put down here FOB Fredericksburg?

A. Yes, everything was FOB Fredericksburg.

Q. And yet you don't know how much was there?

A. No, it is a gamble.

Q. When you say FOB Fredericksburg it must have been some basis? How much were you allowing per ton?

A. You have to figure $13.00 per ton freight for one thing.

Q. I am just asking you one thing. How much you allowed per ton in Fredericksburg?

A. How much did I allow per ton in Fredericksburg?

Q. Yes, if you know.

A. I think at that time that I figured approximately $20.00 a ton, I am not positive.

page 102 } Q. Let's go back to these Ammunition Transporting Tubes, how much did you allow a ton on *thos,* or was that the same price?

A. I don't think so. I think I put $15.00 on that, because that takes a different category; they are light iron.

Q. Let's go back to the top of the page. How much did you allow for the lot of galvanized baling wire?

A. I think I based my price on $15.00 a ton.

Q. But you don't remember exactly how much tonnage there was?

A. No, sir.

Q. Then how about this lot of baled miscellaneous scrap?

A. That was in the one pile.

Q. That was in the one pile. How about this cast iron and steel scrap, how much did you base that on?

A. I think $25.00 a ton. I am not sure now.

Q. And it says another lot of the same, and I presume you gave that the same?

A. Probably the same.

Q. All right, when you get down to those 651 "I" Beams, 5" x 10" @ x 10'—3/4" thick. What value did you place on those?

A. $1,500.00.

Q. Was that on a scrap basis or usable basis?

A. Scrap basis.

Q. That is on a scrap basis, I guess that is on a tonnage

Jacob Schein.

basis, also?
page 103 } A. Yes.
Q. How much was that?

A. I don't recall, I think that was figured on $25.00 a ton or $20.00 a ton.

Q. You think it was $20.00 a ton?

A. Approximately.

Q. Now, dropping down to the bottom of that page, 1952 Chevrolet 1½ Ton Stake Body truck, Model 6408. I think you in your direct testimony stated that you put a $10.00 valuation on that?

A. That it was scrap. I wouldn't have it.

Q. Do you handle automobiles?

A. No. I know that a lot of automobiles are dragged into junk yards and wrecking yards at $10.00 apiece, and I have seen them pay $5.00 apiece and have them brought in time and again.

Q. I understand that. What I am getting at is this: Do you recognize the value of an automobile for a usable item, when it still has usable life?

A. No, I don't consider anything but scrap.

Q. Regardless of what these items are?

A. Unless it is a truck used in his business, delivering or hauling in used material.

Q. Regardless of whether or not these trucks were let's say in a position to be put in usable condition with
page 104 } very minor expense?
A. That wouldn't interest me.

Q. That wouldn't interest you a bit?

A. No.

Q. The mere fact that you might have taken it in for $10.00 and might be able to sell it for $300.00 as a usable item, that wouldn't interest you at all?

A. Not at all, but I have never seen a truck brought in for $10.00 that could be sold for $300.00.

Q. Now, let's go to page 5, Building Number 5.

Before we get there, this F. E. Reed Engine Lathe, you testified that you put a valuation of $50.00 on that?

A. Yes.

Q. Are you familiar with this type of lathe?

A. Well, the lathe, I figured the weight of scrap iron, and that is what I put my value on.

Q. I just asked you the question, are you familiar with this type of lathe?

A. No, I wouldn't say I am too familiar.

Jacob Schein.

Q. Do you know exactly what its real condition is?

A. No, it was a lathe in a junk shop; when I go to a junk shop everything to me is practically junk.

Q. Let me ask you this question, and I want you to think about this: There were or were there any of these articles that we have been discussing, either on direct

page 105 } examination or on cross examination, arranged or displayed for sale purposes and not for junk?

A. Well, I would think a few of them were; they were in the warehouse, there were some small items in the warehouse.

Q. Isn't it a fact that there were a great many items, in all fairness, I am not saying the majority, that were actually arranged and displayed for sale and not for junk?

A. Let me give you an opinion: Most of the stuff that was found in the yard, it appeared it was put down wherever they found space available and it set there; then when you get around to all these scrap piles and scrap iron, that is just piled up there and normally if a man comes in and *sess* something there and can use it, he will buy it, and if not it will just stay there until it is sold for scrap.

Q. In any of the warehouses was there any arrangement of items that indicated that they were on display for sale?

A. There were several items probably, but probably they were put in the warehouse because of the weather conditions, they may damage.

Q. Was there any special display, from your observation, that you would know that those items were specifically for sale?

A. I wouldn't say that.

Q. Where was this F. E. Reed Engine Lathe?

A. That was in the warehouse.

page 106 } Q. You say you don't know what condition it was in?

A. That is right.

Q. Let's go to the Mead "Mighty-Mouse" Bulldozer. What price did you put on that?

A. $100.00.

Q. Do you know anything about the bulldozer?

A. No, sir.

Q. Your price is based on scrap?

A. Scrap.

Q. You have no idea what condition it was in, whether it was saleable or salvage?

A. No, most of these things were wrecked and obsolete.

Jacob Schein.

You could tell they were obsolete, they were used and battered, and to me they had no value other than as scrap.

Q. You knew nothing of their valuation other than as an article of scrap?

A. The bulk of them, as far as resale value I wasn't interested in.

Q. So, if your valuations are a great deal lower on a great many of these articles than those put on by Mr. Weschler, you wouldn't have any idea which was correct?

A. I will give you the same answer that Mr. Weschler did, he said he wouldn't give you $1.00 for any of it; that lathe particularly, I wouldn't give you a five dollar bill for it other than for scrap, I wouldn't give you anything for it as a usable item.

page 107

Q. Now let's go to Building Number 5 on the same page, 40 Electric Motors and Pumps, various sizes, and then you have got 96 electric motors and pumps, various sizes—

A. That is right.

Q. Where were they located when you went there?

A. Where were they located?

Q. Yes.

A. I think on the floor and on some pallets, if I remember correctly.

Q. What valuation did you place on those units?

A. I think I figured at that time approximately three cents a pound.

Q. Do you know whether any of those were salvage or usable?

A. No.

Q. You don't know?

A. No, I know a lot of them were so obsolete that to me they were scrap; I wouldn't buy a motor other than for scrap.

Q. Let's go down two items, A lot of USA Engine, Road Machinery and Miscellaneous replacement parts. What was your valuation on that?

A. $400.00.

Q. And that is all based on scrap?

page 108

A. I don't recall, to tell you the truth.

Q. Have you got any way of recalling what it was?

A. No, I don't remember. I figured if it was *uable* they should probably get that out of it, and if it was scrap they should probably get that out of it.

Jacob Schein.

Q. If it was usable do you know anything about the valuation on miscellaneous parts of road machinery of this kind?

A. Not too much. There may be a few usable parts in this.

Q. Well, what was this?

A. I don't remember. I don't know whether that price is scrap value or what he ought to get for it or ask for it.

Q. All right now, on page 6, about the seventh or eighth item. A lot of Scrap sheet and cast aluminum, copper, brass, monel and stainless steel. What value did you put on that?

A. $650.00.

Q. Do you deal in that?

A. That stuff I deal in, that is what I would have paid for it, for that pile.

Q. How much of a pile was there?

A. In weight?

Q. Yes.

A. I don't recall.

page 109 } Q. How much on the basis of scrap were you paying for it in putting the price down?

A. That, off hand, I couldn't tell you, but I was figuring so much per pound for the lot or so much for the lot.

Q. Do you have any basis for that price?

A. I have no motive in putting a price on it other than what I would have paid.

Q. Don't misunderstand me, I am not in the first instance trying to impugn your motives, I am only trying to get at the basis of your valuations and the facts.

A. On my study I would have given $650.00 for that pile and moved it out.

Q. You don't know what that is based upon?

A. I was gambling on it, I know what it entailed, it entails a lot of labor cleaning and sorting.

Q. On what was it predicated? It must have been on weight or something?

A. On weight.

Q. How much?

A. I don't remember. You must remember this: We have some items quoted at twenty cents a pound and some items at two cents a pound. You cannot set a figure without taking the whole lot into consideration, and that is what I did.

Q. That day you don't know how much of that material was in that pile on June 8th?

page 110 } A. No, how should I know? This is all supposed to have been the same amount of material

Jacob Schein.

that was there when this was marked up, I guess.

Q. A further item down the page, 17 bales of scrap aluminum. What was your appraisal on that?

A. By the pound?

Q. What was the price?

A. At that time scrap aluminum was worth approximately eight or nine cents a pound.

Q. What was your appraisal of that?

A. $200.00.

Q. At that time it was how much a pound?

A. Eight or nine cents a pound.

Q. Had it gone up or come down?

A. It may have advanced a cent since then.

Q. You say it is worth eight or nine cents a pound and how much is in a bale?

A. I don't remember, enough to bring it up to $200.00, you can divide it out.

Q. You don't know how much was in a bale? On a basis of eight or nine cents a pound, did you have any weight for the bales?

A. Whatever my judgment told me that is the way I figured on it. If I remember correctly it is a compressed bale and weights possibly a hundred and some pounds
page 111 } apiece, a little over a hundred pounds apiece, I think.

Q. All right, let's turn to page 8, sir, if you will, starting with the first item 62 automobile and trucks, parts missing. You put what appraisal on those?

A. $400.00.

Q. Upon what did you base that appraisal?

A. What did you say?

Q. Upon what did you base that appraisal?

A. On Scrap iron.

Q. On the basis of weight?

A. Yes.

Q. How much did they weigh?

A. Oh, an automobile will weigh a ton, that is complete, you understand, but a lot of these the motors were missing, parts *wee* missing and I took it as an entirety.

Q. How much is that per ton for the scrap iron?

A. Now, this is the way that works, it was worth approximately $15.00 a ton, but this entailed an operation that would probably cost eight to ten dollars a ton, perhaps.

Q. Let's go on down to the item 11,680 lbs. No. L Copper?

A. Yes.

Jacob Schein.

Q. What appraisal did you put on that?
A. $2,377.60, at nineteen and a half cents a pound.
Q. FOB Fredericksburg?
page 112 } A. Yes.
Q. And 31,932 pounds of No. 2 Copper?
A. Eighteen cents a pound, FOB Fredericksburg.
Q. And your total is what?
A. $5,7467.76.
Q. And 1580 lbs. of Red Brass Rollers and Gears, what was your valuation of that?
A. $284.80, that is eighteen cents per pound; they were the prevailing prices at that particular time.
Q. And they are FOB Fredericksburg and not the mill price?
A. FOB Fredericksburg.
Q. Let's go a little bit further into that. What would be the quoted mill price the day you did this?
A. Probably a cent and a half above that. You see that is not what you call a mill item, that is a foundry item. You may be able to dispose of that type of material within a closer radius, where you don't have additional freight to pay.
Q. Isn't it true on a lot of the items you have been discussing?
A. No, not on ferrous material, you only have two mills, that is United States Steel and Bethlehem Steel.
Q. Where is the nearest plant?
A. Sparrows Point.
page 113 } Q. How much is the freight on that?
A. I think your rate is about $8.00 a ton, I am not sure of that.
Q. Let's go to the item of 15,980 pounds of clean car radiators?
A. Fifteen cents a pound, $2,370.00, that was the price FOB Fredericksburg that day.
Q. All of these, I take it are one to one and a half cents under mill prices quoted for that day?
A. I would say that.
Q. All right, let's go to the item of 10,590 pounds of sheet aluminum. What was your price on that?
A. $1,164.90, eleven cents a pound.
Q. 6,590 pounds of 2 S Aluminum?
A. Thirteen cents a pound, $856.70, that was the list price that day.
Q. All right, and 4,870 pounds of aluminum radiators?

Ralph Weschler.

A. Eleven cents a pound $536.25.

Q. All right on page 9, 1885 pounds of babbitt?

A. Ten cents a pound or a total of $188.50.

Q. 7,429 pounds of zinc, what appraisal did you put on that?

A. I think I put about four cents on that.

Q. Four cents a what? A pound?

A. A pound, $277.16.

page 114 } Q. Is the total?

A. That was the market price.

Q. All right, sir, let's drop down below there, I think you have three items, 451 pounds of red inner tubes, 3,406 pounds of black inner tubes and 30,201 lbs. of blue strip inner tubes. You placed what valuation on those?

A. I put $300.00 on the lot.

Q. How did you base your valuation on that?

A. I think on the assumption that a lot can be salvaged, a lot is dry rotted and some of it has a valuation of two or two and a half cents a pound.

Q. Did you make any inspection of each item to determine the condition of this material?

A. Not too much, I know some of them were dry rotted.

Q. Now, let's go to the trucks and equipment, however, before I do that I just want to go back to page 8 for a minute with respect to the amount set forth opposite the various piles of metal. You just accepted that—

A. The weights?

Q. The weights as given, you didn't make any independent appraisal of the amount there was?

A. No, I was given the weights and assumed all of it was weighed.

* * * * *

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* * * * *

RALPH WESCHLER,

recalled as a witness by the defendant, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Campbell:

Ralph Weschler.

Q. Mr. Weschler, in your inspection of this property on June 8th or June 9th, or whenever it was, did you find any of it in warehouses, in what we call display form?

A. I did, as disclosed by the appraisal.

page 131 } Q. In what way is it disclosed by the appraisal? What items were on display? What type of items?

A. Numerous items in the yard proper, plus a part of the articles on page 5 under Building 5.

Q. Go ahead.

A. Plus Building No. 5 on page 5, Building Number 1, on page 6 and part of page 7, Building Number 2 on page 7, that is about it, sir.

Q. That is about it, you say?

A. Those items were specifically displayed.

Q. When items are on display are they being offered for scrap purposes or for use?

A. Not normally.

Q. They are normally being offered for use?

A. I would think so, in fact we were told they were for sale.

Q. Who told you?

A. Some young man, who went around with us—

Mr. Gibson: I object to it.

Q. Was it Mr. Max Klotz?

Mr. Gibson: I object.

The Commissioner: He didn't ask what he was told; he asked if he was told.

A. I didn't ask his name.

Q. Only one young man went around with you?

page 132 } A. Yes, sir.

Mr. Campbell: That is all.

CROSS EXAMINATION.

By Mr. Gibson:

Q. In these warehouses these various items were arranged together, for instance most of the motors were in one pile, were they not?

A. The motors were not piled, no, sir, they were displayed

Ralph Weschler.

as you would expect for them to be displayed in a place of that kind.

Q. They were not piled on the floor?

A. No, it was not any pile.

Q. There was a certain area and the motors would be in that area?

A. That is correct.

Q. And you have another area and another type of motor in that area?

A. That is right.

Q. There was an area where things of a similar type were arranged together in the building?

A. That is right.

Mr. Gibson: That is all.

* * * * *

page 133 } Mr. Campbell: If the Commissioner please, counsel for both sides are prepared to present in evidence appraisals made by Paytes-Massey Insurance & Realty Company, through J. S. Paytes, and Hawkins & Janney, through Mr. J. T. Janney and Johnson & Glazebrook through Mr. Orrock F. Johnson, who have jointly appraised various real property belonging to Mr. Klotz and Mrs. Klotz jointly or to the partnership. These properties are listed and we are, as I say, offering them as an exhibit jointly.

The Commissioner: All right, that will be Jointly Offered Exhibit by the plaintiff and defendant, A.

Mr. Campbell: I would like to stipulate with Mr. Gibson that all of the properties listed on Exhibit A belong to the partnership, regardless of how the legal title stands, with the exception of the premises at 612 Princess Anne Street, which is appraised at $20,000, the premises at 924 Kirkland Street, appraised at $10,000, the premises at 1621 Sunken Road, appraised at $14,000, the premises at 1600 Franklin Street, which is the home formerly occupied by
page 134 } Mr. and Mrs. Klotz, appraised at $37,500. Is that correct?

Mr. Gibson: Yes, sir.

The Commissioner: Do I understand that all of them are partnership property with the exceptions you named?

Mr. Gibson: That is right.

Mr. Campbell: If the Commissioner please because of the fact that the order of Court, which provided for valuation of the real property, also authorized Mr. Klotz to pay the value of Mrs. Klotz' share in the partnership in real property, at the valuations fixed, it becomes also important to state the legal ownership of the remaining property, which are not in the partnership.

Now, if Mr. Gibson will follow me, I would like to stipulate that the premises at 1600 Franklin Street are owned by Mr. and Mrs. Klotz as joint tenants, with the right of survivorship; that the premises at 1621 Sunken Road is also owned by Mr. and Mrs. Klotz as joint tenants with right of survivorship, but that the premises 924 Kirkland Street and 612 Princess Anne Street stand in the name of Mr.

page 135 } Klotz.

Mr. Gibson: That is correct.

Mr. Campbell: Subject to Mrs. Klotz' inchoate right of dower. Is that agreed to, Mr. Gibson?

Mr. Gibson: Yes, sir.

* * * * *

FORREST W. BROWN, JR.

another witness of lawful age, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Gibson:

Q. Would you state your name, your age and your occupation?

A. My name is Forrest W. Brown, Jr., age thirty-five, and I am a Certified Public Accountant.

Q. With what firm are you, Mr. Brown?

A. I am a partner in A. M. Pullen Company in Richmond, Virginia.

Q. Has your firm been the auditor for the Klotz business for some years?

page 136 } A. Yes, since 1939, I believe.

Q. Did you make up certain balance sheets of the Klotz partnership as of June 7, 1958?

A. Yes, sir, I did.

Q. Are these the balance sheets that you made up, Mr. Brown?

A. Those are the statements, yes, sir.

Forrest W. Brown, Jr.

Mr. Gibson: I would like to introduce this as Plaintiff's Exhibit Number 2.

Mr. Garnett: There is no objection to it as an Exhibit prepared by Mr. Brown, but we do object to the materiality and relevancy of it.

The Commissioner: Subject to any specific item?

Mr. Garnett: That is right.

The Commissioner: It will be marked accordingly.

Q. Mr. Brown, I think on that Exhibit you have three statements, do you not? In that exhibit there are three different balance sheets prepared?

A. Yes, sir, that is correct.

Q. Would you state to the Commissioner the reason for the three different balance sheets?

A. The reason is, the one being based—Well

page 137 } there is a different basis for merchandise inventory and plant property and equipment; two of them being based on appraised value, so far as plant property and equipment is concerned.

Q. Exhibit A of this Exhibit shows the balance sheet of the partnership according to the inventory value furnished by Mr. Klotz and the book value of the properties, is that correct?

A. That is correct, yes.

Q. Now Exhibit Number B is based upon the appraised values before the Commissioner and the inventory of the personal property by Weschler & Sons, is that correct?

A. That is correct, I believe, I don't have it identified as to who made that appraisal.

Mr. Campbell: That is correct.

Q. And Exhibit C is the balance sheet based upon the inventory appraisal made by Mr. Schein?

A. That is correct. It should also be stated that real estate is stated in Exhibits B and C at the appraised value.

Q. The only difference in Exhibit C and Exhibit B are the difference of the inventory and personal property values connected with the business?

A. That is correct, yes, sir.

Q. Now, did you take this Exhibit, Mr. Brown—

Forrest W. Brown, Jr.

Mr. Garnett: What exhibit is that?
page 138 } Mr. Gibson: The same one I have just handed to him.

Q. And read into the record from the book value of the business the amount credited to Mr. Klotz and the amount credited to Mrs. Klotz?

Mr. Garnett: Under each one of these exhibits, you mean?
Mr. Gibson: Yes, that is what I am asking.

A. What you want would be the balance to the credit of each of them as of June 7, 1958?
Q. That is correct.
A. Exhibit A shows to Mr. Klotz, $161,900.59, to Mrs. Klotz $15,371.85, or a total of $177,272.44.
Exhibit B shows credit in the capital account of Mr. Klotz $259,301.93, to Mrs. Klotz $64,072.52, or a total of $323,-374.45.
Exhibit C shows a balance in the capital account of Mr. Klotz of $224,384.40, of Mrs. Klotz $46,563.77, or a total of $270,848.17.

The Commissioner: That is C you are reading?

A. C, yes.
Q. So, those are the balance sheets that have been prepared by you based, one upon the book value, and numbers two and three taking into consideration the reappraisal of
page 139 } the real estate, and as to B, the Weschler appraisal of the personal property, and C, the Schein appraisal?
A. Yes, sir, that is correct.
Q. Now, with those figures included, Mr. Brown, does that Exhibit correctly reflect the financial condition of the partnership as of June 7th?
A. These figures as of June 7th were prepared without an audit by us, it does reflect the balance as they appeared on the records of the partnership.
Q. They are the balances from the records?
A. Yes, sir. May I qualify that statement?

By the Commissioner:
Q. I want to ask one question. Your B and C Items were, as I understand, including the real estate?

Forrest W. Brown, Jr.

A. The real estate at appraised value.
Q. At appraised value?
A. Yes, sir.
Q. A does not?
A. That is right, that is the book value.
I made a statement that these reflect the balances as shown by the books. It is possible we made some adjustments in preparing these that do not yet appear on the books, but we started with the book value. We made certain adjustments for depreciation, accounts payable, etc., that I am not sure have been recorded in the books but the informa-
page 140 } tion was supplied to us.
Q. In other words they have a cut off, and, therefore, some of the adjustments made due to the cut off, you are not sure have been recorded in these books?
A. That is correct.

* * * * *

Q. Mr. Brown, you have the Odor Exhibit, Defendant's Exhibit 2, do you not?
A. Yes, sir.
Q. Now, the objections that Mr. Odor has raised are on page 6, is that correct?
page 143 } A. That is right, yes, sir.
Q. Now starting with item number 2 on the Odor Report, that is the unexplained charge July 31, 1957, $2094.31. Would you give to the Commissioner what you now have ascertained the explanation of that item to be?
A. As best we can now determined from the records the explanation of that $2,000.00 is a transfer from the Government 9-D Account, it is an account in which money had been paid in suspense for taxes in an earlier year, and as a matter of fact it was paid in December 30, 1946 and not credited to the estimated tax of Mrs. Klotz; $60.13 of it appears to be the second payment on the 1947 estimated tax, and $34.18 is State Income Tax.
Q. Could you state for the record why that adjustment was made?
A. Principally on the basis of the fact that this deposit into the 9-D Account had been in 1946 and had stood on the records for that period of time and in 1948, presumably at the taxpayers request, the $2,000.00 was credited on the current years taxes.
Q. All right now Mr. Brown, as to item number 3, the US

Bonds in the amount of $2,100.00. Do you have any explanation of those figures?

A. Yes. There is nothing disclosed by the records, which would indicate whose name those bonds stood *it.*

page 144 } That is the answer.

Q. The only thing that you could tell from the records was that certain charges were made against Mrs. Klotz's account for bonds?

A. That is the only thing that is disclosed by the records, yes, sir.

Q. How about the checks payable to Fredericksburg, Virginia Banks for Christmas Savings Accounts. Did you make an analysis of that item? Item number 4.

A. I have an analysis of the payments into the Christmas Savings Accounts and the deposits, which appear to be the proceeds of such Christmas Savings Accounts for the years 1950 through 1956.

Mr. Campbell: May I ask if there is any question of Mr. Odor's Report with respect to the payments that went into the Christmas Savings Account?

Mr. Gibson: There is no question of his figures.

A. There is no question about—it is admitted having been charged to Mrs. Klotz.

Q. The charges that were made to her account, which went into the Christmas Savings Account started in January 1949 and ended November 10, 1952, is that correct, according to the Odor Report?

page 145 } A. That is correct.

Q. Now Mr. Brown, what did your analysis show is the total amount having been contributed to the Christmas Saving Accounts in the Fredericksburg Banks during that same period?

A. For this period we find $54,500 deposited in such accounts, $48,000 deposited into the business as those accounts were apparently closed out.

Q. So that during that period you found $48,000 deposited in the Christmas Savings?

Mr. Garnett: In the Christmas Savings?

A. Yes.

Q. And how much later charged out and credited to the business?

Forrest W. Brown, Jr.

A. $48,000.
Q. And that left this difference *unaccount* for of how much?
A. It would be $6500.00.
Q. What was the original figure deposited, Mr. Brown?
A. $54,500.00.
Q. During that period?
A. Yes, sir.
Q. And the withdrawals, I mean the amount taken out of the Christmas Club and carried on the business books were what?
page 148 } A. $48,000.00.
Q. When these monies from these Christmas Clubs were deposited in the Klotz partnership account, who is given credit for that amount of money on the books?
A. Mr. Klotz.
Q. There was $6500.00, then of this Christmas Savings Money for which there is no explanation as to who received it?
A. That is right, no record of it save the partnership record.
Q. In other words, it didn't go into the partnership account?
A. No, sir.
Q. And you don't know, of course, who got it?
A. No, sir.
Q. Now, item number 5, that is the item for the expenses of Max Klotz, which were charged to Mrs. Klotz during the period that is set out in this exhibit. Is the amount, so far as you could ascertain, in the Odor Report correct?
A. Yes, insofar as we could ascertain all that was expenses of Max Klotz and was charged to Mrs. Klotz, yes.
Q. Did you check the amounts charged to Mr. Klotz for Max's expenses during that period?
A. No, I have not.
Q. All right, the next item is item 6, payment
page 147 } for electrical appliances. According to the records, as I understand it, those electrical appliances went into the home at 1600 Franklin Street, is that correct?
A. Insofar as the record identifies them; they are identified to Fred A. Payne, whom I understand are Appliance Dealers.
Q. On item 7, the payments to Washington, D.C. Department Stores, is that correct?
A. Yes, sir.
Q. The item of $2665.43, which was charged to Mrs. Klotz, is that correct?

A. Yes, sir.

Q. Do you all have any way of telling who actually purchased the goods that those checks paid?

A. No, we do not have such information.

Q. Is the only thing you could tell from the records that certain payments to these department stores were made and charged to Mrs. Klotz?

A. That is correct.

Q. The payments for fuel, electricity, etc., as represented in item number 8, would be something that you wouldn't have any knowledge of, would you?

A. No, I only know these amounts were charged to Mrs. Klotz.

page 148 } Q. On item number 9, the premiums paid on the life insurance, you don't know who were the beneficiaries under those policies, do you?

A. No, I don't.

Q. Now on Item number 10, Various other items. Is there any way you could tell as an accountant for whom those items were purchased?

A. There was no way we could tell from the partnership records.

Q. In addition to the items that we have just mentioned there are also adjustments that Mr. Odor has made to the income tax account of Frances Klotz, is that correct?

A. Yes, sir, that is correct.

Q. All right, leaving out the income tax item, were the items two through ten the only items that were charged to Mrs. Klotz on the partnership books from the inception of the partnership until it was closed on June 7, 1958?

A. Your question is, leaving out the income taxes, if these were the only items charged to Mrs. Klotz—

Q. Leaving out the income taxes and the cash withdrawals?

A. There would be some few other items, but there would be the bulk of the items, other than cash withdrawals and income taxes.

Q. Then these items would be substantially all of the items that were charged to her during this period of time?

A. Yes.

page 149 } Q. Now, Mr. Brown, I believe A. M. Pullen & Company prepared the income tax returns for the Klotzes during this period did they not, the period of the partnership?

A. Yes, sir.

Forrest W. Brown, Jr.

* * * * *

Q. What was the original reason for the formation of this partnership, Mr. Brown?

A. I cannot state from my own knowledge.

* * * * *

Q. Were you there, Mr. Brown?

A. No, I didn't work on the job at the time of its formation.

* * * * *

Q. Let me ask you this: In 1948, was there a question made by the Federal Government to the 1947 Tax Return?

A. Yes, there was.

Q. And you have that information in the file, page 150 } which was in the office of A. M. Pullen & Company, is that correct?

A. Yes, sir.

Q. State the nature of the Government's contention, Mr. Brown?

A. The Government contended that the income of the partnership for its fiscal year ending July 31, 1947, should be taxed entirely to Mr. Klotz. The Government Report read: "Increase in income is due to disallowment of the partnership as not bona fide. Husband is true earner of the income."

Q. Now, what was the final result of the Governmental complaint as to the partnership?

A. The tax liability for the year 1947 was eventually settled by allowing Mr. Klotz a salary of $20,000.00 a year, and Mrs. Klotz a salary of $2600.00 a year, and the balauce of the income was divided two-thirds and one-third.

Mr. Campbell: The balance of the what?

A. The balance of the partnership income after those salaries.

Q. In other words, the Government said that Mr. Klotz would have to draw from the partnership the sum of $20,000 a year in salary?

A. That is right, before the balance would be divided by the partners.

Forrest W. Brown, Jr.

Q. Do you have the copy of the proposal submitted to the Treasury Department by A. M. Pullen on behalf
page 151 } of Mr. and Mrs. Klotz?

Mr. Campbell: May all this testimony be in subject to our objection, as we do not believe it is relevant or otherwise admissible.

I just don't know how compromise negotiations of any kind can be admitted.

Mr. Gibson: Will you mark*ed* that as Plaintiff's Exhibit 3.

Q. All right, Mr. Brown I will hand you.

Mr. Garnett: Mr. Gibson, may I interpose one other basis for the objection?

This objection runs to all this testimony and to all documents with respect to this particular matter on the further basis of the immateriality of this testimony insofar as it bears on the dissolution of a portion of the agreement, which we are here under at the present time without any reference with respect to the tax situation or otherwise.

The Commissioner: I think you are all bound by the partnership agreement, and at this time don't see any reason to go back of the partnership agreement, but I will let it in subject to your objection.

A. It is a letter dated February 22, 1950, to
page 152 } P. H. Lowry, Technical Advisor, U. S. Treasury Department Technical Staff, 300 Virginia Building, Fifth and Main Streets, Richmond, Virginia, (Note: Here the witness read the letter, which is filed as Plaintiff's Exhibit 3)

Mr. Campbell: May we make another objection on the ground that the letter was not written by the witness.

Q. How is the letter signed, Mr. Brown?

A. The letter is signed by Mr. W. H. Westfall of our firm.

Q. Was your firm acting under sworn authority from the taxpayers?

A. Yes, sir.

Mr. Campbell: Does he have that with him?

Mr. Gibson: I assume he has it in the file.

Forrest W. Brown, Jr.

The Commissioner: It is signed as Agent for Taxpayers, Power of Attorney on file.

Q. For the year 1947 separate returns were filed by Mr. and Mrs. Klotz, is that correct?

A. That is correct.

Q. After that year were separate returns filed?

A. Joint Federal Returns were filed in 1948 and all later years.

page 153 } Q. 1947 was the year in which the statute was changed to allow a husband and wife to file joint returns and get advantage somewhat of a split income, is that correct?

A. That is right, for 1948 and later years had the effect of having the income tax as if divided equally between husband and wife.

Q. So where a husband and wife made a return the tax would be the same regardless of how much ones income was or how much the others income was?

A. That is correct, generally.

Q. Now Mr. Brown, was the $20,000 that the Government allocated to Mr. Klotz in the year 1947 ever shown on the books as salary credited to him?

A. No, it was not.

Q. And every year after 1947 the only salary charge shown on the books to him was the $100.00 a week, was it not?

A. That is correct.

Q. Now Mr. Brown, would you explain to the Commissioner the method by which your firm allocated the income tax charges to Mr. and Mrs. Klotz?

* * * * *

page 154 } A. The income tax paid each year was paid from partnership funds and for the purpose of closing out the partnership record to drawing account, the tax payments were charged two-thirds to Alex Klotz and one-third to Frances Klotz.

Q. What was the reason, Mr. Brown, that you charged one-third of the tax to Mrs. Klotz and two-thirds to Mr. Klotz?

A. Apparently because of the partnership ratio, one-third and two-thirds.

Q. In other words, your firm felt that the income was being divided two-thirds and one-third and you made the tax charge the same way?

Forrest W. Brown, Jr.

A. I don't know under what circumstances it was originally started in that manner, what was the basis of its origin.

Q. Let me ask you, Mr. Brown, were yearly copies of this audit sent to the Klotz business in Fredericksburg, Virginia?

A. Yes.

Q. You, of course, don't know, who had access to these yearly audits, do you?

A. No, I do not.

Q. But every year you would audit the business and mail a copy of your audit to Fredericksburg?

A. Yes, that is correct.

Q. How long have you been with A. M. Pullen & Company?

A. Slightly over fourteen years.

page 155 } Q. Do you have any knowledge of any complaint being received in your office in reference to the accounting of the audits or your reports that you rendered yearly?

A. Not until recent months.

Mr. Campbell: What is your answer?

A. Not until recent months when this controversy arose.

Q. In other words, until Mr. and Mrs. Klotz had this disagreement your firm never received any complaints in regard to the audits of the Company?

A. Not to my knowledge.

* * * * *

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* * * * *

Q. Mr. Brown, so far as you know, who was the active operating head of this business during the peirod you were doing the auditing there?

A. Insofar as I know, Mr. Klotz.

Q. Do you have that statement I handed you yesterday?

A. Yes.

Mr. Gibson: All right, I believe that is all for Mr. Brown at this time.

Forrest W. Brown, Jr.

CROSS EXAMINATION.

By Mr. Campbell:

Q. You say, Mr. Brown, that Mr. Klotz has
page 157 } been the active operating head of the business
during your knowledge of it?

A. During my knowledge of it, yes.

Q. Did your firm, in making this allocation and the accountings look to Mr. Klotz for instructions?

A. Insofar as I know, however, I never made these audits.

Q. Insofar as you know did they look to Mr. Klotz for instructions?

A. Insofar as I know.

Q. And not to Mrs. Klotz?

A. That is correct.

Q. Do you recall a couple of years ago when Mrs. Klotz came to your firm's office in Richmond and asked the privilege of seeing the audits and was advised that she could not see the audits without Mr. Klotz's consent?

A. I am not familiar with that, no, sir.

Q. You have referred to the $20,000 salary to Mr. Klotz and the $2600 salary to Mrs. Klotz. Is there anything in the partnership agreement with respect to that?

A. Not so far as the $20,000.00 was concerned.

Q. Have you seen the partnership agreement?

A. Yes, sir.

Q. Has the Government to your knowledge ever questioned any tax return with respect to the salaries drawn by Mr.
Klotz and Mrs. Klotz since 1947?

page 158 } A. No, sir.

Q. In fact the returns have been made on the basis of one-third to Mrs. Klotz and two-thirds to Mr. Klotz have they not?

A. Yes, sir.

Q. Then on what possible theory are you allocating a $20,000 salary to Mr. Klotz and a $2600 salary to Mrs. Klotz?

A. So far as Federal taxes are concerned there has been no question of allocation in later years.

Q. As a matter of fact the Government has recognized the partnership, has it not?

A. Subject to this adjustment.

Q. That is right, subject to the adjustment for the single year, the Federal Government has recognized and approved the partnership, has it not?

A. Yes, sir.

Forrest W. Brown, Jr.

Q. Did you prepare any of these Federal Income Tax Returns?

A. No, I did not.

Q. Have you examined any of them?

A. I, in some years, have made routine checks of the computations as they pass through the office.

Q. You know as a matter of fact that Mr. Klotz had individual income, which was not reflected in the partnership return, do you not?

page 159 } A. That is right.

Q. And no adjustment was made of that?

A. No, sir.

Q. You never advised Mrs. Klotz what amount of these taxes she was being allocated with on the partnership books, did you?

A. I have never had an opportunity to talk to Mrs. Klotz.

Q. To your knowledge did any member of your firm advise Mrs. Klotz of that fact?

A. I don't know of any such discussion.

Q. You have examined the correspondence of your firm with relation to the Klotz matter, have you not?

A. I have seen certain correspondence, I have not attempted to read it.

Q. You have not come across any correspondence from your firm to Mrs. Klotz, have you?

A. No, I have not.

Q. In making allocation of these other items, did you make any inquiry of Mrs. Klotz as to how they should be allocated?

A. As I say I haven't been on the audit engagement on any of these years.

Q. When did you first become familiar with this matter?

A. Last December was the first time I have

page 160 } ever been in Mr. Koltz's office.

Q. You know nothing about the basis for any of these charges?

A. I do not know of any discussion*g* that may have taken place.

Q. Do you know the basis on which these charges were made against Mrs. Klotz's account, to which Mrs. Klotz through Mr. Odor objects?

A. No, I do not.

Q. The life insurance, for example, the premiums on which were charged to Mrs. Klotz's account, do you know whether these premiums were on policies on the life of Mr. Klotz?

A. I have not attempted to examine the policies.

Forrest W. Brown, Jr.

Q. Don't you audit the books?

A. I have not been on these audit engagements in any year.

Q. Do you know whether Mrs. Klotz has any life insurance?

A. I do not.

Q. Do you know whether Mrs. Klotz in any way authorized these charges to her account?

A. I don't know.

Q. You have certified to these statements, have you not, or your Company has?

A. One point in answer to that question with reference to the drawing account and the charges made to it.

page 161 } Both Mr. and Mrs. Klotz used the partnership as if it was a personal bank account, and insofar as the audit engagement was concerned it would take endless time for us to look at each department store bill or statement to see if it was properly charged, and so far as I know that was not attempted.

Q. Did you make inquiry of Mrs. Klotz on the subject?

A. I have not.

Q. To your knowledge has any member of your firm ever talked to Mrs. Klotz with regard to these items?

A. Not to my knowledge.

Q. Or the question of the allocation of partnership income you have had occasion, have you not, to make joint returns for husband and wife?

A. Yes, at times.

Q. And you have had occasion to allocate proportionate taxes on such joint returns, and how it was properly chargeable, have you not?

A. We occasionally get such requests.

Q. You don't want to sit there and tell the Commissioner that if the husband gets twice the income that the wife gets, that the husband under proper accounting practices, that the husband pays twice the income tax the wife pays, and that that is the proper accounting practice for that?

A. The Government doesn't prescribe any method—

Q. No, I am not asking you that, but I am ask-

page 162 } ing you from the standpoint of proper accounting practices.

A. Well, I have done that at times.

Q. Obviously you have done it at times, it was done in this case. Do you consider that proper accounting practices?

A. There are other methods in which it might be done.

Q. In fact the other methods are used in normal accounting practices, are they not?

Forrest W. Brown, Jr.

A. Some other method might be preferable.

Q. Actually assuming the income to be as stated by Mr. Odor in his report, the system of allocating the tax as contemplated by Mr. Odor is in accord with proper accounting practices, isn't it?

A. No, I would somewhat object to that method of allocation.

Q. To what extent would you object to it?

A. Principally because I think that the taxpayer with the largest income is the only one that makes any saving by reason of a joint return.

Q. Assuming the one that makes the largest income is the only one who makes any saving by reason of a joint return, that would still not result in that taxpayer avoiding two-thirds of the tax, would it?

A. No, sir.

Q. Even then the taxpayer with the two-thirds
page 163 } of the income would pay substantially more than
two-thirds of the tax, wouldn't he?

A. Possibly.

Q. You say possibly, you know he would?

A. Ordinarily yes, unless there was some reason.

Q. Even giving effect to your theory that the taxpayer with the larger income should get the entire saving, there would be still a larger proportionate share charged to the other taxpayer, isn't that true?

A. I don't think I can answer in terms of appropriate accounting methods; some other method would undoubtedly result in less tax being allocated to her.

Q. As a matter of fact the parties filed separate Virginia State Tax Returns, did they not?

A. That is right.

Q. And your firm prepared those, did they not?

A. That is correct.

Q. And the Virginia State Tax Returns show that Mr. Klotz received other income?

A. That is correct.

Q. And he received substantial additional income beyond that shown to the partnership, did he not?

A. Yes, sir.

Q. You didn't take that into consideration in allocating the tax between Mr. and Mrs. Klotz on the books is that
correct?

page 164 } A. That is correct.

Q. You don't mean to say that your accounting in that respect is proper, do you?

Forrest W. Brown, Jr.

A. In the absence of any agreement of allocation, I think maybe another method might have been used.

Q. Then your defense of this method, if it be a defense, is it would only be appropriate by agreement between the parties?

A. Any method would be appropriate by agreement.

Q. But in the absence of any such agreement the method followed by Pullen & Company wouldn't be in accord with proper accounting practices?

A. There would be other methods.

Q. You haven't answered my question. Would it be in accord with proper accounting methods in the absence of such an agreement?

A. I don't know that, the method is entirely proper, but I say other methods could be used.

Q. Assuming that Mr. Klotz has additional income other than from the partnership and Mrs. Klotz does not. Do you think it proper for Mrs. Klotz to be charged with Mr. Klotz's tax on the additional income?

A. No, I think some other method would have been preferable in that respect.

Q. In the absence of any agreement, assuming
page 165 } that Mrs. Klotz had no other income and that Mr.
Klotz reported twice the income that Mrs. Klotz reported, would it not be more appropriate as an accounting practice to allocate to Mr. Klotz the proportionate share of his higher income?

A. If the partnership had been the only income I can well see how the partners might have thought about income taxes as any other matter of expense.

Q. You mean by agreement?

A. Yes.

Q. In the absemce of such agreement, it would not be equal?

A. I am not sure it would not, if the partnership had been the only income.

Q. Mr. Brown, you have made, I am certain, many partnership returns?

A. Oh, yes.

Q. And you have also made individual returns for the partners based on the partnerhip returns?

A. Yes.

Q. In any other case, that you ever had in your life, have you ever followed this *practe* where the partners get a different share of the partnership income?

A. In most cases of that kind I am not aware of how the

tax has been divided, the partners divide it, and that is it.

Q. Do you know of any case where there has
page 166 } been a joint return filed?

A. I have followed it for pro-rating tax that may be due by a decedent in estate taxes.

Q. I am not speaking about estate taxes, I am speaking about cases where a joint return has been filed.

A. I don't recall.

Q. You know it wouldn't be good accounting practice in the normal sense? It is certainly not the accepted accounting practice, is it?

A. Possibly not.

Q. How many partnership returns have you ever filed?

A. I don't know. I have filed a number of family partnerships.

Q. Did you ever follow this procedure in any family partnership?

A. The only family partnership return that I make regularly I have no idea how the partners divide the tax.

Q. Am I to understand that you have made no effort to check the accuracy or the appropriateness of any of the allocations that were made to Mrs. Klotz, which were shown in Mr. Odor's report?

A. I have not attempted to go back to the source of the information on any of these.

Q. Your firm has acted as accountants for the
page 167 } Klotz partnerhip since the time of its inception,
has it not?

A. That is correct, yes.

Q. And your firm has submitted to the Klotz partnership annual statements of the accounting of the partnership, isn't that correct?

A. Yes.

Q. I show you what appear to be copies of your annual statements for the fiscal years ending July 31, 1947, July 31, 1948, July 31, 1949, July 31, 1950, July 31, 1951, July 31, 1952, July 31, 1954, and I here interpolate that I just do not have 1953, July 31, 1955, July 31, 1956, and July 31, 1957, and I ask if you can identify these papers, which I am handing you, as being the audits of your company for the years in question?

A. They are our reports on examination, yes.

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Forrest W. Brown, Jr.

The Commissioner: They will be marked Defendant's Exhibit 3A through 3J, for identification.

Q. Mr. Brown, are you aware of the fact that this partnership began as of August 1, 1946?

A. Yes, sir.

Q. I show you the statement marked Defendant's Exhibit 3A for identification, being the report for the fiscal year ending July 31, 1947, and I call your attention to page two of that report, entitled, "Working Capital and Net Worth". For the fiscal year ending July 31, 1947, in determining the net worth of the partnership, your firm took the current assets and current liabilities were deducted therefrom leaving working capital of $41,535.06, did they not?

A. The current assets less current liabilities, $41,000, yes, sir.

Q. And added to that certain other assets, bringing the total assets up to $80,866.63, and subtracted from that figure an item entitled "Partnership Loan Account of $17,220.07, leaving a capital net worth of $63,646.56, is that correct?

A. Yes, sir.

Q. And did this item of $63,646.56, then constitute the capital of the partnership, according to your report, as of July 31, 1947?

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A. That is correct.

Q. Now, let's look at the Report for the year ending July 31, 1948, at which time the capital account for the partnership was $61,697.79, is that correct?

A. That is correct, yes, sir.

Q. And is that item made up of the so called current assets less current liabilities plus other assets, making a total of $94,562.61, less a partnership loan account of $32,864.82?

A. That is correct, yes, sir.

Q. So as of July 31, 1948, there was a partner's loan account of $32,864.82, is that correct?

A. Yes, sir.

Q. And does that mean loans by a partner to the partnership?

A. It would either be loans by a partner to the partnership or profits that had accumulated and had not been withdrawn from the partnership.

Q. But which were treated as a partnership loan by the partner to the partnership, is that correct?

A. That is true.

Q. Now, I want to show you the account for the fiscal year

ending July 31, 1949, which is Defendant's Exhibit 3C for Identification. I notice that the net worth or
page 170 } capital account of the partnership suddenly jumps from $61,697.79, the year before to $92,981.95 for the fiscal year ending July 31, 1949, is that correct?

A. Yes, sir.

Q. And is the bulk of that increase due to the fact that the loan account of the partners, which had been previously at $32,094.00 plus certain additional loans or certain additional items were added under the item additional investment and withdrawn from the loan account?

A. That is part of the increase, yes.

Q. Is it a fact that as of July 31, 1949, the books of the partnership reflect nothing on loan account of partners and only the item of additional investment of partners?

A. That is correct, yes.

Q. Now, I will ask you to look at the account for the fiscal year ended July 31, 1951, which is Defendant's Exhibit 3D and ask if that also shows additional investment by partners during that year of $15,387.50?

A. That is correct, yes.

Q. And that is shown or reflected in the capital account of the partnership, isn't it?

A. Yes, it is reflected in the capital account.

Q. In other words, the additional investment goes to increase the capital account of the partnership?

A. That is correct.

page 171 } Q. And as of July 31, 1950, was there any partners loan account shown?

A. No, sir.

Q. Now, I ask you to glance through the remaining Defendant's Exhibits for identification, being 3E, 3F, 3G, #3H, 3I and 3J, and tell me whether in any of those years there appears any partners loan account?

A. No, there is no partners loan account shown in any of those years.

Q. For each of those years such additional monies that went into the partnership, whether advanced by a partner, or undistributed profits, were in each year termed additional investment, is that correct?

A. For reporting purposes.

Q. I say for the accounting purposes of the partnership, they were so treated?

A. For reporting purposes, there may be in some years, these were credits against drawings.

Forrest W. Brown, Jr.

Q. What do you mean by reporting purposes, for the purpose of your annual audit?

A. Yes.

Q. And a similar practice was also followed, was it not, with respect to the Federal Income Tax Information Return filed by your firm on behalf of the partnership?

A. I would assume so, I haven't examined them
page 172 } for that purpose.

Q. But you assume that is correct?

A. Yes.

Q. As a matter of fact in the exhibit, which has been introduced by counsel for Mr. Klotz, as Plaintiff's Exhibit 2, in your statement of the balance sheet as of June 7, 1958, which has been offered and received in evidence on behalf of the plaintiff, there appears also an item "Additional Investment $38,624.69, does there not?

A. $28,624.00.

* * * * *

Q. And shows no partnership loan account, does it?

A. That is correct.

Mr. Campbell: If I may interject so that the Commissioner may understand the purpose of this line of inquiry.

The partnership agreement contemplates two ways in which assets may get into the partnership and treats those assets
very differently once they get in for the purpose
page 173 } of dissolution.

Paragraph 7 provides in the second paragraph: "When the partners shall determine that a portion of the net profits of any year, or period, distributable in the proportions herein set forth, or as otherwise changed hereafter by the partners to each of the partners, is needed as additional working capital for the partnership, and all the parties hereto agree, such amount shall be permitted to remain in the partnership and become a part of the working capital of the partnership, and the balance of net profits, if any, over and above such amount will be available for withdrawal by the partners in the proportions of the distributive share of each. Where the partners shall all agree that one or more partners may leave in the partnership a portion of his distributive share of the net profits differing in proportion from that hereinbefore set forth, such amount so left with the partnership shall be considered as borrowed money, and the partnership

shall, until otherwise changed by unanimous action of the partners, allow interest to accrue thereon at the
page 174 } rate of three per cent per *per* annum, which amount shall be payable by the partnership as and when and upon such notice as the partners from time to time shall agree. In event of liquidation of the partnership, amounts loaned by any one of the partners under this paragraph shall be paid, together with any interest thereon, before any distribution of capital shall be made to the partners."

So, that, if this were in the loan account we would concede they would be repaid as the plaintiff is now contending before any distribution is made of capital, but paragraph four of the partnership agreement deals with the situation, which we have here.

I don't want to argue the case now, but simply state the proposition on which we are *interogating* this witness, and it says:

"The capital of the partnership shall consist of the capital used in the business and contributed to the partnership by Alex Klotz on August 1, 1946, which partnership capital was contributed one hundred per cent by Alex Klotz, plus such additional contributions of capital hereinafter made by each of the partners in the proportion from time to time
page 175 } agreed on by the partners, whether new money is paid in or the profits, or a portion thereof, of the partnership determined to be necessary for the business and affairs of the partnership and agreed by all of the partners to remain in the assets of the partnership until additional funds shall have been paid into or permitted to remain in the partnership. The interest in the capital in the partnership in event of dissolution thereof shall be on the basis of sixty-six and two-thirds per cent thereof to Alex Klotz and thirty-three and one-third per cent thereof to Frances Klotz."

It is our contention and I say I don't want to argue the matter, that by these audits it appears that the partners decided that instead of making loans to the partnership that it would be treated as an actual, formal increase of capital, and inasmuch as they are increasing the capital with a—

Mr. Gibson: Mr. Commissioner he is cross examining this witness.

Mr. Campbell: —division of two-thirds and one-third in the

event of dissolution. Without arguing the matter, I wanted to state our position.

page 176 } Q. Now, Mr. Brown, you have stated with reference to one item, that you made an examination of the amounts put into Christmas Savings Fund account and found that there were $54,500 put into the Christmas Savings Account, isn't that correct?

A. Yes, sir, that is correct.

* * * * *

Q. Does the $54,500, to which you refer include the items, which appear in Item number 4 of Mr. Odor's Report, which are set forth in detail in Schedule 3 on page 12?

A. Yes.

Q. In other words, that $54,500 includes, does it, the sum of $6385.00, which was charged against Mrs. Klotz's account on the books of the partnership?

A. That is correct.

Q. And I think you also testified, did you not that you can account for $48,000 of that $54,000 being returned into the partnership, itself, is that correct?

page 177 } A. That is correct, yes, sir.

Q. And I believe you stated, did you not, that no part of that $48,000 was credited to Mrs. Klotz?

A. That is correct, yes, sir.

Q. Although presumably sixty-three odd hundred dollars of it had been charged to her?

A. Sixty-three hundred odd dollars of deposits were charged to her.

Q. And she got no part of the amount that went back into the partnership?

A. That is correct.

Q. And you have no information as to where the rest of it went?

A. That is correct.

Q. All of that money was credited to Mr. Klotz' partnership account, not Mrs. Klotz's is that correct?

A. That is correct, yes, sir.

Mr. Campbell: That is all.

Forrest W. Brown, Jr.

RE-DIRECT EXAMINATION.

By Mr. Gibson:

Q. Now Mr. Brown, I want to reexamine you on two or three things here.

When these sums of money at the end of the year were either left in the business or from time to time during the year when funds were put in the business by Mr. Klotz,
page 178 } how were those funds set up on the partnership books?

A. I have not examined all years for that purpose, so I do not know. In most recent years the amounts deposited by Mr. Klotz have been credited against his drawing account on the partnership books.

Q. So, in other words, if he put any money in the partnership, he was given credit for it?

A. Yes. sir.

Q. Credit for it in what way?

A. By credit to his drawing account.

Q. By credit to his drawing account?

A. Yes. sir.

Q. Now state to the Commissioner, so he will have a little better understanding, how these partnership funds were actually handled by Mr. Klotz?

A. To a large extent the partnership bank account was used as the personal bank account, so to speak, of the two partners, that is household bills, clothing withdrawals, utility bills, all manner of personal expenses and money invested was drawn from the partnership bank account and charged to the drawing account of the partners; likewise, when Mr. Klotz deposited in the partnership bank account a great portion of his income from sources other than the partnership, such amounts were credited to him on the partnership books. In other words, the partnership bank account was used for a per-
page 179 } sonal bank account.

Q. So, actually Mr. Klotz used the partnership somewhat as a personal bank, is that right?

A. Yes, sir.

Q. When he would sell securities from time to time what would happen to the proceeds, that is personal securities that had nothing to do with the partnership, what would happen?

A. The proceeds would be deposited in the partnership account and credited to Mr. Klotz.

Q. He would be given personal credit for it?

A. That is right.

Forrest W. Brown, Jr.

Q. In other words, Mr. Brown there would not be a two-thirds credit to Mr. Klotz and a one-third credit to Mrs. Klotz, but it would be a personal credit to Mr. Klotz?

A. That is correct.

Q. Now, would it happen very often that just a short time after the deposit would be made that then a withdrawal of a smaller or substantial amount would be made?

A. I don't know that you could identify it by time. I have considerable—

Q. Let me put it this way: From your examination of the books isn't this what would happen? For instance, Mr. Klotz would sell some stock, and his business would be a little short of cash and he would deposit the check from the

page 180 } broker in the partnership account?

A. That is right.

Q. And then may be the partnership had built up some cash and he would buy stock and he would then withdraw from the partnership account and send the broker a check for the stock?

A. That is right.

Q. In all these accounts there would be a credit to Mr. Klotz when he would put the check in the bank and then a charge against him when it would be taken out?

A. That is correct.

Q. But the books never showed any of these deposits being credited to the partnership as such?

A. They never showed any division between the partners, only a personal credit to Mr. Klotz.

Q. Then apparently, from your examination of the books, Mr. Klotz paid practically all his bills by partnership check, and he was charged on the partnership books with those checks?

A. It would appear that substantially all household bills were being paid by Mr. Klotz.

Q. Mr. Brown, excepting the items set out in Mr. Odor's Report, all of the others were charged to Mr. Klotz, is that correct?

A. Other than what is set forth in Mr. Odor's Report, there is the ordinary weekly cash withdrawal charged to

page 181 } Mrs. Klotz plus certain other amounts, which he did not take exception to.

Q. These are the only items to which Mr. Odor took exception, so far as you know?

A. That is my understanding.

* * * * *

Forrest W. Brown, Jr.

Q. Mr. Brown, I will hand you and I will state for the record that that *that* was produced by Mrs. Klotz on the hearing for temporary support money, to show the annual expenditures at their residence at 1600 Franklin Street, and ask you to take a look at that.

What does the total there show. Mr. Brown?

Mr. Campbell: Are you offering that now?

Mr. Gibson: Yes, sir.

Mr. Campbell: May we object to it. This witness cannot identify it.

The Commissioner: Is that the list of figures or approximate figures alleged to be the cost of living?

Mr. Gibson: Yes, sir.

The Commissioner: That has been admitted by Judge Bazile.

page 182 } Mr. Campbell: I am just objecting to this witness testifying to it; he didn't prepare it.

The Commissioner: It is already in the record.

Q. What does the record there total show, Mr. Brown, of the expenditures per year, submitted by Mrs. Klotz.

A. It shows a total of $21,695.00.

Q. For the annual living expenses—

Mr. Campbell: The annual estimated living expenses.

Q. Estimated by Mrs. Klotz?

A. That is right.

Q. Now, if during the period, which we have been discussing, Mr. Klotz was charged on the tax basis, that these gentlemen have suggested to you, and also if he paid those bills from his two-thirds share of the income from the profits, what would have been the mathematical result?

Mr. Garnett: We object to that—

The Commissioner: You are assuming your major premise. If, if if.

Mr. Gibson: This was introduced by them and put in evidence.

Mr. Garnett: Even if it was, it doesn't have anything to do with paying those bills.

page 183 } Mr. Gibson: Let me go ahead and devolop it.

Mr. Garnett: We object to the question.

The Commissioner: Go ahead.

Forrest W. Brown, Jr.

A. I am not sure I can answer it by years. I know that for this total period Mr. Klotz's share of the profits for eleven years is some $346.000, but I do not have what share of the total tax Mr. Odor has allocated to him.

Q. Do you have his tax for that eleven year period?

A. I don't have his tax for the eleven year period, no, sir. I can get it by going through these papers, but it will take a few minutes.

Q. How about looking through them.

The Commissioner: Would you want to introduce this, since it is already in?

Mr. Gibson: No, sir, I will withdraw that.

The Commissioner: Withdraw that then and let the record show that it has already been received. (Note: Referring to Plaintiff's Exhibit 4)

Q. All right, Mr. Brown, have you made an analysis of your papers for the eleven year period?

A. Yes, it would appear that Mr. Klotz reported income for that period of approximately $365,000.00. His share of the Federal Income tax allocated in the manner proposed by Mr. Odor would be $190,000.00, which would leave approximately $175,000 after income taxes and before any other expense items or approximately $16,000 per year.

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Q. He would have, according to Mr. Odor's calculation, during the eleven year period approximately $16,000 a year after paying Federal Income taxes, is that correct?

A. That is correct, yes.

Q. And according to the estimated cost, which is in the record, the yearly maintenance expenses they amounted to what?

A. $21,695.00.

Q. Now, the $16,000 of income, after Federal taxes would not take into consideration your State taxes, would it? State of Virginia taxes?

A. No.

Q. So, that would decrease it still further. So, in other words, if you charge those estimated expenses to Mr. Klotz his income after the Federal taxes allocated to him by Mr. Odor, would not be enough to support him?

A. No, sir.

Q. So, in other words, to live in that style it would be necessary and essential that Mrs. Klotz be charged with some portion of these expenses?

Forrest W. Brown, Jr.

A. Yes. sir.

Q. Now, if you use the allocation of the Federal
page 185 } taxes you used, instead of Mr. Odor's, it would
change it to what extent?

A. Mr. Odor, proposed to allocate approximately $15,000 less tax to Mrs. Klotz than was allocated.

Q. So, that would reduce Mr. Klotz' income after Federal taxes during those periods to $14,500, would it not?

A. No, I have used Mr. Odor's allocation in arriving at the $16,000.

Q. You used Mr. Odor's allocation in arriving at the $16,-000?

A. Yes.

Q. What would it be if you used yours?

Mr. Campbell: What do you mean by yours? He uses two basis for figuring what Mr. Klotz's income after Federal taxes. You had two basis, one on the $20,000 salary and the other on the two-thirds and one-third.

Mr. Gibson: There is no salary in it.

The Commissioner: As I understand the question you just asked him for a calculation on the basis of Mr. Odor's Report?

Mr. Gibson: That is right.

The Commissioner: Now, you are asking him what it would be—

Mr. Gibson: On the basis of his allocation.

page 186 } Mr. Campbell: I don't know that it is necessary, but it is understood that all of this testimony is over our objection.

A. His taxes would increase that after tax income by about $1300.00 a year.

Q. That would give him an income after taxes, Federal Income taxes, the method you all have used, of about $17,300. a year?

A. That is correct.

Q. Now, Mr. Brown, when he cross examined you, Mr. Campbell went into the question or raised the point that the Federal Government never questioned the partnership or any salary allocation after 1947. Would you explain why that would be true?

A. There would be no occasion for a Revenue Agent to attempt an adjustment, as it would have no effect on the tax, a family partnership situation, consisting of husband and wife, is no longer an issue.

Q. In other words, they allowed the joint returns to be filed instead of a single return after 1947?

A. That is right, the joint return has the effect of dividing income equally as between husband and wife, so a change in partnership allocation between husband and wife would have no effect on income taxes.

Q. After 1947 the entire income was reported
page 187 } for taxation and the Federal Government didn't care what proportion was charged to each?

A. On the return in effect it is added together and then you take half of it and compute the tax and double it.

Q. So that was no longer an issue?

A. That is correct.

Q. Is it your professional opinion that if it had not been for the change in the law that the Federal Government would have required in the ensuing years the same salary allocation that it had in 1947?

Mr. Garnett: I object to that, that is calling for an hypothesis.

The Commissioner: Yes.

Mr. Gibson: I am asking him if in his professional opinion, as an accountant, had the law not been *change,* had it been the same when this partnership was set up and had it continued the same, would the Federal Government have questioned or required this salary allocation.

The Commissioner: Do you think he knows the answer?

Mr. Gibson: If he thinks he can give it.

The Commissioner: If you know.

A. I don't think there would have been any
page 188 } doubt that the Revenue Agents would have followed through that 1947 adjustment into later years.

Q. And they would have required the partnership to allocate $20,000 as salary to Mr. Klotz?

A. That is right, unless there was some change of condition that would warrant some other finding.

Q. Now, Mr. Brown, as I understood your testimony in regard to the allocation of the income taxes, your firm took the position, did it not, that since the profits of this partnership were divided two-thirds and one-third, you all treated the Federal taxes in the same manner, and allocated two-thirds and one-third, is that correct?

A. They were allocated in that manner. Now, I do not know

the conditions that may have lead up to the inception of this allocation because I did not participate in it.

Q. Let me ask you this. Mr. Brown: Have you projected the difference in the income tax, which would be charged to Mrs. Klotz's account solely on the basis of the additional income which Mr. Klotz received from other sources during those years?

A. Not in that manner. no.

Q. In what manner have you projected it?

A. I made a computation in respect to how it would be divided if it were divided as a percentage of each income to the total.

page 189 } Q. That is right, give that. What would that difference result in?

A. That would result in allocating about $77,000 to Mrs. Klotz without giving effect to that Revenue Agent's adjustment of the 1947 tax.

Q. It would change the figures to what extent, is what I am trying to get?

A. It would change them about $14,000 before we given effect to that Revenue Agent's change.

Mr. Campbell: In Mrs. Klotz's favor?

A. No—Wait, let me take another look at this. Mr. Odor's Report shows $76,000 charged to the drawing account of Mrs. Klotz; this method would also charge approximately $76,000 to it. There is a difference between years, the partnership closed it books on a July year, and that somewhat confuses the situation, but in any case, as compared to Mr. Odor's method this would allocate about $14,000 less income tax to Mr. Klotz before giving any effect to that Agent's adjustment of the '47 tax.

Q. So, in other words, it would be $14,000 less charged to Mr. Klotz?

A. That is right.

Q. Now, in the year 1947, you say that the Revenue Agent *made the* partnership changed the salary to Mr. Klotz from $5200 to $20,000. Was he ever given any credit on

page 190 } the partnership books for that additional salary?

A. No, sir, he was not.

Mr. Gibson: That is all.

Forrest W. Brown, Jr.

RE-CROSS EXAMINATION.

By Mr. Campbell:

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Q. You have stated that Mr. Klotz paid all his personal bills from the partnership account. How do you know that?

A. I said it appeared that substantially all were paid.

Q. How do you know?

A. Just judging from the charges going through his drawing account.

Q. Do you know whether or not that was all of them?

A. I don't know they were all.

Q. Do you know, as a matter of fact you know that Mr. Klotz had securities from which he had money of his own?

A. I know he had.

Q. Don't you know that he frequently sold securities and the monies from the sale of those securities was left in the securities account with the broker?

A. My answer was based on the deposits credited to Mr. Klotz's account and the checks charged to him.

Q. The implication, which you gave or which I understood from your testimony, and which I am sure you will want to correct, if in error, the *implaction* was that all Mr. Klotz's money transactions were handled through the partnership account. You don't mean to imply that, do you?

page 192 }

A. No, sir.

Q. As a matter of fact most of his securities were handled through security accounts, were they not?

A. I know he had security accounts.

Q. And he had substantial cash balances in those accounts, did he not?

A. I have never examined them.

Q. And he had substantial securities, which did not belong to the partnership, is that correct?

A. Yes.

Q. And on which the income didn't go into the partnership?

A. The income in general was deposited in the partnership account, but was not treated as partnership income.

Forrest W. Brown, Jr.

Q. Actually Mr. Klotz often intermingled his personal funds with the partnership funds, did he not?

A. He deposited personal funds with the partnership, yes.

Q. You spoke of the Federal Government questioning this partnership in 1947 or questioning this allocation of partnership income in 1947, and then you spoke of the year the tax law was changed, so that it didn't make any difference any longer how the income between husband and wife was allocated. Is that correct?

page 193 } A. Yes, sir.

Q. Actually from the point of view of the Federal Income tax, this partnership was not necessary in 1948, was it?

A. That is correct.

Q. And this is true from 1948 through 1958, if the only purpose of this partnership was for tax purposes, it would be no longer any occasion for it to continue, would it?

A. That is correct.

Q. So there must have been another purpose for it?

A. I wouldn't speculate on that.

Q. But you did file these annual reports for the partnership each year?

A. Speaking of our reports on examination?

Q. Yes, sir.

Q. They were sent to Mr. Klotz each year.

Q. And you say that after 1948 there was no longer any tax purpose to be gained by the partnership?

A. I wouldn't say no purpose, but so far as Federal taxes were concerned there was no purpose.

Q. And as far as Virginia tax purposes are concerned it would only be possibly a hundred dollars a year?

A. It would have been about that.

Q. So it was infinitesimal?

A. Yes, sir.

Mr. Campbell: That is all.

page 194 } RE-DIRECT EXAMINATION.

By Mr. Gibson:

Q. Mr. Brown, when you speak of Mr. Klotz's investment account, I presume that Mr. Campbell was talking about his stock account with Abbott, Proctor & Paine?

A. That was my understanding.

Q. When he would sell stock with Abbott, Proctor & Paine,

and get checks from them, he would deposit those in the partnership's account, is that correct?

A. I haven't made an analysis of Mr. Klotz's account for all these years, however, I did make one up for the period ending June 7th, and on a good many occasions during that period he did deposit the proceeds from the sale of stock in the partnership account; whether the money remained with Abbott, Proctor & Paine for any period of time or whether it was done immediately, I wouldn't attempt to say.

Q. As an actual practice Mr. Klotz intermingled his personal funds with the partnership funds all during this period, did he not?

A. Yes, sir.

Q. He treated it, as you described it, as his personal Bank?

A. Yes.

Q. In every case where this intermingling was going on the charge and credit to and from him were being put on the partnership books, is that right?

page 195

A. That is correct.

Q. Let me ask you something else, Mr. Brown: Mr. Campbell has mentioned about the fact that a lot of this money may have been put in here as additional investment. If it had been put in as additional investment, that is if Mr. Klotz had intended to put it in as additional investment, then in each one of those years you would have had to have gift taxes paid on that money, would you not?

Mr. Campbell: Whether or not Mr. Klotz paid gift taxes is immaterial.

Q. Was there any gift tax ever paid on any of these transactions?

A. Not to my knowledge.

Q. In other words, Mr. Brown, if two people have a partnership, leaving this one out, assuming they are equal partners, and one person comes in and in one year puts $100,000.00 in that partnership and one partner gets credit for $50,000 of that money, there would have to be gift taxes paid on that amount, would there not?

Mr. Campbell: We are talking about distribution and dissolution and not gift taxes.

Mr. Gibson: I understand that.

Alex Klotz.

Q. There would be a gift tax payable on that amount, would there not?

page 196 } A. Yes.

Q. And when you file an income tax return there should be a gift tax shown on your return?

A. There should have been a gift tax return filed.

Q. So far as you know was any gift tax return filed?

A. Not to my knowledge.

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Mr. Gibson: Mr. Commissioner, I would like to move at this time that you view the Alex Klotz junk yard. There has been considerable testimony in the record, and there will be more, as to whether these different materials there should be classified as usable, salable items or as junk or scrap items, and I think it would be helpful for you to view the premises.

The Commissioner: Do you have any objection?

Mr. Garnett: I would think it would be helpful.

The Commissioner: For the record, if you have no objection, I would like to have Mr. Klotz sworn as a witness. I would like to ask him the question as to whether there has been any change, other than ordinary sales in the ordinary course of business, because the testimony we have relates to back in June.

page 199 } Mr. Campbell: You don't mean right now?

Mr. Gibson: Yes, I think it would be better before I put him on the stand.

Mr. Campbell: We have no objection. I do question the effect of the view in the light of the fact that this is three months after.

The Commissioner: All I intend to do—I understand that Mr. Klotz has been operating the yard?

Mr. Gibson: That is right.

The Commissioner: Do you have any objection to his being sworn?

Mr. Gibson: No, sir.

ALEX KLOTZ,

being first duly sworn, deposes and says as follows:

Forrest W. Brown, Jr.

DIRECT EXAMINATION.

By the Commissioner:

Q. You have been operating the Klotz Junk Yard since June of this year, have you not?

A. Yes, sir.

Q. And you were operating it at the time these various inventories were made?

A. Yes, sir.

page 200 } Q. Would you tell us for the record whether or not there has been any material changes at the junk yard as to arrangement or classification of materials other than just which might occur in the ordinary and normal course of the business you carry on?

A. It is about the same.

Q. It is about the same?

A. There have not been any changes made, all the material is still there.

* * * * *

Thereupon, the Commissioner together with counsel for the respective parties took a view of the Klotz Junk Yard, the view consuming approximately an hour and twenty minutes; and, thereupon, the Commissioner and counsel returned to the Court Room where the following proceedings were had:

* * * * *

page 201 } FORREST W. BROWN, JR., recalled for further cross examination by counsel for the defendant, deposes and says as follows:

CROSS EXAMINATION.

By Mr. Campbell:

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Q. Mr. Brown, did you ever have occasion to check any of the insurance policies on Mr. Klotz's life?

Forrest W. Brown, Jr.

A. On his life?

Q. Yes, sir.

A. Yes, I think I did at one time.

Q. Let me ask you this: In Mr. Odor's Report, which is Defendant's Exhibit number 2 for identification—Do you have a copy of the Odor Report?

A. Yes, sir.

Q. There are certain items listed in Schedule 9, details of which appear on page 20 of his Report, which show certain premiums paid from September 8, 1949, through October 29. 1955 on life insurance policies or rather to life insurance companies, which were charged on the books to Mrs. Klotz. Are you aware of that?

page 207

A. Yes, sir.

Q. And those payments aggregate during that period the sum of $1516.07, do they not?

A. That is correct.

Q. Can you tell me whether or not during that period Mr. Klotz had insurance on his own life in State Farm Mutual Life Insurance Company?

A. I made a mistake when I answered a previous question. I did inquire into the insurance at one time to get some idea of the cash surrender value, but I didn't examine the policies.

Q. Do you have any information that life insurance was carried by Mr. Klotz in the State Farm Mutual Life Insurance Company?

A. The only record I have of any insurance was the fact that certain checks were paid to State Farm Mutual Life Insurance Company as they appeared on the books.

Q. Do you know on whose life those policies were carried?

A. No, I do not.

Q. If those policies were carried on the life of Mr. Klotz and Mrs. Klotz was not the beneficiary without right of change, proper accounting practices would require that the premiums be charged to Mr. Klotz and not Mrs. Klotz, would they not?

page 208

A. I would assume that Mr. Klotz had all the incidents of ownership of the policies.

Q. If Mr. Klotz had all the incidents of ownership, then the premiums should be charged to Mr. Klotz rather than to Mrs. Klotz, isn't that correct?

A. I would think so.

Q. And your firm didn't make any check to determine whether or not that was a fact?

A. That is correct.

Forrest W. Brown, Jr.

Q. Now, sir, I refer you to Schedule 3 of Mr. Odor's Report, the details of which are found on page 13. You will note that that item represents checks payable to Fredericksburg, Virginia Banks over a period from March 5, 1951 through November 10, 1952, and which are items charged to Mrs. Klotz's account in a total amount of $6,385.00. Do you see such an item?

A. I believe that is $6,385.00.

Q. $6,385.00.

A. I see the item you have reference to.

Q. Those items, I believe you stated are correctly taken from the books as far as the transcriptions were concerned?

A. Those item were charged to Mrs. Klotz's account.

page 209 } Q. And they do represent deposits to Christmas Savings Accounts in Fredericksburg, Virginia Banks?

A. By reference to the checks and the record of the account it was the best explanation we could arrive at.

Q. It was the best explanation you could arrive at, and that is that they represented deposits to Christmas Savings Accounts?

A. Yes.

Q. Can you tell us during that period or during the period ending in 1953, the early part of 1953, that is when Christmas Savings checks would be paid, how much total the partnership had paid for Christmas Savings and how much total they got back? In your original statement, Mr. Brown, you carried it on up through 1956, I believe was the end of that period and you said there was some $6,500 unaccounted for. I am now asking if you can terminate your period as of the payments on Christmas Savings Accounts for the period ending Christmas of 1952?

A. I don't know that my dates will correspond with the item here. I can tell you amounts that were charged to the account of Alex Klotz beginning in 1949 and ending in 1952.

Q. How right, sir, how much were they?

A. December, 1949 through November 1950 were $9,020.00.

Q. Yes, sir.

page 201 } A. And from December 1950 through November 1951 were $10,000.00.

Q. Yes, sir.

A. And from December 1951 through November, 1952, were $9,300.00.

Q. Now, during that same period, according to Mr. Odor's

figures, which you state are accurate $6,385.00 was charged to Mrs. Klotz, is that correct?

A. That is correct, however, I believe his figures go back into the year 1949.

Q. Let's take them for the comparable years, her figures beginning as of January, 1949 and that is when you are beginning Mr. Klotz's figures?

A. No, I don't have the early months of that year.

Q. They begin in January, 1949.

A. December of '49 is the only figure I have for him in this analysis, I don't have them listed here.

Q. In any event the total amount he received or the total amount that was credited to the Klotz partnership on Mr. Klotz's account was how much?

A. In December, 1950, there is a credit of $8,000.00, and November 1951, there is a credit of $8,500.00, and in November, 1952, there was a credit of $9,500.00.

Q. All right, during that same period were there any credits to Mrs. Klotz's account?

A. No, sir, not to my knowledge.

page 211 } Q. Well, would not proper accounting practices require that if these Christmas Savings Accounts were charged in part to Mrs. Klotz's account on the books of the partnership that she should receive the benefit when the Christmas Savings checks were cashed or returned?

A. Our examination did not extend to any of the individual records of the partners.

Q. They did indicate, did they not, that the amount just referred to of $8,000, $8,500, and $9,500.00 were credited to Mr. Klotz, isn't that correct?

A. That is correct, yes, sir.

Q. Now, sir, does that item include the sum of $7,500 credited on 7-31-50, to Mr. Klotz?

A. The amount I read *were* for the credits beginning in December 1950, because I didn't have the corresponding withdrawals for 1949.

Q. Let me ask you this: From your record was Mr. Klotz credited on July 31, 1950, with $7,500 from Christmas Savings?

A. I have a credit on December 31, of 1949 of $7,500.

Q. And then do you have on July 31, 1951, a credit of $2,700 to Mr. Klotz from Christmas Savings?

A. What date is that.

Q. That is July 31, 1951. The date is 1951, I made an

Forrest W. Brown, Jr.

error, excuse me. It is 1951.

page 212 } A. A credit on July—

Q. Do you find a credit of $2,700.00 during this period that you didn't refer to?

A. No. I find a charge of $2,700.00 in 1950.

Q. Wasn't that item of $2,700.00 credited for withdrawal of Christmas Savings during that period?

A. A credit for withdrawals?

Q. Yes, sir.

A. Let me be sure I have the same period.

Q. This item of $2,700 to which you refer—

A. That is the period ending December of 1950.

Q. The year ending July 31, 1951?

A. July 31, 1951.

Q. The year ending July 31, 1951, that is the fiscal year?

A. On July 31, 1951, my similar date indicates a charge of $5,780.00.

Mr. Campbell: I will examine Mr. Odor on that, I am not clear enough myself as to what his figures mean at the present time.

Q. I want to turn now to item 3, schedule 2 of Mr. Odor's Report, his analysis being found in Schedule 2 on page 10 of Mr. Odor's Report, showing US Bonds purchased from partnership funds and charged to Frances Klotz's Account beginning February, 1948 and ending in 1951, a

page 213 } total amount of $2,100. Mr. Brown, I think you stated that this is a correct transcription from the books, that is that these items were charged to Mrs. Klotz during this period?

A. That is correct.

Q. For US Bonds purchased?

A. Presumable for Bonds purchased.

Q. Were you present when Mr. Odor made his examination of the books of the Klotz partnership?

A. Yes, sir, I was.

Q. Did you and Mr. Odor during that period go over the ledgar accounts of the Klotzes for this period showing interest accrued on US Bonds?

A. I believe we reviewed the accounts relative to capital, which would show certain interest on bonds cashed.

Q. Isn't it a fact that on the partnership bonds, that these E Bonds, assuming that these were E Bonds, that the interest was accrued on each year on the books?

A. No, sir, I don't think that would be true.

Q. Are you sure?

A. I don't believe there were any E Bonds on the books of the partnership.

Q. Did you and Mr. Odor go over the interest receipts or interest accruals credited to Mr. and Mrs. Klotz from US Bonds?

A. Yes.

page 214 } Q. Did you find any credits to Mrs. Klotz for interest on US Bonds?

A. No, sir.

Q. Is it a fact that all interest appearing on US Bonds was credited to Mr. Klotz?

A. As far as the records will show, whenever bonds were cashed the interest was credited to Mr. Klotz.

Q. To Mr. Klotz's account, and interest on those bonds was also credited to Mr. Klotz's account?

A. On any bonds that I have any record of being cashed.

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MRS. FRANCES KLOTZ,

called as an adverse party by counsel for the complainant, and being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Gibson:

Q. Your name is Mrs. Frances Klotz?

A. Yes, it is.

Q. Mrs. Klotz, I believe you are one of the partners in the Klotz junk business here in the City of Fredericksburg?

A. Yes, I am.

Q. I think that partnership was formed in 1946, is that correct, Mrs. Klotz?

A. That is right.

Q. And prior to that time, Mr. Klotz had operated the business as a sole proprietor?

A. Yes, he had.

page 217 } Q. I believe that the original property put into this partnership was contributed entirely by him, is that right?

Frances Klotz.

A. That is right.

Q. Now, from the time that the partnership was formed until approximately eighteen months or two years ago you and Mr. Klotz got along very well, did you not?

A. Yes, we did.

Q. Your relations were most cordial until that time?

A. Yes.

Q. And, of course, all during the years you had no idea there would ever be any difficulties between you?

A. I certainly did not.

Q. Now, from the period beginning with the formation of the partnership until these difficulties developed, did you do any work at the place of business?

A. Oh, yes, I did. I started working regularly at the office in 1936 or '37 and worked steadily every day all during the war and everything.

Q. I was referring to the time of the formation of the partnership?

A. Oh, yes.

Q. You worked there until approximately two years ago when the difficulty took place?

A. Yes, that is right.

Q. Did Mr. Klotz work regularly at the office
page 218 } during that period?

A. Yes, regularly—he was in and out, of course, like I suppose any business man is.

Q. And he was out considerably during that period of time, would you say?

A. Well, I don't know whether you would call it out, a lot or not, I mean I don't know what you mean.

Q. He would be away?

A. He would be away for a day or two taking a little trip. He was operated on during that time, he was in Baltimore in the hospital for awhile, I don't know whether that is what you mean or not.

Q. Part of the time that you worked, did you assist with the bookkeeping?

A. No, I never did any bookkeeping, Mr. Gibson, I didn't know how to keep the books.

Q. What type of work did you do?

A. I did regular, routine office work. I bought and weighed up stuff on the scales just like Mr. Klotz did himself when he was there.

Q. During all that time the books of the partnership were kept in the office were they not?

Frances Klotz.

A. Yes, sir.

Q. *Thy* were available for you to look at if you had so desired, were they not?

page 219 } A. Yes, to look at, but I had no knowledge of bookkeeping, I didn't have knowledge of what they were.

Q. While they were available to you, you didn't have any knowledge of bookkeeping?

A. No, I didn't, Mr. Klotz was a bookkeeper at one time, but not me.

Q. Did you ever see the reports of A. M. Pullen & Co.?

A. Yes, I saw them in the safe in the office.

Q. And that would be during the period of the partnership?

A. That is right.

Q. Did you ever read those reports, Mrs. Klotz?

A. Well, I looked at them, I would take one out once in awhile, may be twice during that time. I would have one out, and if Mr. Klotz would come in the office he would want to know what I was looking at it for. He would say, "You don't know what is in it, so what are you looking at it for."

Q. But they were available?

A. Yes, they were available, and I understood from Mr. Pullen's Company, there was also one sent to the office for me, but I never did receive it; there was one for Mr. Klotz and one for me and one for the office.

Q. You did inquire of A. M. Pullen & Company about it then?

A. That was about eighteen months ago after

page 220 } the trouble started.

Q. But you never made any inquiry to A. M. Pullen & Company concerning the partnership books, accounts or records until this trouble started?

A. Mr. Gibson, I never had any reason to inquire.

Q. I am not criticizing you, but the fact is that you didn't?

A. No, I never did.

Q. And the reports were kept there in the safe?

A. Yes.

Q. And the safe would be open all day long?

A. Yes.

Q. So, you had ample opportunity to inspect either these reports or the actual books of the partnership, did you not?

A. Yes, I did, but I knew of no reason why I would have

Q. So, you made no complaint either to your husband,

Frances Klotz.

to his book-keeper or to A. M. Pullen & Company about any of these items until this trouble developed?

A. That is right.

Q. And then, I take it, if this trouble would have not developed there never would have been any occasion for you to complain, is that correct?

A. I suppose it would have gone on just like it had been going on.

page 221 } Q. And the question would not have been raised, would it?

A. No, as long as Mr. Klotz had done like he had been doing all the time.

Q. Until this trouble developed he provided very handsomely for his family, did he not?

A. Yes, he did.

Q. And he was in all respects an ideal husband?

A. A good husband and a good father.

Q. And he contributed liberally to you and the children, did he not?

A. Yes, he did.

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Q. All right, now how much has been expended for electrical appliances, television and radio and different things like that in the home, Mrs. Klotz, do you have any idea?

A. That I don't know, Mr. Gibson.

Q. You don't have any idea?

A. No, I don't.

Q. Now in the items that have been charged to have been improperly charged to you, there is a total of $2,451.00 which was purchased from Fred Payne and from Coples & Son, were these charges for items that went into the home, Mrs. Klotz?

A. Well, I suppose so, Mr. Gibson, all that sum, so far as I know, is for electrical appliances, that is right. We got our stuff from Fred Payne, the electrical stuff was bought from him.

Q. To the best of your knowledge these appliances then did go into the home?

A. To the best of my knowledge.

Frances Klotz.

Q. Now, in the final property settlement in this matter, you, of course, expect to get the home?

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A. I don't know, Mr. Gibson.
Q. You don't know?
A. I would have no way of knowing.
Q. It is your desire to retain it, is it not?
A. Well, I would like to, yes.
page 227 } Q. All right. Now, Mrs. Klotz you say that up until eighteen months ago that there had been no difficulties between you and your husband?
A. No.
Q. Now, I think it is fair to ask you whether or not you consider that the difficulties arose because of the emotional instability on his part?

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A. Well, I don't know, Mr. Gibson; I don't know what started it.
page 229 } Q. But you feel that is what did start it, don't you?

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A. I don't know what you are talking about, Mr. Gibson, He just started out of the clear blue sky, and I don't know why.
Q. And you cannot give any reason for what happened?
A. No, I cannot.

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Now, I think you have said that you cannot give any reason for the conduct of your husband in the past eighteen months?

A. I cannot.

Q. And I think you feel extremely sorry for him, do you not?

A. Yes, I do.

page 232 } Q. And, of course, for that reason all of these claims and demands are being made upon him. Is that correct?

A. Yes.

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FORREST W. BROWN, JR.,

recalled as a witness for the complainant, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Gibson:

Q. Mr. Brown, did you ascertain who prepared this partnership agreement?

A. Yes, sir, Mr. R. E. Cabell.

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Q. He is an attorney in Richmond or was an attorney?

A. He was an attorney.

Q. Is he now living?

A. No, sir, he died several years ago.

Q. Was there anyone from your inquiry in that firm at the present time, who is familiar with or did any work upon this partnership affair?

A. No, sir, the information they gave me was

page 234 } that noone there now is familiar with the preparation of the agreement.

Q. So, no-one at the Cabell law firm, who is there now, is familiar with this agreement?

A. That is correct.

Q. All right, I want to direct your attention to paragraph 4, Mr. Brown, and in *ference* to the figures of one hundred

per cent contributed by Alex Klotz, and then at the end of that paragraph, the two-thirds and one-third.

I wish you would state the interpretation you put upon that clause?

Mr. Campbell: We note an objection to any answer to that question as to the construction he made of the agreement; that is a matter for the determination of the Court and not of the witness.

The Commissioner: The objection will be noted.

Q. Go ahead.

A. The entries that we made, reflected on the partnership books, were on the basis of one hundred per cent of the original capital, which was contributed by Mr. Alex Klotz, that that portion should be divided two-thirds to Mr. Alex Klotz and one-third to Mrs. Frances Klotz.

Q. And during the period that your firm has handled this account that was the construction placed upon it, page 235 } is that correct?

A. That is correct.

Q. In other words, you construed the provision, the two-thirds and the one-third to apply because of the fact that he had made the one hundred per cent contribution?

A. That is correct.

Mr. Campbell: We note an objection to all these questions and ask that they be noted in the record.

Q. That is the way they were treated, is it not?

A. Yes, sir.

Q. Now, if there had not been the two-thirds and one-third provision in that paragraph, then upon dissolution Mr. Klotz would have received it all back, would he not?

Mr. Garnett: We object again.

The Commissioner: Your objection will be noted.

Q. In other words, if you did not have at the end of that paragraph the provision that he would get two-thirds and Mrs. Klotz would get one-third, then all would have gone back to him?

A. That is correct.

Q. Let me ask you this, Mr. Brown. In your opinion, if under this provision upon the termination of the partnership

page 236 } all of the assets would have gone back to Mr. Klotz, woould the Federal Government have allowed this partnership to stand?

Mr. Campbell: We note the same objection.

A. It would undoubtedly have been a strong factor in disallowance, and I think the Government could have sustained disallowance on that basis.

Q. Now Mr. Brown, insofar as you know, or insofar as your files reflect, was there ever any agreement among the parties to this business as to additional capital?

A. There is no indication in our files of any agreement, other than reflected here.

Q. All right, sir, Mr. Brown, I think you have analyzed the actual books that are kept at the Klotz business, have you not?

A. I have analyzed the capital account for this period as reflected in our reports on examination.

Q. I want you to state to the Commissioner the type of accounts that are actually kept there at the business, insofar as Alex Klotz is concerned?

A. Insofar as his capital account—

The Commissioner: You are not objecting to this?

Mr. Campbell: No.

page 237 } A. Insofar as Mr. Klotz's capital account, there are numerous accounts in the capital and drawing account category. On this most recent trial balance, it did show charges for Christmas Savings Account, US Saving Bonds Account, Drawing Account, rental expenses, rental insurance, real estate taxes on rental property, contributions, other real estate property taxes, income taxes, as well as credits from rental income, dividend receipts and interest receipts by Mr. Klotz.

Q. Were they also carried as a loan account?

A. Not on this last trial balance in June of this year, however, in earlier reports there was a loan account carried.

Q. So, Mr. Klotz had numerous so called personal accounts set up on these books?

A. That is correct.

Q. And when he would deposit dividends in the business bank account he would be given credit in the dividend account?

Forrest W. Brown, Jr.

A. That is right.

Q. And when rent would be deposited he would be given credit in the rent account?

A. That is right.

Q. And when he would advance money to the business, how was that carried?

A. In some years as a credit to the loan account and in the most recent years as a credit to his drawing account.

Q. I didn't hear that, Mr. Brown.

page 238 } A. In many years the advances by Mr. Klotz would be credited to the loan account in his name, in this most recent year the credits have been made against a drawing account in his name, the account being simply entitled "Drawing Account of Alex Klotz."

Q. So there would be a loan account or drawing account?

A. That is right.

Q. Now, sir, is there anywhere in these books any allocation ever made to Mrs. Klotz except for her portion of the earnings, after the original set up of the partnership?

A. There is an additional investments of $74.40, I don't have the year, I can find the year, that is the only additional credit in respect to Mrs. Klotz except through profits.

Q. Except through profits. Now, let me ask you this, Mr. Brown: Have you compiled the drawings and the charges and the advancements of Mr. Klotz during the period of this partnership?

A. Yes, sir, I have.

Q. Would you read those in the record?

A. You only want the total for this period?

Q. Yes, sir.

A. This is for the period from the beginning of the partnership through the year ending July 31, 1957. The profit, including a couple of items of correction in prior

page 239 } years, is $342,058.02, the drawings are $426,474.84, and the advancements in one form or another are $214,844.43.

Mr. Gibson: That is all.

CROSS EXAMINATION.

By Mr. Campbell:

Q. Mr. Brown, you stated that these drawings Mr. Klotz made and the monies he put back were put from time to time into a loan account?

Forrest W. Brown, Jr.

A. That is correct, yes.

Q. At the end of the year that loan account, at the end of the fiscal year of the partnership, whatever balance there was in that loan*d* account was then transferred to the capital account as an additional investment, isn't that correct?

A. Yes, that account together with credits and debits would be closed into capital.

Q. So that at the end of the year he may have made a loan or personal withdrawal from time to time and at the end of each fiscal year in the partnership those loan accounts were closed out to a different account and whatever additional balance he had was put in as additional capital, isn't that correct?

A. That is correct, as a result of the closing of the accounts any net debit or credit in the account was put in the capital account.

page 240 } Q. You didn't retain any loan account after the one year, in which you put it into capital, did you?

A. That is right, after the first couple of years.

Q. You will recall in my examination of you before that I called your attention to the fact that possibly two years after the partnership was formed or possibly three years, there was a permanent loan account carried, that is correct, isn't it?

A. That is correct.

Q. But then that was discontinued and whatever balance was in that account at the end of each fiscal year was always transferred to the Capital account, is that correct?

A. That is correct.

Q. Did you have any instructions as to that?

A. I have no knowledge of any such instructions.

Q. You know of no agreement with respect to that, one way or the other?

A. Not to my knowledge.

Q. You say that the Government may have raised some question about the partnership if Mr. Klotz received all the capital of the partnership. Actually, the Government, after 1947, was not concerned with the partnership, was it?

A. They would not have been concerned after 1947, that is correct.

Q. Your statement would be completely inap-
page 241 } plicable after 1947, wouldn't it?

A. That is correct.

Mr. Campbell: That is all.

RE-DIRECT EXAMINATION.

By Mr. Gibson:

Q. Mr. Brown, you didn't receive any instructions from Mr. Klotz to transfer these loans and advancements to any capital account, did you?

A. I see no indication of it.

Q. And so far as the actual books, they still show these figures in the loan and drawing account, isn't that right?

A. They show, through many of these years they show a loan account as *many* was advanced during the fiscal year and at the end of the year that account together with other personl accounts of Mr. Klotz would be closed to capital.

Q. That would be done by your firm as an audit practice, is that right?

A. I haven't examined all years, but from our files it would indicate that was the entry we had them make.

Q. It was an entry that you all would make?

A. We presented to them, yes.

Q. But you weren't in any way instructed by Mr. Klotz to do that?

A. There is no indication in the file of that.

page 242 } Mr. Gibson: That is all.

RE-CROSS EXAMINATION.

By Mr. Campbell:

Q. You have only been with this firm for three years?

A. With A. M. Pullen?

Q. No, I mean you have only been engaged in the work for the Klotzes for the last three years?

A. No, not that long, last December was the first time.

Q. When you say there was no indication of any instructions, you do not know whether or not there was any instructions when the annual loan account was closed in 1948 or 1949?

A. There is no indication of any instructions.

Q. In the file?

A. No, sir.

Alex Klotz.

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Q. You have produced certain correspondence for the years 1949 and 1950?

A. Yes, sir.

Q. You have examined it have you not, I don't mean now?

A. I have looked through it, yes.

Q. Is there any reference in any of these papers to the closing out of the loan account and the credits of the items to the capital account?

A. I see no reference to it, except whatever may be reflected in the journal entries.

Q. Those journal entries, in your experience as an accountant, would indicate instructions from *somone* to change a prior practice, would it not?

A. I could only speculate on that.

Q. You frequently do make such changes or
page 244 } make changes in your accounting practices based
on verbal instructions. do you not?

A. It is possible.

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ALEX KLOTZ,

recalled as a witness in his own behalf, being previously sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Gibson:

Q. Would you please state your name, age and occupation?

A. Alex R. Klotz, age sixty-two, junk dealer.

Q. Where do you reside, Mr. Klotz?

A. At present.

Q. Yes, sir.

A At the junk yard.

Q. In what City?

Alex Klotz.

A. Fredericksburg.
Q. Fredericksburg, Virginia?
A. Right.
Q. You are the husband of Frances Klotz, is that correct?
A. Yes, sir.
page 251 } Q. And in 1946, you and your wife entered into a partnership agreement, which has been introduced in evidence here, is that correct?
Q. The assets that were placed into this partnership were owned entirely by you, is that correct?
A. Yes, sir.
Q. And when they were set up on the books of the partnership, you were given credit for two-thirds of their value and she was given credit for one-third, is that correct?
A. Yes, sir.
Q. Now, Mr. Klotz, could you tell the Commissioner the reason that the partnership was formed?
A. Well it was formed to save some income tax on our returns.
Q. And after the years 1947, the law was changed so that you and your wife could file joint returns, is that correct?
A. That is right.
Q. So that after the year 1947, so far as Federal taxation is concerned it made no difference whether it was your income or hers, did it not?
A. To me it was the same.
Q. It was taxed as a lump?
A. Yes, sir.
page 252 } Q. Now, Mr. Klotz, how many years have you been in the junk business?
A. I have been in the junk business in Fredericksburg for thirty-two years.
Q. And during that thirty-three years that has been to all practical purposes your only business, has it?
A. Yes, sir.
Q. You have seen, have you not, the so called Weschler appraisal, which has been put in evidence in this case?
A. Yes, sir.
Q. You also heard Mr. Weschler's testimony in this case, did you not, Mr. Klotz?
A. Yes, sir.
Q. Now, would you explain to the Commissioner what, if anything, would be the differential for scrap on your yard from the price paid at the mill?
A. Well, in the scrap iron and *stell* it would be about thirty

per cent, which would be the amount of the freight per ton, and the valuation of the scrap at the mill.

Q. Now Mr. Klotz, did you make an analysis of items, which appeared as scrap on the Weschler Report?

A. Yes, sir.

Q. What was the value that they had on that material that they classified as scrap?

A. This is their appraisal?

page 253 } Q. Yes.

A. $23,235.00.

Q. All right, accepting for the purpose of this exhibit their appraisal, you took thirty per cent of that figure and deducted it from it, did you not?

A. Yes, sir.

Mr. Gibson: I would like to introduce this in evidence as Plaintiff's Exhibit.

The Commissioner: That will be Plaintiff's Exhibit 4.

Q. All right, Mr. Klotz, taking thirty per cent from that value at Fredericksburg due to the freight and handling charge, what would that value show as to that scrap?

A. After deducting the freight the scrap inventory would be $16,264.50.

Q. Now Mr. Klotz, did you make an analysis of the Weschler Appraisal in regard to the items that you considered junk, but which it was obvious from the value set in their appraisal that they considered usable, salable units other than scrap?

A. Yes, sir.

Q. Is this the *anlysis* you made?

A. These items are in my opinion—

Q. Wait just a minute, let me introduce this.

Mr. Gibson: I would like to introduce this as

page 254 } Plaintiff's Exhibit 5.

The Commissioner: It will be so received.

Q. Would you make an explanation for the record of that exhibit?

A. Well, in my opinion the classification that he used as salable material, it is not salable until you get a customer for it; it was bought for scrap, classified as scrap and until it is sold it is still scrap. Ninety per cent of the stuff, more or less that comes through there is sold to us for scrap. If

we go through it sometimes we find something that is good and we try to sell it, if we don't sell it we throw it back into scrap. It may stay there ten or fifteen years and we find no sale for it. Most of it comes in as scrap and goes into scrap.

Q. Mr. Klotz were the items on that list, were they purchased as scrap?

A. Well, most of it, yes, most of it was purchased as scrap. You take this item 129 drums of white metal scrap, that came out scrap; a bull dozer blade, that come out of the scrap.

Q. When you take this scrap into your yard, what do you do with it?

A. Well, I tell you it comes in sometimes so fast that we just throw it away the best way we can, then when we get to it

page 255 } we reassort it and see if we can get any salvage out of it. Sometimes we do, but I don't consider it salable until we find a customer for it. A man buys scrap iron, aluminum, brass, that is a different item, that is packed up ready for scrap; stuff that comes in like a piece of pine. Here is a large tarpaulin $15,000. It is junk, it is full of holes, what good is it. If we get a good one we sell it, yes.

Q. When you segregate these items, I understand you to say that you will often leave it in a segregated manner for a considerable period of time?

A. Yes, sir.

Q. And once in awhile someone will come in and purchase an item?

A. Yes, sir.

Q. As a practical thing, in the event they are not purchased, what eventually happens to those materials? For instance, if it is not sold as a usable unit?

A. It is sold as scrap. If we kept all the usable stuff we have accumulated in the last twenty years, we would have to have a hundred acres of land.

Q. To a large extent the length of time these things remain*d* on your yard depends on the employment or situation of your employees, does it not?

A. That is right.

Q. Let me ask you: How many years has it been since you

page 256 } were in the used parts business—used automobile parts?

A. We went out of that business after we moved in 1951 from Charlotte Street up to where we are now; we have been out of the parts business entirely.

Alex Klotz.

Q. As a practical matter, do you sell any automobile parts now?

A. Yes, *occassionaly* in a junk car a man comes in there and who has been coming to our place for years and he comes to our place and we let him have it. I don't make any specialty of buying cars for parts.

Q. How often does that happen?

A. Not too often. Sometimes we might get one call a month, sometimes five calls; it doesn't happen too often.

Q. For instance, those cars that the Commissioner saw today in the lot, are they being kept in order to sell the parts?

A. No, sir, they are ready for the scrap. If they were salable they wouldn't be piled up mountain high. If a man asked for a part how would you know where to look in that pile.

Q. They are there to be burned?

A. Burned and assorted into scrap for the mill if we ever get to it and maybe we never will.

Q. In regard to the cars that are being kept in what appears to be a field, what are they being kept there for?

A. We didn't have any space to put them on the
page 257 } lower yard when we moved out of Charlotte
Street and we put them up there for the express purpose of cutting them up when we got to it and we never have got to it.

Q. How long have they been up there in that field?

A. Seven years.

Q. Now, for instance on page number one of the Weschler Report, there *is* 134 sinks and basins. How long have you had those?

A. Well, they have been accumulating for the last three years.

Q. How many would you sell in a year as a unit to individuals?

A. Well, I don't know exactly, but I imagine we have sold this year about fifteen of them.

Q. About fifteen?

A. This whole year.

Q. So that with 134, then it would probably be about a ten year period to dispose of them?

A. It won't be that long, because I am going to throw them into scrap anyhow.

Q. You are going to throw*n* them into scrap?

Alex Klotz.

A. The porcelain ones I am going to break them, and most of them are porcelain.

Q. In regard to the motors in that building, do they have any value as usable units?

page 258 } A. Well, there were few in there, yes, you could probably sell.

Q. What would happen to the bulk of them?

A. Well, I will throw them into scrap if I don't soon sell them if we cannot sell them, most of them are *obsolte*, there is one 49 Ford and one good motor.

Q. On that Weschler list that you have put junk prices on as against his usable prices, were practically all of those items purchased as junk?

A. As scrap, every bit of it was bought as scrap.

Q. And as a practical business proposition they will all end up for the most part as scrap, is that correct?

A. Wait a minute. There were some items here that I didn't buy as scrap, this lathe, I didn't *but* for scrap; not every item was bought as scrap.

Q. I said practically all.

A. Yes, there are a few items on there, I would say ninety per cent of them.

Q. Ninety per cent of those items were purchased as scrap?

A. Yes, sir.

Q. Now Mr. Klotz, would you state from that exhibit the total valuation put upon these items by the Weschler appraisal?

A. Is that Exhibit number 5?

page 259 } Q. Yes, sir.

A. His appraisal was $23,691.50.

Q. Now what appraisal price did you put on that as scrap?

A. I appraised it as $9,043.50.

Q. Now Mr. Klotz, speaking as of June 7, 1958, what did you consider the fair market value of the merchandise inventory that you had on that yard and in your warehouses?

Mr. Campbell: May I note an objection to that question, because under the order the only question that can be raised with respect to the Weschler Appraisal *are* with respect to specific items, by the terms of the order, itself.

Mr. Gibson: Go ahead and answer the question, Mr. Klotz.

A. Would you repeat it?

Alex Klotz.

Q. What do you consider the fair market value for everything on your yard included in that appraisal?
A. At resale value or at cost?
Q. No, market value.
A. Market value. Well I would say anywhere between forty and fifty thousand dollars would be a fair appraisal for it at that time.
Q. Now, what has happened to the market in the type of articles, with which you deal, between June 7th and the time that Mr. Schein made his appraisal?
A. Well, it had not materially gone up, I would
page 260 } say some of it had gone up about ten per cent.

Mr. Garnett: How much?

A. Ten per cent.
Q. Has the market been lower since June 7th up to the present time than it was on or about that date?
A. No.
Q. In other words, that period was the low part of the market?
A. That was, I would say, about as low as it has been this year or since the recession had started.
Q. As a matter of fact at that time the mills were buying practically no scrap, were they?
A. Yes, sir.
Q. Let me ask you this: Was there any material difference between your merchandise inventory between the time Mr. Weschler made the appraisal and the time Mr. Schein made his appraisal?

Mr. Campbell: Again, I would like to note an objection, because the requirement of the order is as to specific items.
The Commissioner: Specific items, yes, sir.
Mr. Gibson: I want an answer.

A. I wouldn't say, some items might have been more, some items might have been less, but there hasn't been any
big movement of scrap between the Weschler ap-
page 261 } praisement and the Schein appraisement.
Q. In other words, there has not been any substantial change?
A. Substantially the same, I would say it would be.

Alex Klotz.

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Q. Now Mr. Klotz, I want to direct your attention—Before I do that, I want to ask you this question: For
page 265 } what price would you sell today the entire inventory as listed in the Weschler Report for cash?

Mr. Campbell: Objection again as not being relevant to the issue as framed by the order.

A. At the present time I would sell for about $60,000.
Q. In other words, you would make a firm offer to anyone for that inventory and where it was not available make it up, for $60,000?
A. Yes, sir, at that time, is that what you mean?
Q. Yes, sir.
A. June 7th.

Mr. Campbell: As of June 7th?

A. As of those values at that time.

Mr. Garnett: Was that inventory or inventory and equipment?

A. That was inventory, not the equipment.

Mr. Garnett: At $60,000 as of June 7th?

A. Yes, sir, that inventory at those prices.
Q. Now, let's go into the accounting proposition. Did you keep the books for the Klotz partnership?
A. No, sir.
Q. Who kept the books, Mr. Klotz?
A. Well, I had a bookkepper to keep the books.
Q. Now during that period you had a bookkeeper, and then you employed A. M. Pullen & Company?
page 266 } A. I have had them since 1938, I believe.
Q. Did you ever give A. M. Pullen & Company

any instructions in regard to the accounts, audits or how they were kept?

A. No, sir, I took their word for it every year; they came in and they did all the work and sent me the report; all I did was sign the papers as they handed them to me, because I figured they were reliable and well able to take care of that.

Q. All you did was sign the tax returns when they sent them to you?

A. That is right.

Q. But you had no direction or control over their work, did you?

A. No, sir.

Q. Mr. Klotz, during the period of this partnership, did you have an individual bank account of your own?

A. Occasionally, yes.

Q. But for all intents and purposes all your funds were deposited in what account?

A. In the Klotz account.

Q. In the partnership accounts?

A. Yes, sir.

Q. Is it fair to say that for all intents and purposes you used it as a private bank?

A. Yes.

Q. And when you put money in that account page 267 } who was given credit for it?

* * * * *

A. Well, here is the way I done it. If I drew a check for $100.00, I charged A. R. Klotz, and if I got money in return, like a dividend, I guess the bookkeeper credited A. R. Klotz's account with money deposited to Klotzes account; I guess that is the way they did it. I didn't make the entry, that is true, but if I took out, like on some items I would draw money on, they would charge it to me, and if I put any money back into it, they would credit my account.

Q. Now, Mr. Klotz, when the original assets were transferred from you individually to the partnership, how were they allocated on the partnership books?

A. Two-thirds to me and one-third to Mrs. Klotz.

Q. And each year, is it not true that Mrs. Klotz was given credit for one-third of the partnership profits and you were

given credit for two-thirds?

page 268 } A. That is my understanding of it, yes, sir.

Q. From time to time, Mr. Klotz, you did—

Mr. Campbell: Please don't lead the witness, Mr. Gibson.

Mr. Gibson: All right, sir, I have to bring him to the point.

Q. Let me ask the question this way: When funds were deposited into the Klotz account, was it your intention that two-thirds of that should go to you and one-third to Mrs. Klotz?

Mr. Campbell: Objection.

A. Of the profits?

Q. No, any funds that you would put in the account.

A. Do you mean if I sold merchandise and that check was deposited?

Q. No, I am referring—if you would make sale of an asset of your own, which was not a part of the partnership?

A. Well, if I sold some stock, they would credit my account with it.

Q. So you considered that as a credit solely to you, is that right?

A. Yes, sir.

Q. Then, when you would withdraw funds you would be charged?

A. I would be charged, that is right.

Q. Mr. Klotz, during the period of the partner-

page 269 } ship, who actively controlled and operated the business?

A. I did.

Q. Was your control of it in the actual operation any different after the partnership was formed than it was before?

A. No, sir.

Q. What was the only difference?

A. The only difference was the name Klotzes.

Q. That is the only difference?

A. Yes, sir.

Q. Now after the partnership was formed and the initial assets put into it, was there any agreement between you and Mrs. Klotz in regard to other funds becoming a part of the capital?

Alex Klotz.

A. No.

Q. Never at any time?

A. We never have discussed the partnership during the twelve years.

Q. You say that during the twelve years the partnership was never discussed?

A. No, never questions asked or answered.

Q. No questions were ever asked or answered?

A. No, sir.

Q. Did your wife at any time ever make any complaint about any of the charges or credits or anything?

A. Never.

page 270 } Q. No *complain* was ever made until the difficulties developed?

A. Yes, sir.

Q. Had there ever been any discussion between you as to how the business should be run or anything of that nature?

A. No.

Q. Now Mr. Klotz, I hand you the Odor Report, which has been introduced in evidence and on page 10, there is a schedule in regard to Savings Bonds. Could you, for the record, give any explanation as to why those bonds were charged to Mrs. Klotz?

A. Well, my opinion of this could be that some of them were made in her name and some of them were made in the grandchildren's names and I figured probably should be charged to her, but of all the charges ever made, I wouldn't say that there is an infinitesimal amount, which was charged to her, that actually should have been charged, as far as that is concerned.

Q. Where were those bonds, Mr. Klotz, that were bought in the grandchildren's names?

A. Well I had them in a box in the safe upstairs, I don't know where they are at now. I don't know how many there were, I would make a guess, but I wouldn't want you to hold me to it, I would say over three thousand dollars worth.

Q. In the grandchildren's names?

page 271 } A. Yes, I believe that was—I haven't looked at them for a long, long time.

Q. Do you have any idea how many were purchased in Mrs. Klotz's name?

A. Actually, I wouldn't know. I never gave it a thought when I bought them.

Q. Now, on page 11, Mr. Klotz, there is—*begining* on page 11, rather, there is a statement as to the Christmas Savings

checks that were charged to Mrs. Klotz for a period of approximately three years there. Would you state for the record *you* explanation of those charges?

A. Well, I might say that if I saved $8,000 of Christmas Savings Club, those charges were made to me and when checks were sent to me by the banks I would, on occasions, either hand her one of them, all were made payable to me and I would endorse it and I think on quite a few occasions I would give her some of them. May be $500.00, may be $300.00, may be $200.00, and I would deposit most of it back in the mutual bank for Government taxes, that was the reason we saved them.

Q. Over the period of the partnership, did you give her every Christmas part of these Christmas Savings?

A. Yes, not too much, I would say anywhere from two to five hundred dollars. I don't say that was every year, I don't have any records to show I did.

page 272 } Q. But you did that?

A. Yes.

Q. Now, let me show you the item entitled "Expenses for Max Klotz" and ask you what is the explanation for that?

A. Well, it is the same old thing, he was going to school.

The Commissioner: What page is that?

A. That is one page 16. I thought she should pay part of the education, probably, that is why I done it.

Q. In other words, you felt that since she was getting a third of the profits that she should pay a part of the expenses?

A. Yes, these are all infinitesimal amounts.

Q. That was a very small amount of it?

A. Yes.

Q. Of the total spent on him?

A. Oh, yes.

Q. On page 17, there is a schedule of electrical bills, would you—

A. Well, all these items went into the house, probably I done the same thing there that I done on the others, charged some of them to her, and the majority of them were charged to me. Sometimes I would just think about it and I would do it, and again I wouldn't think about it. I didn't have any specific terms of doing it. Some people have

page 273 } specific terms of doing those times, I didn't do it that way.

Q. Occasionally when a bill would come *it,* you would in-

struct the bookkeeper to charge it to Mrs. Klotz, is that what you did?

A. Yes, that is right.

Q. I want you to look at page 18, Schedule VI, and ask you for the record to state the explanation of those items?

A. I probably paid those bills and charged them out to her because they were her clothes and probably thought she should pay for them herself, and I just figured that I should charge her account so her part of the partnership would pay for that.

Q. Were those items a substantial amount of the items your wife bought at department stores during the existence of this partnership?

A. I hardly think so.

Q. Mr. Klotz, insofar as you can recall were these items from the Washington Department Stores, did they represent items that you purchased for yourself?

A. No.

Q. All right, sir, look at Schedule VII, page 19 of the Report and state for the record your explanation of those items?

page 274 } A. That was a period of how many years? Six years. According to *here* there is only charged $630.07 to her account, whereas, there was certainly, probably in the six years the total amount of that would be—Well, let's see—four times that amount, may be more. There is a lot of items on there, like electric lights and water rent. You know I paid more that $20.00 water rent in six years.

Q. In other words, it was just a small occasional amount charged to her account?

A. Yes, sir, that is exactly the truth.

Q. I want you to look at Schedule VIII, on page 20, which represents life insurance premiums and I wonder if you will state for the record, which of those policies are yours?

A. Well, I think that State Farm Life Insurance Company is insurance made, I think—I don't know, I think they are made—Now, wait a minute, they are made—I took that out for myself and I believe they are made to me as beneficiary and should I die, they go to the two grandchildren. I believe that is *they* way they are made.

Q. All right, how about the next one?

A. I don't know if any of these others are made to me; I think they are all made to different grandchildren and different children, the beneficiaries.

Alex Klotz.

Q. In other words, you aren't the beneficiary of any of them?

page 275 } A. No, I am the only beneficiary, I believe in two policies of State Farm Life. I done that probably is the reason and in case of my death the grandchildren would get it.

Q. Why was Mrs. Klotz's account charged with the premiums on those policies?

A. I thought again that probably she should pay part of it, they were for her children.

Q. During that period—

A. At one time they were a lot more, they are substantially lower because a lot of policies are matured and a lot are cancelled. I would say that would be about half.

Q. This would be about half?

A. Half of one year, they ran between $2500.00 and $3,000 per year, premiums per year, but they are not that now.

Q. So this amount would have been about half of one year?

A. Half of one year.

Q. Now, I want to hand you Schedule IX, on page 21, and ask you to explain that schedule to the Commissioner?

A. Well, these items, probably some of them—some few of them could have been my own, like here is one— Let's see, wait a minute. Berry Burke could have been mine, Young Men's Shop, Washington, D. C., could have been mine. On the whole I believe mostly they were hers. This Roy Fisher, if I am not mistaken, was for jewelry purchased,

page 276 } if I am not mistaken, and I thought she got the benefit of that and should have been charged with it. Some of these items could be mine, oh, possibly Frank Brothers, I know that is mine, the other items, I don't know which would be mine.

Q. Taking all these items in toto for these two or three years, Mr. Klotz, what percentage of the expenditures that you made for the living expenses of you and your wife and your clothing, would you say was charged to her?

A. I would say one-half of one per cent.

Q. A very small amount?

A. Yes, sir.

Mr. Gibson: Your witness.

CROSS EXAMINATION.

By Mr. Garnett:

Alex Klotz.

Q. Mr. Klotz, if I were to tell you that your wife didn't buy anything *for* Tiffany & Company on December 3 and December 19, 1956, would that refresh your memory as to whether you bought that or not?

A. I wouldn't want to try to recollect all the items I ever bought in twenty-five years.

Q. I am taking you back to '56. Did you buy anything in December, 1956, from Tiffany & Company?

A. I don't remember that I did, no, sir.

Q. You don't remember that you did?

A. No, sir.

page 277 } Q. Let's go back up the line, how about September and December, from Sidney West?

A. Well, it is possible that she went up there and bought a suit of clothes and charged it and I paid for it and charged it to her.

Q. Isn't it an actual fact, now Mr. Klotz, that your wife's practice was that whenever your wife bought anything, whether it be from *Garfinkels,* Sidney West or anywhere else, that if she had an account she would pay her own items from her own separate account, and that the items that were chargable to you, she would advise that they were your items and you would pay for them?

A. You believe that. I don't.

Q. I am asking you if that isn't a fact?

A. No.

Q. It is not?

A. No.

Q. Now, I think you stated to the Commissioner and to those of us here, that insofar as the items that were *chargable* to the payments on the Washington, D. C. Department Stores, they were a part, which you allocated to her for her own purposes, is that correct?

A. Allocated to her?

Q. Yes.

A. I never heard of allocating.

page 278 } Q. Do you mean these are all her charges for that period of—

A. I probably had a good reason to charge them at the time.

Q. How did you arrive at these amounts to charge to her?

A. If I made those charges against her, I probably had a bill in front of me and charged to her what I thought was hers at that time.

Q. If I told you that I hold in my hands statements for

Julius *Garfinkels,* and Woodward & Lothrops for the period that *stated* in April, 1947, and goes forward through the 12th day of July, 1957, which shows that your wife had a separate account at *Garfinkles,* and Woodward & Lothrops, and that she paid a total, from her separate funds, of over $7,000, then would you say that you are mistaken?

A. I would like to see the bills; I would like to see the receipts and checks.

Q. And if I told you these charges you have listed here were actually for your own clothing, she is further mistaken?

A. I think so.

Q. Are you positive?

A. I am not positive, I think so.

Q. Do you have any record in your office that would indicate for what purpose these items were purchased?

page 279 } A. I may have bills from Woodward & Lothrop or anybody else if I got that bill, if it was my own purchase, my own personal bill I charged it to myself and if it was her bill I charged it to her.

Q. You would pay most of the bills by checks drawn on the Klotz Account?

A. I did.

Q. In whose name were those bills?

A. In hers, I reckon.

Q. How did you get the bills?

A. I get all the bills.

Q. Do you mean the actual bills didn't come to the house?

A. They come to the house, but who got them?

Q. I am asking you.

A. Who do you think?

Q. I am asking you, sir?

A. I did.

Q. Your wife didn't get them and give them to you and tell you that they were your bills?

A. You have got to show me.

* * * * *

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Q. I understood you to say, and correct me if I am wrong, that you didn't have anything to do with the books?

Alex Klotz.

A. I never did, I wrote checks, but I never made entries in the books.

Q. Can you tell us how these various charges got in *her* against Mrs. Klotz, if you didn't have any instructions to your bookkeeper?

A. I possibly instructed, if I wrote the check I put it on the stub of the check, that was the only thing I did.

Q. Now, you *arell* telling us that you controlled the allocation of these funds entirely?

A. I didn't tell you nothing, I said when I wrote the check I put it down on the stub.

Q. As to who was to be charged?

A. Yes, sir.

Q. Then the bookkeeper took his instructions directly from you?

A. On these few times.

Q. Let's start on these premiums paid on life insurance policies. Do you have these policies?

A. I think so.

Q. Would you please get them for us the next time we get together?

A. You are welcome to have them.

page 282 } Q. Why did you stop allocating any of these expenses to your wife after 1955?

A. I don't know, there was no particular reason, I never followed that pattern all the way through, if I had it would have been probably five times the amount that it is.

Q. You just put on her account what you felt like and left off what you didn't feel like was hers?

A. Certainly, I ran the business to suit myself.

Q. You ran the business to suit yourself?

A. Certainly, it was my business, to tell you the truth.

Q. It was your business?

A. Yes, I worked for it.

Q. Regardless of the fact that you had the so-called partnership?

A. So called, yes.

Q. You didn't think it amounted to anything?

A. No, sir, not to me.

Q. These items are just what you wanted to charge against her when you felt like it?

A. Yes, that is right I don't see why you are making such a big fuss over small items like that.

Q. Let me ask you something, Mr. Klotz. I think you heard

Alex Klotz.

your wife testify this morning that she went into the business starting in 19— When was it '46 or '36?

A. In '46, we formed the partnership.

page 283 } Q. Before you formed the partnership, didn't your wife work in that business?

A. The whole time I have been in Fredericksburg she has never put in one solid year's work.

Q. When did she start working for you?

A. She never started, she come down there a day or two at the time, she was never on the payroll.

Q. No, she was never on the payroll?

A. That is right.

Q. You saw to it that she stayed off the payroll?

A. There was no particular reason, she got her pay every week.

Q. When did she start?

A. She never started. The only time she come down is when I asked her to come down when I was gone somewhere. In the first place she didn't know how to run a junk business.

Q. Why would you call her down there, then?

A. She was a sort of—what I would call a sort of—you have a lot of people working for you, and she was a sort of safety valve, so to speak.

Q. When did she start being a safety valve?

A. I don't know.

Q. After you formed the partnership, was she a safety valve?

A. No, after we formed the partnership it was

page 284 } just like all the time since '51, after we got up to the other yard, I would be off, and the time I was in the hospital, for ten days in '51, and from then down to the present time I would say she worked in total two hundred hours.

Q. Two hundred hours?

A. In total.

Q. What did she do?

A. I don't know—I don't know.

Q. What?

A. I don't know what she done while I was away, how would I know?

Q. When you were there what did she do?

A. When I was there she wasn't there, never when I was there.

Q. You filed this suit for dissolution of the partnership, did you not?

Alex Klotz.

A. Yes.
Q. Why?
A. Do you want me to tell you why?
Q. Yes.
A. I don't know.
Q. No reason?
A. I told you what I thought, I don't know.
Q. You have no idea why you file this suit for the dissolution of the partnership? You wanted to get rid of
page 285 } your wife, is that the reason?
A. You are answering it.
Q. I am asking you did you want to get rid of your wife?
A. What do you think?
Q. I am asking you the question, you are on the stand.

The Commissioner: Answer the question.

A. Yes, sir.
Q. You wanted to get rid of your wife as a partner. How long have you been wanting to do that?
A. Since the day I formed it.
Q. Since the day you formed it?
A. Yes.
Q. Well, you knew in 1947, did you not, as you testified on direct examination that as far as taxes were concerned, there was no necessity for it?
A. That is right.
Q. Why didn't you get rid of it then?
A. I was stupid.
Q. You are stupid?
A. Yes, why didn't I do a lot of things?
Q. I am asking you?
A. I am telling you, put it down as stupidity.
Q. Ever since 1946 you have desired to get rid of your wife as your partner?
A. Yes, I should have never formed a partnership.
Q. How long have you been planning on getting
page 286 } rid of the partnership?
A. I don't know, it just come to me all of a sudden, I guess.
Q. When did it come to you all of a sudden? About eighteen months ago?
A. Yes.
Q. So over the period of the last eighteen months you have had definite plans to get rid of this partnership?

Alex Klotz.

A. Right.

Q. Prior to that time, did you have any idea or plans about getting rid of it?

A. I said I never had any plans, it just come up to a boiling point.

Q. It come up to a boiling point?

A. That is right.

Q. Is that when the rental of your property began to go down?

A. I never gave that a thought. I didn't know it was going to be given up by that time. I had it on a six months rental basis, it was renewable every six months.

Q. Mr. Klotz, then your testimony as to valuation of the inventory and the equipment is all predicated on the basis that you had planned to get rid of this partnership?

page 287 } A. It is not so, I based my prices on what I think it is worth, and I have as good an idea as you or anybody else. That is a fair and acceptable question. I know as much about that racket as anybody else, as much as that man you had here and more too.

Q. What do you think Mr. Schein knew?

A. Mr. Schein, I didn't bribe him or anything, I tore off the sheet and said, "Put your own price on it." He is a junk dealer.

Q. Do you think his prices are correct?

A. Whose?

Q. Mr. Schein's?

A. Some of them were and some of them weren't. Those of Weschler's, which I thought were correct I didn't say a word about. He doesn't know it all either.

Q. Did you ever discuss the prices with him that he put down?

A. No, sir.

Q. On the Weschler list there is a lot of ammunition transporting tools. Mr. Weschler valued them at $600.00. You in your appraisal of it, which you have introduced in court said that that is thirty per cent too high. Mr. Schein says that those ammunition transporting tubes are worth $3,000 in his appraisal.

A. He has a few items there—

page 288 } Q. Let's talk about this one then.

A. Well, it is *no* so, there is not $3,000 worth of those shells there. Period.

Q. What are those shells worth?

A. Well, they were classified as number two scrap, at that

time they were worth $20.00 gross a ton, FOB Fredericksburg; they are worth a little more now.

Q. How many tons of them were there?

A. I would say at that time it was thirty to forty tons.

Q. This was on June 7th?

A. Yes— Wait a minute. I won't say the exact tonnage, I just cannot remember back in June. Our contract—No, it was not that much there, our contract on them started in June from the Government.

Q. June of what year?

A. '58.

Q. 1958, is there much more of that stuff there now?

A. Yes.

Q. I thought you said that the inventory was the same now as it was in June.

A. On that one particular item.

Q. I am talking about the inventory.

A. You took inventory in June, this is October.

Q. The question was asked you by your counsel if that inventory was the same now as it was in June.

page 289 } A. I said substantially it was the same.

Mr. Gibson: Wait a minute, he said between that time and the time Mr. Schein made the appraisal that there had been no substantial change.

A. Yes, sir, between June and July. There is a whole lot of difference between June and October. Some items I haven't got any of now, I sold some of them.

Q. Some what?

A. Some metals, he had it down there, that is brass, copper, aluminum, and stuff like that.

Q. Do you pay freight on any of these items that you sell and ship?

A. Well, it is deducted from the other end.

Q. I am just asking you, do you pay the freight on any of these items that you sell and ship?

A. Sure I do.

Q. You do?

A. Yes, on some of them.

Q. Do *you* books reflect any freight items paid?

A. No, I think the freight is deducted and the invoice is made less the freight. That is right, I think that is right, Maybe I don't, I don't make all the bills, Max does it now.

Alex Klotz.

Q. As a matter of fact, isn't it true that there
page 290 } isn't any freight paid?

A. That is not so, some items I ship are prepaid, some Items I haul by my own truck; scrap iron is sold delivered to the mill less the freight, it is taken off me in making settlement.

Q. Have you sold much scrap iron between June 7th and the present time?

A. Not too much, I would say—

Q. You have your records on those sales, do you not?

A. Absolutely

Q. Will you get those records available? Do you know what that scrap iron was bringing?

A. Well we sold 100 tons at—I can bring it up here.

Q. Let me run down this list. I want your records on the following items: On the tube steel you sold.

A. I haven't sold any.

Q. None. The galvanized wire.

A. Well that is not a scrap item.

Q. It is listed here as an item, you have it listed here.

A. We had it down there. Anyway we sold, I believe, two car loads.

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Q. Now, Mr. Klotz, so that we won't have any misunderstanding about it. As I understand you now, insofar as these items that have been set forth in the statement by Mr. Odor, starting with Schedule I, which has to do with the Federal Income taxes, going through Schedule II, which dealt with the US Savings *bons* purchased from the partnership funds and charged to Frances Klotz, Schedule II, "Checks payable to Fredericksburg, Virginia Bank, representing deposits on Christmas Savings Accounts, Schedule IV, "Items Representing Cost and Incidental Expenses of Schooling For Max Klotz"; Schedule V, "Payments for Electrical Home Appliance for Residence of Alex and Frances Klotz"; Schedule VI, "Payments to Washington, D. C. Department Stores"; Schedule VII, "Payments for Fuel, Electricity, Etc., for Residence"; Schedule VIII, "Premiums on Life Insurance Policies"; Schedule IX, "Various other items charged to

Drawing Account of Frances Klotz". That you directed either your bookkeeper through your checks or your accountants, who did your audit, to make these charges as you saw fit?

A. I didn't direct the auditor. When I wrote a check, as I told you once before, it would strike me to charge it to her, and I done it.

Q. If it struck you to charge it to her you did it?

page 298 } A. I did, sometimes I would tell the bookkeeper, yes, sir. I don't see anything wrong with it.

Q. Did you ever have any discussion with any of the auditors from A. M. Pullen & Company as to how the taxes were to be set up?

A. No. I will tell you the truth, when those people come in and they would ask me anything I would turn them over to the bookkeeper. I don't believe they ever asked me anything, because I figured they were capable and knew how to do the job.

Q. In years past, do you know who they sent? Say in '46, in '47, '48 and '49?

A. I don't know whether that was Bass or John E. Hamilton.

Q. Bass or John E. Hamilton?

A. Is he still with you? I don't know, I think they would be on the income tax reports. Who signed them?

Q. Mr. Klotz, I understand you to say that you ran this business as a sole proprietorship and that you ran it to suit yourself?

A. That is right.

Q. Did you ever read the annual reports of your accountants and auditors when they would come back?

A. Yes, I would glance at them.

Q. Did you understand them?

page 299 } A. I wouldn't understand them a hundred per cent, but I figured pretty close to it.

Q. So, you figured pretty close to it, and you knew what was going on as they come back?

A. Well, show me one of them.

Q. Let's pick one.

A. I will tell you the truth, what balled me up was these capital gains and that stuff like that, I don't know much about it. I would say I left it to the Pullen Company to make out the report correctly; whatever they done I was satisfied with.

Q. I hand you herewith, Mr. Klotz, Defendant's Exhibit 3-C, which is the report of the A. M. Pullen Company on your business for the fiscal year ending July 31, 1949, and I direct

your attention to page two. Can you identify what is meant by reference to 7-31-48, which is the previous year, "Partner's Loan Account $32,864.22." What did that mean to you?

A. I loaned the business that much more money.

Q. Now, let's look to the year 1949. Do you see any there there under "Partners' Loan Account"?

A. No, I don't.

Q. What happened, do you know?

A. No.

Q. I presume you read this in 1949, the increase of $31,-
page 300 } 284.16 in net worth during the fiscal year ending July 31, 1949 is accounted for as follows: And the third item under that increase is called additional investment?

A. Well, that probably should have been loan.

Q. Did you give any instruction as to what was to be done with this money?

A. Well, I figured right off the start that all the money I would put back in the business would be a loan and eventually, through a period of time, I would get it back.

Q. Did you tell anybody that?

A. Well. maybe I did and maybe I didn't, I don't recall.

Q. You have been getting these statements since 1949 and looking at them, have you not?

A. Just looking at them.

Q. You have noticed from time to time that there has been additional capital added?

A. No, I never noticed it before.

Q. Oh, you never noticed it before?

A. No, I didn't.

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Q. With reference to these items of charges against your wife's account contained in the Odor Schedules, did you ever discuss any of these with your wife?

A. No, sir.

Q. You never discussed or told her—

A. I might have told her I was charging some of it to her account.

Q. You never discussed the bond situation as such, did you?

Alex Klotz.

A. No, sir.

Q. And you never sat down and discussed the Christmas Savings or any other specific items with her, but you might have told her you were charging some items to her?

A. I think I might have, yes, sir.

Q. Will you tell us on what basis you discussed
page 305 } it with her?

A. I think I might have said, "You ought to pay some of it" or something like that.

Q. But you aren't sure of that?

A. No, I couldn't swear, I cannot recall every conversation I have had in the last ten years.

Q. As I understand it, the Christmas Savings Account checks were all issued in your name?

A. Yes, sir.

Q. And you just decided what portion you wanted to charge against your wife and did it?

A. I think so, yes.

Q. Correct me if I am mistaken, but I thought I understood you to say on direct examination that as of June 7th, the time that the appraisal was made by Mr. Weschler, that you considered a fair sale price of the inventory at that time to be $60,000?

A. Yes, sir.

Q. Did you make any statement as to what you consider the fair market value of the equipment? Have you made any evaluation of that?

A. No, I don't believe I have, no.

Q. Do you have any evaluation of the equipment?

A. I think I would have, yes, sir.

Q. What do you consider the fair market value
page 306 } to be of the equipment?

A. I would have to have a little time to put all the items down and see what it is all about.

Q. You haven't studied that?

A. No, because they weren't interested particularly in the equipment. I could think about it and give it to you, but I would like to have a little time to think about it.

Q. But you consider the fair market price of the inventory was $60,000?

A. I think so.

Q. As against Mr. Weschler's $78,000?

A. Yes, sir, I think some of his appraisal was all right, but I consider some of the items he was classifying as usable

was wrong. I could be wrong, but I think I have got a pretty good idea.

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RE-DIRECT EXAMINATION.

By Mr. Gibson:

Q. All right, let me ask you two or three questions, Mr. Klotz. Do you know of anybody else in Fredericksburg, who is capable of running a junk yard such as yours?

A. I don't think so.

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Q. Now, let me ask you this, Mr. Klotz: In reading these reports of A. M. Pullen & Company was it of any significance to you the terminology used by the auditors in the report?

A. No, sir.

Q. You did look to see what you were being given credit for?

A. Yes, sir.

Q. And the terminology they would use would mean nothing to you?

A. No, sir.

Mr. Gibson: That is all.

RE-CROSS EXAMINATION.

By Mr. Garnett:

Q. So far as you are personally concerned neither the audit report or the terminology had any significance at all?

A. That is right.

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page 309 } MRS. FRANCES KLOTZ,
recalled as a witness in her own behalf, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Campbell:

Q. You and Mr. Klotz were married when, Mrs. Klotz?

A. On August 9, 1925.

Q. What business was Mr. Klotz in then?

A. In the scrap business.

Q. In Fredericksburg?

A. Yes, he was working for his brother at that time.

Q. He was working for his brother?

A. Yes, he wasn't in business for himself.

Q. And did you or he have any substantial assets at that time?

A. No.

Q. He had none and you had none?

A. Just his salary that he was drawing from his brother.

Q. Did he have any accumulated assets at that time, to your knowledge?

A. I don't know, to my knowledge, no.

Q. How did he get into business for himself, Mrs. Klotz?

A. Well, he bought his brother out, his brother originally owned this business.

Q. Do you know how much he paid his brother for it?

A. No, I don't know the exact figure.

page 310 } Q. Was it as much as $10,000 or more?

A. No, it was less than that, to my knowledge.

Q. Do you know about when that was, Mrs. Klotz?

A. Well, it is over twenty years ago. I don't know the exact date.

Q. Did you and Mr. Klotz during this period, from that time until—or from the time he bought his brother out until a year and a half ago when the differences between you arose, I believe you said you had a harmonious home?

A. Yes, we did.

Q. And you raised two children?

A. Yes, we did.

Q. And during that period were you not working with him in the business?

A. Well not when the children were babies I wasn't there.

Q. When did the children cease to be babies?

A. Well, I was working in the business with Mr. Klotz for the past twenty years; I was in the business with Mr. Klotz

before there was any partnership, I worked there, I wasn't on the payroll.

Q. If you take the past twenty years, that would be 1938, have you been working there since 1938?

A. Yes, I would say it was around 1938 or 1939 that I started going to the office regularly.

page 311 } Q. Did you spend most of the day there?

A. I spent the whole day, a lot of days I didn't even go out for lunch.

Q. It was your practice to give a full day in working at the office?

A. Yes, it was.

Q. And you drew no salary?

A. No, I didn't.

Q. And the monies, which the business was earning, went to build up the value of the business, or some of it?

A. Yes, it did.

Q. And to the extent you could, did you help?

A. Yes, sir, whatever I could do, I was doing it for both of us, not for one person, and I thought he was doing the same.

Q. And there came the time that the partnership was formed, and did he ask you to sign this partnership agreement?

A. Well, as well as I remember, I don't remember just how it was, but the men from Mr. Pullen's come out with the agreement and I know we both signed it down in the office.

Q. That is the man from Pullen's came to the office with this partnership agreement. Do you remember who he was?

A. Yes, sir, Mr. Westfall, he was a senior partner at that time.

Q. Did you and your husband sign the agree-
page 312 } ment together at the office?

A. Yes, we did.

Q. Did you trust your husband to do what was fair when you signed this agreement?

A. Yes, I did, I had no reason to think otherwise.

Q. Now Mrs. Klotz, you stated that you continued to work there and that you saw these annual statements from time to time in the safe?

A. Yes, I did.

Q. And that you may have glanced at them, I believe that is a summary of your direct examination?

A. Yes, that is correct.

Mrs. Frances Klotz.

Q. Did you ever study any of these annual statements before this difficulty arose?
A. No.
Q. Were you familiar with what was in them?
A. No, I wasn't, because I didn't understand them.
Q. Have you had any experience in bookkeeping?
A. None whatsoever.
Q. After the difficulties arose, did you learn that certain items had been charged to your account on the books of the partnership?
A. Yes, I did.
Q. Did you learn that such items had been charged to your account for purchases at Woodward & Lothrop's
page 313 } and *Gar- Garfinkel's?*
A. Yes.
Q. When did you first learn of that?
A. Let's see, I guess it was a year and a half or two years ago.
Q. Before that time had you any idea that such items were being charged against your account on the partnership books?
A. I had no way of knowing.
Q. You didn't?
A. No, I didn't.
Q. Did you know any other items were being charged against your account for purchases at any other stores?
A. No, I didn't.
Q. Did you know that any items were being charged against your account for electrical equipment and appliances used down at your home?
A. I had no idea it was.
Q. Did you know that any life insurance premiums on Mr. Klotz's life were being charged to your account on the partnership books?
A. No.
Q. Did you know that any items were being charged against your account for Christmas Savings?
A. No, I didn't.
page 314 } Q. Did you know that any US Savings Bonds were being charged against your account?
A. No, I didn't.
Q. Did you know that you were being charged on the books of the partnership with one-third of the annual Federal income tax payable?
A. No, I didn't.

Mrs. Frances Klotz.

Q. Did you know what proportion of the income tax had been charged to your account?

A. No.

Q. Had your husband discussed any of those items with you?

A. No, he hadn't.

Q. Did he ever tell you or did he ever discuss any of those charges that had been made against your account?

A. No, we never discussed it.

Q. After you learned that certain charges were being made against your accounts on the partnership books for items of the class to which I have referred, did you make any *inquire* of A. M. Pullen & Company?

A. Yes, I did.

Q. What did you do?

A. I went down there.

Q. You went down where?

A. To Richmond to A. M. Pullen & Company.

page 315 } Q. Approximately when was this?

A. That was, I presume, two years ago, a year*l* and a half or two years.

Q. A year and a half or two years ago—

A. I don't remember the date.

Q. To whom did you talk?

A. I talked to Mr. Bass and he call in, if I am not mistaken —Mr. Bass at that particular time, and I suppose he still is, the head of the tax department, and I asked for Mr. Bass and then he brought in, I think it was Mr. Hamilton, I am not sure.

Q. Did you make any request of Mr. Bass?

A. Yes, I did.

Q. What did you ask him?

A. I asked him would he make a review of the past ten years and get all the list of withdrawals against my capital account.

Q. Do you mean the charges?

A. That is right.

Q. What did Mr. Bass say?

A. He said he couldn't do that. I asked him why.

Q. What did he tell you?

A. He said that unless Mr. Klotz would give them permission they would do it, otherwise they wouldn't do it.

Q. At that time you and Mr. Klotz had become

page 316 } estranged, had you?

A. Yes.

Mrs. Frances Klotz.

Q. Now, did you ask for a dissolution of this partnership yourself, Mrs. Klotz?

A. No, I did not.

Q. Did you have any desire to break it up?

A. None whatsoever.

Q. Did you know that your husband was planning to break it up?

A. No, I didn't.

Q. Was the first knowledge you had that he wanted the partnership dissolved when you were sued in this matter?

A. I beg your pardon.

Q. Was that the first knowledge you had that Mr. Klotz wanted the partnership dissolved when he sued you?

A. Yes.

Q. Mrs. Klotz, on Schedule IV of the report submitted by Mr. Oder, Mr. Franklin Odor, which has been offered in evidence in this case, there is a list of items representing "Cost and Incidental Expenses for Schooling of Max Klotz." Did you know you were being charged with any of those items?

A. I certainly did not.

Q. Did you agree that your account should be charged with any of those items?

A. No, I did not.

page 317 } Q. Is the first time that you learned of those a year and a half ago, too?

A. That is right.

Q. Did you and Mr. Klotz have an understanding, or let's call it a practice, between yourselves after this partnership was formed as to what items were to be paid by you in the running of the house and what items were to be paid for by him? Did you have such an understanding or practice?

A. Only I suppose to use my money.

Q. What were you supposed to use your money for?

A. To run my house, buy my groceries, and that sort of thing.

Q. How about your clothes?

A. And buy my clothes.

Q. How about the maid?

A. And pay the *made.*

Q. How about the electrical bills?

A. No.

Q. How about the gardener?

A. No.

Q. How about the electrical equipment that was put in the house?

Mrs. Frances Klotz.

A. No.

Q. Did you make purchases from time to time at Woodward & Lothrop's and *Garfinkels?* . . . .

A. Yes.

page 318 } Q. The account for purchases at Woodward & Lothrop's and *Garfinkel's* stood in what name?

A. When the account was taken out there, I took it out myself, with Mr. Klotz's permission and I put it in my name.

Q. What was your practice when bills came in from Woodward & Lothrop's and *Garfinkels'?*

A. When bills came in from Woodward & Lothrop's or *Garfinkel's,* if I had made any purchases for myself or any of the grandchildren or our own children, I would make those payments with my own personal check, and if there was anything on there for Mr. Klotz I would turn it over to him and let him pay it.

Q. Did you make it a practice to look at the bills when they came in to see what was being charged?

A. Oh, yes, I always got the bills, they came to the house.

Q. Did you look at all bills that came to the house?

A. Yes, I did.

Q. Did you examine them to see whether they were for items, which were properly *chargable* to you?

A. Yes, I did.

Q. And when they were would you draw a check for them?

A. I would with my own check.

Q. Did you make notes of what items you were paying?

A. Yes, I did.

page 319 } Q. And then would you go over the bill on each occasion with Mr. Klotz?

A. No, after I had paid my bill. if there was anything on the bill for him I would send it to him or give it to him and say, "This is your affair."

Q. Did he ever make any objection to any of those items?

A. No.

Q. Have you produced at my request payments, which you have made from your account to Woodward & Lothrop and *Garfinkels* during the period from 1947 to date?

A. Yes.

Q. And these two bunches of checks, which I hand you, are they the checks, which you have produced at my request?

A. Yes, they are.

Mr. Campbell: I would like to offer in evidence, subject to

verification by Mr. Gibson, and by his accountant, if he wishes, a list of the checks payable from Mrs. Klotz's account to Woodward & Lothrop's and *Garfinkels* during the period in question, in lieu of offering the original checks, subject, of course, to your verification.

Mr. Gibson: Don't you think the original
page 320 } checks should be put in?

Mr. Campbell: We have them here, but we hoped to avoid encumbering the record with them.

Mr. Gibson: Put the list in then.

The Commissioner: That will be Defendant's Exhibit 4.

Q. Mrs. Klotz, do you have any life insurance on your life?

A. No.

Q. Did you know that any life insurance premiums on your husband's life were being charged against your account on the partnership books?

A. No, I did not.

Q. Had Mr. Klotz ever discussed that with you?

A. No.

Q. Had he ever told you he had ever charged life insurance premiums for the benefit of your grandchildren to your account?

A. No, he did not.

Q. Mrs. Klotz, there are certain charges to your account under the schedule entitled "Various Accounts" for instance on May 13, 1948 to Mac Mannes. Do you know what that was?

A. I don't know. How much was the check?

Q. $27.25.

page 321 } A. What was it?

Q. Mac Mannes?

A. Mac Mannes. That could have been something I purchased and asked Mr. Klotz could I pay it from the office.

Q. The next item of August 2, 1948, to the Fredericksburg Company for $44.96. Do you know what that item is?

A. No, I don't.

Q. October 23, 1948, Land's Jewel Box, $132.00. Do you know what that item is?

A. No, I don't.

Q. Is that any purchase which you made?

A. No, it was no purchase I made. He could have bought something as a gift for me there.

Mrs. Frances Klotz.

Q. Did he tell you that he was charging it to your account on the partnership books?

A. No.

Q. The next item is Young Men's Shop, October, 1948. Did you ever buy any clothes at the Young Men's Shop for yourself?

A. Not for myself, no.

Q. $80.25. Is that an item, which should have been charged to you?

A. No, evidently it was for some clothes that Mr. Klotz got there.

Q. January 24, 1949, Berry Burke Co., $19.50.

page 322 } Did you ever make any purchase of that kind for your account?

A. No, I didn't.

Q. I show you the entire page 21, which is Schedule IX of Mr. Odor's Report, and ask you if any item on that page was purchased by you?

A. I am sorry I cannot read this without my glasses, and they are in my bag.

Q. Do you have them here?

A. Yes, in my bag.

Q. Is there any item, Mrs. Klotz, except with respect to one item, which I believe was from Mac Mannes, that may have been purchased for your account?

A. That is right.

Q. Is there any other item on there, which could be so included?

A. No.

Q. Have you read the entire page?

A. Yes, I have.

Q. Were any of the other items on that page items, which you purchased?

A. No, I didn't, unless they were things that I purchased for Mr. Klotz at his request.

Q. Do you mean clothes at Sidney West's and things like that?

A. Yes, that is right, because Mr. Klotz would

page 323 } buy very little of his own clothes or his own shopping, he would always have me go do it for him.

Q. Do you know, Mrs. Klotz, of any reason why Mr. Klotz is insisting on dissolving this partnership, or why he wants to dissolve it?

A. No, I do not.

Mrs. Frances Klotz.

Mr. Campbell: Your witness.

CROSS EXAMINATION.

By Mr. Gibson:

Q. Mrs. Klotz, as to these various items, the bills that are paid to these various stores, you could not be certain at this time, who made those purchases, could you?

A. Yes, I could, Mr. Gibson, because a lot of those stores, I have never even been inside.

Q. You have never been inside them?

A. Yes, that is correct.

Q. I thought you said that you did practically all the buying for him?

A. Yes, for his clothes, but a lot of those places I have never been in.

Q. Did you have an account with other clothing stores during this period for which you have exhibited these checks?

A. What do you mean other stores?

A. You have some checks here to Woodward & Lothrops and *Garfinkels.* Did you have accounts at any
page 324 } other stores?

A. No.

Q. They were the only ones?

A. Yes, they were the ones I usually buy from.

Q. Approximately what was the total amount during those years? Approximately $10,000?

A. I haven't the remotest idea, Mr. Gibson. Whatever the bill shows or whatever the bill was that came in I paid for by personal check.

Q. According to the exhibit, which you have filed, you have set down your and Mr. Klotz's purchase for clothes at an average of $3,500.00 a year?

A. Yes.

Q. Yet on this list, which you have exhibited here you have only purchased about $10,000 worth of clothes—

A. I don't understand.

Mr. Campbell: Would you repeat the question.

Note: Here the Reporter read the question.

Mr. Campbell: Are you referring to the Exhibit, which she has just filed?

Mrs. Frances Klotz.

The Commissioner: I believe this is Exhibit 1 and was accepted by the Court.

Mr. Campbell: This is her estimate.

Mr. Gibson: I will rephrase it.

page 325 } Q. According to the Exhibit, Mrs. Klotz, which you produced, and which has been filed in this case, you have here that your estimated expenditure for your and Mr. Klotz's clothes was $3,500.00 each year. Is that correct?

A. I don't know, that, of course, was an approximate figure, it was purely a guess.

Q. I understand, but you testified under oath before Judge Bazile that that was approximately correct, isn't that right?

A. If I testified it was approximately correct I still stand by that.

Q. I am asking you if you didn't buy any clothes at other places during this period which you have shown, a period of approximately ten years?

A. You are asking me if I had charge accounts at other places?

Q. No, I am asking you if you made purchases for clothes at other places?

A. I am sorry I didn't understand it, I thought you asked me if I had charge accounts at other places.

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Q. Yet you testified that up until the last eighteen months your husband had been a liberal provider for you and your children?

A. I still say the same.

Q. And yet you gave no consideration to the effect these demands would have upon the business?

A. I felt like it was what he could afford.

Q. You felt like it was what he could afford?

A. Yes, that is correct, I felt like that is what Mr. Klotz could afford.

Q. Then the basis of your demand was what you thought Mr. Klotz could afford to pay.

Alex R. Klotz.

RE-CROSS EXAMINATION.

By Mr. Gibson:

Q. Mrs. Klotz, you know that you can make an oral agreement, too?

A. I don't know. These days oral agreements don't seem to stand up. If a written agreement can't stand up I don't know what a written one would do.

Q. You are not inferring that there were any oral agreements subsequent to this written agreement, are you?

A. I said there were no agreements.

RE-DIRECT EXAMINATION.

By Mr. Campbell:

Q. You didn't want this partnership dissolved, did you, Mrs. Klotz?

A. No, I didn't.

Q. And are you only asking what you are justly entitled to out of the partnership?

A. That is right.

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ALEX R. KLOTZ,

recalled for further cross examination deposes and says as follows:

CROSS EXAMINATION.

By Mr. Garnett:

Q. Mr. Klotz, I have here a group of insurance policies in various companies, which include Northwestern Mutual Life Insurance Company, Shenandoah Life Insurance Company, Equitable Life Assurance Society of the United States, Metropolitan Life Insurance Company of New York and all of those policies are insuring your life, that is correct?

page 334 }

A. Yes, sir.

Q. In no instance in any one of these policies at the present time is your wife named as the beneficiary? Correct?

Mrs. Frances Klotz.

Mr. Garnett: I object—

Mr. Gibson: May it please the Commissioner I don't think they have a right to keep *interupting* my cross examination.

The Commissioner: This is cross examination, and as I said a great deal of leeway is granted.

Q. In other words, the basis of your contention is what you think he can afford?

A. That is right.

Q. That is right?

page 331 } A. That is right.

Q. Mrs. Klotz, after this partnership was set up in August, 1946, you all never had any agreement about any financial matters thereafter, did you?

A. What do you mean, we didn't have any agreement?

Q. Any agreement other than the original partnership agreement?

A. The partnership agreement, yes.

Q. And there have been none since then?

A. No.

Q. The only agreement you have had is what was set out in the partnership agreement, which was signed by you and your husband?

A. I didn't know there had to be more than one agreement, Mr. Gibson.

Q. I was just asking. There weren't any other agreements?

A. No.

Q. As to the capital account or anything else?

A. No.

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Mr. Gibson: That is all.

page 332 } RE-DIRECT EXAMINATION.

By Mr. Campbell:

Q. The question was asked whether there had been any additional agreement. What do you understand by agreement, Mrs. Klotz? A written agreement?

A. A written agreement, I presume.

Alex R. Klotz.

A. I don't know whether she is or not.

Q. If you have any question about it, will you examine the policies and advise us in which of these policies she is named as the beneficiary?

A. I don't think there is.

Q. There is none in which your wife is the beneficiary, correct?

A. Yes, sir.

Q. Now, I have here in my hand three policies, the first one is on the Northwestern Mutual Life Insurance, Policy Number 2707748, originally issued to Alex Klotz, the fact amount of $3,000, in which your wife Frances L. Klotz was the beneficiary. On October 18, 1954 you changed the beneficiary from your wife to your brother, Ben Klotz. I ask you if that is correct, according to the policy?

A. That is right.

Q. I have here another Northwestern policy, Policy number 2657508, in the face amount of $2,000.00 insuring the life of Alexander R. Klotz, the policy is dated September 11, 1935, the original beneficiary was Frances L. Klotz, and on October 18, 1954, the beneficiary of that policy was changed to Ben Klotz, is that correct?

page 335

A. Yes, sir.

Q. I have Shenandoah Life Insurancy policy 108854, taken out on the life of Alex R. Klotz in the amount of $2,000.00, dated in October, 1936, and that policy had a change of beneficiary on September 22, 1954, to Ben Klotz, that is correct?

A. That is right.

Q. Mr. Klotz, why did you change those beneficiaries at that time?

A. I have a right to change them at any time.

Q. Did you anticipate at that time that you were going to change this partnership?

A. No, I don't think that was in my mind. My brother has been nice to me and I thought I would change some beneficiaries to him.

Q. Did you notify your wife that you were changing the beneficiary?

A. No.

Q. Are these all of your insurance policies?

A. Yes, sir.

Q. Despite the fact that you had charged these premiums

to your wife's account up through October 29,
page 336 } 1955, in the total amount of $1,516.07, none of
which were for the benefit of your wife as beneficiary, you thought you were doing what was fair and equitable so far as your wife was concerned?

A. Most of them were made to her grandchildren, so what was the difference.

Q. How many were made to her grandchildren?

A. I would say ninety per cent were made to the children and grandchildren.

Q. Is Ben Klotz a child?

A. No, he is my brother.

Q. Do you have any of these insurance policies made payable to your mother?

A. To my mother?

Q. Yes, sir.

A. My mother has been dead for twenty-five years, may her body rest in peace.

Q. I hand you herewith the Equitable Life Assurance Society of the United States, Policy No. 14150422, and ask you who is the beneficiary in that policy?

A. That is the mother of the boy, Stephen L. Klotz, he is a son of Max Klotz, Carol Klotz is the mother of this little fellow.

Q. Carol Klotz is the mother of Stephen Klotz?

A. That is the mother. What is wrong about that?

Q. I was just asking who it was, so I could be
page 337 } sure who they were.

You say that ninety per cent of these policies are made to your children and grandchildren?

A. Well, I believe, outside of my brother, I don't know of anybody that is a beneficiary except children and grandchildren. I haven't got any made to myself, I cannot get it when I die, so I left it to who I thought would be benefitted by it.

Q. But in none of these policies does your wife have an interest?

A. That is right.

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Alex R. Klotz.

Q. Mr. Klotz, apparently there are two State Farm Mutual Life Insurance policies, which are included in this group of policies, which you have handed me, is that correct?

A. Yes, sir, for $1,500.00 each.

Q. And who are the beneficiaries in those policies?

A. My grandadughter.

Q. Now, in none of the policies, which you own at the present time, whether they are here in Court or not, is your wife the beneficiary?

A. That is right.

Q. You have the right, do you not, on all of the policies to change the beneficiary as you see fit?

A. Yes, sir.

Q. On no policy is there a limiting endorsement?

A. That is right.

Q. Did the right to change the beneficiaries exist on all the policies which you own now and then owned, starting from 1949 forward?

A. Yes, sir.

Mr. Garnett: That is all.

RE-DIRECT EXAMINATION.

page 342 } By Mr. Gibson:

Q. Mr. Klotz, I will hand you Northwestern Mutual Life Insurance policy number 2918893 in the amount of $6,000 and ask you who is the beneficiary under that policy?

Before you answer that question, what is the date of that policy, Mr. Klotz?

A. 23rd of November, 1938.

Q. Who are the beneficiaries under that policy?

A. It says, I, Alex R. Klotz, the insured, under policy No. 2918893, issued by the Northwestern Mutual Life Insurance Company hereby designate Ruth Klotz, born 10-4-25 as direct beneficiary thereunder and Frances D. Klotz, wife, as contingent beneficiary under said policy.

Q. Is that policy in force at the present time, Mr. Klotz?

A. Yes, sir.

Q. All premiums are paid up?

A. Yes, sir.

Q. Mr. Klotz, I will hand you policy of the Mutual Life Insurance Company of New York, Policy Number 5045218,

in the amount of $2,000 taken out in June, 1935, and ask you who is the beneficiary in that policy?

A. It says, "Mode of Settlement—"

Q. You do not have to dictate all that, just say page 343 } who it is.

A. Ruth Klotz, daughter of insured.

Q. Is that policy in effect at the present time?

A. Yes, sir.

Mr. Campbell: If you want to save time just read the policy numbers in the record and the beneficiaries.

Mr. Gibson: All right. Policy of the Mutual Life Insurance Company of New York, number 52485800, taken out in April, 1937, in the amount of $5,000, Beneficiary—Max Klotz.

Q. That would be your son, would it not?

A. Yes, sir.

Mr. Gibson: Max Klotz, son. Policy with the Northwestern Mutual Life Insurance Company, Policy No. 4343754, taken out on May 8, 1951, in the amount of $3,000, beneficiary, Lou A. Bress.

Q. That is your grand-daughter?

A. Grand-daughter, yes, sir.

Mr. Gibson: Policy in the Mutual Life Insurance Company of New York, Policy No. 5233299, in the amount of $5,000, taken out in March, 1937, the beneficiary is Ruth Klotz, daughter.

Policy of the Northwestern Mutual Life In-
page 344 } surance Company, number 2657508, taken out
September, 1935, in the amount of $2,000, beneficiary Ruth and Max Klotz, son and daughter.

Policy of the Northwestern Mutual Life Insurance Company, number 2805581, in the amount of $10,000, taken out in June, 1937, beneficiary, Ruth and Max Klotz, share and share alike or the survivor. That would be his daughter and son.

Metropolitan Life Insurance Company, Policy No. 8466262A, in the amount of $2,000, taken out in June, 1933, beneficiary, Max Klotz, son.

The Equitable Life Assurance Society of the United States, Policy No. 14I50422, taken out September 4, 1953,

on the life of Stephen L. Klotz, and the beneficiary is the insured's mother, Carol G. Klotz.

Q. That will be designated as grandson and daughter-in-law, correct?
A. Yes, sir.

Mutual Life Insurance Company of New York, Policy Number 5134550, taken out in April, 1936, in the amount of $2,000, beneficiary Max Klotz, son.

page 345 } Northwestern Mutual Life Insurance Company, Policy number 2918892, in the amount of $6,000 taken out in November, 1938, beneficiaries, Max Klotz, son, direct beneficiary, Frances D. Klotz, wife, contingent beneficiary.

Q. Mr. Klotz, are all of these policies still in force and effect?
A. All paid up, yes, sir.
Q. They are all paid up?
A. All premiums are paid up.
Q. Mr. Klotz, during the period of these years that are mentioned in this report, from September 8, 1949, through October 20, 1955, what was your yearly life insurance premiums? What did they amount to, just roughly?
A. I would say roughly about $2,500.00 to $3,000.00 a year.
Q. And they are all now paid up, is that correct?
A. Yes, sir, the premiums are paid up.

Mr. Gibson: That is all.

And further this deponent sayeth not.

E. FRANKLIN ODOR,
another witness for the defendant, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Campbell:

page 346 } Q. State your full name, please.
A. E. Franklin Odor.
Q. And your profession?
A. Certified Public Accountant.
Q. Your office is located where?

E. Franklin Odor.

A. In Washington, D. C.

Q. And in what jurisdictions have you practiced your profession?

A. I hold a certificate for the District of Columbia, and also the State of North Carolina, and I am registered in the State of Virginia as a non-*residenct* public accountant.

Q. Over what period of time have you been regularly engaged in the practice of your profession?

A. Twenty-eight years.

Q. Do you specialize in any particular field of accounting?

A. General accounting practice.

Q. Have you had experience in the handling of partnership accounts?

A. Yes, we have quite a few partnership clients in the office.

Q. Have you had experience in preparing joint returns of husband and wife?

A. Yes, we prepare numerous joint returns of husband and wife.

Q. In addition to practicing your profession, page 347 } have you engaged in teaching?

A. Yes, sir, I have taught at the Benjamin Franklin University in Washington since graduating from there in 1929.

Q. You have been teaching there ever since?

A. Yes, sir.

Q. Have you, at our request, Mr. Odor, made certain examination of the books of the Klotz partnership at Fredericksburg, Virginia?

A. Yes, sir, I have.

Q. When did you make that examination, approximately?

A. Oh, I think it was during the month of May, various dates during the month of May.

Q. What year?

A. 1958.

Q. And where did you make that examination?

A. At the Office of the partnership in Fredericksburg.

Q. Was anyone with you, any other accountant with you during the period of your examination?

A. Mr. Brown of A. M. Pullen & Company was with me during the course of each examination of the partnership books, and also, we worked together in establishing the income that could be attributed to each individual partner, as shown on the joint returns.

Q. Did you, in addition to examining the partnership books,

page 348 } examine the Federal Income Tax returns, the joint returns filed by Mr. Klotz and Mrs. Klotz during the period of this partnership?

A. Yes, copies of those returns.

Q. Was Mr. Brown with you during that examination?

A. Yes, sir, he was.

Q. Is that the Mr. Brown who testified in these proceedings?

A. Yes, it is.

Q. As a result of your examination of the books of the Klotz partnership and of the copies of the joint Federal Income Tax returns of Mr. and Mrs. Klotz, did you prepare a report, which has been offered and received in evidence as Defendant's Exhibit number 2?

A. Yes, sir, I did.

Q. In going over that report, it contains numerous schedules, does it not, Mr. Odor?

A. Yes, sir.

Q. I will ask you to turn to Schedule II, Schedule of United States Bonds purchased from partnership funds and charged to Frances Klotz, total bonds purchased at cost $2,-100.00. Does that schedule correctly reflect items taken from the books of the partnership?

A. Yes, sir.

Q. Schedule III purports to list checks payable to Fredericksburg, Virginia Banks—

page 349 } Mr. Gibson: Mr. Campbell, I don't like to *interupt* you, but it has been agreed that these items are correctly taken from the books.

Mr. Campbell: I was under the impression it has.

Mr. Gibson: Mr. Brown so testified.

The Commissioner: He testified earlier that the items in the Odor Report were taken from the books.

Mr. Campbell: All right, that is fine.

Q. Mr. Odor, Schedule X, on page 22, is a schedule purporting to show the appraised value of real estate carried on the partnership books of the Klotzes compared to net book value as of July 31, 1957. As a result of testimony that has been offered in this proceeding, have you made a revised Schedule X?

A. Yes, sir, I have.

Q. Are the papers, which I hand you, the revised Schedule

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X and certain other revised schedules, which you have prepared?

A. Yes, sir.

Q. Have you also prepared as a result of the testimony of Mr. Brown with respect to certain income tax charges between Mr. and Mrs. Klotz, a revised Schedule I?

A. Yes, sir.

page 350 } Q. As a result of those two modified schedules have you made a revised Exhibit A reflecting the change in partner's capital account giving effect to your revised schedules?

A. Yes, sir.

Mr. Campbell: I would like to offer in evidence the revised schedules to which the witness has just testified.

The Commissioner: That will be marked then as Defendant's Exhibit 5 and indicated as revised schedules as a supplement to Defendant's Exhibit number 2.

Q. Mr. Odor, I believe you stated that you have made an examination with Mr. Brown of the Federal Income Tax Returns filed jointly on behalf of Mr. and Mrs. Klotz for the years 1948 through 1957, inclusive, is that correct?

A. Yes, sir.

Q. In addition to that, did you make an examination of the separate returns filed by Mr. Klotz and Mrs. Klotz for the calendar year, 1947?

A. Yes, sir.

Q. Does Schedule I, as revised, September, 1958, which is a portion of Defendant's Exhibit 5 reflect the amounts which were charged to the drawing account of Frances Klotz on the partnership books for such income taxes?

A. Yes, sir.

page 351 } Q. Now, sir, beginning with the year 1947, your revised schedule, for the year 1947, your schedule, as revised, shows that separate returns were filed, and indicates a charge or indicates a share of that separate return to Mrs. Klotz in the mount of $7,572.44, is that correct?

A. Yes, sir.

Q. Was that amount charged against her on the partnership books?

A. That amount was charged to her on the partnership books on various payments.

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Q. Are those payments reflected in the upper portion of that schedule?

A. Yes, sir, they are.

Q. What items, sir?

A. There is an item of March 14th, $60.13, an item on the books under the date of July 31, 1947, for $60.13; an item under the date of July 31, 1948 for $7,371.68.

Q. Those three items total $7,572.44?

A. No, sir, they do not total precisely $7,572.44, that was one little difference that we could not account for.

Q. How much difference was it?

A. Well about $80.00 difference.

Q. About $80.00?

A. Yes, sir.

Q. Have you been able to account for that
page 352 } difference?

A. No, sir.

Q. You have not?

A. No, sir.

Q. You heard Mr. Brown's testimony, did you not, with respect to some questions, which were raised by the Bureau of Internal Revenue with respect to the returns filed for Mr. and Mrs. Klotz that year?

A. Yes, sir.

Q. You heard the testimony, did you, with respect to the adjustment, which was made, with the result of reducing Mrs. Klotz's salary for the purpose of that computation?

A. Yes, sir.

Q. As a result of these adjustments, was there any reduction in the amount charged to Mrs. Klotz on the partnership books?

A. There was no reduction as far as the partnership books were concerned.

Q. The full amount for the tax for the amount of salary, which she received from the partnership, or drawing account, which she received from the partnership, was charged against her?

A. The full amount of the tax as shown by the original return was charged to her on the partnership books.

Q. So, is it a correct statement to say that she was charged
all income tax for that year or with her propor-
page 353 } tionate share of the income tax for the full amount
of monies, which she received or with which she
was credited on the partnership books?

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A. She was charged with income tax for her one-third of the partnership profits.

Q. For the years 1948 through 1957, your Schedule I as revised indicates that joint returns were filed. Is that correct?

A. Yes, sir.

Q. In the filing of those joint returns, the returns themselves show only a single tax due, is that correct?

A. They show a tax on the income of both Mr. and Mrs. Klotz.

Q. In one sum?

A. In one sum.

Q. Were certain allocations made of that tax on the partnership books?

A. The payments that applied against all the taxes, Federal Income taxes, were applied to the partners on the basis of two-thirds and one-third.

Q. That is two-thirds of the total tax was charged to Mr. Klotz?

A. Yes, sir.

Q. And one-third was charged to Mrs. Klotz?

A. Yes, sir.

page 354 } Q. Did Mr. Klotz, during that period, have substantially more income than Mrs. Klotz?

A. Yes, sir.

Q. Did he receive more than twice the income of Mrs. Klotz?

A. He had income from various other sources.

Q. As a result of that was his income more than twice her income?

A. I don't know that that would be true each and every year, but there were many years in which it would be true.

Q. Where in your schedule is a showing of the amount charged against Mrs. Klotz on the partnership books for these income tax returns for the year 1948 through 1957, inclusive?

A. The amount charged for the period through June 30, 1958, are shown on the revised schedule and total $83,204.29.

Q. Let's assume that Mrs. Klotz had filed separate returns during that entire period, would her tax have been that large?

A. No, sir, it wouldn't.

Q. Then, is it a correct statement to say that not only did she not receive any benefit from the joint tax returns, but she was penalized as a result of filing joint tax returns on the partnership income?

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A. Yes, sir.

page 355 } Q. Can you state how much her tax would have been during those ten years as compared to the amount charged to her on the joint returns?

A. I don't have the total for the ten years. I can give you each separate year.

Q. Will you give us each separate year, then.

A. The tax for the year 1958, if I may start in reverse, because that appears in the Report of June 4, 1958. Her tax for the year 1958, disregarding any question of benefit that may have been obtained by filing a joint return.

Q. You mean if her tax had been filed on a separate return?

A. Purely on the basis of a separate return filed, her tax would have been $4,877.79.

Q. How much was charged against her by virtue of the fact that it was a joint return?

A. By virtue of the fact that it was a joint return she received a charge of $9,466.66.

Q. Now, sir, for the preceding year—

Mr. Gibson: What year is he talking about?

A. 1958, Mr. Gibson, because that is illustrated in the Report. If you will look on page 2 of the Report of June 4th, the report which you have an illustration of the calculation.

Mr. Gibson: I see. Go ahead.

page 356 } A. If I might explain to you further, so you can follow it. You will notice on page 2 that Mrs. Klotz's share of the tax is to be $4,699.20, which was reflected in a reduction due to a joint return having been filed of $178.59, hence if a separate return had been filed her tax would have been the sum of those two figures.

Q. And that would have been a total of how much?

A. $4,877.79.

Q. How much was charged that year to her on the partnership books?

A. She was charged with four quarterly payments, which totalled $9,466.66.

Q. That is for which year?

A. For the year 1958.

Q. Will you go back to the year 1957—

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Mr. Gibson: The year '58 is not up.

Q. Will you explain what you mean by that?
A. You are correct the payments—part of the 1957 payments were made in 1958, and the payments made on the declaration in 1958 would apply to 1957 taxes.
Q. Are you referring now to the 1957 taxes?
A. The 1957 taxes are the ones illustrated in the June 4th Report.
Q. As I understand it now, we pay our taxes
page 357 } as we go along—
A. I will be glad to give you the individual payments.

By the Commissioner:
Q. The things you are talking about now are for the taxable year 1957?
A. Correct.
Q. As I understand it some were paid in 1958?
A. Early 1958.
Q. At the time he paid his anticipate tax?
A. Your return is not filed until April.

By Mr. Campbell:
Q. All right, sir, the testimony, which you have just given is with respect to the calendar year 1957?
A. The calendar year, 1957.
Q. Now, will you state what Mrs. Klotz's tax charged to her on the partnership books for 1956, for the calendar year, 1956, was and what it would have been had she filed a separate return? I am assuming that separate returns were filed on the basis of her actual earnings?
A. I cannot give that, I will have to combine two figures on *thos,* which I presently have in my working papers.
Mrs. Klotz's tax for the year 1956 if she had filed a separate return would have been $7,181.96.
Q. How much was actually charged against her on the partnership books as a result of her paying one-third of the tax shown on the joint return?
page 358 } A. In the various payments that were made applied to the 1956 tax, she was charged with $9,433.05.
Q. All right, if you will take 1955. If she had filed a separate return that year for the amount of her net earnings, what would have been her tax compared with the amount

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charged against her on the partnership books as a result of the joint return?

A. The amount of her tax as shown by a separate return, if one had been filed, would have been $6,112.33. In the several payments made applicable to that tax she was charged $7,862.61.

Q. Will you go to the preceding year, that would be 1954, and make the same comparison.

Mr. Gibson: It doesn't look like his testimony is the same as his exhibit.

Mr. Campbell: No, sir, it is not, the exhibit does not show these figures.

A. No, sir, it doesn't, not on the basis of individual years. For the year 1954, Mrs. Klotz's tax on a separate return would have been $3,539.96; she was charged in the several payments made applicable to that 1954 tax, one-third of the total tax shown on the return, which was $13,241.28, or she was charged with $4,413.76.

Q. Now for the year 1953?

page 359 } A. For the year 1953, her tax on a separate return basis would have been $3,606.51. The various items charged to her for that year representing payments made applicable to it was $5,519.05.

Q. Now for the preceding year, if you will take each year back to 1948, please.

A. For the year 1952, the tax on a separate return basis would have been $6,465.61. Payments made on that year's tax and charged to Mrs. Klotz were $902.26.

For the year 1951, the tax on a separate return basis for Mrs. Klotz would have been $9,096.58; she was charged in the various payments made applicable to that year, $11,383.16.

For the year 1950, Mrs. Klotz's tax on a separate return basis would have been $3,384.00. She was charged in the various payments made applicable to the tax $4,652.06.

For the year 1949, Mrs. Klotz's tax on a separate return basis would have been $129.88. She was charged in the several payments applied to the tax of that year $5,038.79.

For the year 1948, her tax on a separate return basis would have been $7,221.32. She was charged in the various payments applicable to the year with $9,494.43.

The year preceding that was on a separate return.

Q. As a result of those charges made against Mrs. Klotz on the partnership books what total amount was charged

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page 360 } against her for Federal Income Taxes on the partnership books for the years that you have mentioned in excess of the amount, which she would have had to pay had she filed separate returns?

A. The excessive amount is $20,015.91.

Q. Twenty what?

A. $20,015.91.

Q. Now, Mr. Odor, I refer you to your Schedule I, as revised, in which you state that there is an excessive amount charged against the drawing account of Frances Klotz, I presume on the partnership books?

A. Yes, sir.

Q. In the amount of $21,703.89. Will you explain the difference between those two figures?

A. That difference is a savings that comes about because of the benefit to persons filing a joint return.

Now, if I might again refer to page 2 of the June 4, 1958 Report—

Q. If you will please, just explain what you mean by that.

A. In the total column there is shown the taxable income on the joint return of $49,087.32.

Q. For what year is that?

A. This is for the year 1957.

Q. And is this just a sample year?

page 361 } A. That is a sample year only. Immediately below there is shown the tax based on separate returns and before any credit against tax for dividends; that tax as shown on the separate returns amounts to $20.535.91; the tax shown on the joint return, also before dividend credit is $19,761.52, or a savings because of the filing of a joint return of $774.39. In the same illustration that savings has then been apportioned to Mr. Klotz and to Mrs. Klotz on the basis of the ratio of the tax of each to the total, thereby allocating to Mr. Klotz $595.80 of the savings and to Mrs. Klotz $178.59 of the savings. The difference, then, between $21,703.89 shown on the revised schedule I and the $20,015.91, that I mentioned a moment ago, is due to the sum total of the various years of those savings, which total is $1,687.98.

Q. Well then, Mr. Odor, referring to your revised Schedule I, in order that there may be no possible misunderstanding on this statement with respect to it,—Do you have your revised Schedule I there?

A. Yes, sir.

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Q. I call to your attention the language on that page "Federal Income Tax on the basis of separate returns for Mrs. Klotz?

A. Yes, sir.

Q. Would it not be more correct to say Federal Income tax on basis of separate returns for Frances Klotz and giving effect to her share of savings on the joint returns?

A. Yes, sir, that is true, and, of course, that is explained in the Report on page 2, immediately above the sample calculation.

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Q. But, in any event, if Mrs. Klotz received no part of the savings from the filing of the joint returns, she would have been entitled to a credit of $20,015.91 against the amount that was actually charged to her on the partnership books?

A. Yes, sir.

Q. Is it correct to state that $20,015.91, represented a penalty to her as a result of the filing of joint returns?

A. In my opinion it did, yes.

Q. Now, you have made a proportionate allocation, you have recommend or stated it in your report that there should be a proportionate allocation of savings from joint returns, a total, I think of a little more than $1,600, is that correct?

A. Yes, sir.

Q. Can you state whether or not in your experience as an accountant, that is or is not a proper accounting practice to make such allocation of savings?

A. We do it in the office all the time, in any case where the question of division of savings on a joint tax return, we submit to both husband and wife a tabulation very similar to the one shown here, and in turn will use the determination of net income in the preparation of their separate financial statements.

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Q. Have you had occasion to have that method presented to or texted by any of the courts of Virginia?

A. We very recently had a question of a Committee, where joint returns were filed, and the proportionment of taxes.

Q. You say Committee, do you mean one of the husband?

A. One of the parties, the husband in this case, the property was under the supervision of a Committee, and the account was filed with the Circuit Court of Fauquier County in which this proportionment was used, and that account has been accepted by the Court.

Q. Can you state whether in your experience as an accountant that is or is not required—such proportionment is required in good accounting practice?

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A. In my opinion good accounting practice use such proportionments in order to determine the respective share for each of the parties involved.

Q. Have you in *you* experience as an accountant, have you ever heard of penalizing one party as a result of filing a joint return in the allocation of the tax?

A. It has never come to us, because we have never used an allocation other than the one illustrated here.

Q. In your opinion, would it be good accounting practice to use such a proportionment?

page 364 } A. It would not only be good accounting practice, it would be most unfair to the party penalized.

Q. Mr. Odor, as a result of your analysis of the tax returns, to which I have reference, and assuming that the items shown on the remaining Schedules in your exhibit were improperly charged to Frances Klotz on the books of the partnership, and assuming that the values of the real estate of the partnership is as indicated in your revised Schedule X, which I believe counsel will concede, is the summary of the testimony on that, and assuming also that the fair value of the personal property of the partnership as of June 8, 1958, is the value fixed by Adam A. Weschler & Sons in the appraisal filed with the Court, based on those assumptions have you made a computation of the partner's capital in the Klotz partnership as of June 8, 1958, giving effect to these transactions?

A. Assuming that all of the items listed in the Report, as revised, were improperly charged to Mrs. Klotz and that the appraisals were as submitted by Mr. Weschler for inventory and for fixed assets, as agreed to with respect to Real Estate, the total adjusted capital of the partnership would be $316,-374.45, which is shown on Exhibit A.

Q. That is on Exhibit A, the second page?

A. Under the total column at the bottom of the page.

page 365 } Q. And what would the respective shares or respective capital balances of the two partners then be?

A. Starting with the capital of the partners as shown by the books on June 8, 1958, making the adjustments for the particular items that we mentioned, the capital of Mr. Klotz—

Q. You are referring to the first page of Exhibit A, are you?

A. I am referring now to the first and second page.

Q. Let's start with the first page. Item A is "Partner's Capital as shown on the Balance Sheet."

E. Franklin Odor.

A. June 8, 1958.

Q. Based on book value.

A. Based on the books of the partnership as shown by the statement that was prepared, I believe, by Mr. Brown. Item B, represents the various items that were considered to be improperly charged to Mrs. Klotz and adds $41,-773.44 to Mrs. Klotz's account and subtracts it from Mr. Klotz's account. Item C would then be the adjusted or corrected capital balances of the partnership, as shown by the partnership books, assuming that those items, the adjustments, are correct. Item D on page 2, shows the additional capital interest because of appraisal increase in the value of inventory, basing that value on the Report of Mr. Weschler, the total increase would be $41,751.23, of which two-thirds is shown to be Mr. Klotz's capital or $27,834.16, page 366 } and one-third Mrs. Klotz's or $13,917.07. Item D-2 shows the appraisal *increas* of fixed assets over the book value or depreciated value of those assets.

Q. You say fixed assets, do you mean fixed personal assets?

A. Fixed assets used in the business, such as equipment, furniture, etc.

Q. But not real estate?

A. But not real estate. The excess of the appraisal over the book value is $13,862.32, of which two-thirds is shown to be Mr. Klotz's capital and one-third Mrs. Klotz's capital, resulting in a distribution of that increase of $9,241.55 to Mr. Klotz and $4,620.77 to Mrs. Klotz. Item E shows the appraisal *increas* over book value or depreciated value of real estate owned by the partnership, the total increase is $83,-488.46, of which two-thirds is shown to be Mr. Klotz's capital or $55,658.98, and one-third Mrs. Klotz's or $27,829.48, resulting then in a capital balance for Mr. Klotz of $212,861.84, and for Mrs. Klotz of $103,512.61.

Q. If there were added to the present book value of the partnership or total capital of the partnership, as reflected in Mr. Brown's book statement as of June 8, 1958, if there be added to that total the sum of the additional amounts from Mr. Weschler's appraisal and the additional amount from the over appraisal of the real estate, is it a page 367 } correct statement to say the total of the partners would be $316,374.95.

A. On the basis of *thos* valuations, yes, sir.

Q. Now, sir, disregarding the capital account of the partnership and the items, charged from one partner to another

or credited from one partner to another on the capital account, if that total capital of $316,374.45 was divided as the defendants contend it should be divided, on the basis of two-thirds to Mr. Klotz and one-third to Mrs. Klotz, what would be the respective share of Mr. Klotz and Mrs. Klotz?

A. Mrs. Klotz's share would be one-third of $316,374.45, or $105,458.15. Mr. Klotz's share would be $210,916.30.

Q. How much difference is there between the defendant's theory as to division on the basis of two-thirds and one-third and defendant's alternate theory on the basis of the improper charge of items to Mrs. Klotz's account as listed?

A. Well approximately $945.00.

Q. It comes out almost the same?

A. $1,945.00.

Q. $1,945.00?

A. Yes, sir.

Mr. Campbell: Your witness.

CROSS EXAMINATION.

By Mr. Gibson:

Q. Mr. Odor, I think you went over all of the accounts during the term of this partnership, did you not?

page 368 } A. All of the accounts? No, sir, only those that related to Mrs. Klotz's drawings and—

Q. Didn't you make an examination of the Report of A. M. Pullen & Company?

A. Of the reports but not the accounts of the partnership.

Q. Insofar as you could see were those reports prepared in accordance with good accounting principles?

A. I would say generally so, yes.

Q. You would say they were?

A. Preparation and form of the reports, yes.

Q. You spoke about this item of the improper charge to Mrs. Klotz for the $2,094.31, because of the difficulty with the Revenue Department—

A. No, sir, the $2,094.31 was an item charged to Mrs. Klotz on July 31, 1947, for which we had no explanation at the time. Mr. Brown, I believe has since been able to get an explanation of it, and found that all but approximately $34.18 would relate to Federal Income tax.

Q. Let me ask you this, Mr. Odor: You are aware of the fact that for the year 1947 that the Federal Government

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would not allow the salary schedule set out in the partnership, are you not?

A. I will say that they made a change in it.

Q. They changed it to a salary for Alex Klotz
page 369 } of $20,000.00 instead of $5,200?

A. They did that for the purpose of tax adjustment, yes, sir.

Q. Was there any credit to Mr. Klotz on the books of the partnership for that amount?

A. No, sir, there was not.

Q. For the additional $14,800 of salary?

A. No, sir.

Q. There was not?

A. No, sir.

Q. In keeping with good accounting practice he should have been allowed that $14,800 credit, shouldn't he?

A. No, sir.

Q. He shouldn't?

A. No, sir.

Q. In spite of the fact, you say that Mr. Brown has testified that the Government would not have allowed the partnership to stand, because they questioned the *bona fides* of it?

A. Mr. Brown did not put that additional salary on the books nor did Mr. Brown credit to Mr. Klotz any additional salary for the year 1947.

Q. I am asking you, you have testified that you feel you should go back and make all these corrections, shouldn't he
have been credited with the additional $14,800 of
page 370 } salary?

A. No, sir.

Q. He shouldn't?

A. No, sir.

Q. In other words, he should be charged for tax purposes on the $20,000.00 salary, when he draws from the partnership $5,200, and you tell me that would be proper accounting practice?

A. No, sir, it wouldn't, because the partnership agreement would apply.

Q. I am asking you would it—

Mr. Campbell: The witness is entitled to finish his answer.

The Commissioner: He answers the question and then he is entitled to make any explanation which he wishes.

Q. If a man is charged for tax purposes with $20,000 salary,

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wouldn't it be proper to credit him on the books for the $20,000 on which he has paid taxes?

A. No, sir.

Q. It wouldn't?

A. No, sir.

Q. You wouldn't consider that good accounting practice?

A. No, sir.

Q. Let's carry it a little further. Suppose the salary was $100,000 and in the partnership agreement it was
page 371 } set down at $5,000, and the profits were $100,000, say it was $100,000 profits, Mrs. Klotz gets one-third and Mr. Klotz would get two-thirds, if he is set up for a salary of $100,000, on the tax schedule, he would go in the hole a considerable amount of money, wouldn't he, if you gave the credit and made the charges as you suggest?

A. The tax rate is not one hundred per sent, so I doubt if he would go in the hole.

Q. If he was charged with a salary of $100,000, how much would he have left?

A. In 1947, I don't recall the tax rate.

Q. You know approximately.

A. They have changed it.

Q. What would they be now?

A. Well on $100,000 salary, he would probably have thirty-five to forty thousand dollars left.

Q. So, if he had to pay tax on the $100,000 salary and only got two-thirds of the $100,000 as his share of the income he would be exactly down to zero, wouldn't he?

A. If that had been the case.

Q. So, that couldn't have been good accounting practice, could it?

A. Mr. Gibson, the only way I know to answer is this: For the purpose of the financial statement and for good account-
ing practice, that the partnership agreement
page 372 } would control, and in this particular case no adjustment was made on the partnership books at all for the salary considered by the Internal Revenue Department in arriving at a settlement for that particular year; it was not reflected on the books.

Q. I am not asking you—

Mr. Campbell: Pleas*t* let him finish.

The Commissioner: Let him finish.

Mr. Gibson: He is just rambling. Go ahead.

E. Franklin Odor.

A. And in this particular case the revised Schedule X and the original Schedule X shows Mrs. Klotz's tax as it was shown on the original return. Now actually in the settlement—

Mr. Gibson: I am not asking about this stuff. He is going into something I didn't ask him at all.

A. In the settlement the Internal Revenue charged Mrs. Klotz $4,847.07 for the year 1947. Now, if it is good accounting practice, it would also be good accounting practice for the tax, but I don't believe it is, it is not reflected in the report under the certificate of the accountant, nor was it reflected in Mr. Brown's report for that year.

Q. Mr. Odor, when you made your first check of these books, you did go over and revise these accounts and credit Mr. Klotz and charge him all the way through there, didn't

page 373 } you?

A. When you say charge or credit, do you mean on the books?

Q. In your report?

A. The changes are reflected in the report.

Q. And all through there it is reflected as a capital account?

A. Because the capital account is the only thing that appeared on the books.

Q. Let me ask you this: Do you consider it proper accounting practice in the dissolution of a partnership to distribute the assets of the partnership in the capital account?

A. If the partnership agreement so provides.

Q. In the absence of any such provision in the partnership agreement, what would it be then?

A. In the absence of such a provision, I think the general law of the State would control.

Q. Do you know what that is?

A. The State of Virginia, I couldn't tell you.

Q. Suppose you didn't have any law on the subject?

A. Then, I would say it would be a matter of agreement between the partners.

Q. If there was no law and no agreement, and there was no statute applicable to the distribution, how would an accountant using good accounting practices distribute it?

page 374 } A. In the absence of any agreement at all, you would probably recommend that it be distributed on the basis of their capital balances.

E. Franklin Odor.

Q. You probably would recommend?

A. Yes, sir, in the absence of any agreement to the contrary.

Q. Now, isn't it true that there is going to be a tax refund for the year 1957?

A. So, I understand. I understand that a joint declaration was filed for the year 1958, and that there is an over payment on the 1957 tax.

Q. And that is not reflected in your exhibit?

A. No, I think the joint declaration is still in effect. There is the question of dividing that over payment between these two partners.

Q. Now Mr. Odor, very often a partnership composed of husband and wife *treat* things differently from a business partnership, wherein the parties are not related by blood or marriage. Isn't that true?

A. Well necessarily the same questions may not be raised as you go along.

Q. Let me ask that you answer my question.

Isn't it true that very often in a partnership, which is composed of husband and wife, you wouldn't have the same situation that you would with those of individuals, page 375 } who had no connection?

A. In what respect?

Q. In respect to the actual operation of the business, the paying of bills and things of that nature.

A. Well, probably not, because the husband and wife generally have confidence in each other.

Q. That is right, so you don't have exactly the same actual set up, do you?

A. Well, not precisely.

Q. Now, I want to hand you what has been introduced in evidence by Mrs. Klotz as an exhibit of the estimated annual *expenes* at their residence at 1600 Franklin Street, and I think they total approximately $20,000. Now, if you take this exhibit that you have used here for 1957, and assuming all the charges to be made against Mr. Klotz and his income tax to be charged as you have it, he wouldn't have anything, would he?

A. Well, assuming that they were actual expenditures that would be true.

Q. In other words, he would come out at the end of the year—

A. He would come out about $500.00 short.

Q. About $500.00 short. So assuming that those expendi-

E. Franklin Odor.

tures were made, unless some of these items were charged to Mrs. Klotz, he would be in the red?

page 376 } A. Of course, some of those items were charged to Mrs. Klotz, because she had a salary, she had some other drawings.

Q. Now, wait a minute, just answer my questions.

Mr. Campbell: You won't let him answer.

Mr. Gibson: He goes into things I am not asking him, he starting making suppositions.

Mr. Campbell: You just don't like his answers.

Mr. Gibson: No, I don't object to his answers, but it is purely a voluntary statement.

Q. The items listed in your report are the only ones you took exception to?

A. The only ones charged to her that I took exception to.

Q. You don't know of your own knowledge anything about the propriety of those charges, do you?

A. No, sir.

Q. Who instructed you to take exception to those items?

A. At the time the engagement was undertaken, the instructions were to examine the withdrawal accounts of Mrs. Klotz with a view that Mrs. Klotz was to pay certain items, those items were food for the home, a maid, a *gardner,* her personal clothing, maintenance of her car, various household supplies, such as linens and things of that kind. The same instructions were given to examine the accounts

page 377 } with a view that he was to pay for his car, his personal expenses, his own clothes, furnishing for the children, children's education, utility bills, life insurance, and on that basis the examination was made and exceptions to the items were taken.

Q. You were instructed by the attorneys?

A. Yes, sir.

Q. And in your report you stated, do you not, that we are advised by your account that numerous items have been improperly charged?

A. That is correct.

Q. So you in no way are attempting in your testimony to say that these charges are improperly made?

A. I would have no knowledge of the individual charges.

Q. Mr. Odor, Mr. Campbell has asked you quited a number of questions about Mrs. Klotz being penalized. When

a man turns over a third of the income from his business to his wife that is a rather generous thing, isn't it?

A. I guess my wife gets more than a third, Mr. Gibson, I think it would have to be judged in each individual case whether it was generous or isn't. I would have no way of knowing in this particular case.

Q. Do you think from the total amount of charges that there seems to be any policy of penalizing her?

A. I believe Mr. Campbell's questions dealt with the question of penalty with reference to the imposing
page 378 } of the income taxes.

Q. Did it appear to you from your examination of the books that her husband was trying to penalize her?

A. Well, if these items were improperly charged, I would say he was attempting to do so.

Q. Based upon the entire income of these parties, do you think the books reflect an attempt on his part to penalize his wife?

* * * * *

A. With respect to what item?

Q. You have been over these books and you have been asking about Mr. Klotz penalizing his wife. I want to know, having been over these books, considering the income of this partnership, do they reflect a situation whereby Mr. Klotz was penalizing his wife?

A. I would say that the partnership books would not show that, because the partnership books are not complete within themselves with respect to all of the transactions.

Q. They are not complete?

page 379 } A. No, sir.

Q. Then how can you make up an exhibit such as you have prepared, if they are not complete?

A. These exhibits only raise a question as to the items shown.

Q. And that is as far as they go?

A. This is as far as they go, that is as far as I have intended them to go.

Mr. Gibson: All right, that is all.

RE-DIRECT EXAMINATION.

By Mr. Campbell:

Forrest W. Brown, Jr.

Q. You have made a list of certain items, which were charged against Mrs. Klotz's account on the partnership books, set forth in your schedules. Did you find other items to which you had been instructed not to take exception, such as charges for a maid, etc.?

A. Yes, there were various other items to which no exception at all was taken, and they totalled a fairly substantial amount in the course of the whole period.

Q. It included things like a maid and upkeep of the car?

A. The upkeep of the car and the cash withdrawals made each and every week, the latter part of the period $125.00 a week. There was no question with respect to those items at all.

pag 380 } Mr. Campbell: That is all.

* * * * *

page 381 } FORREST W. BROWN, JR.,
recalled as a witness by complainant in rebuttal, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Gibson:

Q. Mr. Brown, I have asked you to project through the period of this partnership the effect on the accounts of the parties of a $20,000 salary to Alex R. Klotz in lieu of a salary of $5,200 per annum, and would you state what that would be?

Mr. Campbell: May we note an objection as being immaterial.

The Commissioner: The objection is noted.

A. For the eleven years, 1947 through 1957, it would increase the share of income of Alex Klotz in the amount of $54,266.63.

Q. And that would be charged against Frances Klotz's account?

A. That is correct.

Q. Now, Mr. Brown, was there any credit on the books of the company given to Mr. Klotz for the additional $14,800 on which he was required to pay income tax in 1947?

Forrest W. Brown, Jr.

A. No, there was no credit given on the books.

Q. Now, Mr. Brown, was there a ruling by the Internal Revenue in 1954 as to the method of allocating income taxes?

page 382 } A. There was a ruling in respect to the allocation of tax in respect to shares of joint taxes to be shown on Estate Tax Returns in respect to decedents' share of the joint tax liability.

Q. And what formula did the rule set up?

Mr. Campbell: We object as having no bearing on income tax.

The Commsisioner: As I understand it you are speaking of a rule of the Tax Department?

A. It is a rule in respect to the amount of Federal Income tax of a decedent, which should appear as an asset on an Estate Tax Return.

Q. What was that ruling, Mr. Brown?

A. The basis of that determination would be that the share, the decedent's share of the joint income tax should be the proportion of the total tax that the decedents tax up to date of death bears to total income.

Q. That was where a joint return was filed?

A. That is correct.

Q. If you used the same formula in this present case, would there be any material difference in the amounts charged to the respective parties for income taxes?

Mr. Campbell: May we note our objection to this whole line of testimony on the same basis, that it is irrelevant to this case.

page 383 } A. There would be some change in the allocation based on the proportionate income of each. The total income of Mr. Klotz included in the joint return being about 69½ per cent of the total income on the joint returns.

Q. What would be the total effect on the figures that you have used here in your exhibits as to the amount charged to the respective parties? Would that affect it?

A. It would affect the amounts as allocated on the books.

Q. To what extent, that is what I mean?

A. I cannot give you that figure.

Q. Would it make any substantial difference?

Forrest W. Brown, Jr.

A. It would probably make a difference of about several thousand dollars.

Q. About several thousand dollars?

A. Yes, sir.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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